



Rational suicide, assisted suicide, and indirect legal paternalism



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ABSTRACT

This article argues in favour of three related claims: First, suicide is not an immoral act. If people autonomously choose to kill themselves, this ought to be respected. Second, we can deem the desire to die comprehensible, and even rational, when the person contemplating suicide does not see a meaning in her life. This assessment is not based on a metaphysically dubious comparison between the actual life of a person and the supposed state of being dead. Third, from the first two theses it does not automatically follow that we should allow other people to help someone who autonomously and rationally chooses to die to pursue this plan. To argue against indirect legal paternalism, the practice of legally preventing someone else to assist a person to perform a suicide or to be killed on request, needs additional reasons. It is argued that assisted suicide and voluntary active euthanasia can indeed be justified by establishing a claim of persons who want to die but are not able to kill themselves. This mainly means that being really free to die should be interpreted as involving the means to fulfil one's desire to die.

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1. Introduction

This article deals with the topic of suicide from a philosophical perspective. It focuses mainly on normative issues regarding the rational and moral assessment of the will to die. This is the perspective we usually find in ethical debates and a significant part of the article falls into this area. Since a normative assessment usually determines legal regulations of suicide and assisted suicide, I believe it is also important to look at these issues from the perspective of political and legal philosophy. It will therefore be discussed whether suicide should be regarded as a practice that needs to be prevented or – on the contrary – to be enabled in order to secure the individual freedom of citizens. The main topic in this perspective is paternalism. In general, the article argues from a liberal point of view; it takes for granted that there is a reasonable pluralism of value commitments, and that there is a priority of individual liberty. This implies that restrictions of individual options need to be justified on grounds that are neutral between different reasonable conceptions of the good. As will be seen, within the context of the discussion on suicide this liberal stance particularly implies certain problems when referring to an alleged objective value of the personal life of a person. I discuss the value of life to the person who lives it, and it seems particularly difficult to establish such a value that is not due to an evaluation of the person herself without using arguments that are not neutral between different reasonable conceptions of the good. Hence, from my point of view, it is the person herself that confers

meaning and value to her own life, not any metaphysical characteristic of persons.¹

In the philosophical literature on suicide two main issues are usually discussed. First, whether, and under which circumstances, we should attempt to *prevent* suicide. Because the issue concerns potential interference with the individual freedom to act, which is supposedly to the benefit of the person seeking suicide, this discussion is to a large extent congruent with the debate over paternalism. Secondly, it is considered whether, and under which circumstances, we are able to *understand* and endorse the intent of a suicidal person. This discussion focuses on the possible explanations or justifications of the wish to die.²

The above two problems are independent of each other, even if there is some overlap. The answer to the question whether we should allow a person to perform suicide is surely influenced by a possible justification of the death wish.³ Nevertheless, it is not convincing to reject an intervention only because we find the will to die comprehensible. Conversely, it is not obligatory to prevent a suicide only because we

¹ Surely many people will disagree with such an account and I appreciate that there are reasonable disagreements regarding this matter. But this very fact of reasonable disagreement points us towards a liberal perspective. If someone can show that there is an objective value to life or to persons that does not depend on any subject-relative evaluation, then several of my arguments can be rejected.

² A third strand of discussion deals with the definition of suicide (see also Mayo, 1983). I will not pursue this in the following text (see however the remarks in the following footnote).

³ I use “perform suicide” for the action under consideration, because the more common expression “commit suicide” already bears normative (negative) connotations. In the literature the problem is sometimes circumvented by using the verb “to suicide”. But I find this expression stylistically unattractive.

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cannot understand the decision to die. These two themes can accordingly be discussed separately, as will be done here as well.

For the first theme, the moral question of the justification of suicide prevention, it appears to be possible to refer to a received view. In the more descriptive first part of this essay, I will introduce this point of view. The second part will probably be more contentious; there I will concentrate on the second theme and will thereby ask whether there can be such a thing as rational suicide, as well as which characteristics are necessary to call it thus. In order to clarify this issue I will make reference to the at least as old philosophical problem of what makes death an evil, because if death should always be a harm, it seems to follow that a will to die is always irrational. In the third part, I will return to the first theme of suicide prevention, but this time by addressing a special problem, namely the question whether people with suicidal intent might possibly have a right to assistance, or whether, on the contrary, a form of indirect legal paternalism might be justified, that is, paternalism that bans willing helpers in a suicide act from offering a requested service.

Altogether, this article argues in favour of three related claims: First, suicide is not an immoral act. If people autonomously choose to kill themselves, this ought to be respected. Second, we can deem the desire to die comprehensible, and even rational, when the person contemplating suicide does not see a meaning in her life. This assessment is not based on a metaphysically dubious comparison between the actual life of a person and the supposed state of being dead. Third, from the first two theses it does not automatically follow that we should allow other people to help someone who autonomously and rationally chooses to die to pursue this plan. To argue against indirect legal paternalism, the practice of legally preventing someone else to assist a person to perform a suicide or to be killed on request, needs additional reasons. It is argued that assisted suicide and voluntary active euthanasia can indeed be justified by establishing a claim of persons who want to die but are not able to kill themselves. This mainly means that being really free to die should be interpreted as involving the means to fulfil one's desire to die.

2. Should we attempt to prevent suicides?

For a long time the moral aspect of suicide has been discussed in reference to the agent, and to a lesser extent as regards the issue of the moral legitimacy of interference in the intended action. It has been asked whether the person seeking suicide intends to perform a morally wrong act. This discussion has almost completely subsided, because certain premises on which a moral condemnation of suicide is based are generally no longer considered to be valid. I would like to name three of these premises (Birnbacher, 2006).

First of all, suicide can be regarded as morally reprehensible if life is considered to be the property of God. One thus violates in a sense God's demands if one "throws away" one's life. Although this argument is often brought into connection with Christianity, it also appears in other contexts, such as Socrates' rejection of suicide in the *Phaedo*. A similar argument can be found, among others, in John Locke (Locke, 1960, p. 284; cf. Lohmar, 2006). Socrates' account may surprise many, for after all he himself drinks the hemlock. Yet even if Socrates – "technically" – kills himself by drinking poison, it can be argued that he did not perform suicide, because he lacked the will to die. He acted freely when he drank from the cup, but not due to any autonomous decision, because it was not his wish to die. Rather, he was sentenced to death, and because he accepted the sentence, he obeyed. To this extent the manner of his death is a purely technical aspect (Frey, 1978). But the premise that our lives belong to others is today barely comprehensible anymore (Hume, 1826). In addition it itself is not accessible to rational justification, but instead merely relies on faith in God. Because moral judgements, however, have set out stronger justification demands than mere religious beliefs, this argumentation is only convincing to a minority (Battin, 1982; Biggar, 2004).

Secondly, suicide can be understood as a violation of moral duties to ourselves. Immanuel Kant's (1996b) damning verdict is based on this argument. "The first, though not the principal, duty of man to himself as an animal being is to preserve himself in his animal nature. The contrary of this is willful physical death or killing oneself (*autochiria*), which can be thought as either total, suicide (*suicidium*), or merely partial, mutilating oneself" (p. 546).

Yet a fundamental problem of the notion of duties to ourselves lies in the identity of the obligating and the obligated, and the consequent potential release from such an assumed obligation. If I want to die, then I could absolve myself from the obligation to preserve my life. Kant (1996b, p. 547) sees this problem and solves it by dividing the personal union and differentiates the rational (free) being (*homo noumenon*) from the phenomenal (natural) being (*homo phaenomenon*). A person can, as a humanly rational being, therefore obligate herself as a phenomenal being. It seems obvious that this condition of duties to ourselves is hardly convincing. But let us take a closer look at Kant's argument against suicide.

The human being is capable of autonomy and hence, in Kant's view, is an end in itself. This is what establishes the duty of everyone to respect others morally. At the same time this characteristic of the human being's own existence, namely to be an end in itself, prohibits the person herself to end her life in order to achieve another end, such as the defence of personal honour or the avoidance of pain. Thereby she would make herself into a mere means to her end, which according to Kant is a contradiction in itself. This interpretation of the categorical imperative, however, which amounts to the prohibition of instrumentalization, is difficult to apply, because it remains unclear whether by suicide a person actually uses herself merely as a means. This requirement is the proviso of the second formulation of the categorical imperative (Kant, 1996a, p. 80), which in the philosophical debate is called the formula of humanity. Indeed, it is even difficult to understand how we can use ourselves merely as a means at all. To be sure, we use our own bodies as instruments, as it were, in order to reach our goals. But if we act on the basis of our own free will, then it is difficult to see a moral problem in purely self-regarding acts.

Kant also argued that the deliberate termination of a person's own life is a violation of the very conditions of morality. "To annihilate the subject of morality in one's own person is to root out the existence of morality from the world ..." (Kant, 1996b, p. 547). This argument rests upon the assumption of moral autonomy, a self-referring duty to maintain the capacity of acting morally. Yet this mandate cannot originate from ourselves, that is, be derived from our own interests, because in this case we could, again, release ourselves from this duty. Kant (1996b, p. 565ff.) seems to see its source in an end or purpose of human nature. However, such natural-teleological arguments are difficult to support under the modern conditions of a scientific and non-metaphysical outlook. We know that no teleological processes are to be observed in nature, even if it sometimes appears that way to us. Kant's argumentation in favour of duties to ourselves is nowadays, for these reasons, hardly ever advocated (but see Timmermann, 2006).

Thirdly, it can be argued that a suicide violates the sanctity of human life, which is to be protected. To end our lives means therefore to disregard the inviolableness of this value. Just like the first argumentation, this one suffers from an unsecured premise, namely the supposed sanctity of life. If this notion merely refers to the intrinsic value of every human life, a value that lies in life itself, then the question arises whether every suicide would thereby be condemned. The person seeking suicide can admit to the intrinsic value of her own life, but she just orders this value under others, such as freedom from suffering. Surely an intrinsic value need not be overriding or absolute, it simply means that it is a value in itself, and not by support of some extrinsic source.

Reference to the sanctity of life therefore would have to be understood as a categorical value, so that any premature active termination of life represents a violation of this value, and that it may not simply

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