

# 1



## Ethical Perspectives to Guide Decision-Making

Should the lives of suicidal people be saved whenever possible? The answer to that question has been debated by philosophers and policymakers since humanity's earliest historical records. Today, we find the standard range of philosophical orientations revealed in contemporary practices and bioethical discussions. The general ethical perspectives presented in this chapter are succinct statements of alternative positions one may take concerning the moral acceptability or unacceptability of suicide, as well as one's obligations to intervene to save a life and the limits thereof. Our presentation of philosophical perspectives is intentionally abbreviated, sidestepping many subtleties of the rich debates among philosophers on these issues. However, we use this overview to set out a framework for thinking about the implicit and explicit ethical premises that underlie existing policies and practices concerning suicide and suicide prevention. We present popular paradigms or conventional models of the ethics of suicide research culture to articulate how these points of view may make a difference in applied situations. Although, in our view, pure philosophical forms are unlikely to be found in real-life moral dilemmas, we think it may be genuinely beneficial for practitioners, researchers, and policymakers to acknowledge and communicate their own values and how these values inform the resolution of hard cases in suicide research ethics (Stojanović, 2020; Weisstub, 1998).

Attitudes towards the acceptability of suicide vary around the world, and individuals within countries hold a variety of beliefs about whether suicide is justified. The seventh World Values Survey, completed in 2021 (Haerpfer *et al.*, 2022), includes data from a survey from 80 countries, with 1,000 to 5,000 respondents per country. Participants were asked, as part of a detailed questionnaire about their values, 'Please tell me whether you think suicide can always be justified, never be justified, or somewhere in between?' Respondents were given a card with a scale from 1, labelled 'never justified', to 10, labelled 'always justified', to indicate their response. Overall, countries having more secular-rational values that place less emphasis on religion, traditional family values, and authority are more accepting of suicide, although they do not necessarily have more suicides, when compared with countries with more traditional values. The mean scores, on the scale from 1 to 10 (1 = never justified; 10 = always justified) vary from 1.12 for Egypt to 5.21 for the Netherlands.

Some countries, such as Egypt and Albania, have almost universal beliefs that suicide is never acceptable (in Egypt 95.3% of respondents answered 1; in Albania 93.9%). This contrasts with countries where most people held a middle view, with relatively few feeling that suicide is never acceptable (e.g., in the Netherlands 15% responded 'never acceptable' and 11.4% 'always acceptable'). In analyses of Wave 4 of the World Values Surveys (1999–2001), Stack and Kposowa (2016) found that cultural approval of suicide was associated with values of individual self-expression. These data indicate that although there are significant differences in how much people feel suicide is justifiable by country, we see a range of beliefs *within* all countries, and in most countries the majority feel that some suicides are justified.

We have identified three broadly defined positions, recurrent in discourses concerning suicide, which we call moralist, libertarian, and relativist. These positions express the dominant perspectives that are the usual starting points for how both experts and laypeople orient themselves in problematic or conflictual situations. This chapter is meant to suggest possible opening conversations, ways of looking that should lead us in the quest for greater dialogue.

## 1.1 In the Name of Morality

Several philosophical traditions adhere to the moralist position that suicide is unacceptable and that there is a pervasive moral obligation to protect life. Arguments against the acceptability of suicide have a long history in several different philosophical traditions. They may be based upon a religious philosophy in which it is sinful to take one's own life, such as is clearly indicated in the Koran. The teachings of Mohammed require submitting to divine will and one's preordained destiny (Kismet), which includes the timing of death. The Koran states that suicide is a graver crime than homicide: 'O believers! ... do not kill each other or yourselves. Surely Allah is ever Merciful to you [...] And whoever does this sinfully and unjustly, We will burn them in the Fire. That is easy for Allah' (Khattab, 2016, 4:29, 4:30)

The concept that suicide goes against divine law and is unacceptable can be found first in the views of the pre-Socratic philosopher Pythagoras who, according to Plato's accounts, believed that people must wait until God releases the soul from its bonds, despite the ordeals of living (Choron, 1972; Stojanović, 2020). Plato concurred that suicide is disgraceful and wrote that suicides should be buried ignominiously in unmarked graves (Plato, 1934). However, Plato recognised that there are some exceptions: when one's mind is morally corrupted, when the self-killing is done by judicial order, when the suicide is compelled by extreme unavoidable misfortunes, and when it is from shame after having committed grossly unjust actions.

Although there is no prohibition against suicide in Christian scriptures, and suicides by martyrdom were admired in early Christian writings, the status of suicide as a crime and sin was incorporated into Christian dogma beginning with St Augustine in the fourth century (Dublin and Bunzel, 1933), who considered suicide to be an unrepentable sin. By the time of Thomas Aquinas in the thirteenth century, suicide was recognised as both a sin and a crime. His arguments that life itself is sacred, that suicide disrespects the authority and generosity of the Creator, and that suicide leaves no opportunity for repentance have remained a fundamental part of Christian doctrines (Barrois, 1945).

Moralist arguments against the acceptability of suicide need not be based upon religious or social obligations; for example, they can include a justification based on the categorical imperative of Immanuel Kant (1949). Kant believed that human life is sacred and must be preserved at all costs, as part of moral law that dictates this obligation categorically and unconditionally. He wrote in *The Metaphysics of Morals*, 'The preservation of one's own life ... is a duty', and 'To dispose of one's life for some fancied end is to degrade the humanity subsisting in his person and entrusted to him to the end that he might uphold and preserve it' (Kant, 1949, p. 239). Although Kant believed in the duty to preserve life, he was concerned about some exceptional circumstances when he questioned if a heroic death to save one's country should be considered a suicide, and whether it is a suicide if a person condemned to die is commanded to kill himself (as Nero commanded Seneca). Kant also asked if it is a suicide when a person bitten by a rabid dog, knowing he will die from the wound, kills himself to avoid endangering others. As Jacques Choron (1972) points out, these questions are more than attempts to define what is a suicide and what is not. They reflect potential challenges to Kant's main contention that for moral reasons suicide is unacceptable, without offering answers or revising his strong commitment to his belief in preserving life.

The moralist position is that the protection of life is a fundamental value that takes precedence in decision-making. Other theological arguments include the necessity to conform to God's intentions, leaving it to the Creator to determine the timing and manner of death. One can also find arguments condemning suicide based on natural law, including St Thomas' contention that suicide is contrary to natural inclinations to charity, whereby every man should love himself.

Arguments that date back to Aristotle contend that suicide harms other people and the society in which one lives. An individual has the responsibility to remain alive and serve society and not be cowardly and kill oneself to escape 'from poverty or love or anything painful' (Aristotle, 2000, 1116.10). This view of suicide as a harm to society has been expressed in various ways over time. For example, in sixteenth-century England, suicide was viewed as an offence against the King's interest in the preserva-

tion of all his subjects, albeit based on their economic value as taxpayers. Obligations towards society are also reflected in the contemporary argument that taking one's life has disastrous effects on the person's family and friends.

This harm to society is sometimes the basis for laws that make suicide illegal (see Chapter 7). Most countries have decriminalised suicidal behaviours, though a minority still maintain its illegality. For example, Canada decriminalised suicide in 1972 (Lester, 1992), and England in 1961 (England, 1961). Most Western countries have laws against aiding and abetting suicides. Chapter 7 reviews the legal status of suicide around the world and looks at the arguments for and against laws criminalising suicide.

Regardless of the justifications given, the moralist position is that it is essential to save and preserve life in all circumstances, and that suicide prevention is an imperative.

## 1.2 Self-Styled Libertarianism

Libertarian perspectives emphasise the individual's freedom of choice to determine whether to live or die. Libertarian perspectives vary in their philosophical basis, from the hedonistic right to suicide to avoid pain to a wide range of utilitarian approaches. For example, Hume (1894) insisted that not a single text of Scripture prohibits suicide and said that the commandment 'Thou shalt not kill' is meant to only exclude the killing of others. He argued that when people experience pain and suffering, and when a person is tired of life and is more a burden than an asset, suicide can be the prudent and courageous way to react to misfortune.

Libertarian views of suicide may be found in contemporary beliefs that the decision to live and die may be weighed rationally by a contemplative individual who is not currently suffering (Nashnoush and Sheikh, 2021; Prado, 1998). A more radical libertarian approach involves actively promoting suicide under certain circumstances; for example, for those suffering from

a painful or debilitating physical illness (Humphry, 1991; Nashnoush and Sheikh, 2021). Regardless of whether the justification for a libertarian perspective concerns an obligation to avoid pain and displeasure or a simple neutrality with respect to life-and-death decisions, the net result is that from a libertarian point of view there is no specific obligation to intervene to prevent a suicide.

The trend towards a more libertarian perspective on suicide may be reflected in the decriminalisation of suicidal behaviours in many countries. For some, the practices of euthanasia and assisted suicide constitute an embodiment of this perspective, and the legalisation of these practices in some countries indicates their increasing influence. However, it is important to note that those who are proponents of euthanasia often distinguish between end-of-life decisions by the terminally ill and persons with incurable degenerative diseases, and suicidal behaviour by persons suffering from mental illness (Humphry, 1991; Nicolini *et al.*, 2020). The libertarian perspective is that such distinctions, requiring special precautions, need not be made public policy nor guide clinical interventions and research on suicide. As existential philosophers have contended, libertarian perspectives recognise an inherent 'right' to decide whether life is worth living (Camus, 1955), and the absence of an obligation to interfere with the personal decision to die.

### 1.3 The Umbrella of Relativism

In ethical philosophy, *relativism* refers to the belief that what is morally acceptable varies according to the context or framework of assessment. That framework may be local cultural or contextual norms or individual standards (Baghramian and Carter, 2022). Relativist perspectives (Macklin, 1999; Mishara and Weisstub, 2018) determine the 'rightness' or 'wrongness' of suicide, and the extent to which there are obligations to intervene to prevent suicide, based upon either contemporary situational and cultural variables or on the anticipated consequences of action or inaction. A

large proportion of the general public may be considered common-sense contextualists since they reply differently to questions about the acceptability of suicide depending upon the nature of the situation. For example, people in many cultures generally feel the suicide of an elderly person to be more acceptable than the suicide of a young person; suicide is generally more accepted if the person is suffering from a painful terminal illness than if the person is healthy.

Different ethical and religious groups may hold opposing views about which suicides should be condemned and which should be condoned or accepted. However, from the relativist perspective, the specific context and consequences matter for determining the morality. For example, the Stoics in ancient Greece are noted for their acceptance of suicide. The virtues of suicide were praised by Seneca for elders who begin to lose their faculties and by Pliny the Younger, who considered suicide to be 'eminently high and praiseworthy.' Nevertheless, the Stoics had a contextualist view in which not all suicides were acceptable. Noble suicides that resulted from careful deliberation were accepted or praised. However, impulsive suicides, due to temporary 'confusion of values,' or ones done in the absence of sufficient cause were clearly unacceptable. For example, Epictetus said,

But remember the principal thing: that the door is open.  
Do not be more fearful than children; but as they, when the  
play doth not please them, say, 'I will play no longer':  
so do you, in the same case, say, 'I will play no longer,' and go;  
but, if you stay, do not complain.

(Epictetus, 1910, p. 49)

The Stoics accepted suicides resulting from careful deliberation in unendurable circumstances but rejected rash suicides and suicides in more tolerable situations. This contrasts with Jewish laws, as formulated in the Mishnah of the Talmud, which stipulated that, 'Whenever a person of sane mind destroys his own life, he shall not be bothered with at all.' The Talmudic commentary by Rabbi Eleazar summarises the funeral

practises: 'Leave him in the clothes in which he died, honour him not, nor damn him. One does not tear his garments on his account, nor take off one's shoes, nor does one hold funeral rites for him; but one does comfort the family, for that is honouring the living' (Preuss, 1911, pp. 603–607). In the *Semachot*, a post-Talmudic treatise on the rules of mourning, Chapter 2 discusses when a person found dead should be regarded as a suicide, or 'one who intentionally destroys himself' (*'meabed atzmo ladaat'*).

In the case of suicide (intentional self-destruction), the *Semachot* indicates that the person's body is deprived of all ritual honours. However, the definition of suicide requires that the act was with full intention (*'ladaat'*). This requirement and the Talmudic requirement that the person be of 'sound mind' indicate that suicides resulting from rational deliberation, which were accepted and in some circumstances encouraged by the Stoics, are the only acts of self-destruction that are condemned in traditional Jewish practices. Jewish practice does not consider a death to be a suicide if the person's intentions were not 'full' or if the person was not of sound mind. This would eliminate most deaths classified as suicide by coroners and medical examiners. Up to 90% of people who die by suicide in Western countries, and at least a majority elsewhere (Cho *et al.*, 2016; Knipe *et al.*, 2019), have a diagnosable mental disorder, so they could be considered to potentially not be of 'sound mind'.

The view that the determination of a death as a suicide in Jewish practice should be limited is further supported by analyses of the meaning of the Hebrew word *'ladaat'* and its practical implications. Perls (1911) stated that the full intention to end one's life must have been clearly expressed in words before the death. For example, if a person is found hanging on a tree or pierced by his own sword, this is not considered a suicide, because it could have been a murder if the person had not announced his plan to kill himself beforehand. Friedlander (1915, p. 213) quoted the Orthodox Jewish laws pertaining to suicide, which include:

When one who had been killed was discovered, as far as possible the act of killing should be regarded as the deed of another person and not as his own deed. If a child dies by suicide, it is considered that he



had done the deed unwittingly. Likewise, if an adult killed himself and it is evident that the act was prompted by madness or through fear of terrible torture, he should be treated as an ordinary deceased person.

Although it may appear that Orthodox Jewish practices express an absolutist position in which all suicides are unacceptable, the acceptance of killing oneself in justifiable circumstances (madness, fear of torture, when a child, without clearly expressed full intentions) indicates that the position can arguably be described as contextualist, notwithstanding that exceptions do not necessarily nullify a guiding principle.

Furthermore, ambivalence about suicide in suicidal individuals has been found to be omnipresent by many researchers (Macintyre *et al.*, 2021). Given that a high proportion of people who kill themselves are suffering from a mental disorder and are considered to have ambivalent feelings, only the very few people who kill themselves in a rational, unequivocal, and deliberate manner would meet the Jewish definition of suicide.

Another relativist perspective, based upon a utilitarian ethic, focuses on the best interests of society as understood in terms of the cost-benefit analysis of social utility, rather than just on the best interests of the person. Underlying the utilitarian ethic is the maximisation of social utility as the vehicle to alleviate social misery. For the utilitarian, suicide sometimes may be viewed as an honourable behaviour that preserves and respects societal values, for example in the case of hara-kiri and kamikaze deaths in Japan. In other contexts, for example in the former Soviet Republics, suicide was viewed negatively because it deprived society of the productivity of a worker. Therefore, suicide was regarded as an aggression against state interests, as was the case earlier in feudal England.

All the diverse relativist perspectives share the common view that the obligation to protect life varies, depending upon an analysis of the context or situation. The analysis may be in terms of an understanding of the cultural context and current circumstances, or an assessment of the consequences for the person, their milieu, or society. Such reflection may involve some

form of cost-benefit (or risk-advantage) analysis of the situation, based on principles ranging from individualist to communitarian values.

## 1.4 The Rationality of Suicide

The philosopher Jacques Choron (1964) defined *rational suicide* as meeting the following criteria: (1) there is no psychiatric disorder; (2) there is no impairment of reasoning; and (3) the person's motives appear to be justifiable or at least understandable by the majority of contemporaries in the same culture or social group. Choron's first requirement, that there is no psychiatric disorder, eliminates the majority of suicides, since most people who die by suicide suffer from a mental disorder. This indicates that rational suicide, if it exists, characterises only a small minority of suicides (Knoll IV, 2019; Prado, 2008).

Even the most vocal proponents of the possible rationality of suicide exclude people suffering from mental disorders. Humphry (1986), in his defence of the Hemlock Society's support of rational suicide, states that there is another form, 'emotional suicide or irrational self-murder'. The Hemlock Society's stance or policy on nonrational suicide is to prevent it whenever possible. Furthermore, the Society explicitly discouraged any form of suicide 'for mental health or unhappy reasons' (Humphry, 1986). In recent years, this narrow support for rational suicide has been expanded to include those persons whose suffering is emotional and is associated with the presence of a mental disorder (see Chapter 8).

When the person who attempts suicide does not suffer from a serious mental disorder, suicide may still be irrational; for example, when a person is in a temporary state of extreme agitation or emotional despair. When a person has suffered a loss, been abandoned by a spouse, or been fired from a job, they may become highly suicidal even though they have not been suffering from a previous mental disorder.

There remains the question of whether any suicide can be considered rational. Ron Maris (1982) argued that suicide derives from one's inability or refusal to accept the terms of the human condition. He felt that suicide

may be seen as effectively solving the problems at hand, in contrast to nonsuicidal alternatives. In his view, although no suicide is ever the best alternative to our common human condition, for some individuals suicide expresses a logical response to an existential human situation.

The philosopher Margaret Battin (1984), while admitting that no human acts are ever wholly rational, defines 'rational suicide' in terms of the criteria of the person being able to reason, having a realistic world view, possessing adequate information, and acting in accordance with their own fundamental interests. Battin indicates that meeting the criterion of 'the ability to reason' appears to be very difficult, as research and anecdotal information indicate that people who die by suicide often leave messages that are illogical and tend to refer to themselves as being able to perceive the effects of their suicide after their own death. One of the basic criteria for being able to act rationally is the ability to use logical processes and to see the causal consequences of one's actions. It can be argued that the majority of suicidal persons do not accurately foresee consequences.

In addition, one can pose the philosophical question of whether it is possible to foresee the final consequence of suicide, which constitutes knowing what it is like to be dead. Battin suggests that when we imagine ourselves dead, we generally project ourselves as viewing our own dead body surrounded by grieving relatives at a gravesite. This presupposes a subject with a specific capacity. Battin acknowledges two classes of suicides that are not necessarily irrational. First are those with religious or metaphysical beliefs that include the possibility that one goes on to have human-like experiences after death. Second are persons whose reputation and honour are of primary importance (e.g., a Japanese suicide of honour) or collective suicides aimed to protect the dignity of a specific group (e.g., the mass suicide of the Jews at Masada).

There is also the challenging question of what constitutes rational decision-making. Rationality, according to *Webster's New World Dictionary of the American Language* (1966), is 'exercising one's reason in a proper manner, having sound judgment; sensible, sane; not foolish, absurd or extravagant; implying the ability to reason logically, as by drawing conclusions from inferences, and often connoting the absence of emotion' (p. 1207).

This definition implies a degree of autonomy in the decision-making process, the ability to engage in logical and reasoned thought processes, and the absence of undue influence on the decision-making process by external factors. Professor David Mayo (1983), in a review of contemporary philosophical writings on suicide, suggests that a rational suicide must realistically consider alternatives with the likelihood of realising goals of fundamental interest to the person. The person then must choose an alternative that will maximise the realisation of those goals. Mishara (1998) has argued that most important human decision-making is more emotional than rational, including significant choices in life, such as whom we marry and what careers we choose. If important decisions have a predominantly emotional basis, what would lead one to expect that the paramount decision of ending one's life could be different and more rational? Those who argue for the existence of rational suicide (e.g., Benatar, 2020) generally insist that this must occur when a person is experiencing interminable suffering. Mishara argues that in the presence of severe suffering, true rational decision-making is even less likely to occur; the emotions associated with the suffering compromise one's ability to think rationally.

Battin addresses the criteria for rational decision-making in terms of the decision being based on a realistic view of the world. She points out that there are multiple world views, which vary depending on cultural and religious beliefs; what appears to be irrational for some is considered quite rational in other cultural contexts. Her third criterion, that the person possesses adequate information, may need to be reframed to consider the impact of the emotional state of the person on their ability to evaluate and consider information, and, by implication, to be able to consider alternative courses of action. The vast majority of suicides occur at critical junctures of the life cycle.

Battin's additional criterion of avoidance of harm is essentially the justification that organisations such as the Hemlock Society propose as their fundamental justification for rational suicide. They cite the cessation of the harm caused by unbearable suffering as the most common reason for suicide. They reference grave physical handicap, which can be so constricting or extreme that the individual finds it intolerable. This justification goes

against Christian and other religious traditions that view pain and suffering as serving the constructive purpose of spiritual growth, having a deeper meaning, or as being part of God's plan.

The decision to end one's life when terminally ill is frequently represented as the most rational basis for suicide. The acceptance of ending life when extreme pain or handicap is experienced assumes that no relief for the pain is available and that the severe handicap cannot be tolerated. Humphry (1986) defends people's 'right' to refuse to experience even a 'beneficent lingering' and to simply choose to discontinue living when terminally ill.

Battin's (1984) final criterion, 'acting in accordance with a person's fundamental interest', raises the question of whether one can actually satisfy personal interest by being dead (and not around to be satisfied). Nevertheless, some individuals have long-standing moral beliefs in which the decision to shorten life under difficult circumstances is condoned as being 'in their interest'.

The concept of rational suicide may be confused with the concept of 'understandable' suicide. The psychologist David Clarke (1999) suggests that, when considering the expressed wish to die, the concepts of rationality and autonomy are less useful than the concepts of 'understandability' and 'respect'. It is essential to point out, however, that what an outsider might consider to be understandable or respectful of a person's wishes is often not symmetrical with the suicidal person's experience. In some situations, when outsiders feel that a person would be 'better off dead', those who are existentially grounded in a harsh reality feel differently. Despite popular belief, very few persons who are suffering from terminal and severely disabling chronic illnesses seriously consider, or engage in, behaviour to end life prematurely (Choy, 2017; Liu *et al.*, 2020; Mishara, 1998, 1999b).

Debates concerning rational suicide often centre around society's obligations to provide easier access to suicide under specified conditions, implying moral acceptance. The haunting question remains where and how to assess the requisite threshold of rationality. What constitutes unbearable suffering for one person may be an acceptable level of discomfort for another. Furthermore, individuals differ in the extent to which rationality

is the key component of their decision-making processes. On what basis may we say that rational decision-making is more justifiable than emotionally driven decisions? Most suicidologists choose to try to prevent suicides that come to their attention, assuming that rational suicides, if they exist, are rare; that they are difficult to identify; and, finally, that they merit interventions to challenge their reasoning.

## 1.5 The Rational Obligation to Suicide

Some have argued that there are circumstances when there can be a rational obligation to suicide, a duty to suicide. The philosopher Joel Feinberg defined a duty as something required of one to be done whether we like it or not (Feinberg, 1980). A moral duty may be associated with a larger community, where sanctions may be attached in the event of failing to act morally.

Immanuel Kant is often viewed as the preeminent philosopher of deontology (the study of duty or moral obligation), and his absolutist stance against suicide is widely known. However, some Kantian scholars have identified various exceptions to this view and have made arguments in favour of a duty to commit suicide under certain conditions. Despite ongoing debates about the proper interpretation of Kant on this matter, Altman (2020), a Kant scholar, argues that the positions taken by interpreters who claim that Kant provides an inroad for an obligation to die are a serious misinterpretation of his work as a whole.

These 'interpreters' claim that Kant believed that a person who has lost her moral agency should view suicide not only sympathetically, but also as a duty. They argue that this approach is based on the principle that the moral must trump the physical, and when a person is no longer able to act morally, the protection of life should be suspended. Kant himself referenced the case of a galley slave who had lost the capacity to act as an agent in his own right, likening him to an animal. This understanding of the loss of moral agency has been developed by scholars such as Dennis Cooley

(2015a, 2015b) and James Callahan (1995), who argue for a duty to suicide, subject to certain conditions.

Cooley criticised Kant's position, identifying what he contends is a serious shortcoming in what he calls 'moral psychology'. He argues for the establishment of duty to suicide when moral agency is no longer present. It is worth noting that in situations of extreme scarcity of resources, deadly conflicts, torture, starvation, and complete degradation of self, it may be difficult to determine what constitutes moral agency.

From our perspective it is difficult to assert that lack of moral agency remains the correct characterisation when there is scarcity of resources, or when deadly conflicts have resulted in torture, starvation, and complete degradation of self. Shall we include the particular vulnerabilities of women who have been disallowed from moral agency in some theocratic cultures?

The problem with fashioning moral agency is that the exceptions give rise to a more fundamental question of who could possibly be the rightful judge of what constitutes moral agency in the face of calamitous conditions. There is a danger in citing abstract health-care situations that suit a philosophical argument for lack of moral agency. Survivors of atrocities have confronted the profound loss of moral agency in different ways: for example, finding meaning in life despite their circumstances, surviving to bear witness, and honouring fallen parents through the propagation of future generations. Moral agency alone is not the informative characterisation of action when unspeakable acts result in a diffusion of self.

In considering the social welfare medicine found in Western Europe and many Commonwealth countries, there are still many inconsistencies in who pays for what, and whether such inequalities are conducive to the wealthy having a greater, better, or more credible moral agency in contrast to vulnerable minorities, women, children and adolescents, and the impoverished. End-of-life costs are massive, and there can be compelling reasons for ending life found in the many narratives of retaining funds for loved ones.

Dennis Cooley presented the case of the Canadian Gillian Bennett, who died in August 2014 by suicide to avoid succumbing to dementia (Cooley, 2015b). Bennett's video diary, which has been watched worldwide, demonstrated an apparently thoughtful and dignified approach to her own death. Recognising how a decreased mental capacity would alter her agency, and expressing her thankfulness to her next of kin, Bennett disclaimed any remorse in embracing death. Cooley cited her as a role model. Her life was a special one, with a loving relationship with her husband and her extended family. She was the beneficiary of an enlightened social welfare medical community. Given her heightened sense of not being a burden to her family, she also conveyed a sense of responsibility to her country for the good life that she had lived.

To what extent was Gillian Bennett's suicide a model to be followed? Kant's proclamation, 'To live is not a necessity; but to live honourably while life lasts is a necessity' (Kant, 1963, p. 152), is a general statement that may not apply to every individual or situation, particularly those who are less fortunate. One can imagine the reaction of powerful, autocratic, and dictatorial cultures that could mock and humiliate people who are thought to lack the dignity to take their own lives under predetermined circumstances. In our view, this would be the ultimate distortion of what Kant and his many interpreters intended.

The relevance of the body as deteriorations occur is also a complex issue. It is important to ensure that individuals with physical or mental handicaps are not discriminated against or devalued, and that their lives are considered just as valuable as anyone else's. As we discuss in more detail in Chapter 8, in their vehement condemnation of the Canadian expansion of the MAiD laws to include persons with degenerative handicaps and mental illness, organisations and individuals with physical disabilities have expressed that the use of a physical or mental handicap as a criterion for euthanasia and assisted suicide is prejudicial and constitutes a fundamental devaluation of the lives of people who are entitled to the supports necessary to live a fulfilling life (United Nation Human Rights Committee (HRC), 3 September 2019; United Nation Human Rights Council, 26 September 2019; Commission spéciale sur la question de mourir dans la



dignité, 2012; Vulnerable Persons Secretariat, 2020). In 2019, the UNHRC Special Rapporteur on the Rights of Persons with Disabilities reported that she was told by persons with disabilities that they were offered the illusory 'choice' between living in a nursing home and having their lives ended by MAiD (Devandas-Aguilar and United Nation Human Rights Council Special Rapporteur on the Rights of Persons with Disabilities, December 19, 2019). The Special Rapporteur and the Independent Expert on the enjoyment of human rights by older persons sent a joint communication to Canada (Quinn *et al.*, 2021) in which they expressed concerns that the Canadian MAiD laws discriminate against the elderly and persons with disabilities by viewing their lives as being of lesser value, a form of prejudice they referred to as 'ableism'.

There is no consensus about who is the rightful person to intercede in clarifying options or supposed duties. In such situations we find ourselves in a quagmire of moral confusion. Even when individuals and their families have agreed that they have become a burden, there will be examples of unsustainable guilt at having allowed a suicide of kin to go forward. Given the scarcity of resources and the projection that increasing numbers of people will be called upon to assist those in a diminished state, can we foresee a society that will be bent on preparing citizens to release their guilt in favour of dutiful suicides?

And what of the unequal pressure on the dispossessed, which reinforces their lower social status and asserts their lesser worth? Should this lead to a particular course of action, an affirmation, or a clear denial of the duty to suicide because of their historical and present dispossession? Rosemary Tong (2000) noted that because women are more nurturing and self-sacrificing than men, the concept of a duty to die might be unreasonably applied to them. This argument can be equally applied to minority communities where there are conflictual senses of obligation.

Bioethicists such as Dena Davis (2015) have asserted that to seize control of one's destiny, especially under circumstances of great tragedy and limits, is to be active and dominant. This incites women to take charge of their lives as full persons with moral obligations to fulfil. Although this is

a statement of principle that resounds morally, its practical applicability across countries remains perplexing due to global inequities.

In this regard it is instructive to return to Kant's treatment of Lucretia's historic suicide, which altered the direction of the Roman Empire. Kant wrote:

The moment I can no longer live in honour but become unworthy by such an action, I can no longer live at all ... if, for instance, a woman cannot preserve her life any longer except by surrendering her person to the will of another, she is bound to give up her life rather than dishonour humanity in her own person. (Kant, 1963, p. 156)

Can anyone today credibly make such a moral claim as a protocol for women who are raped? Many would find Kant's statement morally repulsive. Is this yet another form of victim-blaming cast as agency? It is illuminating to reflect on the Kantian view that an individual should first resist rather than take their own life. Again, Kant's comments may be considered a philosopher's luxury and ignorant of the reality in which victims find themselves.

Once euthanasia is legalised and medically assisted dying is put into place in a jurisdiction, what implications are there for the expanding territory of a duty to die? There are sets of criteria that have been offered to assist us in making informed decisions personally or societally about the duty to suicide. Hardwig's suggested criteria for a duty to die are one example:

1. Continuing to live will impose significant burdens on your family and loved ones as you grow older.
2. If you have lived a full and rich life.
3. If your loved ones' lives have already been difficult or impoverished.
4. If your loved ones have made great contributions to make your life a great one.
5. If you cannot make a good adjustment to your illness.
6. If you cannot make significant contributions to others, especially your family.
7. If the part of you that is loved will soon be gone or seriously compromised.

8. If you have lived a relatively lavish lifestyle instead of saving for your illness or old age. (Hardwig, 1997a, 1997b)

Nothing of the aforementioned criteria is written in stone or is compelling as a firm guideline. Culture, gender, religion, and other factors could suggest other criteria or none at all. Whatever the criteria, there are concerns about manipulating and exploiting the vulnerable.

In his unpacking of Kant's deficiencies in the area of 'moral psychology', Cooley (2013) quoted the work of Virginia Held (1996, p. 36)

This is not to say that rationality should be abandoned; it is to say that rationality must be tried out in and revised in the light of moral experience and must be supplemented by the moral understanding that can only be cultivated by embodied, empathic actual persons.

In looking back to the Bennett diary, the compelling question is whether it expressed a duty to die or more simply was a statement about a life no longer seeming to be worth living, where 'duty' does not really describe her state of mind and her message to the world.

Once we enter a wider world where we are concerned about the manipulation of vulnerable populations, the real crux of the matter is exposed. Most individuals are neither noblemen nor philosophers. They are subject to deteriorations of self and handicaps, both physical and mental, more often present at the end stages of life. It is possible that, with population growth and the elderly living to breakthrough ages, withdrawal of support will become a threat to the incapacitated and dying. We need to be ready morally to answer arguments about the duty to die.

Are we doomed to passively venture towards alleviating guilt and accepting that citizens must plan to terminate themselves at an appropriate time consonant with a new morality? It is premature to celebrate such a duty. In fact, at this stage in our contemporary life it would be widely regarded as a deplorable move. Perhaps Kant's notion of moral agency is 'so reasoned through' with an array of interpretations that it is eclipsed by the realities of death and family in an age of scarcity and growth in inequalities.

In the future, technologies and medical innovations may develop to compensate for what we know as handicaps. What appears now as an utterly hopeless future could become a tolerable reality. In the latter part of the twentieth century a diagnosis of active acquired immunodeficiency syndrome (AIDS) was considered a death sentence accompanied by decreasing capacity, increased suffering and dependency, and an apparent loss of personhood. Suicide rates among people with AIDS increased dramatically, particularly suicide among persons when first diagnosed with human immunodeficiency virus (HIV), before serious symptoms appeared. Medical advances have now resulted in people with AIDS being able to live fulfilling lives. It is possible that in a relatively short period of time other afflictions that have been described as warranting a duty to die may be alleviated or sufficiently diminished.

## 1.6 The Right to Be Protected from Committing Suicide

Jonathan Herring (2022) has argued that suicidal individuals have a basic right in the United Kingdom (UK) to receive treatment and have actions taken to protect them from killing themselves. Citing various court decisions, he contends that every vulnerable person must be protected from death. For example, in the case of *Rabone (Rabone and another (Appellants) v Pennine Care NHS Trust (Respondent)* [2012]) Lady Justice Hale, herself an expert in mental health law, opined that there should be laws to deal with ‘threats to life from any quarter’ (Hale *et al.*, 2017).

Professor Herring cites the European Convention on Human Rights (ECHR), Article 2 (the Right to Life) as the justification for providing protection of life by suicide prevention activities, citing *Olewnik-Cieplińska and Olewnik v. Poland* [2019]:

However, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life, therefore,

can entail for the authorities a convention requirement to take operational measures to prevent that risk from materialising.

This judgement indicates that the obligation to protect from suicide risk is tempered by what is practical, and it can depend upon an analysis of how burdensome it is to respond to a potential need for protection. To date, the right to be protected from suicide has not been included in any specific legislation, and judges in the UK and elsewhere have been reluctant to insist that any specific suicide prevention actions must be undertaken. At best, as judges have said, the application of the right to life to suicide prevention is uncertain (*Rabone and another (Appellants) v Pennine Care NHS Trust (Respondent)* [2012], UKSC, n.1), and that operational duties will develop incrementally (*Daniel v. Saint George's Healthcare NHS Trust*, [2016], EWHC, 23 (QB)).

## 1.7 Good Samaritan Law

The question of when a person has a duty to act should be extended to the question of whether there is a duty to prevent or attempt to prevent a suicide. An intervention to prevent a suicide in the making or one that is anticipated brings to the surface unceasing and confrontational debates about the moral content of the law. In the twentieth century, the repeal in most countries of laws making it a criminal offence to attempt suicide (see Chapter 7) has led to a focus on the moral and legal obligations to rescue people who are on the verge of taking their own lives. Because suicide is a matter of life or death and there is something irksome about standing and watching it happen without intervention, the law in this instance is pushed to its limits with respect to 'justice' and 'mercy' as basic components of a legal system.

In the area of the duty to rescue, it has been a well-established perspective that European-oriented civil law has emanated from a communitarian approach and therefore is logically connected to an interventionist modality with penal consequences. In contrast, Anglo-Saxon common-law history

has emphasised autonomy and freedom of action over and against social responsibility.

Common law, in contrast to civil law, does not have a universal criminal liability for the failure to act. As an example of a common-law country, in the United States (USA) there are civil statutes granting a form of immunity from civil liability when rescuing a person. In these statutes, professionals are sometimes subject to different and higher standards than volunteering individuals. One author has divided the variations into three categories: full liability protection, limited liability protection, and no liability protection (Northcut, 2018). Apart from such legislation, common-law judges have delineated specific rules: Once a person begins a rescue, it must not be discontinued, and the tort-feasor (person who commits a tort) is only held accountable for the injuries if the situation is worsened (Dawson, 1960). In common law there are additional special rules, such as those pertaining to property owners, parents, lifeguards, security officers, and lately there is an application of US law to the rescue of migrants (Post *et al.*, 2003).

Almost one-third of US states – California, Colorado, Florida, Massachusetts, Ohio, Minnesota, Nevada, Alaska, Hawaii, Rhode Island, Texas, Vermont, Washington, and Wisconsin – have criminalised failure to act, and each state has a different approach to penalties and criteria. The statutory varieties, both for civil immunity and penal responsibility, create some uncertainty in the USA, as the location is paramount for understanding the prospect of liability. A number of states have specified that individuals are required to assist when they are aware that another person is in danger, and that they may assist without creating danger to themselves or others.

Historically, in the civil law countries criminal statutes were first enacted under autocratic or dictatorial regimes. They used duty-to-rescue laws as a vehicle to encourage citizens to inform on each other, as in Vichy France under the domination of the Nazis or the infamous periods of the former Soviet Union. In this case the statutes were a lure for individuals to denounce those disloyal to the existing powers (Hayden, 2000). Following these ironic beginnings, by the end of the twentieth century laws about

a duty to rescue were encapsulated into the majority of European jurisdictions. Despite this, punitive sanctions have generally been light, and there are no differential patterns in their application worthy of our attention (Feinberg, 1980; Feldbrugge, 1965). The current situation is as follows: Whether in civil or common-law jurisdictions, the courts have not used serious criminal sanctions in the application of statutes and codes unless circumstances were seen as heinous in the public eye.

An additional factor related to holding someone responsible for failure to act is the broadly accepted psychological understanding that bystanders are wont to panic, making it difficult to isolate blameworthiness within a crowd. Only in a small minority of cases do we find an outcome of paying damages, and that has happened where interventions have indeed done more harm than good, causing substantial losses. In sum, spontaneous altruism is honoured as an act of charity or as a moral duty from a variety of perspectives. Regardless of whether this positive appreciation stems from deontological libertarian, or relativist/contextual (utilitarian) standpoints, it is difficult to identify likely naysayers regarding the attractive quality of intervening to save the lives of strangers. We can turn to mass media to be confirmed in this generalisation.

How does this lend itself to our valuing voluntary, nonpaying acts, as distinct from assistance rendered by professionals, who are compensated for their services? Some commentators have used arguments, even Kantian ones, to oppose a duty to rescue in tort law because of the commitment that the voluntariness should rest in the private sphere and never be made a legal duty (Uelmen, 2016; Volokh, 1999).

Tort law in common-law countries has consistently differentiated between those who have had professional training and laypeople, requiring the former to be held to a higher professional standard. For people with professional training, if there is a failure to perform the function according to the reasonable standard of those similarly trained, then liability results. To date, there is no body of material to which we can refer when making distinctions between professionals and laypeople in determining liabilities for suicide rescuers.

In the practice of suicide prevention helplines, the distinction between the roles of professionals and laypeople is often blurred, with each having identical responsibility to help and save the lives of suicidal persons. Crisis and suicide prevention helplines worldwide are divided among centres that pay professional counsellors and centres that rely upon trained lay volunteers to answer calls and respond to chat and text messages from suicidal individuals. Since lives are at stake regardless of the professional status of helpers, are we to conclude that liability should be equal? This argument is bolstered by research findings over fifty years that show that lay volunteers are superior to more highly trained professionals such as psychiatrists, psychologists, and social workers when it comes to helping suicidal people through helplines.

A seminal article by Durlak (1979) reviewed 42 studies comparing the effectiveness of professional and nonprofessional helpers with respect to outcomes. The research found that nonprofessionals had equal or better clinical outcomes than the professionals. Later, Hattie and Hansford (1984) conducted meta-analyses of 154 comparisons in 39 studies and concluded that nonprofessionals were more likely to achieve resolution of the person's problems than professionals were. Mishara *et al.* (2016) found that more recent studies underscored that help provided by lay volunteers was at least as effective, and in most cases more effective, than the responses of professionals. These research studies used a variety of indicators of the effectiveness of interventions, ranging from client survey reports on the perceived helpfulness of the session, to decreases in suicide risk, and behaviours measured with standardised scales and observations. No matter which criteria were used, the lay volunteers were found to be as effective as professionals, and usually better. These research findings suggest that there is no evidence of different abilities in preventing suicides between trained laypeople and professionals that would justify having different levels of responsibility for these two groups.

It is important to recognise that the prediction of who is at high risk of suicidal behaviour lacks specificity and sensitivity. Even when using the best diagnostic tools currently available, there is always a large number of false positives (people being identified as about to attempt suicide who do not



initiate an attempt) and false negatives (people who are thought to be at low risk who proceed with a suicide attempt). (See Chapter 2 for a detailed discussion of this.)

In the common-law area, a landmark article, ‘The Case for a Duty to Rescue’ by E. J. Weinrib, appeared in the *Yale Law Journal* in 1980, which looked into the growth of case law to tease out a ‘rule of obligation’ to intervene when there would be limited loss or difficulty. This work morally highlighted the case of the ‘easy rescue.’ In the words of Professor Weinrib:

When there is an emergency that the rescuer can alleviate with no inconvenience to himself, the general duty of beneficence that is suspended over society like a floating charge is temporarily revealed to identify a particular obligor and obligee, and to define obligations that are specific enough for judicial enforcement. ... That tort law’s adoption of a duty of easy rescue in emergencies would fit a common-law pattern ... that gives expression to the law’s understanding of liberty. (Weinrib, 1980, p. 293)

Since the 1980s, there has not been an articulated rule accepted as the ‘common rule of the common law’.

The role of tort principles is important in understanding how the law of Good Samaritanship has evolved in parallel with civil and penal statutes. Common law has increasingly focused on autonomy and freedom, as opposed to collective morality, as the prevailing reference point (Linden, 1972; Montana, 2017). In the final analysis, common sense is the best predictor of how emerging cases will be decided upon, regardless of the jurisdiction, civil or common law. One component is whether to define duty to rescue from a theory of contract law as opposed to tort law (Eisenberg, 2002; Scordato, 2008).

In tort law there is a necessity of locating a duty, wherever possible a reasonable standard of care, a proof of causation, and the link between the actor and the result in terms of any harm (damages) being inflicted. Where there is no cause, there is no tort. Normally, the language deployed is one of proximate causation, with this test linked to the language of foreseeability

and risk. Without specific legislation demanding that morality be incorporated into civil law or common-law traditions, despite the many efforts of legal academics and philosophers of law, the status quo has essentially remained.

In our contemporary global period of anonymity in the digital universe, exacerbated by the COVID-19 pandemic, is it time for the courts and the legislatures to move forward towards some unanimity in encouraging suicide prevention? Should we advance our thinking internationally to forgive even acts of negligence where the intent was to do good rather than to induce or create harm? Should governments guarantee that professional groups doing suicide prevention be properly insured? Should lay volunteers, who constitute a large proportion of the counsellors in suicide prevention helplines and providers of online interventions to prevent suicides, have special protections to compensate for their lack of insurance and support from a professional association or licensing body? Our position is that such movements should be encouraged through effective lobbying and international cooperation.

We contend that legal considerations rarely resolve ethical dilemmas; when meaningful resolution occurs, it is usually determined by internalised ethical standards. We now turn to an examination of some of those issues and dilemmas.