

SUICIDE IS NOT A PRIVATE CHOICE

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THE RIGHT TO PRIVACY has both positive and negative connotations for those who consider themselves part of the natural law tradition. On the one hand, a significant part of the experience of political totalitarianism in this century has been the total disregard for human privacy. The intimacies of family, religion, and friendship—traditionally outside control by the state—have been systematically invaded by totalitarian regimes. On the other hand, certain prominent forms of liberalism, with roots stretching back to the beginning of modernity, have elevated privacy to the foundation of all rights and duties. In the radically individualistic claims made for privacy by many liberal theorists, we see the introduction of a dangerous idea of autonomy or practical self-sufficiency into political discourse.

Classical views of privacy are not based on the basic self-sufficiency of the individual. Every individual is a person necessarily imbedded in a range of multiple relations, and, therefore, no one is really independent in anything but a relative sense; no one is truly autonomous. Autonomy can only be the property of God who is capable of *creatio ex nihilo*. It is a property no creature should attempt to achieve, let alone assume that it already possesses. To view any individual as being independent of relationality is like viewing a point outside of a line, a line outside of a figure, a figure outside of a body.

Privacy itself is thus a relative term in the classical view. I have a right to privacy *from* the state in certain aspects of my family life (such as the choice to marry, the choice of whom to marry, the choice to have children, the choice to limit the number of children, *etc.*) because it would be an unwarranted extension of the authority of the state as a public institution to invade an area of human existence that it must largely leave alone if that area is to remain intact. The state's right to invade this area of human relationship is justified only when it can be shown that rights beyond the realm of familial authority are being violated, as, for example, when children are being abused. The same

would be the case in friendship. The state cannot determine who my friends are to be without simultaneously destroying the realm of friendship altogether. The state's right to invade this area is justified only when it can show that rights beyond the realm of friendship are being violated, as, for example, when friends are conspiring against the safety or integrity of the society itself. And the same would be the case in religion. The state has no right to determine how I am to worship or not worship God without simultaneously destroying the free assent to faith (which always implies the free rejection of any faith or some one faith) that faith itself, as distinct from conventional religious behavior, seems to require for its very integrity. The state's intervention is justified only when it can show that rights beyond the realm of any religious community are being violated, as, for example, when people are being held prisoner in religious communities or being subjected to other forms of abuse. In all of these cases, we do see an affirmation of the freedom of choice, but we do not see the foundational autonomy that many liberals have seen as the ground of both freedom and responsibility.

Even though the term "autonomy" is usually taken in its Kantian sense (where moral law is self-legislation), the foundational autonomy of which I am now speaking is far more radical. Kant believed in the correlation of moral right and moral duty, and he did so based on his view of human nature and its essential sociality. Foundational autonomy asserts instead that in the most fundamental practical sense I am my own creator, which means that at the core I am alone. As such, I am free to do whatever I please. My nature is essentially amoral; it is coequal with my power. Thus my privacy is myself; everyone else is in truth a stranger.

In this view my public involvement is a necessary evil, whose value is purely instrumental. Public responsibility is that limit on my activity which I am willing to negotiate with others in society in return for a mutual non-aggression pact among ourselves called the social contract. It is, in effect, a delayed gratification: I take less now in order to be able to keep it longer. The state is what we establish in concert to make sure that no one can cheat on this contrast with impunity. But since such private, selfish persons cannot expect any trust from one another, and thus cannot constitute a community *between* themselves, they must create the state as

an external institution (heteronomy) that stands *over and against* its citizens in their privacy (autonomy)—just as a police officer stands over and against potential criminals in order to frighten them into obeying the law. And because institutions and their bureaucrats have a way of quickly developing institutional interests of their own, the citizens whom they regulate subsequently develop as much distrust of this external, alien institution as they have for each other as potentially dangerous strangers.

How much this political bargain costs me in terms of my private power, which is now constituted as my “natural right,” runs the gamut from the maximalism of Thomas Hobbes to the minimalism of Robert Nozick. But for everyone who holds some version of this view, my relations are not what I am already imbedded in but what I am able to create by and for myself, for nothing—not even God—transcends me.

MANY CONSTITUTIONAL SCHOLARS question the existence of a “right to privacy” in the U.S. Constitution. But the right is nonetheless at the heart of the 1973 Supreme Court decision in *Roe v. Wade* that permitted elective abortion in our society. *Roe* became so quickly institutionalized because it reflects a philosophy held by many in our society (whether “liberal” or “conservative”) that the greatest right is the right to privacy and that the power of the state must regard itself as a means thereto. As Justice Brandeis once put it, it is the right “to be let alone.”

Nevertheless, despite its notoriety, *Roe* does not present the most difficult moral challenge. Until recently, those in favor of elective abortion in our society confined their arguments to the question of the personhood of the fetus. By arguing that the fetus’s lack of separate bodily space from that of its mother makes it part of her own body, they concluded that abortion was a crime without a separate victim, hence by the criteria of foundational privacy, no crime at all. By implication, however, if it could be shown that the fetus is a separate life from that of its mother (for example, having its own genetic code from the time of conception), then even by liberal criteria there would be a crime with a real victim, hence prohibited by the social contract with its minimal requirement of protection of innocent persons.

What has emerged of late, however, is something that natural law

adherents opposed to elective abortion have long suspected: the real reason behind the liberal enthusiasm for elective abortion is precisely that it is “elective.” In other words, personal liberty, located in the right to privacy, is now presented as being more important than even the protection of innocent life. Thus some advocates of abortion-on-demand are now admitting that the fetus might very well be more than a part of the body of its mother but, nevertheless, because it is dependent on its mother for life, she has the right to end that life if it interferes with the exercise of her own personal liberty. Of course, here the supposed line drawn between abortion and infanticide disappears.

That has created some degree of pause in the debate so far, it seems. If dependence on another disqualifies one from the protection of society, as in the case of the infant’s dependence on its mother’s body and the infant’s dependence on the attention of the caregiver, then where do we locate just who is not dependent on others? Is independence as liberty only the property of those who have the power to defend themselves? If that is the case, then even for radical liberals the social contract has been irrevocably broken. No one would be safe any more. Any distinction between right and might would thereby be destroyed.

EXTENDING *ROE V. WADE* to permit infanticide admittedly requires the introduction of some additional premises. But the precedent of *Roe* is logically sufficient to justify what is now called “physician-assisted suicide.” And, indeed, this was done in the decision of the U.S. Court of Appeals for the Ninth Circuit that declared the Washington State law prohibiting physician-assisted suicide to be unconstitutional on the grounds that it violated the guarantee of personal liberty in the Fourteenth Amendment to the Constitution. Though the Supreme Court on June 26 unanimously reversed the Ninth Circuit, this is exactly the same constitutional ground that *Roe* invoked. In a case where the killer and the killed are one and the same person (the physician being only an authorized agent of the suicide), the connection to a general protection of personal liberty is actually easier to make than in a case where, conceivably anyway, the one being killed is an actual victim of the aggression of a second party.

In the case of abortion, there is a possible separation between criminal and victim, something which punishable crime presupposes but which is not the case with suicide. Thus even the Talmud, basing itself as it does on biblical doctrines regarding divine creation and ownership of the universe, does not make attempted suicide a punishable crime even though it is prohibited. For to do so would be to punish a victim as much as a criminal. But because suicide itself is prohibited, those assisting in a suicide are to be punished on the grounds that “there is no agency for sin.”

BUT IS SUICIDE AN ACT ONE ever does entirely alone? Could we not view suicide as an act that involves the interrelationship of three parties: the individual person, the human community, and God? A place to begin is Aristotle’s brief discussion of suicide in the *Nicomachean Ethics*:

Now when a person kills himself in a fit of anger, he acts voluntarily in violation of right reason; and that the law does not permit. Consequently, he acts unjustly. But toward whom? Surely toward the state, not toward himself.... That is also the reason why the state exacts a penalty, and some dishonor is imposed upon a man who has taken his own life, on the grounds that he has acted unjustly toward the state.... Justice and injustice always involve a plurality of persons. (*Nicomachean Ethics* V, 11, 1138a11-14)

Now this passage deals only with the relationship between the individual human person and the state, which is the institution of fullest human community. However, if we look at a strikingly similar passage from Aristotle’s teacher Plato, we see the relationship of humans and God as well as their relationship to a community included. The striking similarity of the two passages enables one to interpret them in concert:

Now he that kills the person who is, as people say, nearest and dearest of all, what penalty should he suffer? I mean the person who kills himself, violently robbing what Fate has allotted, when this is not legally mandated by the state.... The tombs of such persons shall be isolated. (*Laws* IX:873c)

The notion that suicide, as the most extreme exercise of the right to privacy, is an injustice toward the state, as Aristotle put it, suggests that

the injustice is one of depriving the state of one of its members. Accordingly, it seems to be the crime of robbery. But that, of course, presupposes that individual persons are the property of the state, public chattel of which the state is wrongly deprived by the private act of suicide. It is desertion of duty that the state solely determines in its own interest. Yet, is this not the very presupposition of totalitarian regimes, which assume that human persons are their property, to be used or discarded at will? Is this not the very historical stimulus that has made us so concerned with the right to privacy as the assurance of human dignity here and now? Surely, this fear is valid and deserving of the most serious attention.

Nevertheless, this fear is justified only if we assume that the injustice against the state is strictly that of robbery. For, if that is the case, the state can just as easily mandate the death of those it considers useless or potentially dangerous as it can mandate the life of those it considers useful or benign. If, however, one regards the human person to be social *by nature*, then the function of the state is not to possess its citizens but to serve their social needs for each other. By identifying what those needs are, natural law can be the criterion for judging which human regimes deserve the moral loyalty of their members and which do not. The state is not an institution created by selfish individuals to stand over and against them because they do not trust anybody, even themselves. Humans are placed in society by something greater than themselves, as Plato pointed out, and they do not create society any more than society creates them. The function of the state as the most general institution of human society is to order properly our mutual fulfillment of the needs of self and others. As the Bible puts it, we are all “bone of my bone and flesh of my flesh” (Genesis 2:23), and each of us is a “helpmate for the other” because “it is not good for humans to be alone” (Genesis 2:18).

If the social needs of humans are coequal with their existence, then that existence itself is essentially to be with and for others. As one sage is reported in the Talmud to have said when he returned to his old community after a long, solitary absence, “either friendship or death.” In fact, I think that is the human meaning of death. It does not mean “non-being” for us, which is something no one has experienced or could even

imagine. (How could we imagine our own non-being when this very act of imagining presupposes our own existence? How could we imagine what has absolutely no analogue in our living experience?) Instead, death is our own final loneliness, our being abandoned to our ultimate privacy. It is the last time that we are “let alone.” That is why the most human reaction to adversity is to say that “my kin have abandoned me, and my fellows have forgotten me” (Job 19:14); that is why at the moment of death the most human reaction is to cry, “My God, my God, why have you forsaken me?” (Psalms 22:2). That is why we fear death and do almost everything to postpone its inevitability. But how can we do that without the concern, the help, of those *with* whom and not just *among* whom we live?

Our loneliness is so painful, so terrifying, that when we feel abandoned before death has actually arrived, we are sorely tempted to take control and to pre-empt its sting. Since loneliness is the premonition of death, control is our desire to cheat death of its capacity to rob us of the power that is the only thing we ever really had. In suicide we become death itself and thus attempt to transcend being its passive victim. We want to die just as we have lived—autonomously. Since we have believed in life that our dignity is to be self-sufficient, we now believe that we must die with that same dignity. Death is no longer the ultimate horizon that teaches us that our essence in this world is not to be in control but to make our peace with an order greater than anything of our own making.

Of course, such a suicidal course of action is now advocated only for those who are “terminal.” But if death is our inevitable lot in the world into which we have been cast, who is terminal and who is not becomes an inherently hazy matter. If death is the ultimate loss of control, and if that is the ultimate human indignity inconsistent with life as autonomous self-possession, then there is no reason to ban or even to disapprove of suicide for any mortal, rational, human being. In fact, following this lethal logic, we should encourage, maybe even mandate (law being the last step in the process of social policy) a time when the person bearing it is to dispose of it. That time is when death threatens to race beyond his or her control. Following this logic, is this not what is both good for ourselves and good for others, those others upon whom we become more

and more of a burden?

This is where we are finally led when we assume that our privacy is foundational, that it is our most fundamental right. This insight was best explicated by one of the great founders of modern sociology, Emile Durkheim. In his classic study *Suicide*, Durkheim wondered why suicide rates have risen so sharply in modern industrial societies. His answer was to propose his theory of *anomie*, which is the sense of being personally unconnected to others, not being in a web of what the contemporary anthropologist Clifford Geertz has called “thick” culture. It is the sense of loneliness that comes upon people when they are increasingly taken by others and themselves as dispensable producers and consumers. In such a cold, uncaring environment, more and more desperate people sense that their own lives are simply more than they can bear by themselves alone.

IT SEEMS THAT THERE ARE two overall ranges of relations that are destructive of authentic human personhood (of which privacy is certainly an essential feature) and that encourage spiritual dissolution. That is because in the one case there is too little privacy, and in the other too much.

First, there is the totalitarian scheme that claims our total subservience and disponability for it alone. If any of us is better dead than alive for the state, it becomes our duty to be eliminated or to eliminate ourselves even before the state has to bother itself with that unpleasant necessity. Thus it was no accident that the suicide rate of German Jews beginning in 1933 dramatically increased—years before the actual “Final Solution” of the death camps was implemented—when the society to which most of them believed themselves to be integrated members sent them the clear messages that their presence was to be removed at any cost. Death became the last privacy to which they were consigned.

And second, there are the radically liberal regimes that send the message to their citizens that they are basically on their own, especially in situations when tempted with self-destruction. Here is where persons are the least self-sufficient, the most in need of help from others. In fact, is not our primary social need the need to be helped to control our own murderous tendencies? Thus in the Bible, the first city is founded by

Cain, the first murderer, who, when left alone after killing his brother, cries out (Genesis 4:13), "My crime is too great to bear!" The city is to protect him both from being killed and from killing again.

When a society regards itself as being charged by a higher authority to care for each and every human life in its charge, is it not the prime responsibility of a society so charged to intervene, to break into our privacy, when there is a strong chance that death might otherwise occur?

For, if society is charged to defend all human lives from destruction, there is no longer a difference in kind between homicide and suicide. Killing is to be contained irrespective of who is killing and who is being killed. Along these lines, is it an accident that history's most famous murderer, Adolf Hitler, died by his own violent hand, by the same means by which he delegated others to kill his victims? The fact that the criminal and the victim are identical is irrelevant inasmuch as the law is to protect all persons and not to discriminate in favor of any one of them over the other.

Any society that is basically indifferent to this charge eventually loses the loyalty of its more morally sensitive members. This is true even of the state, society's most impersonal institution. A society that does not care who lives and who dies can hardly expect loyalty from its members.

Such a society runs the risk of its own death by the indifference of more and more of its members. In the end, the very public edifice that private, autonomous individuals have supposedly erected to protect themselves from themselves abandons all of them by refusing to protect each one of them. In the end, who needs the state at all?