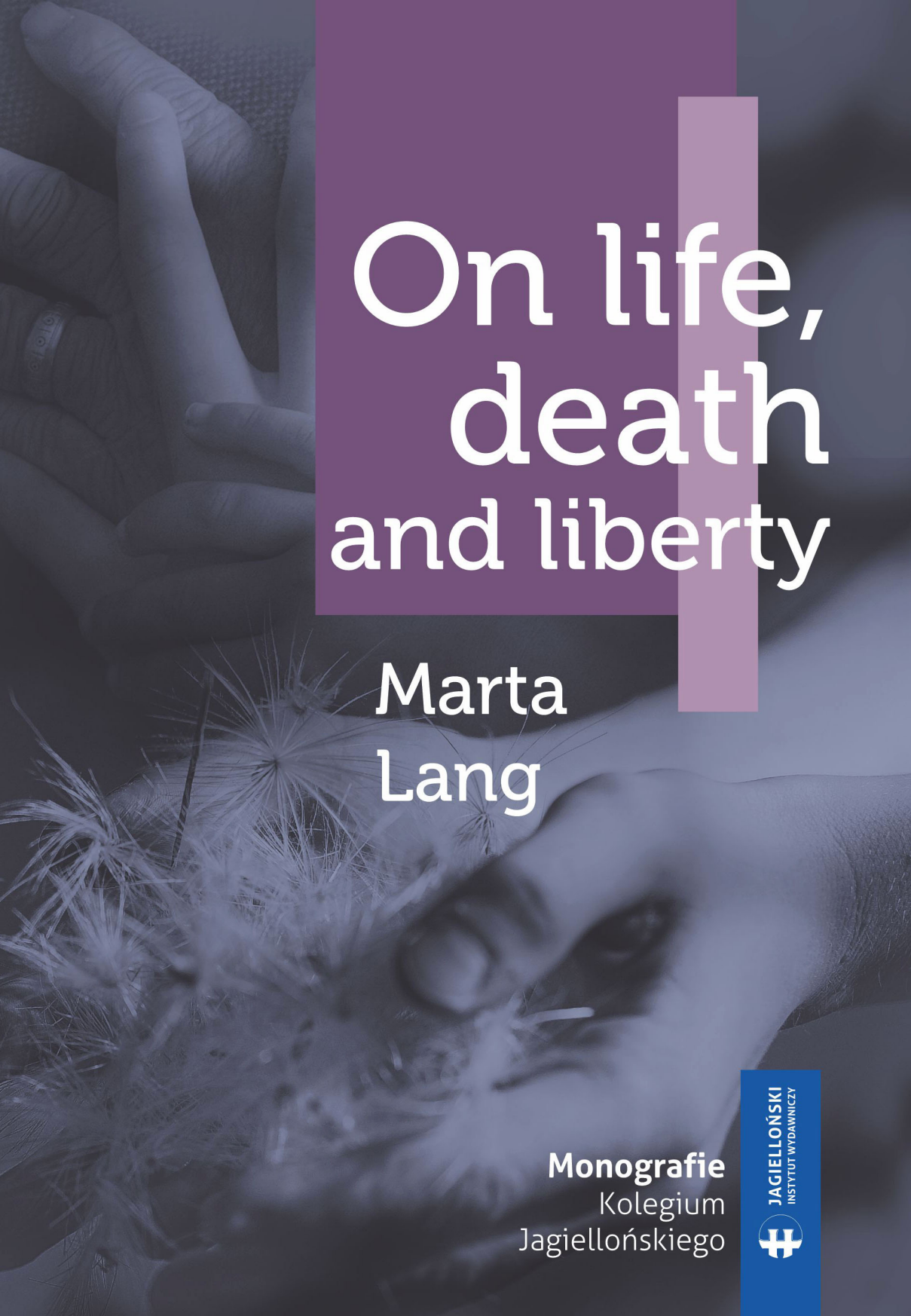

On life, death and liberty

Marta Lang

Monografie
Kolegium Jagiellońskiego

JAGIELLOŃSKI INSTYTUT WYDAWNICZY

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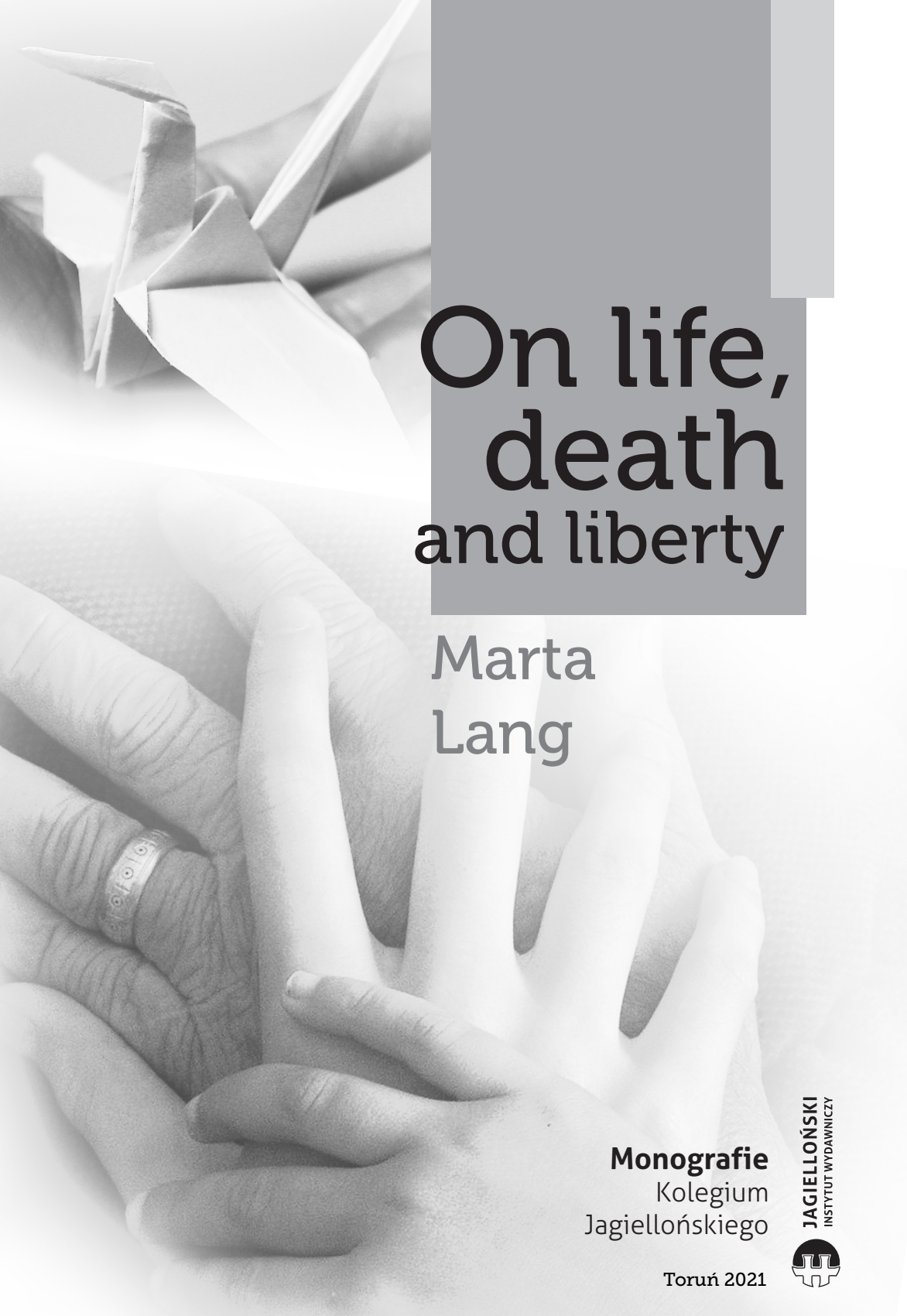

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Toruń 2021

JAGIELLOŃSKI
INSTYTUT WYDAWNICZY

Jagiellonian Publishing Institute
ul. Szosa Bydgoska 50
87-100 Toruń
tel. 56 651 97 81

ISBN 978-83-67201-11-7

MD
machinadruku

Printed by: Machina Druku, www.machinadruku.pl

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Introduction

Why is killing prohibited? How is this prohibition justified in the moral codes of the past and the present? Does this prohibition apply only to humans, and on what grounds? What are the temporal limits of human life and moral status? Do we have the liberty to choose our way of dying? What are the boundaries of social interference with our life and our death? Where do the boundaries of our freedom lie? These are a few questions which may be encountered during the reading of this text.

This essay is a collection of philosophical, ethical, bioethical, and legal considerations about the values fundamental to human existence – the value of life and liberty in the context of normative social systems – morality and law. It is partly based on my articles previously published in Polish and a monograph written in Polish entitled *"The right to life as a human rights standard"*, based on the doctoral dissertation written under the supervision of Professor Tadeusz Jasudowicz and defended in 2009 at the Faculty of Law and Administration of the Nicolaus Copernicus University in Toruń.

In this work, I will focus mainly on the ethical and philosophical plane of the issues, referring only marginally to the legal provisions of international documents and domestic law, and emphasizing Polish law.

I shall concentrate on the protection of human life and refer to the most crucial issues of the beginning of life and its inevitable ending, which brings about the end of the moral status of a person. In this context, I shall also talk of freedom in a broader sense – the freedom to live and the freedom to die; to live in the way one wishes, and the boundaries set by society on individual liberty for life, and also for death in a way one wishes (mainly in the context of euthanasia and assisted suicide).

Although the subject of my deliberations is mainly human life, I will also refer to the concept of life in a more general sense, beginning with the various definitions of the term 'life.' Moreover, I will consider the subject of protecting other living and sentient beings, although I leave the most significant issues of the animal right to life outside the scope

of consideration, referring only slightly to this problem, as it deserves a separate elaboration.

I will try to present the historical development of the norm prohibiting killing in morality and law from prehistoric times to the modern concept of the 'right to life' as a human right.

Undoubtedly, human life is a fundamental existential value and an essential moral and legal value. Without protecting it, the whole legal system fails to make sense. The protection of human life is also one of the primary reasons why the legal system came into being. Theoretically, there could be a legal system that did not contain a norm protecting life. However, it is difficult to imagine legal norms protecting other goods of the participants in this system when their essential good, and even their physical existence, without which it is impossible to realise other goods, would be deprived of protection.

At the same time, human life is not protected in an absolute way in any legal system, including the system of internationally protected human rights. The axiological position of the right to life is controversial in legal and philosophical-legal doctrine. On the one hand, in certain aspects, the protection of the right to life is too weak (e.g. admissibility of the death penalty, killing in wartime), which justifies the efforts to strengthen it; on the other hand, the tendency to an absolutist understanding of the right to life leads to the infringement of other human rights – the right to dignity, bodily integrity, the right to freedom from torture (e.g. in the case of the prohibition of euthanasia or admissibility of abortion).

In the latter cases, the protection of life may interfere with individual freedom, and it is crucial to establish the possible limits of social control over life and death.

1.

The concept of 'life'

The term 'life' has been present in human speech probably since man began to use language at all. It is used in at least a few basic meanings: the duration of human existence from birth to death, or as a term used for everyday human existence, for example, when we want to say something about the quality of life, like 'life is tough.' We speak of life as something that belongs to us (our existence) and simultaneously, as some objective thing, a stream of events in which we are immersed, e.g. 'life goes on.' We also say 'life,' having in mind the vital force that makes us living beings, as in the expression 'life left him.'

In a more general sense, the word 'life' is used to designate all the processes to which living organisms are subjected, a particular state they are in, as well as 'that something' the vital force that distinguishes them from the world of inanimate matter. In this sense, the word 'life' has been subjected to various attempts at scientific definition. Although I will deal with human life in this work, I think it is worthwhile to look at the phenomenon of life in all its glory and introduce the reader to the numerous attempts to define the category of life in its most general sense.

'Life' is among the most difficult terms to define that exist in the language. As W. Zagórski writes in his attempt to formulate a definition of life for the PWN Encyclopaedia, the problem of defining life has accompanied man since the dawn of human thought, and this is because the phenomenon of life directly concerns us humans as animate beings, who grasp the essence of life phenomenologically, as it were, from the inside, and at the same time cannot fully grasp it with their minds and define it exhaustively. Philosophers have been wondering about the essence of life for centuries. In the 4th century BC, Aristotle formulated a theory that sees the essence of life in motion. According to his definition formulated in his treatise *On the soul*, "life is called nourishment by its power, growth and decline."[1]

[1] Arystoteles, *O duszy*, in: Arystoteles, *Dzieła wszystkie*, Vol. 3., transl. P. Siwek, PWN, Warszawa 1992.

During the process of man increasing his knowledge of the animate world, successive attempts were made to determine the necessary characteristics of living organisms that distinguish them from assemblages of inanimate matter.

Nowadays, there are several definitions of life formulated by the various disciplines of science. These are primarily so-called substrate definitions, enumerating specific attributes of life or focusing on one of them.

Biologists define 'life' as a physicochemical process occurring in a spatially separated system of matter, capable of maintaining its structure, exchanging its components with the environment. This process includes metabolism, reproduction (self-replication), growth, excitability (interaction with the environment), natural selection, and evolution. The problem is that some groups of inanimate matter also meet some of these criteria (e.g. self-replicating crystals, some mechanical systems created by man). At the same time, some organisms do not fulfil these criteria, such as viruses (viruses cannot function outside the cell, so they are not an independent spatially separated system), animals in a state of anabiosis, the so-called latent life, or dried seeds. However, it would be difficult to exclude them from the kingdom of life (another example is a mule, incapable of reproduction).

Attempts have been made to define life by the specific characteristics common to all living organisms. Thus, for example, in the 1920s, A.I. Oparin[2] postulated a definition of life, stating that all living organisms are composed of cells. However, although composed of cells, there are substances that cannot be defined as living organisms (e.g., tissue separated from an animal or plant organism). A similar definition of life was attempted by Engels, who claimed that the essence of life is hidden in proteins. Analogically, as in the case of Oparin's theory, one can say that proteins alone, e.g. isolated in a test tube, cannot be called 'life' in the sense of living organisms.

With the discoveries in molecular biology in the middle of the 20th century, a biochemical definition of life emerged, defining living organisms as systems containing reproducible hereditary information encoded in nucleic acid molecules.[3]

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[2] A.I. Oparin, *The Origin of life,* Moscow 1955, quoted by S.M. Potter, *The meaning of life,* Pasadena 1986.

[3] *Encyclopedia Britannica*, Vol. 10, 1977, p. 893.

Defining life in terms of a physical-chemical process is already considered insufficient today. As one of the researchers of the nature of life, J.B.S. Haldane aptly put it, it is as impossible to reduce the essence of life to a chemical mechanism, as it is to reduce the essence of poetry to a system of words. However, life indeed consists of chemical processes, just as poetry consists of words.[4]

It raises the question of whether life can exist in some non-biological form unknown to us? Since physicochemical criteria are not sufficient to determine the nature of life, perhaps they are not necessarily related to the essence of life either?[5]

In the search for the essence of life, successive definitions of life have emerged. In his essay "*What is life?*" (1944), the famous physicist Schröedinger attempted to describe the phenomenon of life from the perspective of the general laws of physics, considering as insufficient the research on life conducted thus far, which focused on defining successive features of living organisms and lacked the ambition to grasp the essence inherent in each of them. His thermodynamic definition of life defines living organisms as systems capable of decreasing their internal entropy (increasing order). It seemingly contradicts the second law of thermodynamics, according to which the entropy of systems increases. In other words, the natural tendency of matter is to tend towards chaos, not order, while living organisms can maintain and increase their internal order. It happens at the cost of matter or energy taken in from outside and then returned as waste. Living organisms, as open systems, by decreasing their internal entropy, increase it in their surroundings.[6]

A definition of life from yet another point of reference, namely the cybernetic definition, was proposed by B. Korzeniewski, who defined life as a system of negative feedback subordinated to overriding positive feedback. Another attempt to define life in a general and abstract way was the autopoietic approach of Maturana and Varela. According to this definition, a living organism is an autopoietic system, i.e. a self-controlling

[4] J.B.S. Haldane, *What is life,* London 1949.

[5] On this subject see C. Sagan, *Other worlds,* Bantam Books; 1st edition (January 1, 1975).

[6] E. Schrödinger, *What is life?*, Cambridge 2012.

network of production processes whose effect is maintaining and regenerating this network and constituting a separate system.[7]

A holistic position considers it misguided and pointless to seek separate definitions for the seemingly only contradictory animate/inanimate categories. These are views that have their roots in the concepts of the presocratics, Thales of Miletus and Anaxagoras, who taught that everything is 'animate' and 'rational' and that all matter in the world is of similar nature. Such views, also called hylozoism or ontological monism, are presented nowadays by, among others, John Vallee, who claims that all existence is 'animate' and is subject to gradation on a vast scale – from a stone to a bacterium, from a bacterium to a human being.[8]

It seems that the definition of life is evolving constantly with the development of scientific knowledge about life, and none of the existing concepts can be considered entirely sufficient and satisfactory.[9]

The origin of life on earth also remains a mystery. How did the transition from chemical substances to living cells occur, and how did self-replicating nucleic acids carrying genetic information come about? According to Francis Crick, the discoverer of the structure of DNA, this transition had such a low probability of occurrence that he instead favours the hypothesis of panspermia, that is, the theory of the extraterrestrial origin of life, or more precisely of directed panspermia, i.e. the idea that life was sent to earth by some more advanced civilisation.[10] However, this answer still does not solve how life originated either on earth or anywhere else.

Some researchers eventually concluded that the most important thing is not to determine the characteristics that distinguish living organisms from inanimate matter; the more crucial question concerning the nature of life is the emergence of consciousness from matter.

In some approaches, the concept of life, in general, is identified with the concept of consciousness. The majority of living organisms, apart from physiological processes, manifest the scope of mental experiences

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[7] H. Maturana, F. Varela, *De máquinas y seres vivos. Autopoiesis: La Organizacion De Lo Vivo*, Santiago de Chile 1973.

[8] J. Vallee, *Introduction to quantum theory*, Chicago University Press 1999.

[9] It is a stance taken by, among others, S. Tirard, M. Morange and A. Lazcano, *The Definition of Life: A Brief History of an Elusive Scientific Endeavor*, "Astrobiology" 2010, Vol. 10, No 10, Published Online: 16 Dec 2010 https://doi.org/10.1089/ast.2010.0535

[10] F. Crick, *Life itself. Its origin and nature*, Touchstone, Simon & Schuster 1982.

spanning the scale from the simplest reaction to stimuli to the possession of consciousness.

Just as we can doubt whether specific chemical structures are animate or not (e.g. viruses), it is impossible to dispute the thesis that everything sentient, let alone conscious, is alive. This equality does not hold in the opposite direction – it is relatively sure that some groups of living organisms feel nothing. Proponents of equating the categories of life and consciousness argue that even chemical reactions occurring in interaction with the environment, e.g. in bacteria, are a primordial form of feeling, which developed in successive stages of the lengthy evolution of conscious processes. Assuming this equation life = consciousness, we should consider all possible forms of conscious machines (Artificial Intelligence) built by man as possible conscious, non-biological (maybe even non-material?) forms of life not yet encountered somewhere in the cosmos.[11]

Life understood as conscious existence is close to the colloquial understanding of this concept usually applied to human life. In this way, we turn to the human meaning of the term 'life.'

[11] As in considerations of Steven A. Benner, in: *Defining Life*, "Astrobiology" 2010, Vol. 10, No 10.

2.

The definition of human life. The beginning and end of human life

With regard to humans, the definition of life is an entirely separate issue. The task is first of all to outline the boundaries of human life in temporal and qualitative terms. The fundamental questions are when human life begins and ends, and the necessary components of being 'human.' The concepts of 'human' and 'human life' are not purely biological; they have a moral component. A human being is a person who has rights. His life is protected, and his death marks the end of possessing these rights. The questions about the definition of human life, about its beginning and end, are above all about establishing the range of subjects who have the moral status of a human being and therefore enjoy rights, including the right to life, and thus the range of subjects who may be affected by morally and legally relevant acts of deprivation of life.

In discussions on the definition of human life, there is a clear line drawn between those who consider man to be a corporeal and spiritual being in equal measure and identify his existence with the biological origin and functioning of the organism and those who consider human life to be primarily the life of a person, a self-conscious individual capable of establishing contact with his environment, experiencing emotions and having a biography. There is also a position that recognises the inseparability of these two spheres – according to it, the existence of a human being is necessary for a person's existence and therefore, the two categories are inseparable.

Dilemmas of a similar nature arise when trying to determine the moment of beginning and the end of a human existence.

Let us now discuss the main issues concerning the definition of death before moving on to concepts concerning the beginning of human life. The order is not coincidental as the competing concepts concerning the moment of creation of the human person correspond significantly with the various definitions of human death, which appear in ethical and legal discourse. Thus, looking at the end of life first will help

to clarify the considerations. Traditionally, human death was defined as a state of irreversible cessation of blood circulation and respiration (cardiopulmonary definition of death). In the mid-20th century, after the invention and use of ventilators, this definition became useless in situations, increasingly common in intensive care units, when artificial support of blood circulation and other organic functions became possible. It also failed to meet the expectations of transplantologists, as it did not allow organs to be harvested early enough while they were still suitable for transplantation.

Therefore, a definition of death was sought to allow the human organism to be considered dead, even though some physiological functions (in particular respiration and blood circulation) can be sustained artificially. This search led to replacing the traditional definition with a new concept, namely that of death of the organism as a whole.

The heart transplant operation performed in December 1967 by Christian Barnard, where the donor was a brain-dead patient with preserved blood circulation, had a particularly cheering effect. Less than a month later, the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death, later abbreviated to the Harvard Commission on Brain Death, was established in the United States.

In August 1968, the Commission published a report in which it stated that its work aimed to formulate a new definition of death and also advocated that such a definition should be determined by the criterion of "permanent non-functioning of the brain," which in practice amounts to the death of the brain stem (as the brain stem is responsible for maintaining essential involuntary functions such as breathing, circulation). Therefore, it is recognised that the human organism is a system composed of a multitude of interrelated sub-systems. Thus, if the brain stem has lost its ability to perform integrative functions, then the individual sub-systems (using living or artificially maintained organs) no longer form a living human organism as a whole.[12]

A legal definition of brain death was then first adopted by the State of Kansas in 1972. It was a definition based on an alternative formulation – death occurs when there is a complete cessation of brain func-

[12] Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Death, *A definition of Irreversible Coma*, "Journal of the American Medical Association" 1968, No 205, pp. 337–340. See the also: Ch.M. Culver and B. Gert, *Philosophy in Medicine: Conceptual and Ethical Issues in Medicine and Psychiatry*, Oxford University Press 1982.

tion or when breathing and circulation irreversibly cease. A similar solution was soon adopted in most countries – the earliest in Finland (1972), the latest in Japan (1992). In Poland, it was introduced with the Announcement ofthe Ministry of Health and Social Welfare on the guidelines of the National Specialist Team regarding the criteria of brain death on July 1, 1984, and then modified in 1994, but the changes were not significant.[13]

The new definition of death is referred to in the literature as the whole-brain definition of death. The emphasis on the term 'whole' is not accidental. It is, as it were, a response to another concept on the definition of death called the higher-brain definition of death, which postulates that the moment of death should be the irreversible cessation of the function of the neo-cortex, the 'higher' part of the human brain responsible for consciousness and human functioning as a person. With the adoption of this concept, people in a Permanent Vegetative State, in whom only the brainstem functions responsible for breathing, circulation and other vegetative functions of the body are preserved, and the neocortical activity has irreversibly ceased, would be considered dead.

Although this concept has many supporters among philosophers and bioethicists (e.g. R.M. Veatch[14]; P. Singer[15]), it has not yet been accepted in law or medicine. The main obstacle is that, although people with a dead cerebral cortex will never regain consciousness, they have preserved blood circulation and other essential bodily functions, sometimes even breathing spontaneously, so intuitively they appear to be alive. The idea of declaring them dead or taking their organs for transplantation raises protests. In addition, opponents of this concept argue that there are currently no methods to determine with 100% certainty that the loss of consciousness is irreversible, and there have been cases where people who have

[13] *Komunikat Ministra Zdrowia o wytycznych w sprawie kryteriów stwierdzania trwałego i nieodwracalnego ustania funkcji pnia mózgu*, DzU MZiOS 13 poz. 36; Another modification was adopted in 1996 and contained a significant change, namely cerebral death was allowed to be confirmed in the case of newborns from the 7th day after birth. The nomenclature was also changed: instead of the term "brain death" the term "permanent and irreversible cessation of brain stem function (brain death)" was used.

[14] This author defines death as "the irreversible loss of that which is *intrinsic to* human nature" in: R.M. Veatch, *The whole brain orientated concept of death – An outmoded philosophical formulation,* "Journal of thanatology" 1975, 3:13-30, p.15.

[15] P. Singer*, Rethinking life and death. The collapse of our traditional ethics*, 2nd edition, New York 1996.

been declared irreversibly unconscious have recovered consciousness, i.e come back to life.[16]

Another argument against adopting such a definition of death is the so-called 'slippery slope' argument. It could be argued that since the cessation of consciousness and personality functions is tantamount to death, people who are profoundly mentally disabled with conscious processes scarcely present should also be regarded as *de facto* dead. It would, in turn, lead to the complete cancellation of their rights as persons. In such a case, anencephalic infants born without a developed cerebral cortex would also be considered non-human, nonpersons or simply not alive.

However, the concept of a higher-brain definition of death is not only about saving the lives of others with a chance of conscious life, often children, by meeting the need for organs for transplantation. It is also about the dignity of the person who has effectively died and the family who cannot soothe their pain by burying them. In cases where the person is on a ventilator, the family, acting as their representative, can ask for the life-support to be withdrawn, but sometimes people with dead cerebral cortexes breathe spontaneously and can survive in this state for years.

Some authors have correctly pointed out that death is not a fact occurring at a single point in time, but a process, and sometimes a two-fold process – the death of a person and the death of an organism.[17] However, the determination of the moment of death seems necessary because of the need for clarity regarding human beings' social and moral status. Hence, some propose adopting some contractual boundary set by the law, analogous to reaching adulthood (this is also a continuous process in which it is impossible to determine the limiting moment unambiguously). This boundary cannot, however, be set arbitrarily – just as there are some objective reasons for setting the age of reaching adulthood at 18 and not at 16, so in the case of the definition of death, it is

[16] See *inter alia* K. Higashi, *Five year follow up study of patients with Persistent Vegetative State,* "Journal of Neurology, Neurosurgery and Psychiatry" 1981, Vol. 44(6), pp. 552–554; N.L. Childs, W.N. Mercer, *Brief Report: Late Improvement in Consciousness after Post-Traumatic Vegetative State,* "New England Journal of Medicine" 1996, Vol. 334; pp. 24–25; J.L. Bernat, *The Boundaries of the Persistent Vegetative State,* "Journal of Clinical Ethics" 1992, Vol. 3, pp. 176–180.

[17] L. Emanuel, *Reexamining Death. The asymptotic model and a Bounded Zone Definition,* "Hastings Center Report," Jul-Aug 1995, Vol. 25, No 4.

necessary to choose a boundary falling within a specific range determined by objective reasons.[18]

In this situation, R. Veatch proposes introducing the possibility of declaring which definition of death one favours and according to which one should be treated in case of doubt. He proposes to use the current definition of whole-brain death as the primary criterion to be applied in the absence of prior consent to another.[19]

The New Jersey Declaration of Death Act currently provides for such a 'conscience clause.' A similar clause was included in the Japanese transplantation law of 1997, where the traditional 'circulatory' definition of death is still used as the basis.[20] Japan is also the country that has resisted adopting the criteria of cerebral death for the longest time owing to the religiously and culturally determined perception of the human being as an inseparable body-spiritual whole. For the patient's brain death to be recognised and for organs to be taken from him, he must give his prior consent, which means having a so-called donor card, and for there to be no objections from his family. Otherwise, the patient can only be declared dead once the heart stops beating.

Western societies have adopted the criterion of brain death as the death of the whole brain. It is now universally accepted, although there are voices of criticism.[21] In principle, it has also been accepted by the Catholic Church[22], although the latter has not developed a consensual position on this issue, and there is still some criticism of the cerebral definition of death from church circles. Its application is even regarded as a form of involuntary euthanasia.[23]

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[18] W. Chiong, *Brain death without definitions,* "Hastings Center Report," Nov-Dec 2005.

[19] R.M. Veatch, *The impending collapse of the Whole-brain definition of death,* "Hastings Center Report," Jul-Aug 1993, Vol. 23, No 4; R.M. Veatch, *The conscience clause*, in: *The definition of death: Contemporary controversies*, S.J. Youngner, R.M. Arnold, R. Schapiro (eds.), Johns Hopkins University Press 1999, pp. 137–160.

[20] See M. Morioka, *Reconsidering Brain Death,* "Hastings Center Report," Jul-Aug 2001, Vol. 51, No 4.

[21] M. Potts, P.A. Byrne, R. Nigles*, Beyond Brain Death. The case against brain death criteria for human death*, Dodrecht 2001.

[22] C. Golser, *Dyskusja wokół śmierci mózgowej z perspektywy katolickiego teologa-moralisty*, Materiały z XIV Sympozjum: *Etyczne problemy transplantologii*, Wydz. Teologii Uniwersytetu Opolskiego, Opole 1996.

[23] OP J. Norkowski, *Mózgowe kryteria śmierci człowieka. Analiza zagadnienia,* „Studia Theologica Varsaviensia UKSW" 2004, Vol. 42, No 2.

Understanding death is conditioned by one's philosophy of life and religion. Cultural differences, therefore, play an essential role in this matter. Given the multicultural nature of the contemporary Western world, perhaps the most sensible solution would be to widen the use of a 'conscience clause', as such a clause would allow a personal choice between all three definitions of death – circulatory, cerebral, and neocortical.

Adopting a specific definition of death is crucial because the declaration of human death has numerous legal consequences. For example, if the neocortical definition were adopted, if death were deemed to be the irreversible cessation of higher brain function, the act's classification would also change if the victim of a crime were placed in a vegetative state (PVS). The perpetrator would be charged with murder rather than grievous bodily harm. The moment of death is also crucial for issues of inheritance and insurance.

However, the most important consequence is the loss of the status of a living person, which entails the right to life and bodily integrity, control of one's own body, and several other rights. Only once death has been established can organs be removed for transplantation (the universally accepted standard of the so-called 'dead donor rule').

The proponents of the whole-brain-definition theory and the traditional definition of death see the human being more in a biological context. As long as an organism with a genetic code belonging to the species *Homo Sapiens* functions in an integrated manner, human life and human rights continue, even though it no longer fulfils any requirements of the definition of being a person.

Proponents of the neocortical definition, on the other hand, see the human being first and foremost as a conscious self, with the end of which human life also ends. The existence of a subject who can have interests and rights ceases.

Even though the binding legal standard is at present the whole-brain death standard, as medical technology and life extension techniques develop, we will have to develop increasingly precise notions of what aspects of our neurological lives are the most important. While the current total brain death standard currently suffices in the vast majority of cases, the standard does not fully line up with what we value in persons.[24]

[24] B. Sarbey, *Definitions of death: brain death and what matters in a person*, "Journal of Law and the Biosciences," pp. 743–752, doi:10.1093/jlb/lsw054, Advance Access Publication, 20 October 2016, New Developments.

Let us now turn to the concepts concerning the beginning of human life in the context of the definition of death and beyond.

Just as there is much controversy in science and philosophy about the end of human life, there is also much controversy about determining the moment of its beginning.

The creation of a new being belonging to the species *Homo Sapiens* begins in the biological sense with conception when a zygote is formed from an egg fertilised by a sperm – the first cell of a new, genetically distinct human organism. The view that this moment is at the same time the beginning of the life of a human person is expressed, among others, by the Catholic Church and by thinkers who support an absolute abortion ban. In the Christian conception, the notion of 'person' is identical to 'human being.' To be a person, is enough to belong to the species *Homo Sapiens*. The dignity and rights of a person are given to man by the Creator at the moment of conception.[25]

It is a concept belonging to a group of views that identify, to some extent, the human person with the human organism.

Competing conceptions of a person are based on philosophical definitions, among others the definition of J. Locke, which I quoted above, and analogous formulations defining a person as a self-conscious, rational individual, possessing the ability of free choice and moral activity.[26] Additional criteria for being a person appearing in the philosophical literature include recognising others as persons, communicating, and organising one's experiences into an autobiography.[27]

It is clear that not all representatives of the human species fulfil these conditions, and indeed not the zygote cell.

In this context, some thinkers speak not of the beginning of the person but the beginning of the human individual, who continues his identity until he attains a personal form of life and is entitled to the same subjective rights.

Among them is N. Ford, author of the book entitled *"When did I begin?"*, where he attempts to establish the moment of creation of a human being

[25] However, the Catholic Church has not always adhered to the theory of conception, initially accepting the moment of the first movement of the fetus as the moment of animation, or the ascension of the soul.

[26] H.T. Engelhardt, *The foundations of bioethics* New York 1996, p. 139

[27] M. Schechtman (ed.), *The consitution of selves,* New York 1996.

in an argument based on embryogenesis. He states that it is wrong to consider fertilisation as the moment of origin because the zygote is not the same as the resulting foetus in the ontological sense. In the development process, the zygote divides into internal cells, which give rise to the embryo, and the trophectoderm, which gives rise to the foetal membrane and the placenta, the living environment of the foetus. More importantly, up to 16–17 days after fertilisation, the division of the embryo and the separation of identical twins – two ontologically separate entities – can occur. Thus, according to N. Ford, the creation of a human being can be dated at the earliest at three weeks after fertilisation.[28] Catholic theologians also do not question this view. They hold that animation (the soul's ascension into a human being) occurs only in the phase after individuation when division into two human units is impossible.[29]

This group of views also includes the idea that the moment of creation of a human being is the moment of implantation (about 14 days after conception).

According to the second group of views, human life is understood primarily as conscious life, the person's life, and begins at later stages of development.

Some philosophers (M. Tooley, P. Singer) claim that human life begins at the moment of developing those bodily functions that make us persons, above all, the function of self-awareness. The human organism does not deserve a moral status before it develops into a person (consequently, infants should not have this status).

According to yet another view, the human person is inseparable from and identical with the human individual from the moment the neuronal structures of the organism responsible for the formation of the self-conscious individual are formed.[30]

As some authors claim, to determine the definition of the terms 'human being' and 'human life,' consistency between determining the beginning of human life and its end is essential. If in the definition of death we recognise the loss of certain essential qualities as resulting in a change from

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[28] N.M. Ford, *When did I begin?,* Cambridge University Press 1988; analogous view expressed by A. McLaren in: *Prelude to embryogenesis, Human ebryo research Yes or No*, London 1996.

[29] T. Ślipko, *Granice życia. Dylematy współczesnej bioetyki,* Warszawa 1988.

[30] M. Lockwood, *Moral Dilemmas in Modern Medicine,* Oxford University Press 1985, p. 23.

the living to the dead and the loss of the moral status, then the appearance of the same qualities at the beginning of life should condition the granting of that status, which entails the granting of rights.[31]

Following this line of thought, to accept the individually determined genetic code as a sufficient component constituting the human individual would entail the claim that death occurs with the destruction of the individual with this genetic code. No one, however, accepts such a definition of death because the tissues of a human being with his DNA usually continue to live long after his death. It is not, therefore, a feature that meets the conditions of consistency.

On the basis of the traditional circulatory-respiratory definition of death, human life begins with the development of the circulatory and cardiac systems of the foetus, which occurs around the 12th week of gestation, or around the 24th week when the foetus is already equipped with a respiratory organ, or finally with the birth when the child takes its first breath.

According to the now generally accepted definition of brain death, a human being is alive as long as the integrated central nervous system functions. This feature appears in the foetus around the 24th week after conception, which is also the time after which it can survive independently outside the mother's body. The foetus's nervous system is then fully developed, but only the spinal cord and the brain stem are active, integrating the vegetative functions of the body. The foetus is then in a condition similar to that of persons in a persistent vegetative state (PVS); primitive consciousness associated with the onset of neo-cortex activity does not appear until between 32 and 36 weeks of foetal life.[32]

According to the neocortical definition of death, which identifies human life with the capacity for consciousness, this very moment would have to be considered the moment when the foetus acquires the status of a person.

R. Veatch, who presents such an analysis searching for coherence between the definition of death and the moral status of the human foetus, points out a particular difficulty, namely that there is a difference between the end of human life and its beginning since, with death, a person loses the qualities constituting his or her moral status irretrievably. In contrast,

[31] R.M. Veatch, *Definitions of life and death: Should there be a consistency? Defining Human Life, Medical, Legal and Ethical Implications,* Washington 1983, pp. 99–113.

[32] See A. Gessel, *The embryology of human behavior,* Connecticut 1971.

at the beginning of life, the human embryo, and subsequently the foetus, in the ordinary course of development, have the potential to acquire those qualities and, although they do not possess them at the moment, they are within their potential.

The concept of a potential human person emerges in the discourse on the beginning of human life.

The dispute about the moral status of the foetus and, at the same time, about the origin of the human person is ongoing in philosophical and legal doctrine. It takes place mainly in the context of discussions on the admissibility of abortion and on the norms for the treatment of human embryos created through artificial procreation. Various points in time are mentioned as starting points of the personal status of the foetus (fertilisation, implantation, individuation, the beginning of electrical activity of the brain, ability to live outside the mother's organism, birth). I have mentioned some of these concepts above, but the discourse on this topic contains many more. However, it is not my aim to exhaust all of them at this point.

3.

The prohibition against deprivation of life as a moral norm

Deprivation of life means the termination, interruption of the life cycle of a living being, that is, bringing death to that being before its natural and inevitable arrival. We shall understand the deprivation of human life as an act or omission of one person or a group of people resulting in the deprivation of life of another person (or of the same person – suicide). By 'depriving of human life,' we shall not denote a death which occurs owing to the action of forces of nature or the killing of a human being by an animal (except for situations in which an animal was used to kill a human being). Common synonyms of the phrase 'deprive of life' are the following expressions: kill, cause death.

Living beings deprive each other of life in fighting for their survival in the course of evolution. Animals kill other animals and plants for food. Humans, the most conscious 'product' of this evolution, also participate in this procedure. One might even say that they are the clear leaders in the number of beings they deprive of life. Unlike animals, they do not do it only to survive.

At the same time, the human species is the only one on earth to have developed moral norms, including the norm that the taking of life is wrong. It applies mainly to representatives of the species *Homo Sapiens*, but in human cultures, this norm appeared as covering also other living beings.

The first issue I will consider is the origin of the norm prohibiting the deprivation of life. I will turn my attention to the ways of justifying this norm and the variants in which it appears in various ethical systems (religious, cultural, philosophical) justifying the unique position of a human being for life protection.

The search for the origin of the moral norm prohibiting the deprivation of life should be preceded by a question about the origin of moral norms in general.

Numerous concepts have emerged in the history of philosophy trying to explain the origin of moral norms. One of the first formulated theories

on the subject can be found in the views of the sophists, who linked morality to the existence of the state, which was supposed to be the provider of moral norms. Some of them, like Callicles[33], argued that these norms were established by the weak, who constitute the majority of society, for protection against the firm, selfish and enterprising individuals in the minority. Others, like Thrasymachus[34], thought, on the contrary, that moral laws were the product of the strong who held power, and were imposed by them to keep the weak in line. The common denominator of sophist thought is the view that moral norms are a convention established by people. A kind of continuation of this view is the modern theory of the social contract. Its leading representative and creator was the 17th-century philosopher T. Hobbes. He derived moral norms from the institution of the so-called social contract. In the original 'state of nature,' in the pre-social and pre-state condition, there were no moral norms. Every individual was guided by his selfish interest, which was the only determinant of good and evil. Because of this state of affairs, there was, according to Hobbes, a conflict between everyone and everyone else, and human life was, as he put it, "poor, nasty, brutish, and short." Hence, to live better, or even simply to survive, people imposed rules on each other in the form of moral norms.[35] Among them, moral norms prohibiting the killing of each other allowed for a safer and more prosperous existence.

According to this concept, the source of morality is a contract concluded by rational egoists sanctioned by state power (this is, of course, more a theoretical model than a representation of any historical reality).

Identifying the sources of morality with rational egoism found its continuation in the further history of philosophy (P. Holbach, A.C. Helvetius, J. Bentham, and the utilitarians). However, it also found its opponents in the form of representatives of the doctrine of intuitionism. The initiator of this doctrine was the 17th-century thinker A. Shaftesbury, who claimed that morality exists thanks to moral intuition, which is the innate moral sense, a characteristic inherent in every human being. According

[33] His view is presented by Platon in *Gorgias,* Platon, *Gorgiasz,* transl. W. Witwicki, Warszawa 1958, p. 84.

[34] His view was also presented by Platon, see Platon, *Państwo z dodaniem siedmiu ksiąg, Praw,* transl. W. Witwicki, Vol. I, Warszawa 1958, p. 49.

[35] T. Hobbes, *Leviathan*, transl. C. Znamierowski, Warszawa 1954.

to this conception, the moral sense is the ability to recognise moral values, which exist objectively and independently of the historical conditions of social life. The reason why some people act immorally is that they do not cultivate this capacity. Those who have a well-developed moral sense are at the same time open to the needs of others, unselfishly kind and sensitive to the suffering of others. Morality is therefore based on sympathy as an emotion born of the moral sense.

The 18th-century philosopher D. Hume also shared this opinion. At the same time he was an advocate of the concept of an innate moral sense that stimulates the formation of moral feelings.[36]

According to these concepts, respect for human life as one of the fundamental principles of morality would thus be based on positive emotion, sympathy for the other person, and negative feelings towards the prospect of depriving him or her of life.

Apart from philosophy, the empirical sciences have also made efforts to explain the genesis of the phenomenon of morality. Contemporary science is dominated by two basic interpretations of the genesis of morality – the biological and the sociological.[37]

According to the biological interpretation, man is seen as one of many animal species that have emerged in evolution. Therefore, it is assumed that morality is derived from biological roots and that its primordial elements emerged at evolutionary levels earlier than those of the human species.

According to a concept belonging to the current biological interpretation, called evolutionary ethics, morality is seen precisely as a product of evolution. Evolutionary ethics derived from the theory of C. Darwin and was initiated by him. According to this concept, both intellect and consciousness are products of evolution, and so is morality. Morality has developed from the social instinct, which dictates acting for the good of the group. According to Darwin, it developed through natural selection as a set of optimal behaviours in the conditions of group life.[38]

This view was also shared by another representative of evolutionary ethics, H. Spencer. Like Darwin, he argued that altruism, which underlies moral norms, is a property of human societies that has emerged in the course of evolution. Societies that do not apply the principles resulting

[36] D. Hume, *Treatise on Human Nature,* transl. C. Znamierowski, Warszawa 1963.

[37] D. Probucka, *Etyka. Wybrane zagadnienia i kierunki,* Częstochowa 2004.

[38] K. Darwin, *O pochodzeniu człowieka,* transl. S. Panek, Warszawa 1959.

from altruism to their members are less successful in evolution than those that do apply them.[39]

Evolutionary ethics also sees moral norms as a continuation of the phenomena occurring in the animal world, from which the human species is biologically descended. Animals also, as some anthropologists point out[40], build communities based on the principles of cooperation and mutual aid. It is rare for animals of the same species to kill each other. Moral norms are, therefore, in a way, a higher stage in the development of altruistic and pro-social behaviour in animals.

It is also possible to derive the basis for forming this norm and other moral norms based on altruism from the evolutionary structure of our brain and related emotional reactions regarding respect for the life of another human being. At the beginning of its development, humanity lived in kinship groups, among carriers of the same set of genes. According to the assumption made by modern scientists, organisms strive to pass on and perpetuate their own set of genes, and so protecting the lives of members of a kin group had this very purpose. This concept is called kinship selection theory, and its creator was the British evolutionary biologist W.D. Hamilton, who lived in the second half of the 20th century. According to him, the origins of morality lie in the so-called kin altruism, a trait that is passed on genetically to subsequent generations. This phenomenon consists of behaviour towards genetically related individuals manifested in mutual help, sharing food, protecting the life of a relative, even by sacrificing one's own life. From a biological perspective, kin altruism means behaviour that increases survival chances and leaves descendants of other genetically related individuals.[41] Over time, the life-preserving reflex from kin moved to a broader range of individuals as humans began to live in larger communities. This concept would coincide with the trends evident in the historical development

[39] The concepts of evolutionary ethics found their continuation in *sociobiology*, a field of science established in the 1970s thanks to E.O. Wilson and his work entitled *Sociobiology. The New Synthesis* from 1975. The thesis in this work is that altruism has an entirely biological basis. This concept is also developed on the basis of genetic achievements by R. Dawkins in his 1988 work *The selfish gene.* On *evolutionary* ethics see: P. Thompson, *Evolutionary ethics: its origins and contemporary face*, "Zygon" September 1999, Vol. 34, No 3.

[40] M. Konner, *The tangled wing. Biological constraints on the human spirit,* London, Heinemann, 1982. quoted by M. Midgley, *Origins of Ethics,* in: *Guide to Ethics,* P. Singer (ed.), Warszawa 2002.

[41] I quote W. Hamilton's concept after D. Pobrucka, op.cit., p. 76.

of the norm prohibiting killing, which will be presented in a separate chapter. Initially, according to anthropologists, the prohibition against killing concerned only members of one's group (kin group). Even today, the degree of individual involvement in protecting the life of a family member, as compared to the protection of the life of a stranger, is much higher. Therefore, the moral prohibition of deprivation of life is also much more substantial concerning a relative than a stranger. This concept is, as it were, an attempt to provide a biological, causal justification for the existence of moral feelings in humans, including negative feelings about depriving another person of life.

However, it should be noted that this conception attempts to explain the biological basis of the formation of the reflex in the human psyche, which gave rise to the norm. It cannot, however, be understood in such a way that we are by nature 'programmed' not to kill other human beings, because in that case, the creation of a norm prohibiting killing within morality and then a norm of positive law would not make sense (it would also not agree with the facts of killings, wars, which have been common since the beginning of human society).

It is a concept belonging to the group of neo-Darwinist theories which derive morality from evolutionary history and at the same time look for its sources in man's genetic heritage. This group also includes the theory of R. Dawkins, presented in his 1988 work *The Selfish Gene.* According to this concept, the driving force behind evolution and the emergence of human social life and moral norms is the goodness of the genotype. An individual always does what benefits his genes. Kin altruism and the moral norms evolved from it are therefore a camouflaged, unconscious egoism pursuing a genetic interest.

As M. Ridley writes, moral life "was not created by thinking people; it evolved as part of our nature. It is as much a product of our genes as our organisms."[42]

It is where the fundamental difference between the biological and sociological interpretation of the origin of morality lies. The biological interpretation assumes total determinism. It does not see man as a subject, partially independent of his biological conditions, who acts and creates his social life. On the other hand, this is the case with the sociological

[42] M. Ridley, *The Origins of Virtue* (*O pochodzeniu cnoty),* transl. M. Koraszewska, Poznań 2000, p. 17.

interpretation, which assumes that at some stage of development, human societies consciously created moral norms, including the norm prohibiting the mutual deprivation of life (we can speak here of a particular form of collective consciousness, not necessarily individual). Furthermore, the sociological interpretation separates the phenomena related to socialisation in the animal world from the social norms developed by the human species. The hierarchy of values and moral principles is, therefore, a product of culture, not biology.

A proponent of such an interpretation of the genesis of morality was, among others, the French philosopher and sociologist at the turn of the 19th and 20th centuries, Emil Durkheim. According to this thinker, morality is an achievement of human societies, which by shaping an individual make him a moral being. The source of morality is the bond of social solidarity necessary to live in a group and work together.[43] According to Durkheim, morality, like other social phenomena, is determined by the concrete historical situation in which a given society finds itself. A similar thesis was put forward by Durkheim's pupil, L. Levy-Bruhl, who claimed that the living conditions of a given community determine its morality. Thus, the norm of respect for human life will differ when we compare the morality of the tribes of 19th century Inuit from Greenland, among whom infanticide was widely practised, and the elderly were left to die in the cold, with the morality of contemporary wealthy Western societies with highly-developed respect for human life. In these latest societies, there is no need to fight for survival by eliminating the weakest individuals.

Separate from the origin of moral norms is the question of justifying the need to comply with them.

In the beginning, the validity of moral norms was justified by the authority of a god or gods, whose will was considered their source. There was a code of behaviour set by a deity in every historical religion, which had to be respected so as not to incur his wrath. In most of these religious codes, there was a general prohibition against killing people.

The philosophers of ancient Greece (the Sophists: Callicles, Protagoras) were the first to proclaim that moral laws are the creation of man, not gods. When the widespread belief in religion as a factor explaining all

[43] The view of E. Durkheim's view expressed in his work *On the division of social labour* is quoted after D. Pobrucka, op.cit. p. 83.

reality was shaken, attempts were made to find sources of justification for moral norms, like the universe and the nature of man.

It is how the theory of natural law arose, considering moral laws as an unchangeable normative order, part of the natural world. According to this theory, man recognises and applies these laws thanks to his rational nature. The precursors of the doctrine of the law of nature were the Sophists, Plato[44] and Aristotle.[45] Aristotle argued that there is a so-called natural justice, independent of positive law, binding on all people. At the same time, he defined man as a rational being whose principle of existence is reason.

From these two components, the Stoics formulated the first principles of the doctrine of natural law. Its most famous ancient representative was Cicero, considered to be the Roman continuation of the Stoics.[46] Both Cicero and the medieval advocate of the theory of the law of nature, St. Thomas Aquinas, claimed that natural moral laws were instilled in man by God, even though they were justified not only by divine authority, but also by man's rational nature. It was the founder of the modern theory of natural law, H. Grotius, who explicitly stated for the first time that the natural moral law would also apply if God did not exist (although he was as far from atheism as possible). The doctrine of natural rights gave rise to the human rights doctrine, which holds that moral duties derive from correlated 'natural,' 'inherent' subjective rights to which every human being is entitled. They are 'natural' because they are part of the order of the universe and nature, and exist objectively independently of man's 'recognition' of them. Therefore, according to this conception, there is an objective natural moral law prohibiting killing and, at the same time, the inherent right of every human being to life.

As I have already pointed out, an essential element of the natural law doctrine is the claim that moral norms find their justification in human reason. Immanuel Kant claimed that morality could be entirely derived from rationality. In other words, that man is moral and follows ethical norms because he is rational.[47]

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[44] He claimed that there is an unchangeable moral reality that belongs to the world of ideas. Platon: *Gorgiasz,* Warszawa 1958; *Protagoras,* Warszawa 1958; *Państwo,* Warszawa 1948; *Prawa*, Warszawa 1960.

[45] Arystoteles, *Etyka Nikomachejska*, Warszawa 1982.

[46] Cyceron, *O państwie,* in: *Pisma filozoficzne*, Vol. II and: *O prawach,* in: *Pisma filozoficzne*, Vol. II, Warszawa 1960.

[47] I. Kant, *Uzasadnienie metafizyki moralności,* Warszawa 1971.

The justification of moral laws by rationality found its opponents in the representatives of the already mentioned doctrine of intuitionism, who saw the source of origin, and at the same time the source of justification, of moral norms in intuition and moral feelings common to the whole human race.

A specific attempt to combine ethical intuitionism with ethical rationalism is the concept of 'considered judgements' of J. Rawls. According to Rawls, duly balanced moral judgements arise when intuitive moral beliefs are explained and justified according to theoretical principles, forming a coherent moral theory.[48]

There are also moral doctrines that deny the existence of any objective set of norms, whether derived from the order of nature, reason, or universal intuition. In this view, morality is a convention adopted by a given community, depending on historical and cultural conditions. This position is held today by representatives of cultural and ethical relativism.

In the case of this conception, the only justification for the validity of a moral norm is its acceptance by a given community. This conception is correct insofar as this norm was historically present in various societies in versions differing in the scope of subjects and with exceptions that varied from one culture to another. However, there has never been a human society whose moral code did not contain such a norm at all.

The issue of the moral prohibition of the deprivation of life raises several further questions. Why is the deprivation of life of a living being considered morally wrong? From the moral point of view, how does this act of destruction, which is the deprivation of the life of a living being, differ from the destruction of, for example, a stone or any part of inanimate nature? What does 'morally wrong' mean, and finally, what does 'life' mean and what kind of life is being referred to? Why is the deprivation of human life considered morally wrong? Perhaps this kind of analysis may seem like the proverbial 'splitting hairs' since, intuitively, the answer to these questions seems obvious. However, perhaps it is worth considering what lies behind this intuitive obviousness.

Morality, as mentioned above, is a set of norms of behaviour, as to the origin of which there are various divergent conceptions. The most basic division of human behaviour based on moral judgements is the division into good and evil. This division belongs to the essence of morality

[48] J. Rawls, *A Theory of Justice*, Cambridge 1972.

itself. The question about the meaning of the terms 'good' and 'bad' is the same as the question about the essence of morality in general. Under these predicates, the features of behaviour that differ from one ethical system to another are substituted. Moral precepts and prohibitions are linked to these predicates.

In most ethical systems, depriving people of their lives is labelled 'wrong' and is prohibited. There are numerous exceptions to this prohibition. Sometimes, the deprivation of life is also considered a lawful act, e.g., capital punishment or killing an enemy in war. In some systems, the prohibition of deprivation of life also applies to non-human beings.

The norm prohibiting killing was historically present in various cultural and religious ethical systems in versions that varied in terms of subjective and objective scope

In the religion and philosophy of the Far East, the protection of life has a universal dimension and concerns all living beings. In Jainism, one of the religions practised in India, all life from its most minor, most primitive forms to human life should be protected. The principle of *ahimsa,* known from the ethics of Hinduism and also from Gandhi's ethics, has similar content, meaning the duty 'not to harm' any living beings. In Buddhism, the prohibition against killing anything alive is one of the five fundamental ethical principles. Breaking any of the principles leads to negative karmic consequences and distances a person from liberation from the cycle of *samsara* (rebirth in the world of suffering).[49] A similar attitude to all living beings can be found in ancient Chinese thought and, in modern times, in the ethics of Albert Schweizer's "reverence for all life."[50]

In the circle of Western civilisation, there has always been much less respect for non-human life. In antiquity, the only examples of doctrines that advocated for animal life were Orphism and Pythagoreanism. Their fundamental dogma was the assertion of the wandering of souls, so that respect for human life implied respect for other beings into which the human soul may be reincarnated.[51]

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[49] R. Kryszak, *Etyczne implikacje absolutnej wartości życia – spojrzenie buddyjskie*, in: *Życie jako wartość w kulturach świata,* H. Cyrzan (ed.), Gdańsk 1997, pp. 12–19, see also: Padmasiri de Silva, *Buddhist ethics,*in: *Guide to Ethics,* P. Singer (ed.), Warszawa 2002.

[50] J.A. Pieńkowski, *Albert Schweitzer "Ethics of reverence for life,"* in: H. Cyrzan, op.cit., pp. 98–103.

[51] K. Banek, *Pythagoras and Pythagoreans towards life,* in: H. Cyrzan, op.cit., pp. 56–61.

In both Judaism and the Christian religion, which are pillars of the culture of our civilisation, and the religion of Islam, great emphasis is placed on the protection of human life and only human life.

The fifth commandment of the Decalogue, "Thou shalt not kill," applies equally to all human beings and exclusively to human beings. However, it is not an unconditional prohibition – the infliction of death in war and the execution of the death penalty are exceptions to this prohibition, as a realisation of the community's will.[52] These exceptions, however, are not formulated in the Decalogue itself. Catholic theology formulated the doctrine of double effect, which justifies exceptions to the prohibition of killing in these cases. According to this doctrine, killing an aggressor in necessary defence (as well as killing in war, which is a form of necessary collective defence) does not constitute a violation of the prohibition "Thou shalt not kill," since the direct aim of the action is not to kill the aggressor, it is an unintended side effect. The precursor of this doctrine was St. Augustine, and St. Thomas Aquinas developed it. St. Thomas writes: "The same act can produce two different effects, one of which is included in the intention, while the other remains outside the intention. However, the morality of such an act is defined not according to what is not included in the intention, for this, as the preceding considerations show, is something incidental. Thus two different effects can arise from an act of self-defence: first, preserving one's own life, and second, the attacker's death. An act of self-defence undertaken to preserve one's own life is therefore not impermissible since it complies with the nature of everyone to preserve one's existence as far as possible. However, such an act, undertaken with a good intention, can be illicit if it is not in proportion to its purpose. If, therefore, one uses more violence to defend one's own life than necessity requires, then one's action is morally illicit, while when one opposes foreign violence with the right measure, it is morally permissible self-defence."[53]

The Christian religion has also developed what is known as the doctrine of the sanctity of human life. It states that man is created in the image

[52] M. Filipiak, *„Nie zabijaj!" Dekalog i nienaruszalność ludzkiego życia,* in: H. Cyrzan, op.cit., pp. 37–44.

[53] St. Thomas Aquinas, *Summa Theologica,* II-II q.64a.7c., quoted by M. Piechowiak, *Knauer's concept of moral choice,* „Roczniki Filozoficzne" 1989–1990, Vol. 37–38, J. 2, p. 32.; this doctrine is now accepted by the official teaching of the Catholic Church, see: *Catechism of the Catholic Church*, Poznań 1994, p. 514.

and likeness of God, has an immortal soul, and therefore human life must be protected unconditionally. This doctrine was developed by St. Augustine and St. Thomas Aquinas and is expressed in the current Catechism of the Catholic Church, which has an unconditionally negative and condemnatory attitude towards all forms of taking the lives of "innocent human beings." At the same time, homicide in necessary defence, war and the death penalty are admitted as forms of collective defence based on the above-mentioned double effect doctrine. Other living beings are left out of the prohibition on the deprivation of life, as they are created for man's benefit, and killing them is not a sin according to the principles of the Christian faith.

Let us try to list all the possible reasons why ethical systems have considered the deprivation of life to be evil and, at the same time, all the reasons that can justify a norm prohibiting the killing of living beings.

1. Cosmological theme – the order of the world is created by a deity and should not be violated by man (as in most monotheistic religions)
2. Living beings have an inherent right to life on the assumption that there is a catalogue of natural laws. Instead of a deity, nature is the lawgiver.
3. Even if there is no deity, life is too precious and unique (perhaps on the scale of the entire universe) a phenomenon to destroy, with every living being a manifestation of it.
4. Living beings feel the desire for life, the same as we, the creators of norms, feel. Hence, the conscious feeling becomes an argument for the prohibition of the deprivation of life, graded according to the hierarchy of feeling the desire for life by living brings. In this hierarchy, the highest is Man.
5. Compassion for all sentient beings (as in Buddhism).

In our civilisation, there is a consensus that members of the species *Homo Sapiens* are subject to the moral prohibition of deprivation of life. Representatives of the human species have the 'right to life,' which is one of the so-called human rights. It is necessary to consider what are the reasons for the special protection of human life.

In the Christian doctrine of the sanctity of life, the duty to respect human life is justified by man's origin from God. This metaphysical argument is

caused by what I have termed a cosmological motive, only applied to man. At the present stage of civilisational development, the law of modern developed states does not rely on this kind of justification. Human rights documents speak of human dignity and inherent rights without justifying them by man's origin from God. As I. Lazari-Pawlowska rightly points out, the all-human rights movement could not derive its rationale from some metaphysical doctrine; it must maintain a supra-confessional character.

An other than metaphysical justification for distinguishing human beings from other creatures in terms of the protection of life is recognising the superiority of human beings as a species. Such a paradigm has taken hold in European culture. As some thinkers, e.g. P. Singer, point out, this approach can hardly avoid the accusation of arbitrariness. Singer even sees in ascribing to our species special rights among other living beings a variety of chauvinism called species chauvinism or speciesism.[54]

The argument for singling out human life is also based on the claim that people have a right to life by virtue of being persons endowed with dignity. A person is entitled to the right to life because of his or her particular characteristics. Beginning with Boethius, who defined a person as "an individual substance of rational nature,"[55] there have been many attempts in the history of philosophy to define the concept of a person. One of the best known is the definition by J. Locke, who considers a person to be "a thinking and intelligent being, endowed with reason and the capacity for reflection, a being that can apprehend itself as the same thinking thing in different places and times."[56]

According to the contemporary American philosopher M. Tooley, the deprivation of a person's life is a greater evil than the deprivation of the life of any other sentient being because a person is capable of having desires and anticipating the future. With the deprivation of life, he is deprived of this future, whereas beings who live only a present existence are deprived only of the present 'now.' Furthermore, he argues that only a person can have rights because only a person can have desires.

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[54] The term was introduced by Oxford psychologist R. Ryder, quoted in: P. Singer, *Rethinking life and death...*, op.cit., p. 190, Singer uses it also in his other works: *Practical Ethics,* Warsaw 2003, *Animal Liberation*, Warsaw 2004.

[55] On Boethius' definition and other historical approaches to the concept of person, see C. Bartnik, *Personalizm,* Lublin 2000, pp. 84–87 and others.

[56] J. Locke, *Reflections on human reason*, transl. B. Gawecki, Vol. 1, Warszawa 1995, p. 471, quoted after: *Encyclopedia of Philosophy*, T. Honderich (ed.), transl. J. Łoziński, Poznań 1999.

The right to life is conditioned by the desire to live, and such a desire can only be had by a person who is the only one capable of grasping himself as a whole existing in time.[57]

Furthermore, the prohibition of killing a person is an expression of respect for his autonomy to choose to live, and only a person is capable of autonomous choices.[58] Moral autonomy is also invoked as a justification of the prohibition of killing by I. Kant.[59] The characteristics of the person, such as self-awareness and autonomy, are thus accepted as justification for the prohibition of the deprivation of life.

However, is this justification enough? Some members of the *Homo Sapiens* species: unborn children, infants, people with profound disabilities, people in a vegetative state, do not have the characteristics of a person in the sense described above, and their lives are protected. On the other hand, some primates, such as chimpanzees, do possess them. For this reason, there are calls to recognise them as non-human persons and to protect them accordingly.[60]

In the context of linking the moral prohibition of killing to the concept of personhood, the question arises: is there a necessary link between having a 'right to life' in the above sense and protecting life? Does not having a moral right to life for beings who are not persons amount to condoning their killing?

It is not only self-awareness and personal qualities that may speak against the deprivation of life of a living being. According to a conception

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[57] M. Tooley, *Abortion and infanticide,* "Philosophy and Public Affairs" 1972, Vol. 2.

[58] P. Singer, *Practical Ethics,* op.cit., p. 103.

[59] According to him, killing a human being is always wrong for at least three reasons: killing a human being against his will violates his moral autonomy, killing a human being in order to profit from it makes one treat him as a means, violating his inherent dignity and at the same time going against the principle of treating a human being always as an end in itself, and finally, killing is, according to Kant, incompatible with the formula of the categorical imperative: "nature, whose right it would be to destroy life itself by means of the same sentiment whose purpose is to stimulate the support of life would fall into contradiction with itself, and therefore could not exist as nature," I. Kant, *Uzasadnienie metafizyki moralności,* Warszawa 1971.

[60] The *Great Apes Project*, an international organisation established in 1993, postulates the adoption of a Declaration of Fundamental Rights at the United Nations, protecting the rights of non-human primates. Among the rights to be included in this declaration is the right to life (https://www.projetogap.org.br/en/). Among its activists is P. Singer, who together with P. Cavalieri published in 1994 a book entitled: *The Great Ape Project.Equality beyond humanity,* a collection of scientific articles by over thirty authors (including, among others, Jane Goodall, Richard Dawkins) supporting the thesis of the necessity of recognising the personal status of non-human primates.

held by, among others, the Dalai Lama, it is wrong to kill sentient beings. The consequence of this concept is the obligation to protect the life of animals, even though they are incapable of being conscious subjects of rights (just as foetuses, newborns and people with profound mental disabilities are incapable of this). As for human foetuses and newborns, the problem is more complex, for they can achieve personal qualities, which is why some thinkers call them 'potential persons' (I will return to this concept later in this book).

It seems that the arguments underlying the higher protection of a person's life are valid in the case of a necessary choice between the life of a person and a nonperson. However, it does not automatically follow that there is a 'right to kill' non-personal beings.

However, it should be remembered that assuming the preference of the life of a person over that of a nonperson, it is difficult to accept the argument of preferring the life of an intelligent human being (person) over that of an animal (nonperson) without at the same time accepting the preference of a normal intellectually developed human being over that of a person who is profoundly mentally disabled or in a state of irreversible unconsciousness (who does not meet the criteria of being a person). Therefore, the only rationale for distinguishing human nonpersons in terms of the protection of life in this situation is that they belong to the species *Homo Sapiens*, which rightly meets the accusation of speciesism.[61]

The requirement of coherence in ethics supports the validity of such views. Moral norms must apply similarly to similar cases based on some coherent and not arbitrary set of principles in order to be adequately justified, if we assume that specific characteristics – consciousness or personal qualities – justify a similar prohibition on the deprivation of life in the case of beings that possess them (and this criterion is justified only insofar as killing a being that is at least minimally conscious differs in any way from destroying, for example, a stone). In that case, we cannot introduce an additional arbitrarily adopted criterion of species membership.

At the same time, the adoption of the personal criterion excludes certain human beings from the equal protection of life. However, we can accept that the dignity and rights of the person as belonging to human beings with actual personal characteristics are extended to potential human beings

[61] Argumentation used, among others, by. P. Singer in: *Practical Ethics,* op.cit., p. 119.

(unborn children and newborn babies), thus realising their right to become full persons. In the same way, we can assume the extension of this personal status to human beings with a low or no degree of consciousness because, for the people who surround them with love and care, they are persons (thus, they are persons in the social sense). H.L. Nelson, describing the story of a child with hydrocephalus and his family, writes about "holding in personhood."[62] For such human beings, deprived of conscious functions above a minimal degree, there is no difference between life and death, and therefore depriving them of life could not be considered evil from their point of view. However, to exclude them from the prohibition of deprivation of life, and hence to deny them the right to life and to authorise their arbitrary killing, would be to violate the personal status attributed to them, to violate the dignity which is associated with it, to the detriment of the absolute moral principle of respect for dignity.

According to another concept, deviating from the definition of a person as a 'rational substance,' a sign of equality is put between an entity belonging to the human species regardless of its stage of development or having conscious functions and a personal entity. It is a concept originating from the Catholic doctrine, which also appears in the secular version. However, in this case, the axiom of the human dignity of every human being seems to be supported by metaphysical justification in the form of the origin of human beings from God. According to this concept, one should distinguish between the personal being itself and the manifestations of the existence of this being. The lack of a particular type of activity (e.g. the lack of conscious functions in a human being) is not, according to this concept, a sufficient condition to deny a specific characteristic to the being itself (to deny it personal dignity).[63]

Let us consider at this point the view of I. Lazari-Pawlowska that the class of moral community that we will adopt (the class of beings to which we grant dignity, to which we relate the moral prohibition of deprivation of life) is, at the end of the day, a matter of our own axiomatic

[62] H.L. Nelson, *What child is this?*, "Hastings Center Report" Nov-Dec 2002, Vol. 32, No 6.

[63] The concept presented in Polish literature, among others, by M. Piechowiak, see M. Piechowiak, *Filozoficzne aspekty regulacyjne prawnych dotyczących życia ludzkiego we wczesnych stadiach rozwoju. Zagadnienia podstawowe*, in: *Wspomagana prokreacja ludzka. Zagadnienia legislacyjne,* T. Smyczyński (ed.), Poznań 1996, pp. 74–78, M. Piechowiak, *Rzeczywistość medycznego wspomagania prokreacji. Aspekty moralne i filozoficzno-prawne,* in: *Małżeństwo w prawie świeckim i prawie kanonicznym*, B. Czech (ed.), Katowice 1996, p. 374.

decision, based on an inner sense of rightness, because we will not find any empirical features either in people or in other creatures that would irresistibly determine for us the class of community.[64] It is a question of adopting a particular paradigm, be it one stemming from faith or the position of rationalism. That is why discussions between representatives of other moral paradigms are so tricky, if not impossible. However, irrespective of the paradigm, we are bound by the imperative of ethical coherence mentioned above. Suppose, therefore, we accept as an ethical axiom the principle of the prohibition of the deprivation of life in the case of beings even minimally aware of their existence and manifesting in any way their will to live, and this is what I am personally inclined to accept. In that case, the prohibition of the deprivation of life should also apply to animals.

However, the universally accepted morality and positive law in our civilisation have always protected only human life, and to a very diverse extent (e.g. protection of the life of free people only; differentiated protection of women and children). I discuss the historical development of the legal norm prohibiting the deprivation of human life in the next section.

However, there are still situations where the deprivation of human life is considered compatible with both moral norms and positive law, such as the deprivation of life in necessary defence or a state of extreme necessity, the killing of a combatant of the opposing side in war, the deprivation of life during the enforcement of the law by an officer of the state through the necessary use of force, or through the carrying out of a sentence of capital punishment in legal systems which provide for this penalty. Other living beings remain, as a rule, outside the moral and legal prohibition on deprivation of life.

[64] I. Lazari-Pawlowska, op.cit., p. 46.

4.

The prohibition of deprivation of life as a legal norm – a historical perspective

The prohibition against taking human life is a moral and legal norm found in human culture at all stages of its development. Before we can talk about any other norms in the development of human society, this prohibition has already appeared. It seems clear that this is because this prohibition is, as M. Ossowska defines it, a norm defending our biological existence.[65] Its appearance in human society thus seems to be a natural self-preservation reflex, a defence mechanism created in order to preserve a species that, unfortunately, like no other, specialises in killing its representatives. The emergence of legal norms was preceded by moral norms expressed in customs, which regulated mutual relations within human communities. Thus, while we are not yet talking about a legal ban on killing, we can speak of customary and religious norms. The moral norm "Thou shalt not kill" can be found in all the religions and cultures we know.

The distinction between legal, religious, and moral norms depends mainly on the definition of law we adopt. According to some researchers of primitive cultures, e.g. Bronisław Malinowski, the system of norms existing there, constituting a conglomerate of customs and beliefs, may already be called law, despite the lack of authority and institutionalisation of norms.[66]

Thus, going back to the earliest period in human civilisation, it is impossible to separate what we might call law, custom, or religious norms. That is why I will initially speak of the legal protection of life, and specifically of the ban on murder, in this general sense.

In order to trace the origin and development of the norm prohibiting the murder of a human being, we must go back to the earliest

[65] M. Ossowska, *Normy moralne,* Warszawa 1985, pp. 31–50.

[66] B. Malinowski, *Prawo, zwyczaj, zbrodnia w społeczności dzikich*, introduction C. Znamierowski, Warszawa 2001.

stage in the history of humankind, to the era before the establishment of the state. The law of primitive human groups in the pre-state epoch is referred to in science as primitive law. It is a typological term referring both to the dark depths of the past and to the law of contemporary primitive peoples (the so-called traditional societies), which, according to some researchers, is supposed to be a gauge of relations prevailing in prehistoric times.

From this earliest phase of legal development, we lack written sources. Instead, we learn about these earliest legal relations from archaeological sources, but above all from ethnographic research.

Various concepts were formed concerning social relations in the original 'state of nature' in science and philosophy. According to J.J. Rousseau, it was a state of ideal harmony, in which humankind lived in peace, respecting the natural right of each individual to live, and not feeling the need to establish legal norms with sanctions. Hobbes creates an entirely different vision of these relations in Leviathan, describing them as a state of permanent "war of all against all."

It is only by law and state organisation that norms are put in place to limit this anarchy, including the norm prohibiting killing.[67]

According to concepts based on Darwin's theory of the struggle for existence, the fundamental imperative of which is the preservation of biological existence, moral norms, such as the norm prohibiting the murder of human beings, appear as a brake, a kind of defensive reflex of the community as a whole in its striving for survival.

It seems that at the root of the legal norm prohibiting murder is the threat of personal revenge for the death of a loved one, a member of the group. For at the dawn of humanity, the group was the basic unit that made survival possible.[68] Therefore the injunction "thou shalt not kill" meant "thou shalt not kill thy own." Thus, intra-group solidarity became the guiding principle, and revenge for the deprivation of life of a group member became a natural sanction imposed on the killer, a duty incumbent upon the other group members.[69]

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[67] T. Hobbes, *Lewiatan*, PWN, Warszawa 1954, pp. 109–110.

[68] K. Mannheim, *Człowiek i społeczeństwo w okresie przebudowy*, quoted after: K. Sójka-Zielińska, *Historia prawa*, Warszawa 1995, p. 11.

[69] S. Grzybowski, *Dzieje prawa*, Wrocław 1981, pp. 47–58; see also: W.G. Sumner, *Naturalne sposoby postępowania w gromadzie*, Warszawa 1995.

It seems to draw a clear line between the first human and animal societies. An animal kills to obtain food, in self-defence, or defence of its offspring, while it does not kill in revenge or to inflict punishment for the death of another animal.

The emergence of the vengeance reflex, as an act of group solidarity, seems to be a higher organised form of struggle for survival, not for individual survival, but the survival of the group as a whole. Over time, as we will see by following the historical development of the law, the scope of the protection of life expands beyond the group, and the prohibition of the deprivation of life universalises.

It seems that the value of a man's life was initially measured according to the criterion of his usefulness to the group, so he was a kind of part, a property of the group, and it was the group that was to receive compensation for his death. As J. Kurczewski writes: "The life of an individual, his physical inviolability are the goods of the group. Against this background, the conviction of the moral value of the inviolability of the individual arises. The group, referring to self-help, does not realise an abstract moral postulate, but secures first of all its economic needs."[70]

Since no institution would give norms authority and binding force in the absence of state power, this function was taken over by faith in supernatural forces or, more generally, religion. The order to take bloody vengeance for the death of a relative was based on, among other things, the belief that the spirit of the deceased demanded this vengeance from the relatives or that it was demanded by the gods. According to this belief, the spirit of a murdered man can be appeased only by shedding the blood of the guilty party. Thus, for example, the shed blood of Abel cried out to God for vengeance.[71] Hence, the right to revenge gave rise to the duty of revenge.[72] In the pre-state social conditions without stratification and institutionalisation, the only principle of reaction to murder was reciprocity, and the only means was individual violence. In the traditional societies of the pre-state era, the primary form of bloody vengeance was revenge by the kin group of the murdered person on the group of the murderer.

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[70] J. Kurczewski, *Prawo prymitywne*, Warszawa 1973, p. 25.

[71] W.G. Sumner, op.cit., p. 448.

[72] See also: K. Koranyi, *Powszechna historia państwa i prawa,* Vol. I., *Starożytność,* Warszawa 1961, p. 92.

This original collective responsibility was linked to the collective sense of subjectivity in traditional societies. Thus, if a member of one compact social group killed a person belonging to another, the life of any member of the killer's group could be taken.[73]

In the legal systems of traditional societies, different attempts were made to formalise the principles of responsibility of family members and relatives. Gradually, responsibility became more individualised, although there were still collective wars between families (the so-called vendettas). With time, to limit the use of violence, institutions of redemption from revenge were introduced as an alternative form of settling disputes between groups. An example of this is the institution of *Wergeld* in German tribes in the first centuries AD. The *Wergeld* was redemption from revenge (vendetta). The whole family of the perpetrator or specific groups of relatives defined by customary law were held responsible.[74]

In the further course of history, as G.W. Sumner writes, "the state took control over the cases of harm and acts of rape and took it upon itself to carry out vengeance on behalf of the wronged victims."[75] The emerging state power tried to eliminate the phenomenon of vendetta as harmful to society as a whole.

Tribal societies of the first centuries AD in Europe provide an excellent example of the transition from the primitive law of the pre-state era to the institutionalised norms established by the emerging state authorities. However, although the newly established institution of the state tried to limit the self-help and role of the family in responding to homicide, for a long time to come human homicide remained a so-called private crime, primarily left to the victim and his family to deal with.

With great difficulties, the state authority gradually managed to control the implementation of sanctions for murder. This phase occurs at the transition to the next stage in the history of law[76], the period of archaic law. The first codes of state law containing norms sanctioning homicide were created. In different parts of the world, this occurred at different historical periods, depending on the existence of a developed state organi-

[73] S. Grzybowski, op.cit., p. 43.

[74] K. Modzelewski, *Barbarzyńska Europa,* Warszawa 2004, pp. 119–168.

[75] W.G. Sumner, op.cit., p. 460.

[76] According to Seagle's systematics in: W. Seagle, *Weltgeschichte des Rechts*, München–Berlin 1958.

sation in a given region. Examples of the oldest codes in the world are the Sumerian Code of Ur-Nammu, written between 2100 and 2050 BC, which states: "He who commits murder shall be put to death" and three centuries later, the Babylonian code of Hammurabi, which formulates the principle of talion: "an eye for an eye, a tooth for a tooth." In Europe, the sanctioning by the state of the norm prohibiting the deprivation of life occurred in the archaic law of ancient Greece and Rome, and then only at the stage of tribal states at the beginning of our era.

In archaic law, the prohibition of homicide thus acquires the position of a norm of state law. However, the normative ban on homicide presented in this way still has little in common with the contemporary legal norm sanctioning the deprivation of life. In essence, it is still revenge, only institutionalised. It is a form of 'retribution' for the death of a person, which is determined by the state, while the realisation of this 'retribution' only gradually passes from the hands of individuals and groups to the state apparatus.

At the same time, however, within religious norms, such as those found in the Old Testament, there appears the norm "thou shalt not kill," which has a more universal and abstract dimension. Thus, God as the giver of life becomes the very source and guarantor of the norm prohibiting murder.

The tradition of Judaism, and subsequently the Christian religion, elevates human life to a sacred, intrinsic value that cannot be compensated for by any other values. Murder is a sin and, as such, entails punishment, which excludes treating it as damage that can be compensated in a material form. Hence, in the legal culture of Judaism, there is a tendency to exclude the possibility of 'redeeming' the murderer. In the Old Testament, we read:

"No ransom for life can be accepted from a killer who is guilty of death. He must be killed."[77] This archaic principle, despite its cruelty, gives an exceptionally high value to human life, which can no longer be related to any material value.

However, for many centuries of Christianity in Europe, homicide has also been treated as an injury that can be compensated for materially. Thus, the principle of material retribution persisted for a long time, and

[77] *Old and New Testament Scriptures, Millennium Bible*, Book of Numbers (35:31), http://online.biblia.pl/.

even today, it is to some extent an accessory element of the sanction for murder (civil action).

The prohibition on deprivation of life has not always been a universal norm in the subjective sense. That is, it has not been applied equally to all representatives of the human species.

Since human beings cease to function in a community based on the principles of intra-group equality and reciprocity, disadvantaged groups and groups privileged to protect life begin to emerge.

The lowest rank in this respect was that of slaves, whether in ancient times, the early Middle Ages, or any other historical period where the phenomenon of slavery occurred, and it is difficult to find a period in human history, not excluding the present day, in which it would not be present in some part of the world.

Slaves were excluded from the ban on murder as they were deprived of legal subjectivity. Hence, in many legal systems, e.g., in ancient Rome, only the life of a free person was subject to state protection, and the murder of a slave was treated as material damage to the master's property.[78] Similarly, in the German tribes in the early Middle Ages, the murder of a slave did not entail the consequence of bloody revenge. Hence no ransom was due for his life as for that of a free one. In some accounts, we come across slaves being placed in the same category as cattle and domestic livestock. If a slave was murdered, the owner was liable to be compensated, just as for the destruction of property. At the same time, the owner was liable for a murder committed by his slave, just as for damage caused by a domestic animal. The improvement of the status of slaves was influenced already in Roman times by the Christian religion with its essentially egalitarian ideological foundations. The universal divine law: "Thou shalt not kill" and the injunction to love one's neighbour, irrespective of one's social status, had positive impact on the fate of slaves in the Christian Roman Empire. However, it must be remembered that Christian doctrine, although it acknowledged the slave as a neighbour, at the same time accepted slavery and social inequality sanctioned by law.[79]

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[78] It was not until the time of the emperor Hadrian that the state took over jurisdiction over the lives of slaves from their owners, see: *Instytucje Justyniana*, transl. C. Kunderewicz, Warszawa 1986, Vol. I, 8,2, Digesta I, 6,2.

[79] St. Peter in the *Epistle of St. Peter*: "Slaves! With all fear be subject to your masters, not only good and gentle, but also strict" (1 Peter 2:18), and St. Paul in the *Letter to the Collosians*: "Slaves, be obedient in all things to your temporal masters, not serving only for the sake of

Christian states had long accepted the institution of slavery and the consequent lack of protection for the lives of slaves.

Islam was much more consistent on the matter. Although Islamic legislation permitted the existence of slavery, it subjected slave owners to several percise obligations, the first of which was the slave's right to life. Thus, the murder of a slave was punished in the same way as the murder of a free man.[80]

The position of peasants in a developed feudal state was somewhat similar to that of slaves. Although they had to be compensated for their lives in the form of headship or restitution (in Poland), a large part of it was paid to the landowner in particular periods.[81] In the period between the late Middle Ages and the Enlightenment in Poland and Europe, there existed actual impunity for taking a peasant's life by the landowner in private estates. The owner, exercising jurisdiction over peasants, also had the right to sentence them to death.[82] This situation was only changed by the penal codes of enlightened absolutism, which introduced equality before the criminal law.

Completely excluded from the legal norm prohibiting murder were the so-called outlaws. This institution had its roots in the family organisation when those guilty of some offence were excluded from the protection of the group, which meant death. In the further development of legal systems, a separate institution of outlawry emerged. Outlaws were, for example, a thief or arsonist caught red-handed, a robber in the act of fleeing, or a person against whom the court had pronounced such a punishment. A murder committed on this category of persons went unpunished.[83]

Among the so-called free ones, who are in principle covered by the prohibition of deprivation of life, differences emerged in the degree of protection of life and the progressing stratification into classes in human society. The divisions became apparent in the amount of compensation

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the eye, as if to please men, but in sincerity of heart, fearing the Lord" (Col 3:22; cf. Eph 6:5n), *The Holy Scriptures of the Old and New Testament, The Millennium Bible*, http://online.biblia.pl/

80 R. Du Pasquier, *Unveiling Islam,* Islamic Texts Society 1992.

81 K. Sójka-Zielińska, *Historia Prawa,* Warszawa 1995, p. 169.

82 In Poland, until 1768, the owners of estates had the right of the sword in relation to peasants, however long before the abolition of this law it was no longer used by them in practice, R. Łaszewski, *Wiejskie prawo karne w Polsce XVII i XVIII w.*, Toruń 1988.

83 This was the case in Frankish law and other early medieval systems contemporary to it, see K. Koranyi, op.cit., Vol. II, p. 213.

for the death of a member of a particular class or social group, which at the same time determined the rank of that group. These differences appeared in Europe already at the stage of the tribal system (e.g. the differentiated Wergeld in the Germans) and deepened with the development of the feudal state and state-society. Women were a particular group in terms of the prohibition on deprivation of life. The institution of blood vengeance was a male invention implemented by men. Women also became its victims, but as a rule, they were not fully entitled to assert their rights, since in our culture, from ancient times until very recently, they remained under the authority of men.

Despite the weaker position of women among the Germanic tribes, their lives were valued highly owing to the social function of childbearing (the amount of compensation for murder was sometimes made dependent on the ability to give birth).[84] However, the situation was not similar everywhere, e.g. the regulations of the *Russkaya Pravda* (the oldest set of laws of the Kievan Rus dating back to the 12th century) set the amount of compensation for a woman as only half of the amount due for a murder of a man.[85] Thus, in principle, throughout the Middle Ages, and in some legislations almost up to the present day, women remained a less privileged group than men as far as the protection of life was concerned. In Longobard law, for example, the punishment for a woman for killing her husband was death in every case, while the husband could execute his wife with the death penalty or a mutilation punishment "when she deserved it" (if he violated these rules, he was only obliged to pay the Wergeld to the king).

In the French codification of 1810, there is a provision excluding the punishment of murder by the husband of a wife caught *in flagrante* committing adultery (these provisions were repeated in the state legislation of Texas and Mexico).[86] It is characteristic that a member of the underprivileged group in the protection of life was punished more severely for the murder of a member of the privileged group, usually without the possibility of redemption from punishment, which in most cases was the death penalty (as in the case of the murder of a lord by a peasant, or a husband by his wife). In its further development, the norm prohibiting

[84] In Riparian law, the murder of a woman who could give birth 'cost' the killer three times more than the murder of a man – see in: K. Sójka-Zielińska, op.cit, p. 163.

[85] K. Koranyi, op.cit., Vol. II, p. 323.

[86] S. Grzybowski, op.cit., p. 225.

murder undergoes a process of universalisation. It is the issue I shall now deal with in more detail. Before doing so, however, I would like to draw attention to a few developmental tendencies to which this norm has been subjected in the course of historical changes.

Firstly, as I mentioned earlier, the sanction for the murder of a human being gradually passes from private hands to the state with the development and strengthening of state organisation. It happens gradually, at first by the authorities setting certain conditions under which reprisals can be carried out (the king's peace, the institution of asylum, domestic peace), then introducing compositional punishments partly owing to the victim's family, partly to the ruler.

Finally, the transfer of the sanction for the murder of a human being to the state has been achieved through a long process of transformation of the crime of homicide (in the former terminology – manslaughter) from a private crime (located in the sphere of civil law relations, where the victim's family took the main initiative of action) to a public crime. This process took different steps in different European countries. Where a solid central authority had emerged, the state sooner acquired a monopoly on the use of violence and the imposition of penalties for homicide, while where this did not take place, for a long time people still had to assert their rights through self-help and family *vendetta*. Another distinctive development is the individualisation of responsibility for homicide, from the original collective responsibility of the entire family to the personal responsibility of the murderer. It is characteristic, for example, that with the adoption of Christianity, barbarian tribes move away from collectivist principles of responsibility for murder, which is a manifestation of a shift from collective pagan subjectivity to Christian individualism.[87] The distinction between intentional and unintentional homicide is also gradually emerging, along with the concept of defence of necessity and absolute necessity.

Parallel to nationalizing the prohibition of deprivation of life comes the already mentioned process of expanding the scope of the norm and equalizing the degree of protection of life of particular social groups, leading to establishing a universal prohibition of homicide. It has taken place under the considerable influence of the Christian religion and the "the sanctity of life" doctrine it has shaped. Human life, every human

[87] K. Modzelewski, op.cit., p. 15

life, is, according to this doctrine, a creation of God, and only He has the authority to destroy it. Thus, the prohibition of the deprivation of life is sanctioned by divine law. Moreover, man is the only being endowed with an immortal soul. Hence human life requires the highest and, what is more, equal protection.

The landmark codification criminalising the murder of any human being equally is the German *Constitutio Criminalis Carolina* of 1532. *Carolina* makes homicide a public legal offence prosecuted equally, regardless of the victim's social status. It no longer provides for the possibility of buying one's way out of punishment for homicide, thus eliminating the last formal bastion of social inequality in this regard. A mark of the increased protection of human life in *Carolina* is the cruelty of the punishment of homicide. The punishment for homicide there is generally the death penalty in various forms, from the ordinary to horrific and elaborate forms of the qualified death penalty (breaking with the wheel, burning at the stake, burying alive, quartering).

However, it should be noted that this was an increase in the protection of life only for murder victims. At the same time, the death penalty was widely used for various crimes, not only against life. The intensification of the protection of human life has also manifested itself in the severe criminalisation of abortion and infanticide. There has been a qualitative equalisation of these practices with the crime of murder. For comparison, in Roman law and the customary law of the Germanic peoples until Christianity, there was very mild punishment for abortion.[88] In Roman law, it was also permissible for a father (*pater familias*) to kill children by virtue of paternal authority (*patria potestas*), which included the right over the life and death of children (*ius vitae ac necis*).[89]

In Visigothic law, a father could kill his child with impunity.[90] As a result, children, both born and unborn, remained an underprivileged group in the protection of life for a long time.[91]

[88] A. Eser, *Zwischen Heiligkeit und Qualität des Lebens. Zu Wandlungen im strafrechtlichen Lebensschutz*, in: *Tradition und Fortschrift im Recht* (Festschrift), Tübingen 1977, pp. 378–396.

[89] The origins of legislative intervention in this law date back to the first century AD. Emperor Hadrian punished a father who killed his son with exile. The *ius vitae ac necis* was last attested by Papinian. This law was condemned by Christianity. It was finally abolished by Emperor Constantine the Great, see W. Bojarski, *Prawo rzymskie,* Toruń 1999.

[90] K. Koranyi, op.cit., Vol. II, p. 200.

[91] Still in Russia in the period between the 16th and 17th centuries, the murder of legitimate children by their parents was punished very mildly. See in: K. Koranyi, op.cit., Vol. III, p. 248.

The universalisation of the legal norm prohibiting homicide is due not only to the Christian religion, but above all to the formation of absolute state, which had the power to equate the most privileged with the lowest classes in the protection of life, and in this way to prove its power over the feudal class and its internal sovereignty. Hence it is in vain to look for this phenomenon in Poland of that period, where the nobility's 'golden freedom' prevailed and the crime of manslaughter for a long time remained a civil offence, especially when it involved the murder of a non-nobleman, which entailed only the payment of a head fee. It raised voices of protest among Polish thinkers of the period. The death penalty for murder, irrespective of the victim's status, was demanded by, among others, Andrzej Frycz Modrzewski in his treatise *O karze za mężobójstwo* (On punishment for manslaughter).[92]

The process of universalisation of the norm prohibiting the deprivation of life and the emergence of the concept of subjective rights leads, in effect, to the emergence of a co-conceived right to life of every human being. It coincided with the ideological changes brought about by the Enlightenment and the bourgeois revolutions at the end of the 18th century. The concept of the right to life as a subjective right dates from then. Human life becomes valued for its own sake and, as such, is to be protected, without the need for it to be founded in the divine order. At this point, it is worth emphasising that subjective rights are a concept that originated in European culture. In Far East cultures, people and animals' lives were considered the highest value, although the concept of personal rights and the right to life did not develop in these cultures.

The concept of the right to life as an inherent, natural right of every human being can be found both in the Enlightenment representatives of the natural law doctrine and in the writings of fundamental ideological documents of the epoch, such as the American Declaration of Independence of 1776, the French Declaration of the Rights of Man and Citizen of 1789, and in the first national constitutions in the world (French and American).

However, only reforms of criminal legislation could bring about fundamental changes in protecting the right to life.

At this point, we should mention the concepts of the supporters of a humane reform of criminal law (the so-called humanitarians,

[92] K. Sójka-Zielińska, op.cit., p. 179.

who included Voltaire and C. Beccaria), which slowly permeated, first, the penal codifications of Enlightenment absolutism, and then found their final expression in the bourgeois codifications of the 19th century. They assumed, first of all, the principle of the formal equality of all citizens before the criminal law and equal legal protection of life. The abolition of the punishment for suicide attempts was also postulated. They opposed the death penalty, generally adopting a new utilitarian concept of punishment, which was no longer a form of retaliation or an attempt to restore a metaphysical, moral order, but had preventive and rehabilitative functions.[93]

Of course, not all the postulates were immediately reflected in legislation. In this respect, the most modern solutions were introduced by two successive French codifications, the *Code Penal* (of 1793 and 1810) and the Bavarian code of Anselm Feuerbach of 1813.

From the perspective of the legal protection of life, the most significant achievements of this period were the explicit recognition of the public-law nature of homicide and the equality of murderers and homicide victims before the law.

As mentioned above, at a certain point in human history, a norm prohibiting the deprivation of human life and prescribing respect for human life develops into the concept of a universal and equal *right to life* for all.

The development of the concept of the right to life will be discussed in the context of both moral and legal doctrine. However, the concept of the right to life is legal. Hence it is not easy to separate these two streams of consideration here.

The concept of the right to life, as a subjective right, may have emerged when the general concept of subjective rights appeared based on philosophical and legal doctrine and positive law. The concept of subjective rights emerged from the doctrine of the law of nature dating back to the Stoics, Aristotle, and St. Thomas Aquinas. It has been formulated by the representatives of the rationalistic school of the law of nature of the 17th century (Hugo Grotius, T. Hobbes, S. Pufendorf, J. Locke, B. Spinoza, F. Suarez). In the writings of these thinkers, the notion of subjective law appeared for the first time. However, according to some philosophers of law, e.g. Leon Petrażycki, the concept of subjective right is much earlier because it is *implicit* in the notion of right, as it is connected with the very

[93] Ibidem, p. 289.

essence of a legal norm, which has a bilateral, imperative-attributive character, determining an obligation, to which, on the other hand, a right corresponds.[94] However, before the emergence of the concept of subjective law, the law was mainly perceived as a set of orders and prohibitions, not of rights, both in the doctrinal and normative sphere. Also, the natural law was conceived more as a set of obligations than entitlements.[95]

The rationalist school of natural law distinguished a set of natural, inherent rights to which every human being is equally entitled. In this way, it laid the foundations for the doctrine of human rights. H. Grotius presented a view according to which the field of morality and law should be understood not as a set of precepts and prohibitions, as had hitherto been the case, but as a set of rights relating to the person.[96] One of the natural rights to which man is entitled is, according to this doctrine, the right to life. The concept of the right to life was thus, in a way, a translation of the norm prohibiting killing and ordering respect for human life into the language of personal rights. However, it should be noted that the right to life acquired an autonomous and primary position in relation to the prohibition of killing. The prohibition of killing is a consequence of the right to life and not the other way round.

In this view, the right to life is, therefore, a natural right that gives rise to a negative obligation effective *erga omnes* to refrain from taking the life of others.

The concept of subjective rights was more fully developed by John Locke. Locke sees man as a being born equipped with a set of natural rights. These rights constitute a kind of property of the individual. One of them is the right to life. As Locke writes, "men by nature have the equal power to preserve their rights, that is life, liberty and property."[97]

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[94] L. Petrażycki, *Teoria państwa i prawa w związku z teorią moralności*, Vol. I–II, Warszawa 1959–1960, quoted after: K. Motyka, *Prawa człowieka. Wprowadzenie. Wybór źródeł,* Lublin 2004, pp. 21–22.

[95] Also today some philosophers of law claim that law is a set of prohibitions and orders, eliminating the notion of entitlement. This is the so-called reductionist theory of entitlement, see: K. Świrydowicz, S. Wronkowska, Z. Ziembiński, *O nieporozumieniach dotyczących norm zezwalających*, „Państwo i Prawo" 1975, J. 30, see also the criticism of this concept: W. Lang, *Prawa podmiotowe i prawa człowieka,* in: *Księga Jubileuszowa Profesora Tadeusza Jasudowicza*, J. Białocerkiewicz, M. Balcerzak, A. Czeszko-Durlak (eds.), Toruń 2004, pp. 208–211.

[96] H. Grotius, *On the Law of War and Peace,* Warszawa 1957, quoted by S. Buckle, *Natural Law,* op.cit., p. 206.

[97] J. Locke, *Dwa traktaty o rządzie,* Warszawa 1992, quoted after: A. Błaszczyk, *Ewolucja państwa. Choice of texts,* Warszawa 1997, p. 152.

According to Locke's concept to protect their natural rights more effectively, people entered into a social contract creating the law and the state. They relinquished certain liberties to the state in exchange for a better guarantee of enjoying their natural rights. However, on the other hand, the state began to usurp the right to encroach upon the individual's natural rights, including the power over the life and death of subjects. Hence Locke's opposition to the absolutist form of government that dominated European states in his era. Locke's thought became an inspiration for liberal Enlightenment thinkers of the 18th century, such as Montesquieu, Rousseau, and the American Revolution's ideologist, T. Paine. In the view of the thinkers of that time, subjective rights were first and foremost rights directed against the arbitrariness of the state. The main content of the inherent right to life was, in this understanding, freedom from attempts on the lives of citizens by the state.

Medieval state privileges, such as the English *Magna Carta Libertatum* of 1215, which guaranteed to barons the inviolability of person and property[98], or the Polish nobility privileges guaranteeing personal inviolability to members of noble families (*neminem captivabimus nisi iure victum* privilege of 1425) are sometimes regarded as the first legal sanctioning of the right to life by the state.

In this context, it is also worth mentioning the later achievements of the 17th century English Revolution – the *Habeas Corpus Act of* 1679 and the *Bill of Rights* of 1689 – which were attempts to guarantee the freedom of the subjects from the arbitrary power of the authorities. These acts are considered the first guarantees of human rights, no longer applicable to a single state, but to all subjects. However, they do not yet mention human rights in the latter sense, nor do they mention the right to life.

In the Enlightenment, during the social changes associated with the bourgeois revolutions, the concept of 'the right to life' emerged. It was then that it was proclaimed for the first time in a political forum that human beings possess inherent and inalienable rights, which constitute a defensive shield protecting the values essential to each individual against the arbitrariness of power. Among these values, the supreme value is life. Thus, what had hitherto remained on the pages of philosophers'

[98] '*No freeman shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we send upon him except by the lawful judgment of his peers or the law of the land,*' quoted in J.L. Justyński, *Evolution from the rights of state and estate to the rights of man,* in: *The origin of human rights*, J.L. Justyński (ed.), Toruń 1991.

works was translated into political manifestos and declarations of binding rights.

The great social revolutions of the second half of the 18th century, the American and French revolutions, represented a turning point in the history of human rights. They transformed philosophical and doctrinal considerations into positive law (normativisation, positivisation, constitutionalisation).

The first legal document in history to declare the existence of an *inherent* and *equal* right to life and *liberty* was the Virginia Declaration of Rights of 12 June 1776.[99] Its provisions were repeated in the famous American Declaration of Independence of 4 July:

'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just Powers from the consent of the governed.'

The French Declaration of the Rights of Man and Citizen of 1789 and the subsequent Declarations of 1793 and 1795 contain similar formulations, although they do not *expressly* mention the right to life. However, the guarantee of the inviolability of the person of every citizen comes first, which implies the right to the inviolability of life.

The French Declaration of the Rights of Man and the Citizen has been recognised as an integral part of the French constitutional system. In contrast, the ideas of the American Declaration of Independence are reflected in the so-called *Bill of Rights,* which consists of amendments to the US Constitution (on the prohibition of the deprivation of life by the state other than by a final court judgment convicting to the death penalty).[100] The right to life thus became, together with other subjective rights, the foundation of the positive law of these countries and the basis of the emerging modern rule of law.

It should be remembered that the Enlightenment concept of human rights and the right to life was different from the modern one, in which

[99] http://www.usconstitution.net/vdeclar.html, [accessed: 30.09.2021].

[100] The US Constitution was adopted on 4 July 1787; the first Ten Amendments to the Constitution were adopted by the US Congress on 15 December 1791.

the state is obliged not only to refrain from violating the right to life, but it is also the guarantor of this right and is obliged to protect it actively.[101] In the Enlightenment view, subjective rights had a primarily negative dimension, directed against state power, from whose abuses they were supposed to protect the individual. So it is also how the articulation of the right to life at that time should be understood, first and foremost, as the right to protection against an arbitrary attack by the state. Initially, the right to life functioned only vertically in the relationship between the individual and the state. The recognition of an equal right to life also influenced the final elimination of inequalities in the protection of life of different social groups by the criminal law (i.e., horizontal relations between community members).[102] The idea of a positive obligation on the part of the state to protect life, consisting, among other things, in the creation of an appropriate legal system containing sanctions for attacks on human life on the same horizontal plane, came into being much later. In fact, it could have come into being only when the state itself was transformed from an organisation fulfilling, according to the liberal conception, only the functions of a 'night watchman' into an institution actively regulating the phenomena of social life. This process took place in the 19th century and the first half of the 20th century.

The recognition of the state's positive obligation to protect life consisted of establishing appropriate norms in the national legal orders, particularly in state constitutions (constitutionalisation). The Constitution of the Republic of Poland of 17th March 1921 (article 95) can serve as an example. The first modern Polish constitution used the phrase: "The Republic of Poland shall ensure in its territory the complete protection of life."[103] The state is obliged to actively protect this right. In this view, the legal and criminal prohibition of deprivation of life was no longer an autonomous norm of domestic law, but derived from the constitutional guarantee of the protection of life.

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[101] Moreover, human rights were at that time formulated as civil rights, their granting and observance depended on the state and on the existence of a citizen-state relationship, contrary to the contemporary conception of international and universal human rights, according to which rights are granted to every human individual regardless of his or her state citizenship.

[102] Nevertheless, in the USA, for example, until the end of the Civil War, the institution of slavery functioned, abolished only by an amendment to the Constitution in 1865, and until 1830 a master had the practically unlimited right to kill his slave.

[103] Act of 17 March 1921, Constitution of the Republic of Poland (OJ RP 1.06.1921).

In the twentieth century, the protection of human rights shifted from intra-State to the level of international law. It was the result of, *inter alia*, the international system of humanitarian law, which had been developing since the second half of the 19th century to guarantee human rights during warfare, and of the activities of the League of Nations, an organisation striving to consolidate peace in Europe after the First World War. Treaties guaranteeing the rights of national minorities were concluded under the auspices of the League of Nations (including the so-called Little Treaty of Versailles concluded between the Principal Allied Powers and Poland in 1919). The League of Nations also formulated proposals for the drafting of an international covenant on human rights, but these plans were not implemented.

After the Second World War, the first international human rights codifications on a universal and regional scale were established. The process of developing international human rights law, which took place in parallel with the development of human rights doctrine, was a reaction to, among other things, the experiences of the Second World War, which undermined the meaning and value of human rights, including the fundamental value of human life. It turned out that the state, together with the system of positive law it created, was not a sufficient guarantor of inherent human rights. On the contrary, the positive law of certain totalitarian states deprived whole groups of people of their inherent rights, including the right to life. (In the case of the Third Reich, this included Jews, the mentally ill, and the mentally disabled).

Thus, in the post-war period, efforts were made to secure human rights definitively by creating a system of international obligations. In this way, for the first time in history, recognising the inherent rights of the human being took place in a universal manner by expressing the will of all humanity and extending protection to every representative of the species *Homo Sapiens* without exception. The right to life has been included in each of the documents creating general standards of human rights – in Article 3 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights, Article 2 of the European Convention on Human Rights, Article 4 of the American Convention on Human Rights, Article 4 of the African Charter on Human and Peoples' Rights. It has also been included in some special conventions (Article 6 of the Convention on the Rights of the Child). The right to life in each of

these documents widens the catalogue of protected rights, which indicates the high ranking that the treaties' creators gave to this right.

Only this moment can be considered to be the emergence of the concept of the right to life in its modern sense, as the right to the multidimensional protection of human life by the state, protection that becomes one of the primary duties of the state. International law thus recognises human rights as independent of the decisions of states and makes states merely guarantors and enforcers of rights that already exist, as formulated in the norms of international law. Thus these rights, as M. Piechowiak writes, go beyond the boundaries of the majority's will (as they have so far been regulated in state constitutions that the majority can change).[104]

The concept of the right to life has already undergone considerable evolution during the process of juridification of human rights in the form of international law documents.

Initially, the guarantees of the right to life in international treaties were interpreted strictly as protective guarantees against intentional or arbitrary deprivation of life by the State.

Concepts quickly emerged that extended the internationally protected right to life to other dimensions. In the face of the global problems of starvation and epidemics, the right to life gives rise, according to this new interpretation, to an obligation on the part of the state to actively help vulnerable groups survive. It also transfers the state's social welfare obligations into the intra-state sphere. The right to life thus understood can be regarded as an extension of the social rights guaranteed by the International Covenant on Economic, Social and Cultural Rights (including the right to an adequate standard of living and freedom from hunger).[105]

The Human Rights Committee adopted such a concept of the right to life in its General Comments to Article 6 of the International Covenant on Civil and Political Rights of 1982, in which it confirmed the broader interpretation of state obligations arising from the right to life (the

[104] M. Piechowiak, *Filozofia praw człowieka w świetle ich międzynarodowej ochrony*, Lublin 1999, p. 49; One can argue with this view, as in democratic domestic legal systems laws ratifying human rights treaties are enacted by a parliamentary majority. Thus, a majority can theoretically also decide to withdraw from an international human rights convention and enact laws contrary to it. At the same time, human rights treaties contain so-called *ius cogens* norms that are binding regardless of a state's withdrawal from its treaty obligations. These include the norm guaranteeing the right to life.

[105] ICCPR, Article 11, in, *Prawa człowieka. Wybór dokumentów międzynarodowych,* B. Gronowska, T. Jasudowicz, C. Mik (ed.), Toruń 1999, p. 67.

state, among other things, should strive to reduce infant mortality, and eliminate malnutrition and epidemics).[106] A similar position was taken in 1982 by the Inter-American Commission on Human Rights, an organ of the American regional human rights protection system, recognising the priority of the 'right to survival' and the satisfaction of basic needs as a natural consequence of the right to life. The United Nations Universal Declaration on the Elimination of Hunger and Malnutrition of 1974 accentuates even more strongly the need to protect the right to life in a positive sense. It rightly states that the world food situation constitutes a threat to the fundamental rights enshrined in the Universal Declaration of Human Rights, particularly the right to life and human dignity.[107] In the doctrine of international law, however, there have been objections to this interpretation of the right to life. Y. Dinstein, for example, argues that the right to life under international law is exclusively a right to protection against arbitrary deprivation of life. Thus, although deprivation of life can also occur by starving someone to death, the state is not responsible for the mere tolerance of under-nourishment unless this is an intentional act. Similarly, it should not be held responsible for inaction in the sphere of infant mortality, even though it is otherwise the duty of the state to prosecute the crime of infanticide.[108]

There was also the idea of separating this aspect of the *right to life* and calling it separately the "*right to live* (*living*)."[109] This latter formulation would refer to the system of economic rights contained in the Economic Pact, while the meaning of the classical term 'right to life' would in this situation be reduced only to the negative aspect (the right not to be killed).

In the context of wars spreading globally, the concept of the right to life as encompassing the collective right to peace has also been proposed. In the light of the Charter of the United Nations, which imposes on states the obligation to strive for the maintenance of world peace, and the General Comments of the Human Rights Committee on Article 6 of the ICCPR

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[106] General Comments of the Human Rights Committee of 27 July 1982, in: *Wspólny standard do osiągnięcia. Stan urzeczywistnienia,* T. Jasudowicz (ed.), Toruń 1998, p. 35.

[107] The Universal Declaration on the Eradication of Hunger and Malnutrition, General Assembly Resolution 3348(XXIX) of 17.XII.1974.

[108] Y. Dinstein, *The right to life, Physical Integrity and Liberty,* in: *The International Bill of Human Rights*, L. Henkin (ed.), New York 1981, pp. 114–116.

[109] F. Przetacznik, *The right to life as a basic human right*, "IX Human Rights Journal" 1976, pp. 585–609.

of 1982, the positive obligations of the state in the aspect of the protection of the right to life also consist in the prevention of war.[110] The subsequent 1984 Declaration on the Right of Peoples to Peace was adopted by the United Nations General Assembly.[111]

According to yet another view, given the threats to human life posed by increasing environmental pollution, the right to life includes also confirms this approach the right to an unpolluted environment. In the case of the right to a healthy environment, the right to life becomes, according to some concepts, also the right of future unborn generations. The obligation of the state to care for the environment, both in terms of positive protection and abstention from destroying it, was confirmed for the first time by the Stockholm Declaration of 1972, formulating the right to a safe environment, which can be interpreted as an extension of the right to life.[112] At the end of the 1970s, K. Vasak proposed a distinction of three generations of human rights: Generation I includes the so-called liberty rights (personal and political), Generation II includes the so-called equality rights (economic, social and cultural), and Generation III includes the so-called solidarity rights (rights of peoples, social groups).[113] Using this classification, it can be stated that the concept of the right to life has evolved from the understanding of this right as a classical first-generation freedom right, through the inclusion of second-generation rights (e.g. the right to an adequate standard of living, the right to freedom from hunger), to the partial identification of the right to life with third-generation human rights (the right to peace, the right to an unpolluted natural environment).

In the context of this liberatory dimension of the right to life, it is worth mentioning a certain tendency in the evolution of the concept of the right to life. From the Enlightenment conception of the right to life to post-war

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110 "In the view of the Committee, any action by the State to avert the danger of war, especially thermonuclear war, and to strengthen international peace and security throughout the world, is and will be the most important condition and guarantee for the protection of life," (...) General Comments of the Human Rights Committee of 27 July 1982, in: *A common standard to be achieved...*, op.cit., p. 34.

111 *Declaration of the Rights of Peoples to Peace*, General Assembly Resolution 39/11, 12 XI 1984, available at: http://www.vilp.de/Enpdf/e070.pdf

112 Resolution of the Stockholm Conference of 14.06.1972, concerning the human environment.

113 See K. Vasak, *For the third generation of human rights: The rights of solidarity.* Inaugural lecture to the Tenth Study Session of the International Institute of Human Rights, Strasbourg 1979, see also criticism of this concept, in: C. Mik, *Zbiorowe prawa człowieka,* Toruń 1992, pp. 90–104.

human rights treaties, guarantees of the right to life implicitly or explicitly allowed for an exception to the prohibition on the deprivation of life in the form of the institution of the death penalty. In principle, the prohibition of the deprivation of life by the state always referred to situations of arbitrary, unlawful deprivation of life, as opposed to the lawful execution of the death penalty in accordance with the judgment of an independent court.[114] The regulation of the death penalty as an exception to the right to life is contained in all the most important international human rights documents (ICCPR in Article 6(2), ECHR in Article 2(1)).

However, the development of the normative concept of the right to life has eliminated the death penalty exception. This process is considered to have taken place on the basis of the European human rights system (adoption of the Sixth and Thirteenth Protocols to the European Convention on Human Rights) and the domestic law of European states. It is also ongoing in the Universal and the American system of human rights protection. Nowadays, the right to life is considered a supreme right, enabling other human rights to be realised. At the same time, it is not an absolute right. In international human rights documents, it is a limited right (exceptions are formulated in the content of this right) and, unlike certain rights such as the right to freedom from torture and the right to freedom from slavery and servitude, it is partially derogable (in the case of the European Convention on Human Rights, it is possible to derogate this right with respect to legal acts of war).

The obligations arising from the right to life are nowadays imposed on state institutions. They are understood as occurring both in the form of a negative obligation on the state to refrain from violating this right in the vertical dimension and an obligation to prevent and punish violations of the right to life in the horizontal dimension.[115] In addition, the state also performs the function of broadly providing protection of human life by counteracting the effects of natural disasters, ensuring an adequate level of medical care, and creating legal regulations which prevent situations and actions dangerous to human life.

Traditionally, human rights have been derived, from the very beginning of the process of their juridicalisation in the 18th century to the modern human rights treaties, from natural law (this is evidenced by,

[114] See, for example, the Fifth Amendment to the US Constitution.

[115] K. Motyka, *Prawa człowieka. Wprowadzenie. Wybór źródeł,* Lublin 2004, p. 17.

among others, the formulations of the Universal Declaration of Human Rights, which speak about the protection of already existing rights, before the provisions of positive law[116]). However, contemporary attempts are sometimes made to go beyond the legal-natural paradigm, which initially constituted the basis for justifying the existence of human rights, including the right to life. Thus, it is sometimes proposed to "liberate human rights from natural rights."[117] However, it does not necessarily have to involve a complete negation of the existence of natural law as the basis and justification of positive law. A proposal reducing the opposition, so to speak, between the position of the positivist philosophy of law and natural law doctrines as far as the justification of human rights is concerned, was put forward by a contemporary positivist, H.L.A. Hart, who in his work *"The Concept of Law"* stated that universally acknowledged principles of conduct based on elementary truths concerning people, their natural environment, and goals can be treated as the minimum content of natural law, to include both positive law and morality. The right of every human being to life as a norm allowing for the physical survival of human beings and thus conditioning the survival of communities and the emergence of other norms would thus belong to this minimum of the law of nature, which every system of positive law must necessarily contain.[118]

From a linguistic point of view, one may wonder whether saying that a subject has a 'right to life' makes any sense at all in terms of the semantic content of the expression 'to have a right to.' 'To have the right to' can, after all, mean both the right to protection against the violation of a particular state of affairs and the right to the existence of a particular state of affairs. However, life and its creation is a biological fact, the existence of which cannot be the subject of anyone's obligation or right. With the existence of life, a living subject of rights – the human being – comes into existence. Nor can the coming into existence of 'life' clearly be the performance of an obligation towards an already living subject. A separate problem in this context is the 'right to be born,' the existence of which is considered by

[116] E.g. the Preamble of the Universal Declaration of Human Rights states that 'it is essential that human rights be protected by law,' in: B. Gronowska, T. Jasudowicz, C. Mik (eds.), *Human Rights. Choice of International Documents,* Toruń 1999, p. 12

[117] Postulate formulated by the American legal philosopher Surya Praksh Sinha, in: *Freeing Human Rights from Natural Rights*, „Archiv für Rechts- und Sozialphilosophie" 1984, No 3 (70).

[118] L.A. Hart, *Concept of law,* Oxford 1961, pp. 189–195.

Joel Feinberg.[119] It is an issue related to the status of the human foetus and the temporal limitations of the concept of 'human life.' The right to life cannot be understood as the right to infinite prolongation of life, as life is a process naturally limited in time.

It seems, therefore, that the core meaning of the term 'right to life' remains the "*right not to be killed*"[120], which is in a sense a translation of the prohibition of deprivation of life into the language of individual rights. This nucleus of meaning also includes the right to be assisted in life-threatening situations. A separate concept is the 'right to the protection of life,' which creates an obligation on the part of the state to create appropriate mechanisms and procedures that can be applied in the event of a violation of the right to life, as well as in the event of a threat to the right to life.

The relationship between the right to life and the prohibition of deprivation of life may also be considered here. As has been shown, historically, the emergence of the norm prohibiting the deprivation of human life preceded considerably the emergence of the concept of the right to life. The universalisation of the norm prohibiting homicide conditioned the emergence of the concept of an equal right to life for all. However, from the point of view of logic, there is no doubt that the prohibition of the deprivation of life is the logical consequence of the human right to life and, as it seems, the right to life does not follow from the prohibition of killing. The protection of life as a highly valued good, generating the prohibition of actions leading to the deprivation of life, does not, therefore, automatically imply the existence of a right to life. Likewise, the protection of animal life does not imply their right to life, although some ethicists, such as P. Singer[121], question the attribution of the right to life exclusively to members of the human species.

Summing up the considerations presented here on the development of the legal protection of human life, I would like to draw attention to several undoubted trends. As I pointed out earlier, one of them is the gradual increase in the subjective scope of the protection of life until its complete universalisation. The protection of human life also increases with

[119] See J. Feinberg: *Is there a right to be born?* in: *Rights, justice and the bounds of liberty*, Princeton 1980.

[120] J. Feinberg, *Voluntary euthanasia and the Inalienable right to life,* in*: Rights, justice and the bounds of liberty*, 1980, p. 222.

[121] See P. Singer*, Rethinking life and death...*

the improvement of procedures, making it possible to assert rights before the courts by adopting modern procedural rules. To this day, there are still exceptions to the prohibition on the deprivation of life that are sanctioned by law, such as homicide in the course of warfare, capital punishment, the deprivation of life by a state official in the course of law enforcement in the case of absolutely necessary force, and euthanasia of terminally ill patients. Some of these are the subject of continuing ethical controversy.

In general, regularity can be observed that confirms, to use a term from Marxist philosophy, a materialistic view of human history. Namely, the higher the level of civilisational development, the broader and more meticulous becomes the protection of human life, realised by moral and legal norms. It follows from this that a person who does not have to fight to satisfy his or her basic needs can 'afford' to observe higher standards of protecting life. At the same time, more excellent protection of human life provides the level of security needed for the development of civilisation and culture. Moreover, as civilisation develops, human life becomes longer and has more to offer, its quality increases, and so does its protection, which is also a necessary element of the positive value of life.

5.

Is there a freedom to die? The issue of suicide

From the historical perspective, there were different attitudes to the phenomenon of suicide in our culture. In ancient times, it was morally acceptable. Sometimes the decision to commit suicide was even sanctioned by the state (in Athens, in the case of an incurable disease, the Senate gave its consent to suicide).[122] Most of the ancient philosophers considered suicide as a dignified and even proper kind of death, e.g. Socrates, who himself ended his life by swallowing hemlock, or Seneca, who wrote: "The eternal law has arranged nothing better than that it has given us the only entrance into life, but a multitude of exits (...)."[123]

The Christian Middle Ages brought about a total condemnation of suicide, as an act against divine law and the sanctity of human life. In most European countries, attempted suicide was punishable regardless of the reason. The corpse of suicide victims was desecrated and deprived of burial, and their property was confiscated. Starting from the *Constitutio Criminalis Carolina* of 1532, legislation started to change. However, even in France in the 17th century, a failed suicide attempt was punishable by death. From the 18th century onwards in Europe, the laws criminalising suicide began to be abolished.[124]

Outside western culture, the attitude towards suicide was not always so negative. In Japan, for example, suicide has always been regarded as a praiseworthy act, if committed to save one's honour.[125]

Recent legislation abolishing the criminalisation of suicide included the English *Suicide Act* of 1961, the 1972 Canadian Act, and Ireland's

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122 M. Szeroczyńska, *Eutanazja i wspomagane samobójstwo na świecie*, Kraków 2004, p. 352.

123 L.A. Seneca, *Listy moralne do Lucyliusza*, Warszawa 1961, p. 260.

124 M. Szeroczyńska, op.cit., p. 352.

125 On the discussion of euthanasia and assisted suicide in Japan see S. Toshihiko: *Human Dignity in the Legal and Bioethical Discourse*, paper presented at: *23rd IVR World Congress Law and Legal Cultures in the 21st Century*: *Diversity and Unity*, Kraków 2007.

Criminal Law Suicide Act; currently, suicide attempts are criminalised only in Singapore.[126]

Despite the abolition of these regulations, the state's attitude towards suicide remained unclear. On the one hand, it is not a forbidden act, and 'what is not forbidden is permitted,' according to the main principle of the liberal state of law. However, on the other hand, there is an obligation on the state and fellow citizens to save suicides, and failure to attempt to save a person trying to commit suicide is punishable.[127] Furthermore, aiding and abetting suicide may also be criminalised. Therefore, the question arises whether there is such a thing as a 'right to suicide.'

Referring to the definitions of the phrase 'have the right to' functioning in the theory of law, Z. Ziembiński explains that "the object of the individual's subjective 'right' is also his indifferent acts, i.e. acts neither ordered nor forbidden by the norms of the considered legal system."[128] A suicidal act is not a forbidden act, so that it can be put under this formula.

However, at the level of binding law, it seems to be otherwise. If there were a positive right to suicide, as A. Wąsek argues, there would have to be legal protection against the actions of the state authorities or other persons, who, not respecting this right, force the suicidal person to give up the execution of the suicide intention or in any other way prevent it.[129] The right to one's behaviour is functionally connected to the duty of other subjects to refrain from actions infringing the rights of subjects entitled to such behaviour.[130] In most legal systems, including the Polish

126 M. Szeroczyńska, op.cit., pp. 352–353.

127 This stems from the general obligation to provide assistance to a person in a life-threatening situation. Failure to comply with it is punishable if the assistance does not involve a serious risk to one's own or another person's health or life. Such a regulation was introduced in Poland by Art. 162 par. 1 of the Penal Code of 1997. A general legal obligation to provide assistance exists also in the Netherlands, Portugal, France, Germany. Italy, Denmark, Russia, Norway, Romania, Turkey, and Hungary, it is not present in the criminal law of the United Kingdom and the United States; a specific duty to provide assistance is imposed on doctors – from Article 30 of the Polish *Act on professions of doctor and dentist of 5 December 1996.* (*Ustawa o zawodach lekarza i dentysty z 5 grudnia 1996 r.,* DzU 05.226.1943) implies that a doctor is obliged to provide medical assistance in every case when delay in providing it could cause a danger of loss of life, serious bodily injury, or serious health disorder, as well as in other cases of urgency; in case of failure to comply with this obligation with fatal consequences, a doctor commits an act under Art. 148 par. 1 of the Penal Code (manslaughter) by omission, since under Article 2 of the Code he is a person under a special legal obligation to prevent the effect of loss of life.

128 Z. Ziembiński, *Teoria prawa*, Warszawa–Poznań 1972, p. 133.

129 A. Wąsek, *Prawnokarna problematyka samobójstwa*,Warszawa 1982, p. 28.

130 W. Lang, *Prawa podmiotowe i prawa...*, p. 211.

one, there are no such regulations concerning suicide. In the current legal system in Poland, there is a provision stating that failure to assist a person in a situation endangering his/her life when there is no danger to oneself or other persons, is a crime.[131] Therefore, there is an opposite standard in the legal order – ordering the rescue of a suicide in every case. A special duty is imposed on the doctor, who is responsible for the crime of negligence in the case of failure to provide assistance[132] unless the failure to save the patient was due to the lack of consent for the required medical procedure.[133] If an adult and competent person who has survived a suicide attempt is conscious and refuses to save his life, the doctor must respect this decision. Otherwise, the act qualifies as an offence under Art. 192 par. 1 of the *Polish Penal Code*, which prohibits performing medical treatment without the patient's consent.

When the person is unconscious, the problem arises if the prior declaration of will of the suicide not to save him/her should be respected. In Germany, where the situation is regulated similarly as in Poland, the jurisprudence of the courts decided against such a possibility, granting the right to self-determination only to persons who are currently conscious and able to decide freely (the decision was made in a case, in which the suicidal person was holding a piece of paper with the declaration of will).[134]

Also, there is a firm conviction about the obligation to save unconscious suicides in Polish legal and medical literature. However, there are also voices favouring not rescuing the suicides who have previously expressed their will to end their lives, especially in the case of rational suicides of terminally ill patients. E. Zielińska argues that if before the suicide attempt the suicidal person expressed his/her will not to accept the rescue action if he/she survived the suicide, the physician is not obliged to

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131 *Kodeks karny* z 6 czerwca 1997, art 162 par. 1.

132 It follows from Art. 30 of the *Act of 5 December 1996 on* medical *and dental professions*, (*Ustawa z 5 grudnia 1996 r. o zawodach lekarza i dentysty,* DzU 05.226.1943), that a doctor is obliged to provide medical assistance in any case where delay could result in a risk of loss of life, grievous bodily injury or serious health disorder, and in other urgent cases.

133 The principle of the patient's consent for an examination, treatment or any health service is provided for by Articles 32 and 34 of the *Act of 5 December 1996 on* medical *and dental professions*.

134 The case of Doctor Witting M. Szeroczyńska, op.cit., pp. 355–356.

save him/her[135]. This position does not seem to be fully justified under the Polish law in force. Art. 30 of the *Physician's and Dentist's Professions Act* imposes on the physician a duty to provide medical assistance in any situation of a threat to life, serious bodily injury, or severe health disorder. Only the lack of the patient's consent to a medical procedure can release the doctor from these obligations. Therefore, an unconscious would-be suicide cannot express his/her opposition to medical procedures aimed at saving his/her life. The question arises whether his prior statement of will may be considered in the absence of the institution of *pro futuro* patient statement in the Polish legal system. In 2005, the Polish Supreme Court recognised this institution concerning the application of a blood transfusion to a Jehovah's Witness, but in the absence of *de jure* precedent in the Polish legal system, this ruling does not resolve the legal issue.[136]

Proposals to introduce a presumption of death-wish for rational suicides also appear in the German literature.[137]

However, the rule in positive law and practice is the application of the opposite presumption – *in dubio pro vita*. In any case, overriding the wishes of an unconscious patient is not only legally permissible but, as a rule, even mandated.

The only adequate legal protection of the will of a suicide at the moment is the right to refuse medical treatment, in other words, the right to commit 'suicide by omission.' However, as already stated, this right applies only to those currently conscious and capable of expressing their opposition to the medical measures taken for them.

The right to refuse treatment derives from the right to privacy, self-determination, and the right to bodily integrity guaranteed in international human rights documents and national constitutions. The principle that any medical intervention may be carried out only after the patient has given his/her free and informed consent is also enshrined in the 1997

[135] See E. Zielińska, *Powinności lekarza w przypadku braku zgody na leczenie oraz wobec pacjentów w stanie terminalnym.*, „Prawo i medycyna" 2000, Vol. 2, No 5, p. 82.

[136] Postanowienie z 27 października 2005 r. Sąd Najwyższy III CK 155/05, Decision of 27 October 2005. Supreme Court, III CK 155/05, thesis: "The declaration of the patient made in the event of unconsciousness, specifying the will concerning the doctor's conduct towards him in medical situations that may occur, is binding for the doctor – if it was made in a clear and unequivocal manner."

[137] A. Eser, *Lebenserhaltung Pflicht*, p. 111, quoted by M. Szeroczyńska, op.cit. p. 356.

European Convention on Bioethics.[138] This principle is applied in most European legislation. For example, the Polish Penal Code includes, among offences against freedom, a norm prohibiting a doctor from performing a medical procedure without the patient's consent (Article 192.1 of the Penal Code mentioned above).[139] However, the right to refuse treatment does not yet constitute the right to suicide (this would be an inference *a minori ad maius*).

International human rights standards do not contain a norm prohibiting suicide, despite their strong emphasis on protecting the right to life. There are claims that since the European Convention on Human Rights does not guarantee a human being the right to dispose of his/her own life, it requires the penalisation of suicide.[140] However, the fact that the ECHR does not guarantee a right does not mean that such a right does not exist – the Convention sets only a minimum standard and even less does it mean that the lack of such a guarantee automatically results in the requirement to criminalise the behaviour which is the subject of this right.[141]

According to M. Płachta, the fundamental problem concerning the existence of the 'right to suicide' is that if the state grants such a right, anyone who wants to take his/her own life will be able to demand assistance from the state to commit suicide.[142] Moreover, anyone who attempts to prevent suicide will be held legally responsible for his behaviour in violation of the subjective right of suicide, leading to a paradoxical situation in which the state, which is obliged to protect human life, will have to be complicit in its deprivation.

I believe, however, that it would be possible to treat the 'right to suicide' as a 'freedom', i.e. a purely negative right, which does not give rise to any claim to active assistance from the state in its exercise, while at

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138 *Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine* of 4 IV 1997, Art. 5. https://rm.coe.int/168007cf98, accessed: 30.09.2021.

139 *Kodeks karny*, Art. 192.

140 This view is represented by H. Schorn in: *Europäische Konvention zum Schutze der Menschenrechte und Grundfreiheiten und ihre Zusatzprotokoll in Erwirkung auf das deutsche Recht. Text und Kommentar.* Frankfurt am Main 1965, p. 78, quoted after: P. Hofmański, *Konwencja Europejska a prawo karne*, Toruń 1995, p. 139.

141 P. Hofmański, *Konwencja Europejska a prawo karne* (*European Convention and Criminal Law*), Toruń 1995, p. 139.

142 M. Płachta, *Prawo do umierania? Z problematyki regulacji autonomii jednostki w sprawach śmierci i umierania*, „Państwo i Prawo" 1997, No 3, p. 55.

the same time giving rise only to a negative obligation on the part of other persons and state bodies to refrain from physical attempts to prevent suicide. Such a negative obligation results from the general right to privacy, liberty, and security of a person, and the right to physical integrity. It is not possible to physically force anyone to do anything unless it is a legally prescribed act and is an execution of the law, nor to force anyone to refrain from an act unless it is a legally prohibited act and is an execution of the law (in this case, execution of the law can be carried out by other persons as well as by state bodies). The negative obligation to refrain from physically preventing the suicide does not necessarily exclude the possibility of attempting to persuade the suicide to abandon his intention. At the same time, the order to rescue an unconscious suicide can be regarded as not contradictory to the negative right to suicide understood in this manner. It is a separate norm imposing the obligation to save human life in every situation when it is endangered. In the case of suicides, this norm is justified because not all suicides are caused by an authentic desire to die. Many of them are a 'cry for help.' Some suicides are also committed in a state of diminished capacity due to mental illness (e.g. severe depression). Hence, the principle of saving all suicides is *prima facie a* valid principle. It does not mean, however, that in the circumstances such as euthanasia suicide (suicide of a terminally ill, suffering person, who is known to have made a rational decision), an exception to this norm should not be recognised, and the order to save life should be revoked, respecting the will of the individual who intends to end his life.

Such exceptions, however, are very rarely found in current law. The principle prevailing in most legal systems is the obligation to save suicides under all circumstances. Even though attempted suicide is not punishable in most legal systems, assisting in suicide is.[143]

Therefore, it seems that the current all-encompassing omnipotence of law emanating from a paternalistic state has gone too far. The norms that were initially intended to maintain social order and protect the individual's safety and autonomy have begun to usurp control over the most

[143] Among European countries aiding and abetting suicide is not punishable only in Germany, France, Finland, France, and Sweden. Swiss legislation despite the existence of a norm punishing aiding and abetting suicide excludes cases of euthanatic suicide. Special regulations concerning euthanatic suicide are also contained in the legislation of Belgium, the Netherlands, and Luxembourg, see M. Szeroczyńska, op.cit. pp. 353–391.

intimate matters in a person's life, such as deciding to die. It is an example of the civilisational alienation process that is taking place in the modern world in various spheres of human life. It seems that man has created mechanisms that have gained power over him instead of serving him. One of these mechanisms is the law. As N. Hoerster says, the state has no interest in prohibiting the exercise of the right to self-determination, which does not interfere with the right to self-determination of another person.[144]

The discussion on the right to suicide in the context of the problem of euthanasia becomes particularly dramatic.

[144] N. Hoerster, *Sterbehilfe im säkularen Staat*, Frankfurt am Main 1998.

6.

The right to die? Assisted suicide and euthanasia

Euthanasia, in the forms of assisted suicide or voluntary euthanasia, is a particular case of the deprivation of human life. They are special because it is controversial whether they fall under the general prohibition of the deprivation of life in the same way as in the case of suicide. As I have shown above, there are no grounds for a moral, let alone legal, prohibition of suicide. However, assisting in the suicide of a terminally ill and suffering person is qualified as assisting in suicide or criminal failure to help. Active euthanasia, on the other hand, is in both the factual and legal sense the deprivation of life of one person by another. Therefore, it is classified as an act intended to kill a person and thus falls under the ban on the deprivation of life.

These two forms of active implementation of the 'right to die' should, in my view, be considered together, since in both the fundamental issue to be considered is the general moral and legal acceptability of assisting an individual who is conscious and determined to take this step to die. It should be noted that the moral acceptability of euthanasia may be a separate issue from the question of its legalisation. There is a position according to which, even if euthanasia is ethically negative, its criminality should be abolished, making it an individual decision outside the sphere of intervention of the law and the state. More often, however, it is the ethical argument that is the basis for the penalisation of euthanasia.

Opponents of the moral and legal approval of assisted suicide and voluntary euthanasia invoke the universal protection of the inherent and inalienable right to life. Thus, the fundamental issue here is how we understand the individual's 'right to life,' whether we understand it as a right coupled with duty, referred to by J. Feinberg as a *mandatory right* or a *discretionary right.*[145]

[145] See J. Feinberg, *Voluntary euthanasia and the inalienable right to life*, in: *Rights, justice and the bounds of liberty,* Princeton 1980, pp. 232–238.

A similar distinction is also introduced concerning inherent human rights by M. Piechowiak. According to him: "in the case of rights, the due state of affairs is independent of the will of the subject of the right; in the case of freedom this state of affairs is co-constituted by free choices and precisely as such is subject to protection."[146] Thus, if we understand the right to life as a freedom, it is at the same time the right to dispose of one's own life, and if we understand it as a 'right,' in the understanding of this term given by this author, it is a right that a human being cannot dispose of (so it is at the same time a right combined with the obligation to exercise it).

Supporters of the doctrine of the sanctity of life argue, as Leon R. Kass does, that the protection of specific values and rights, among others life, is not dependent on the will of the subject of the right; the violation of these rights remains a crime, even when it occurs compliant with the will of the subjects of these rights themselves. "Incest remains incest even if it takes place between consenting adults. Cannibalism remains cannibalism even if its victim consents to it beforehand. Ownership of people, even voluntarily accepted by them, is still slavery," the author states.[147] *Ergo the* deprivation of life is evil in itself, regardless of the will of the living subject.

The resolution of this dilemma depends on the adoption of a particular paradigm. Starting from the thesis of the sanctity of human life, the exercise of the right to life is in a way entrusted to us, but we are not its proper subjects. This position is emphatically expressed by one of the theses of the Catechism of the Catholic Church: "We are only stewards and not owners of the life which God has entrusted to us. We do not dispose of it."[148]

On the other hand, starting from the assumption of the autonomy of the human individual, the right to life is understood as freedom, and it is the subject who possesses this right/freedom – the individual – who decides whether and how he wants to exercise it. These are two opposing ethical paradigms that cannot be reconciled.

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[146] M. Piechowiak, *Prawo a wolność*, w: *Prawa człowieka – prawa rodziny, 30 lat Poznańskiego Zakładu Instytutu Nauk Prawnych PAN*, R. Hliwa, A.N. Schulz (eds.), Poznań 2003, p. 50.

[147] L.R. Kass, *Death with dignity and the sanctity of life,* "Human Life Review," Spring 1990, p. 24.

[148] *Katechizm Kościoła Katolickiego*, Poznań 1994, thesis 2280.

It should be borne in mind that, within the limits to which the intervention of the law extends, the right to life in its basic form is nothing less than an effective *erga omnes* right not to be killed and, as far as possible, to be protected from imminent death."[149] Consequently, the state has a positive obligation to introduce appropriate regulations criminalising homicide. However, the possibility of legal interference does not go so far as to allow the State, within the framework of this positive obligation, to prohibit suicidal acts. As mentioned before, such a ban has no raison d'être in the modern liberal state of law and has been eliminated from the legal order. It seems, therefore, that in the modern liberal state of law, the second paradigm – the principle of autonomy – is adopted as the basis for legal regulations concerning the right to life, and this right is a freedom right and not a duty right.

Given the principle of equal treatment and non-discrimination[150], which is fundamental to the realisation of all human rights and which must be accepted by both supporters and opponents of the doctrine of the sanctity of life, we should consider whether persons who are physically unable to commit suicide and who are denied the legal possibility of being assisted in this process are not victims of discrimination.[151] Owing to a physical disability, they cannot carry out an act that is not prohibited by law, i.e. taking their own life. They cannot do so precisely because the assistance of another person, essential in this case, is criminalised by the state. On the other hand, from the fact that suicide (in the form of an attempt) is not criminalised, it does not follow that it is a socially positive phenomenon, which the state does not try to counteract, let alone that there is any positive 'right to suicide,' as was considered beforehand. Therefore, it is questionable whether a prohibition against assisting in an act that, although not legally prohibited as such, but also not condoned,

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149 "right not to be killed" in J. Feinberg, op.cit., p. 222.

150 A principle formulated in the most important documents of internationally protected human rights: Article 2 of the Universal Declaration of Human Rights, Article 2(1) of the International Covenant on Political and Civil Rights, Article 14 of the European Convention on Human Rights, see in: *Human Rights. International documents, ed.* B. Gronowska, T. Jasudowicz, C. Mik, Toruń 1993.

151 The argument raised *inter alia* in the case before the Supreme Court of Canada – *Rodriguez v. British Colombia*, (*Attorney General*) despite the verdict rejecting the existence of the constitutional right to death recognised by four judges in separate opinions. See: K. Poklewski-Koziełł, The *Supreme Court of Canada towards the problem of "assisted suicide,"* "Law and Medicine" 1999, Vol. 1, No 4.

may be labelled discriminatory in a legal sense. If, however, we accept the rule that everything that is not prohibited is permitted and constitutes an area of freedom, then the attitude of society and state authorities to this area of human freedom is questionable. Creating a situation of inequality that deprives disabled persons of the autonomy to commit suicide is not the purpose of the provisions penalising assisted suicide, although it is their actual, indirect effect. The *ratio legis* of those provisions is the protection of persons vulnerable to the influence of others, as well as the punishment of deceitful actions against persons wishing to commit suicide. In cases where the premises justifying this interference of the criminal law do not exist, the law is deprived of its *ratio,* and the punishment of assisting in suicide constitutes an infringement of the sphere of freedom and violates the prohibition of discrimination.

We should once again consider whether there is such a thing as a positive right to death that is equal for all, i.e. the right to choose the moment and manner of one's passing?

This problem is comprehensively considered by M. Płachta in the article: "*The right to die or the duty to live: New legal parameters of an old dilemma.*"[152]

He cites the view of the supporters of legalising active euthanasia, that the right to die is a correlate of the right to life. Assuming that death is part of life, then the right to die with dignity, to control the quality of one's death is an inseparable aspect of the right to live according to one's own will. Thus, any prohibition that, in effect, forces a paralysed, terminally ill patient to die a prolonged death full of mental and physical suffering against his/her will is an affront to human dignity and, in principle, a violation of the properly understood 'right to life.'[153]

On the other hand, opponents of the thesis that there is a right to die as a correlate of the right to life consider it absurd to make death a part of life when, in fact, it is its negation.[154]

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[152] M. Płachta, *The right to die or the duty to live: New legal parameters of an old dilemma*, "Comparative law review" 1999, Vol. 9–10.

[153] *Rodriguez v. British Columbia* (Attorney General) Supreme Court of Canada, separate opinion of Judge Cory, quoted by M. Płachta, op.cit., p. 12.

[154] An argument raised, among others, during the debate on the legalisation of euthanasia in Canada, House of commons debates, 34th Parl, 2rd Sess, Hansard, Vol. 132., Oct. 24, 1991, 3999 per; M. Plachta, op.cit, p. 12.

It should be borne in mind that, irrespective of whether there is a right to die, it is quite certain that there is no such thing as an 'obligation to live.' As proponents of legalising euthanasia rightly point out, accepting the idea that such an obligation exists[155] would lead to the totalitarian objectification of the individual and would be unacceptable in a liberal society. However, the lack of obligation creates the right not to be forced into the object of this obligation, which is a negative right. M. Płachta quotes the view that both the right to life and its correlate, the right to die with dignity, are negative rights. Thus, if the right to life means as much as the right not to be killed against one's will, then the right to death would mean the right not to be kept alive against one's will.[156] Understood in this way, the right to die, as a negative right, creates an obligation to refrain from certain acts (e.g. to cease medical treatment), but does not create an obligation of positive action (to administer a lethal injection) on the part of medical professionals or the state. At the same time, such a negative right may give rise to a claim against the state not to interfere with the exercise of this right, *inter alia*, by penalising acts necessary for the realisation of this right, performed by an individual other than the entitled one.

The right to autonomy and bodily integrity, which is one of the fundamental rights in the internationally sanctioned catalogue of human rights, undoubtedly gives rise to the right to refuse treatment, which in the case of certain patients is effectively synonymous with the right to choose death. Passive euthanasia on request in most Western countries does not give rise to criminal liability on the doctor's part.[157]

At the same time, apart from the Netherlands, Belgium, Switzerland, and the state of Oregon in the USA, where the construction of criminal provisions does indeed permit assisted suicide, active euthanasia is not permitted anywhere. It leads to situations in which patients who refuse to be kept alive face death by suffocation when they request to be taken off the ventilator[158] or death by starvation when they request to stop receiving

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155 P. Konieczniak, *W sprawie eutanatycznej pomocy do samobójstwa*, „Państwo i prawo" 1999, No 5, pp. 72–78.

156 P. Novell-Smith, *The right to die,* in: Contemporary Moral issues 97 (Wesley Cragg ed. 1983), Toronto: McGraw Hill, cited by M. Plachta, op.cit. p. 11.

157 Apart from Israel and France, see in: *Passive euthanasia at the request of an informed patient*, in: M. Szeroczyńska, op.cit., pp. 252–272.

158 For the case of Nancy B., a 25-year-old Canadian victim of a neurological disease, paralysed from the neck down and kept alive by a ventilator; although her existence could have continued for many years, Nancy demanded that the ventilator be disconnected, see in:

nutrition artificially through a tube.[159] These are cruel and inhumane ways of dying which could easily be replaced by a quick and painless death by lethal injection.[160]

The main argument put forward by opponents of this solution is that the doctor's vocation is to save lives and that we cannot allow a situation in which his role is to take life.[161] On the other hand, it is also pointed out that the doctor's role is above all to act in the patient's interests, and the whole problem should be considered from the perspective of that interest alone. Controversy about the doctor's role and disputes about the sanctity of life must give way to the well-understood interests of the patient and his or her will.[162] The patient, on the other hand, most often expresses the will to minimise his suffering. In many cases, death is the only way to relieve physical or mental suffering.

From the point of view of medical deontology, the difference between active and passive euthanasia is fundamental. The distinction seems apparent from an ethical point of view, but clinging to it can sometimes have tragic consequences, as has been shown above. In my opinion, there is no notable difference in the moral qualification between the cessation of treatment and allowing natural death (passive euthanasia) and the administration of a lethal drug at the patient's request (active euthanasia). As D. Birnbacher points out, the dispute between the supporters of the distinction between active and passive euthanasia and those who consider the distinction to be fictitious arises from the adoption of different ethical paradigms as the basis for reasoning – deontological ethics, which emphasises the princi-

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R. Dworkin, *Life's Dominion. An argument about Abortion and Euthanasia,* Harper Collins Publishers 1993, p. 184.

159 As in the case of Elizabeth Bouvia, a young girl completely paralysed from birth who attempted suicide by refusing to eat and was connected to a probe by the hospital for artificial feeding, after which she applied to the court to have it disconnected. This case is described in, among others: G.E. Pence, *Classic Cases in Medical Ethics,* McGraw Hill 2004, pp. 64–71.

160 This irrationality is pointed out, among others, by R. Dworkin in: "Life's Dominion. An argument about Abortion and Euthanasia," Harper Collins Publishers 1993, p. 184.

161 Especially as it is a declaration made within the medical Hippocratic Oath: "I will not administer poison to anyone, neither at anyone's request nor at anyone's plea, nor will I myself have such an intention," quoted after: *Deontologia lekarska*, A. Tulczyński, Warszawa 1983, p. 6.

162 See N. Hoerster, *Rechtsethik der Sterbehilfe in*: *Sterbehilfe in der Gegenwart*, Regensburg 1990, pp. 55–62.

ples of actions themselves and consequentialist ethics, which places the effects of these actions above the principles.[163]

On the other hand, as J. Glover points out, assisted suicide in the case of terminal illness and active euthanasia are also separated only by a thin line, which is the physical performance of the act – by the person himself (assisted suicide) or, in the case of the physical impossibility of performance by the person himself, by a third person (active euthanasia).

I am convinced by the consequentialist view that in moral terms, when a terminally ill patient is under medical care and is unable to provide himself with the means to commit suicide, but can commit suicide himself if given the means, there is virtually no moral difference between the acts in question. In the light of these views, the moral and legal permissibility of passive euthanasia entails the need to abolish the criminalisation of active euthanasia and assisted suicide.[164]

Based on deontological ethics, a distinction is also made between indirect active euthanasia, involving the administration of pain killers which are known to shorten the patient's life significantly, and direct active euthanasia. It is assumed that indirect euthanasia does not contravene the prohibition "Thou shalt not kill" and is permissible in contrast to direct euthanasia.

This reasoning is also based on the so-called 'double effect theory' adopted by the Catholic Church, originating from St. Thomas Aquinas and developed by 16th-century theologians. According to this theory, a 'bad effect' can result from an action taken with a 'good' intention under certain conditions. The primary condition is that this 'evil effect' should not be the end, but only the inevitable consequence of 'good' means.[165] In this way, the Catholic Church favours the use of means to alleviate pain, even when this has the effect of hastening the patient's death.[166] However, the patient must not be deprived of his life in order to alleviate pain.

Supporters of the legalisation of active euthanasia argue against this concept, pointing out that it leads to moral hypocrisy. Moreover, as

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[163] D. Birnbacher, *Ist die Unterscheidung zwischen aktiver und passiver Sterbehilfe ethisch bedeutsam?* in: *Sterbehilfe*, op.cit., pp. 29–31.

[164] The question of legal classification of these acts looks different. In the Polish Penal Code, the first of these acts constitutes assistance in suicide (Art. 151 of the Penal Code), and the second – murder out of pity (Art. 150 par. 1 of the Penal Code).

[165] J. Rachels, *The end of life. Euthanasia and Morality*, Oxford 1986, pp. 16–17.

[166] See in: John Paul II, *Evangelium vitae*, Pallottinum 1995, p. 122.

J. Rachels argues, the intention with which a given act is undertaken does not change its moral evaluation[167], not when a given action (e.g. administration of painkillers) or omission (cessation of treatment) is undertaken with full awareness of the effect it will have. Such reasoning is also rejected in the criminal law construction of an act. An act undertaken with 'good intention' but with 'bad effect' is also an intentional act, but this intention is called *dolus eventualis*.[168]

Furthermore, the theory of double effect does not indicate what should be done in a situation such as the case of Lilian Boyes, often quoted in the discourse on euthanasia, a seventy-year-old English woman suffering from a severe form of rheumatoid arthritis who asked her doctor for help with suicide when no drugs, including heroin, could relieve her terrible pain.[169]

It is still an open question whether it is solely acute physical suffering that supports a person's request for assistance in dying. Proponents of legalising active euthanasia invoke not only the right to relief from suffering but, above all, the right to die with dignity. Modern medicine, equipped with highly developed technology, can significantly prolong the existence of a terminally ill person while at the same time making him/her entirely dependent on medical equipment. Some people feel that this is a position that offends their dignity and do not wish to accept this kind of existence, so choose death. In the current legal state in most countries, this decision is tantamount to the prospect of death by asphyxiation or starvation, which makes it difficult to take. It creates a no-win situation, generating additional suffering for an already severely tortured person. In many cases, people in this condition go before the highest national and international courts to obtain permission for a painless and dignified death (e.g. Diane Pretty in the UK, Sue Rodriguez in Canada).

It should be noted that international human rights documents recognise dignity as the axiological foundation of all other rights.[170] Hence,

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[167] See J. Rachels, op.cit., p. 93.

[168] By rejecting the theory of double effect and adopting consequentialist reasoning, we arrive at an equal moral qualification of medically assisted suicide, active direct and indirect euthanasia, and passive euthanasia in relation to competent persons, which leads directly to the *de lege ferenda* proposal for equal legal qualification of these acts.

[169] A case described, among others, by P. Singer in: op.cit, pp. 155–157 and by R. Dworkin in: op.cit., pp. 184–185.

[170] See, for example, the second paragraph of the preambles of both International Covenants on Human Rights – "(...) *these rights derive from the inherent dignity of the human person"* – and the Final Act of the Conference on Security and Cooperation in Europe (Helsinki 1975),

there seems to be an axiological primacy of this value over internationally protected human rights in the sense that the realisation of none of these rights can contradict the value of dignity. The protection of human dignity thus also stands above the protection of life. Hence, the prohibition of slavery and the prohibition of torture are absolute and non-derogable under any circumstances, while the prohibition of deprivation of life is not of this nature. It seems to follow from that that it is not possible to violate the prohibition of slavery or the prohibition of torture and degrading or inhuman treatment without violating human dignity at the same time. In contrast, it is possible to take life (e.g. in the framework of necessary defence or state of emergency) without violating human dignity at the same time.

The term 'dignity' both in international human rights documents and in the philosophy from which it originally derives is an open, indefinite, and ambiguous term.[171] As postulated by some authors, the 'dignity' referred to in international human rights documents and constitutional acts should be understood as an objective category and not as dignity subjectively perceived by a specific person.[172] It seems, however, that it would be an exceptionally blatant contradiction of the intuitively perceived essence of dignity to declare that the state of terminal illness causing great suffering or the state of total and irreversible dependence on life-supporting machines perceived by the sick person as offending his or her dignity cannot at the same time be treated as one that undermines the 'objective' value of dignity.

Principle VII, where it is declared that Participating States will "promote and encourage the effective enjoyment of civil, political, economic, social, cultural and other rights and freedoms which flow from the inherent *dignity of the human person."*), Principle VII, where it is declared that Participating States will "*promote and encourage the effective enjoyment of the civil, political, economic, social, cultural and other rights and freedoms which flow from the inherent dignity of the human person and are essential for his full development,*" and also: the second paragraph of the preamble of the Vienna Declaration of 1993. "*Recognising and affirming that human* rights *derive* from *the dignity* and *worth inherent in the human person*," World Conference on Human Rights, Vienna, 14–25 June 1993, Vienna Declaration and Programme of Action, General Assembly Distr. General A/Conf.157/23 12 July 1993, www.ohchr.org [Accessed: 26.08.2020].

171 On the concept of dignity in international human rights law see, *inter alia*, J. Zajadło, *Godność jednostki w aktach międzynarodowej ochrony praw człowieka,* „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1989, Year LI, J. 2.

172 M. Safian, *Eutanazja i autonomia pacjenta. Granice ochrony prawnej,* in: *Między życiem a śmiercią. Uzależnienia, eutanazja, sytuacje graniczne,* W. Bołoz, M. Ryś (eds.), Warszawa 2002, pp. 160–161.

Marek Piechowiak also writes about the need to distinguish the many meanings of the term dignity from the proper meaning of dignity as innate, equal, and inviolable personal dignity, the one of which international human rights documents speak. As one of these other meanings, this author distinguishes, among other things, "dignity based on the circumstances of life." Dignity is understood here as a correlate of the circumstances of life. Dignity, in this sense, can be violated, *inter alia*, by a state of constant pain or illness. In the meaning "scope of dignity" in the sense of "dignity based on the circumstances of life," the author also includes the dignity which can be deprived of a person in a concentration camp. The author's considerations show that, according to him, a violation of dignity in this sense is not a violation of that proper personal dignity which is the foundation of all rights.[173]

However, it would appear that dignity, as a correlate of life circumstances, can be understood as a manifestation of that intrinsic personal dignity, whereas its violation directly undermines that inherent dignity that is the source of rights. In the name of dignity, in the latter sense, violations of "dignity based on the circumstances of life" must be fought. It seems that, above all, this is why the value of dignity has been placed at the forefront of human rights documents. The personal dignity of which the author writes cannot, after all, be violated by any human or state action as an inherent characteristic of the person. Consequently, this dignity does not need legal protection as a matter of course, but serves only as a justification for other rights. The conclusion implied by this reasoning would also be paradoxical – my intrinsic personal dignity, which I possess as a human being and which is the source of my inalienable right to life, makes it necessary for me to persist in a state which I perceive as a violation of my dignity (understood as a correlate of the conditions of life).

As advocates of the death by choice postulate, in a situation where these two values – life and dignity – collide, we are allowed, in extreme situations, to choose a solution that sacrifices the former for the sake of the latter.

From the legal point of view, such behaviour can be considered a state of necessity. According to the doctrine of criminal law, the essence

[173] M. Piechowiak, *Godność jako fundament powinności prawa wobec człowieka,* in: *Urzeczywistnianie praw człowieka w XXI wieku. Prawo i Etyka*, R. Morciniec (ed.) Opole 2004, pp. 33–54, and also by the same author: *Filozofia praw człowieka w świetle ich międzynarodowej ochrony*, Lublin 1999, pp. 343–351.

of counter-activity, which is the state of force majeure, is the collision of legal goods. The good that is saved – dignity and freedom from suffering collide here with the good sacrificed – the patient's life. Euthanasia carried out at the request of the patient seems to constitute a special kind of state of emergency, in which in order to save the good of another person, another good is sacrificed, which is called in the doctrine "necessary assistance." As rightly pointed out, the *sine qua non* condition for invoking a state of public necessity here is the approval of the person concerned, which in the case of voluntary euthanasia is fulfilled. Admittedly, both the good sacrificed and the good saved belong to the same person and, according to some doctrine representatives[174], this excludes the possibility of invoking a state of public necessity, but there are strong arguments to reject this limitation (e.g. someone breaks into someone's home to save that person's life). Thus, saving someone's dignity by sacrificing his or her life at his or her request would constitute an exclusion of the unlawfulness of this act.[175]

Opponents of ethically approving and legalising voluntary euthanasia argue that there can be no question of a 'dignified death' at all, since dignity can only be realised through life. Leon R. Kass expresses the view that euthanasia in the name of dignity is at best a paradoxical and even contradictory slogan. One cannot make oneself more worthy by annihilating one's person. He also points out that even if we consider autonomy to be the most important manifestation of human dignity, the realisation of this autonomy by annihilating its subject is also a paradox.[176] It does not seem to be a clear view. The ability to reflect on one's finitude and the ability to choose death is precisely a human trait and a source of man's dignity, distinguishing him from other living beings. As B. Suchodolski writes about man: "The human being does not close itself within limits set by a rational and utilitarian strategy defining the outlay of effort from the point of view of expected gains and possible losses, but goes far beyond these limits. Instead of caring for the comfort of life, and even for

[174] S. Wolter, *Zarys systemu prawa karnego część ogólnego*, Vol. 1, Kraków 1933, p. 148, J. Makarewicz, *Prawo karne ogólne,* Kraków 1914, p. 177, cited in: Zielińska E., *Powinności lekarza w przypadku braku zgody na leczenie oraz wobec pacjentów w stanie terminalnym,* „Prawo i medycyna" 2000, Vol. 2, No 5.

[175] See in: J. Lachowski, *Stan wyższej konieczności w polskim prawie karnym,* Warszawa 2005, p. 108.

[176] L.R. Kass, op.cit., p. 34.

life itself, man is a being who chooses death in situations which contradict his concept of a valuable and dignified life."[177] Therefore, death by choice cannot be considered a denial of dignity – on the contrary, it can be its triumph in certain situations.

Last but not least, an essential argument of the opponents of the legalisation of voluntary euthanasia, is an argument that goes beyond the moral dispute, an argument of a practical, functional nature, referred to in the literature as the 'slippery slope agument.' It is a reasoning that refers not to the evaluation of certain acts in themselves, but to the probable consequences of the permissibility of those acts and of practising them. It is based on the belief that the legalisation of euthanasia could lead to a lack of respect for life in general and numerous abuses. Some even argue that once we accept the idea of a qualitative valuation of life into those more or less 'worthy' of life, we are taking a small step towards involuntary euthanasia, such as eugenic Nazi euthanasia. From a logical point of view, this argument is misguided, as J. Rachels, among others, points out.[178] The claim that with the acceptance of voluntary euthanasia, we logically must also accept involuntary euthanasia is not valid. There is, however, more justification for the psychological aspect of this argument. Namely, by giving people such a powerful instrument as the right to deprive someone of his or her life in circumstances justifying euthanasia, we run the risk of this right being abused in the same way as many social phenomena have been abused (e.g. the abuse of the rights of guardians over their incapacitated wards). In the case of euthanasia, *post factum* control of such abuses is pointless.

There is also the danger of a gradual 'pushing of the boundaries,' which, according to proponents of this thesis, will end up in the practice of involuntary euthanasia for various reasons. However, historical and anthropological examples show that the acceptance of homicide in certain circumstances does not necessarily lead to abolishing the prohibition of homicide in others. In traditional Inuit societies, for example, infanticide and the killing of the elderly, motivated by the desire of the tribe to survive in difficult living conditions, was accepted, which did not at all lead to the general abolition of the homicide ban; moreover, homicides between adult members of the tribe were almost non-

177 B. Suchodolski, *Kim jest człowiek?*, Warszawa 1976, p. 242.

178 J. Rachels, *The end of life. Euthanasia and morality*, Oxford University Press 1986, p. 172.

existent. This argument is referred to among others by J. Rachels[179] and P. Singer. The latter concludes that in human society, it is possible to create a mechanism of permanent delimitation of similar behaviours into those that are justified in some respects and those that are forbidden. If it functioned so well in primitive society, then modern civilised society should be able to cope with it.[180] This argument is all the more convincing since the modern legal order already knows exceptions to the prohibition of deprivation of life in the form of admissibility of killing a human being in necessary defence or a state of higher necessity, which does not imply acceptance of killing in other situations.

As can be seen from the arguments presented above, the dispute over the 'right to die,' in which representatives of different ethical paradigms, religious and secular worldviews take the floor, can continue indefinitely. The problem in question is not merely theoretical, however. On the contrary, it is a very pressing practical and legal problem, and human fate depends upon its solution.

Therefore, it is my conviction that some directive should be adopted which, leaving these otherwise fundamental questions aside, will allow a ‚golden measure' to be found. In my view, R. Dworkin's view indicates the way to find it: "Forcing someone to die, in the way that others want him to, and which he regards as a terrible denial of his life, is a destructive, monstrous form of tyranny."[181] The thought of the great defender and venerator of life A. Schweitzer is also valuable in this context: "It often happens that slavish adherence to the principle of not killing serves the idea of compassion worse than violating it."[182]

Therefore, in the final analysis, my position is well reflected in the old Roman formula '*in dubio pro libertate*.' The situation is different in the case of involuntary euthanasia of infants (neonatal euthanasia), where the decision not to treat (passive euthanasia) a severely handicapped newborn baby is made only on the basis of the prognosis of a poor quality of its future life (as, for example, occurred in the Baby Doe case in the USA). This is an unacceptable application of the criterion of quality of life, leading to differentiation and discrimination in the enjoyment of the right to

[179] J. Rachels, op.cit., p. 174.

[180] P. Singer, *Practical Ethics*, Cambridge 1999, p. 207.

[181] R. Dworkin, op.cit., p. 217.

[182] Cited in: M. Ossowska, *Normy moralne,* Warszawa 1985, p. 38.

life. It is an open question whether euthanasia of this kind is not nevertheless acceptable where this expected low quality of life means a very short existence filled with suffering. In the name of the right to freedom from suffering, are we allowed to decide for another human being about his or her life or death when he or she is unable to make that decision? Can the law sanction such a decision? These questions remain open.

7.

Legal bounds of liberty. A few considerations on the human right to self-determination

"People are born free and equal...." These are the words of Article 1 of the Universal Declaration of Human Rights, echoing in Enlightenment documents such as the French Declaration of the Rights of Man and of the Citizen or the American Declaration of Independence, whose authors considered it an "obvious truth that the Creator had endowed every human being with the inalienable right to freedom." Considering the colloquial, intuitive understanding of the word 'freedom,' one can doubt whether people are born free, as the creators of the Universal Declaration of Human Rights suggested. It seems that this is a postulated rather than an actual state of affairs. We are always born into specific social and historical circumstances that regulate or even annihilate this postulated freedom in a rather meticulous manner. Let us begin by saying that until the age of eighteen, a person is not free in the sense of being able to determine even matters as fundamental to his or her existence, as where he or she lives, and what kind of education he or she is forced to receive. Moreover, until adulthood, a man is regarded as an individual who is incapable of exercising his freedom in the respect mentioned above and in many others. Thus, if we understand freedom as the ability to decide matters crucial to our everyday lives, we are certainly not born free; perhaps we become free. Unless we understand the Declaration's authors in such a sense, freedom is a potential feature of every human being, which becomes actualised when a person achieves certain abilities to use it. Another interpretation could be that a free man emerges from his mother's womb and is then subject to various types of enslavement. However, even this interpretation leads to absurdity – it is difficult to imagine the freedom of an infant completely dependent on its parents or guardians. Finally, we can understand the intention of the authors of the Universal Declaration in such a way that freedom is a postulated

attribute of man, and man should have the conditions to be free because the striving for freedom is deeply rooted in human nature. What is the meaning of the term 'freedom'? Where do the legal limits of freedom lie? What should they be, and what are they? Would human freedom be possible without the existence of law? These questions arise when we begin to examine the issue of human freedom and the human right to self-determination. In attempting to answer the first of these questions, we should define the term 'freedom.' Freedom is a concept functioning in various dimensions and, therefore, appearing in various meanings in language. In the psychological dimension, the statement 'I am free' means feeling the absence of external constraints on one's actions, a feeling of freedom. It is, therefore, a certain inner experience. In the philosophical dimension, the term freedom is associated with whether human mental states and actions are causally determined (in philosophy, this question is called the problem of determinism). In proximity to the problem of determinism also lies the question of moral responsibility for human acts.[183] In the political dimension, freedom denotes a social system in which people are not unduly restricted in their actions and decisions by the authorities and in which they can influence the exercise of power. The political dimension of the term freedom is in principle identical with the legal dimension. In legal language, the term 'freedom' also means the power to do or not to do something. The common meaning of the term freedom is the absence of external coercion, the absence of restriction.[184] Leszek Kołakowski, in his essay "*On freedom*," distinguishes between two meanings of the term – freedom in the sense of non-conditionality, the ability to create new and unpredictable things, as an elementary experience of every human being, and freedom in the political-legal sense. He sees the common denominator of these meanings – it is the possibility to make a choice. In the political-legal sense, it is about the situational conditions of choice, in general, about what scope of freedom the social organisation leaves us, while in the former sense, it is about our spiritual conditions of choice and creation, about the very fact that we have the power to choose and create.

[183] This problem is thoroughly analysed by L. Kołakowski, *Determinizm i odpowiedzialność*, in: *Pochwała niekonsekwencji*, L. Kołakowski, Scattered writings from 1955–1968, Vol. 2, ed. Z. Mentzel, London 1989.

[184] Encyklopedia PWN, http://encyklopedia.pwn.pl/haslo/3997768/wolnosc.html.

According to Kołakowski, freedom in the legal and political dimension may assume various degrees – from a minimum dimension in totalitarian and authoritarian regimes to an extensive range of freedoms, but it is never unlimited. The hypothetical natural state assumed by some thinkers, where there were no rules or laws (as in the theories of T. Hobbes, J. Locke or J.J. Rousseau) never existed, and even if it did, as Kołakowski says, it would not be a state of unlimited freedom, because then freedom would cease to exist. Where there is no law, there is no freedom either. Freedom in the political-legal sense can therefore exist where something is permitted or forbidden, while the term freedom in a world where there are no prohibitions or commandments is devoid of meaning.[185] Consequently, legal limits to freedom do exist and must exist everywhere. However, the eternal dilemma is what they should be, and this issue will be the subject of the considerations undertaken here. The paradigmatic answer to the question of legal limits to freedom is the harm to others principle of J.S. Mill, a principle formulated in the essay "*On liberty,*" in which the philosopher considers the problem of society's power over the individual, and its limits. According to that 19th-century liberal, situations in which a human community restricts an individual's freedom may be justified exclusively when they serve to prevent or remove the consequences of an individual's violation of the rights or interests of another member of the community.[186] In the area of state versus individual, Mill's principle is not only uncontroversial, but the only possible one. The fundamental statement of Mill: "not one person or a number of persons has the right to tell another mature being that he must not do for his good what he pleases" is difficult to question, assuming that it concerns such actions as in no way infringe upon the vital interests of other members of the community or society as a whole. Despite the intuitive rightness and simplicity of this principle, it is not always applied in reality. In the majority of contemporary states, there are such legal regulations as the criminalisation of euthanasia and assisted suicide, the prohibition of the trade and consumption of hard drugs (in some also marijuana), penalties for not wearing a seat belt while driving a car, which exceed this formula in order to protect the individual against himself. These solutions result from the state adopting a paternalistic

185 L. Kołakowski, *O wolności,* in: *Mini wykłady o maxi sprawy*, Kraków 2009.

186 J.S. Mill, *O wolności*, Warszawa 1959, p. 129, J.S. Mill, op.cit., p. 226.

attitude. The concept of 'paternalism' in philosophical and legal language emerged as a term for the relationship of the state (government) to society (individuals). The Oxford English Dictionary dates the term 'paternalism' back to 1880. It gives the following definitions: the principle and practice of state administration, the government assuming the position of a father in relation to society, the assumption of the state's duty to satisfy the needs and regulate the life of society like a father in relation to his children. Two arguments are invoked to justify:

1. While these practices do indeed violate J.S. Mill's formula of freedom, thanks to their existence society tries to prevent immature people, susceptible to pressure or abuse, from engaging in particular actions. It should be remembered that Mill also referred to mature, rational individuals endowed with free will and not acting under duress. In this type of solution, the value of the good achieved (protection of immature and weak individuals from evil) sometimes outweighs the value of the freedom sacrificed for this purpose (as, for example, in the case of penalisation of possession and trade in heroin, a drug which is a daily cause of death of thousands of teenage drug addicts all over the world).
2. The value protected is of higher significance than the value of the freedom – in the case of the prohibition of assisted suicide and euthanasia, the value of life, according to some doctrines, is an absolute value that overweighs the value of freedom.

In all the examples quoted above, what is generally at stake is freedom concerning probably the most fundamental issue for each of us – the freedom to dispose of one's own body and decide about one's further existence (its duration and how it lasts). The most glaring problem emerges in the context of the discussed right to suicide and the legal permissibility of active euthanasia. As mentioned in the previous chapters, the state interferes with the life and death decisions of the individual, and even though suicidal attempts are no longer penalized, active euthanasia and assisted suicide are legal only in a few places in the world.

The problem of disposing of one's own life and deciding to end it brings another issue, namely the freedom to dispose of one's own body. This issue has already been addressed beforehand in the context of the principle of consent to medical treatment. The freedom to dispose of one's own body

appears here in a negative aspect, as freedom from interference in bodily integrity. However, what remains to be decided is the freedom to dispose of one's own body in the positive aspect. Is there, for example, a right to self-mutilation? The American literature on medical ethics describes the case of a twenty-seven-year-old man who, following the voice of his religious convictions, committed successive self-mutilation (cutting off his right hand, gouging out his right eye, piercing his eardrum), by which, as he claimed, he was supposed to save humankind by God's command. For many years he was repeatedly forcibly hospitalised and demanded to leave the hospital, arguing quite soberly that after all, he posed no threat to anyone, and there was no point in treating him because he had a mission to fulfil and was not sick.[187] Is the forced detention in hospital a form of violation of his freedom to dispose of his own body, as well as his religious freedom?

On the other hand, can he be allowed to amputate his leg after being released, as he has already announced?

Eccentric and irrational actions and decisions should deserve the same protection as rational actions as long as they are taken in full knowledge. Otherwise, freedom would be only freedom to act rationally. If this were the case, the so-called protection of freedom would not fulfil its most important purpose – protecting human individuality against the domination of the community. It is also Mill's position in the quoted essay "*On liberty.*" As another advocate of liberal doctrine, Wilhelm von Humboldt wrote, human individuality is the basis of the community's welfare as a whole. If only for that reason, the community should respect other individuals who adopt a way of life different from the generally accepted one.

In this context, a broader issue concerning the freedom to choose a way of life, even one that is significantly different from that of the majority of society, comes into the picture. It is also a question of the possibility of making such a choice and ensuring that this choice does not give rise to discriminatory circumstances against the individual in various areas of social life.

An example of such a situation is the lack of legal regulations in many legal systems that would allow non-heterosexual couples to marry. Others are the lack of regulation on the institution of civil partnerships,

[187] Beauchamp and Childress, op.cit, Case 10, pp. 412–413.

which would give such couples the possibility to function like marriages (e.g. having the right to visit a sick partner in hospital and to be informed about his or her state of health, the right to receive documentation about the state of health of a partner, the right to decide about the further treatment of a partner in the case of serious illness, the right to joint taxation with partners, the right to a pension after the decease of a partner, the right to inherit from a deceased partner). Although the situation has changed significantly in recent decades in the Western world, there are still problems introducing these solutions (non-heterosexual marriages) in many countries, including Poland.[188]

As Kołakowski writes in the essay quoted above, freedom is also the ability to create unpredictable things. Freedom is creativity. Thus, freedom of expression in art is another problem we should consider when reflecting on the legal limits of freedom. Freedom of artistic creativity, or freedom of artistic expression, means the free creative activity of a human being in the area of culture and Art. The Constitution of the Republic of Poland of 1997, in the chapter "Economic, social and cultural freedoms and rights," in Article 73, guarantees everyone the freedom of artistic creation, scientific research and the publication of its results, the freedom of teaching, as well as the freedom to use cultural goods.[189] In the realm of culture, the freedom of artistic creation with the freedom to exhibit it and the freedom to use cultural goods can thus be distinguished from the provision mentioned above. Artistic creativity, like scientific creativity, is included in the sphere of personal goods, protected by civil law (copyright). The scope of freedom of artistic creativity is characterised by listing the freedoms which comprise its scope: freedom of creation *sensu stricto*, freedom to undertake and carry out artistic activity, freedom to choose the place and form of this activity, freedom to determine the object, problem, scope, and methods of activity, as well as to publish and disseminate its results.[190] The freedom to exhibit artistic creativity consists in making public and disseminating a person's

[188] The LGBT civil rights movement has been very active in Poland in recent years, but it has unfortunately brought about the opposite effect, with the right wing conservative authorities (PiS) in power since 2015. The LGBT minority is being discriminated against in its rights and persecuted for its activities.

[189] *Constitution of the Republic of Poland,* Journal of Laws of 1997 No 78 it. 483, Art. 73.

[190] M.M. Bieczyński, *Prawne granice wolności artystycznej w zakresie sztuk wizualnych*, Warszawa 2011, p. 93.

creative activity. The possibility to freely exhibit the results of creative work is a necessary prerequisite for the realisation of the freedom of artistic creativity. Therefore, public authorities and institutions are obliged to create a system that will protect freedom of creativity most effectively and enable dissemination of the effects of the artistic activity without restrictions, and in the form chosen by the creator. It should be noted that the freedom of artistic creativity is a special case of the constitutionally guaranteed freedom of expression; it is also related to the freedom of the press in terms of communication of artistic expression. Guarantees of freedom of artistic and scientific creativity and freedom of expression are also found in international law documents. We should mention here article 27 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights (freedom of expression), article 15 of the International Covenant on Economic, Social and Cultural Rights (right to participate in cultural life, protection of copyright), article 10 of the European Convention on Human Rights (freedom of expression, communication of ideas). As follows from Article 31 of the Constitution of the Republic of Poland, each freedom, including the freedom of artistic creativity, may be restricted in certain situations. Limitations are permissible only if they result from the provisions of a statute, if they are necessary in a democratic state for its security or public order, for the protection of the environment, health, public morals, or the freedoms and rights of others, and only when the realisation of a certain aim was not possible through the use of other means, less burdensome for a citizen, because interfering less in his sphere of rights and freedoms.[191] Similar clauses (called limitation clauses) can be found in the regulations of international law.[192] Thus, the freedom of artistic creativity may be limited from the point of view of general interest if there is a need to prevent real or even potential conflicts with the interests of other persons or society as a whole. The legal boundaries of artistic freedom are thus generally drawn following Mill's *harm to others* principle. Possible situations of collision of artistic freedom with the rights and freedoms of others and the interest of society as a whole include, for example, insulting religious feelings, violation of the ban on disseminating pornographic content, abuse of national

[191] Constitution of the Republic of Poland of 2 April 1997, Art. 31.

[192] See Art. 19(3) ICCPR, Art. 10(2) ECHR.

symbols, infringement of personal goods of others (e.g. the right to privacy), violation of another person's property right or exceeding the norms of the legal and moral use of the human body as a material of Art. These various legal aspects of the limits of artistic freedom are exhaustively discussed by M.M. Beczyński in his monograph entitled: *Legal limits of artistic freedom in the field of visual arts* (Warsaw 2011). Here, I would like to touch upon only some of them. The most famous Polish case so far concerning freedom of artistic creativity is the case of Dorota Nieznalska. It concerned her installation entitled "*Pasja,*" exhibited at the Wyspa Gallery in Gdańsk during the artist's exhibition in December 2001. The object of controversy was a fragment of the installation depicting a cross with an image of a male penis written into its frame. The Nieznalska trial was the first artist trial in Poland after 1989. The artist was accused of violating Article 196 of the Criminal Code, i.e. insulting the religious feelings of others. The district court in Gdansk found the artist guilty of offending religious feelings and sentenced her to 6 months of unpaid work for social purposes. The reasoning contained in the justification was based on recognising the offensive nature of the work, which juxtaposes elements important to the Christian faith with others in a way it found unacceptable. The artist appealed against the judgment and was ultimately acquitted. In the course of its arguments, the Court noted that the artist's intention was not to offend religious feelings, but to express an individual creative message, so she did not act with direct intent. Furthermore, the court pointed out that although religious freedoms must be protected in the same way as freedom of expression, if the courts were to convict all artists for offending religious feelings, i.e. also those who acted with a direct intention, then it would be possible to speak about religion in Poland only in a good way or not at all.[193] Another well-known case of an artist concerning violation of Article 196 of the Penal Code, i.e. offence against religious feelings, in which the judiciary took a similar stance was the case of Adam Darski – Nergal, leader of the metal band Behemot. The artist tore up the Bible during a concert in 2007, calling it a "book of lies." The criminal trial also lasted several years and ended in 2011, with the artist being acquitted. A position similar to the Polish courts was taken by the European Court of Human Rights, which held

[193] Judgment of the District Court in Gdańsk of 4 June 2009. (unpublished), see M.M. Bieczyński, op.cit., p. 212.

that to elicit a reaction from the law, a form of expression must be contemptuous, insulting, degrading, or ridiculing, which implies a high degree of profanity. The ECHR recognises the wide margin of discretion of national courts concerning restrictions on freedom of expression dictated by the protection of religious feelings. An example of the Court's recognition of the legitimacy of state restrictions dictated by the protection of religious beliefs is the case of *Otto-Preminger-Institut v. Austri*a. The case involved the prohibition of public presentation and confiscation of the film *The Council on Love*, based on the controversial play of the same title by Oskar Panizza. The play and the film depict God the Father as an infirm old man, Christ as a mama's boy of limited intellect, and the Virgin Mary as an unprincipled debauchee.[194] Thus, the legal limit for artistic freedom is the duty to respect the religious feelings of others, but only in the case of a deliberate and direct attack on religion, which may cause harm to these people in the sense that they feel attacked and offended. It is within the scope of Mill's formula insofar as the artistic work does indeed cause such 'damage' and provided that this applies equally to respect for the religious feelings of adherents of all religions and not only of the one which, according to statistical data, is followed by a higher percentage of the population.

A collision between artistic freedom and other legally protected goods is also created by using the human body as an art material. This current of artistic creation is referred to by art historians as body Art. Live body art may consist of a performance that at some point involves violating the integrity of the human body (piercing oneself with needles, mutilation). The problem that arises here is the one already signalled above, namely the problem of the limits of the right to self-mutilation, in the situation when the creator uses his own body as the material of art, as well as the problem of violation of another person's bodily integrity, and even the prohibition of torture when the creator uses for the creative act the body of another person with his consent. Indeed, the counter-narrative of art cannot function as an exemption from responsibility for depriving another person of life (even if that person would voluntarily agree to sacrifice his or her life on the altar of art). However, there

[194] Otto-Preminger-Institut v. Austria, 1994, complaint no. 10737/84, published in ECHR, series A, No 133, quoted in: M.M. Bieczyński, *Prawne granice wolności artystycznej w zakresie sztuk wizualnych,* Warszawa 2011, p. 215. Marta Lang 186.

remains a dilemma as to how one should proceed when an artist invites the public to a performance in which he intends to deprive himself of life. As established above, there is no legal prohibition of committing suicide. The authorities could prohibit this kind of performance for reasons of public morality and public safety (publicly carried out suicide could encourage similar acts by mentally immature minors and could upset and terrify the public). The public authorities, constitutionally and statutorily obliged to protect human life, would also have the duty to prevent the artist's suicide attempt and undertake an immediate rescue operation. Such a case seems unthinkable in today's reality. As M. M. Bieczyński rightly concludes in the monograph quoted above, the constitutionally guaranteed legal protection of life constitutes an unquestionable limit of the freedom of artistic creativity, and despite the normative equivalence of the guarantee granted to both attributes of an individual, it is difficult to imagine in practice recognising artistic creativity as a good higher than human life.[195]

A similar issue is creating works of art using human remains. Gunther von Hagens's exhibitions of dead crafted bodies were an example of this. The protection of the human body also extends to the period after a person's death. In Polish law, a unique role is played by Article 262 § 1 and 2 of the Criminal Code, which establishes the criminalisation of insulting and robbing a corpse. At the same time, it is possible to consciously designate one's body after death to be used for scientific purposes, so why should this not apply to artistic activity (this argument was also referred to by von Hagen, who claimed that these were allegedly bodies of people who gave such consent before their death[196]).

As mentioned above, the limits of freedom of artistic expression are related to the limits of freedom of speech. The freedom of speech is guaranteed by the Constitution of the Republic of Poland of 1997, in Article 54, and at the international level by the European Convention on Human Rights (in Article 10) and other documents of international human rights law. The subject of the limits of freedom of speech is vast. Here I would like to draw attention to one of the most controversial points in the area of this

[195] M.M Bieczyński, op.cit., p. 163.

[196] However, this is doubtful. France and Israel banned the exhibition on their territory owing to the disrespect for human corpses and the suspicion that the prepared corpses are the remains of Chinese political prisoners.

issue, namely the question of the limits of the freedom of speech (and at the same time the limits of the freedom of scientific research) on historical subjects in the face of the current regulation in Polish law creating a legal qualification of the crime called the "Auschwitz lie." Under Article 55 of the Act of 18 December 1998 on the Institute of National Remembrance Commission for the Prosecution of Crimes against the Polish Nation, denying publicly and against facts the crimes mentioned in Article 1, point 1 of the Act is an offence prosecuted *ex officio* with the threat of a fine or imprisonment for up to 3 years. Acts defined in Article 1, point 1 of the Act mentioned above are: a) crimes committed against persons of Polish nationality or Polish citizens of other nationalities during the period from 1 September 1939 to 31 July 1990: – Nazi crimes, – Communist crimes, – other crimes constituting crimes against peace, humanity, or war crimes, b) other politically motivated repressions committed by functionaries of the Polish law enforcement authorities or the judiciary or persons acting on their orders, and revealed in the content of judgments made under the Act of 23 February 1991 on the recognition of invalid judgments issued against persons repressed for activities in favour of the independent existence of the Polish State.[197] From the point of view of the premises enumerated in the limitation clause of Article 31 of the Constitution of the Republic of Poland of 1997, which also relate to freedom of speech, one could express a doubt whether the restriction imposed by the Act meets any of them – that is, whether it is necessary in a democratic state for its security or public order, or the protection of the environment, health and public morals, or necessary for the protection of freedoms and rights of others. How can a false assertion of fact, even one that is patently false, infringe any of these goods, let alone the freedoms and rights of others? We are not dealing here with defamation of specific persons or with an insult to religious feelings. The essence of freedom of speech and freedom of scientific research is making claims, including false claims. Hence, the restrictions imposed by the act mentioned above seem to contradict the constitutional prohibition of infringing the essence of the freedoms and rights contained in Article 31 of the Constitution. However, spreading racial hatred or publicly propagating fascist or other totalitarian regimes

[197] Act of 18 December 1998 on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, Journal of Laws of 2007, No 63, item 424, as amended.

while making such statements is subject to a penalty under Art. 256 par. 1 of the Penal Code.

As can be seen from the above considerations, the legal boundaries of freedom in contemporary legal orders are established rigidly and clearly. They often exceed Mill's formula, touching on the most intimate spheres of human life (sexual life, decision to end one's existence). The land of freedom is thus somewhat too small, and its borders should be widened. However, the borders themselves are necessary for the sake of protecting the territory of this land. It is a kind of paradox that the individual's freedom is protected precisely by restrictions imposed on other community members' freedom. Freedom can only exist through the limitations of freedom – such as a dialectical synthesis of opposites. It brings to mind a question that has arisen elsewhere in these considerations, namely, does the law restrict freedom or, on the contrary, is it a condition for the existence of human freedom?[198] Could equal freedom for all people be guaranteed if there were no law? There are many indications that this is impossible at the present stage of human development. Although freedom is a primordial and natural value, people need legal restrictions on their freedom to preserve the freedom of other individuals. As Isaac Berlin pointed out, it is not enough to say that we do not wish our freedom to be violated; we need to establish a society where there will be legal limits to freedom that no one will be allowed to exceed.[199] In historical realities to date, the need to establish such a social order through law has been and remains indisputable. However, it should be remembered that law is not the only normative system regulating human behaviour in society. Perhaps one day, the utopian ideal of a stateless society without a legal system and without the sanction of coercion will be achieved. Perhaps one day, people will live together harmoniously, without exceeding the limits of freedom in relation to each other, based on natural moral order and intuition. However, it remains a matter of the distant future.

198 See M. Zmierczak, *Prawo – ograniczenie czy warunek wolności?*, in: *Prawne aspekty wolności. Zbiór studiów*, E. Cała-Wacinkiewicz, D. Wacinkiewicz (eds.), Toruń 2008, p. 13.

199 I. Berlin, *Dwie koncepcje wolności i inne eseje*, Warszawa 1991, p. 180.

Conclusion

Irrespective of the scientific definition of life as a phenomenon which we adopt, we intuitively grasp the essence of life, as we are living beings ourselves. We naturally tend to protect living creatures and perceive death as something negative and life as something to be cherished and saved. Historically in our culture, only human life has been morally and legally protected in most societies, leaving all other living creatures outside the scope of protection. As we look back in history, the norm prohibiting the taking of human life has been an element of human culture and moral and legal normative systems since the beginnings of civilisation. However, as has been shown, initially, it did not concern all human beings equally. The prohibition of killing has developed as a universal norm in a long historical process. With the civilisational and cultural development of human societies, respect for the life of every human being has been growing, regardless of his or her social status, age, gender, race, or other features. The idea of human dignity and the consequent command to respect the life of every human being equally slowly made its way into the moral and legal consciousness of societies. (The victory of this idea in positive law was reflected in the recognition of the public-law nature of homicide and the introduction of equality before criminal law in the aspect of punishment for murder). The universalisation of the norm prohibiting homicide conditioned the emergence of the concept of an equal right to life for all. The concept of *the right to life* was conceived when a general notion of subjective rights emerged in Western thought.

The guarantee of protection of the right to life was for the first time inscribed in the declarations and constitutions of the era of the revolutionary social changes of the Enlightenment. At the time, it was a right strongly connected with state citizenship (the human rights listed in the French Declaration of the Rights of Man and Citizen were both human rights and the rights of a state citizen). The state acted as the declarant and guarantor of this right. This right was initially directed solely against the state. The state itself was, therefore, in a way obliged to respect the life of its citizens and to protect them against arbitrary deprivation of life by the organs

of the state. From the Enlightenment to the present day, the concept of the right to life has evolved from a purely negative right, protecting only against attacks on life by a State institution, to the right implying a positive obligation on the part of the state to protect life, from a right protected only in the vertical relationship between the individual and the state to a right which the state is also obliged to defend against infringements by other individuals in the horizontal dimension.

With the emergence of universal human rights and regional human rights systems in the second half of the 20th century, the right to life from the level of national law (statutory and constitutional norms) entered the level of international law. The international community sanctioned the subjective and territorial universalism of this right. The principle of subjective universalism of human rights had already been introduced by the Charter of the United Nations, among its objectives and principles expressed in Article 1, by including the promotion and encouragement of States to respect human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. The concretisation of these rights was then introduced at the universal level by the Universal Declaration of Human Rights and the ICCPR containing guarantees of the inherent right to life.

The right to life was at this point made independent of the state institution. International law recognised human rights as independent of states' decisions and made states merely guarantors and enforcers of existing rights, as formulated in the norms of international law. Henceforth, the state became only the guarantor of the right to life as a right recognised by international treaties as inherent and to which all are entitled, and it began to be accountable to the international community for its practical observance. Since then, every human being, regardless of nationality, has become an object of protection. The individual has a claim to protect the right to life against the state under whose jurisdiction he or she falls.

Thus the state has evolved from being a self-limiting tyrant, who has agreed to give up his power over the life and death of his subjects, into a guardian of the protection of human life in the service of life.

However, in the contemporary discourse on human rights, we can also encounter a different view. The contemporary philosopher Giorgio Agamben, a critic of the idea of human rights, claims, for example, that

today's democratic sovereign states have not given up their power over the life and death of individuals; on the contrary, their prerogatives have been strengthened by internationally protected declarations of human rights. The state continues to be the entity that violates human rights on a large scale while also acting as an ombudsman to monitor these violations. The state continues to exercise power over the biological existence of human beings.

Here we come to the issue of freedom and the boundaries of the law's control over life and death. The death penalty, war, which means allowing killing people and sending them to die, forcing people to die in a way they do not want to, invoking the sanctity of life argument for banning euthanasia and abortion, which means limiting human freedom to decide in matters crucial for the quality of life – these are all actions still undertaken by modern states; also democratic states of law said to obey the human rights standards.

As for the issue of capital punishment, from time immemorial, the imposition of the death penalty has been considered a natural prerogative of the state, and it has survived despite the state's recognition of the existence of a right to life. Even in the early days of the right to life protection in the international human rights system, the death penalty was recognized as a state prerogative. The permissibility of the death penalty by states was established as an exception to the guarantee of the right to life in human rights documents. The abolition of the death penalty, first in the conceptual, then in the juridical sphere, took place at the end of the 20th century in Europe. Under the influence of the thought and activity of such humanists as Albert Camus and Marc Ancel, for example, the Council of Europe began working towards abolishing the death penalty in the European human rights system, culminating in the adoption of two successive abolitionist protocols to the European Convention on Human Rights. Similar protocols were adopted in the universal and American human rights systems. It has led (although the process is only fully completed in the European human rights system) to the elimination of the death penalty from the scope of the exception to the internationally protected right to life. At the turn of the 20th and 21st centuries, a new moral and legal paradigm emerged which excluded the use of the death penalty, even as a punishment for the most severe and indiscriminate human rights violations, and this

was confirmed by the exclusion of the death penalty from the range of penalties in the Statute of the International Criminal Court. Despite this, some democratic countries which recognise the principle of respect for human rights continue to apply the death penalty (the leading example being the United States). International law also allows for legitimate war. War is not the subject of analysis in this work, but it should not be forgotten in the ethical and legal discourse on the protection of life. It is difficult to agree with the statements on the absolute nature of the right to life in the contemporary international human rights law that appear in legal discourse when we consider the possibility of war sanctioned by international law, which creates the conditions for a general exclusion of the prohibition of deprivation of life concerning combatants.

By contrast, human rights such as freedom from torture, the prohibition of slavery and the right to legal personality are absolute. These rights do not contain in their normative content any exceptions to their application. They are also non-derogable rights (the first two in all treaties, the latter in the ICCPR and the ACPHR). None of the human rights documents attaches additional conditions to these absolute prohibitions, in the form of, for example, the condition of 'arbitrariness,' which is attached to the prohibition of deprivation of life in the ICCPR and the ACPPC, or 'intentionality' as in Article 2 of the ECHR.

As mentioned in the considerations in this work, the concept of life, including the definition of death and the beginning of life, is crucial to determine the scope of protection of life by the law and state. In connection with the problem of the subjective scope of the prohibition against deprivation of life, another postulate is worth serious consideration, namely to extend this prohibition also to our 'smaller brothers' – animals. At least as applying to those that exist at a level of consciousness, allowing them to be included in the class of beings fulfilling the minimum conditions of being persons (e.g. primates). It is supported by the requirement of coherence in ethics – if we legally protect the life of persons, why should we protect only the life of human persons? More attention should be paid to this problem, as is currently being done by the environmental movements working to protect all life and the planet. However, this is still only marginally reflected in legal regulations.

References

1. Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Death, *A definition of Irreversible Coma*, "Journal of the American Medical Association" 1968, Vol. 205.
2. Agamben G., *Homo Sacer*, *Sovereign Power and Bare Life*, Stanford University Press, Stanford, California 1995.
3. Arystoteles, *Etyka nikomachejska*, PWN, Warszawa 1982.
4. Arystoteles*, O duszy*, in: Arystoteles, *Dzieła wszystkie*, Vol. 3., transl. P. Siwek, PWN, Warszawa 1992.
5. Bartnik C., *Personalizm,* Lublin 2000.
6. Berlin I., *Dwie koncepcje wolności i inne eseje*, Warszawa 1991.
7. Bernat J.L., *The Boundaries of the Persistent Vegetative State,* "Journal of Clinical Ethics" 1992, Vol. 3.
8. Bieczyński M.M., *Prawne granice wolności artystycznej w zakresie sztuk wizualnych*, Warszawa 2011.
9. Bojarski W., *Prawo rzymskie,* TNOIK „Dom Organizatora", Toruń 1999.
10. Childs N.L., Mercer W.N., *Brief Report: Late Improvement in Consciousness after Post-Traumatic Vegetative State,* "New England Journal of Medicine" 1996, Vol. 334.
11. Chiong W., *Brain death without definitions, "*Hastings Center Report," Nov-Dec 2005.
12. Crick F., *Life itself. Its origin and nature*, Touchstone, Simon & Schuster 1982.
13. Culver Ch.M., Gert B., *Philosophy in Medicine: Conceptual and Ethical Issues in Medicine and Psychiatry,* Oxford University Press 1982.
14. Cycero, *O państwie*, in: *Pisma filozoficzne*, Vol. 1, PWN, Warszawa 1960.
15. Cycero, *O prawach*, in: *Pisma filozoficzne*, Vol. 2 PWN, Warszawa 1960.
16. Darwin C., *O pochodzeniu człowieka,* transl. S. Panek, Warszawa 1959.
17. Dinstein Y., *The right to life, Physical Integrity and Liberty,* in: L. Henkin (ed.), *The International Bill of Human Rights*, Columbia University Press, New York 1981.
18. Dworkin R.*, Life's Dominion. An argument about Abortion and Euthanasia,* Harper Collins Publishers 1993.

19. Emanuel L., *Reexamining Death. The asymptotic model and a Bounded Zone Definition.* "Hastings Center Report," Jul-Aug 1995, Vol. 25, No 4.

20. *Encyclopedia Britannica*, Vol. 10, 1977.

21. Engelhardt H.T., *The foundations of bioethics,* New York 1996.

22. Eser A., *Zwischen „Heiligkeit" und „Qualität" des Lebens. Zu Wandlungen im strafrechtlichen Lebensschutz*, in: *Tradition und Fortschrift im Recht* (Festschrift), Tübingen 1977, pp. 378–396.

23. Feinberg J., *Rights, justice and the bounds of liberty*, Princeton University Press, Princeton 1980.

24. Ford N.M., *When did I begin?,* Cambridge University Press 1988.

25. Gessel A., *The embryology of human behavior,* Conneticut 1971.

26. Golser C., *Dyskusja wokół śmierci mózgowej z perspektywy katolickiego teologa-moralisty*, Materiały z XIV Symposium: *Etyczne problemy transplantologii*, Wydz. Teologii Uniwersytetu Opolskiego, Opole 1996.

27. Grotius H., *O prawie wojny i pokoju,* PWN, Warszawa 1957.

28. Grzybowski S., *Dzieje prawa*, Zakład Narodowy im. Ossolińskich, Wrocław 1981.

29. Haldane J.B.S., *What is life,* Alcuin Press, London 1949.

30. Hart H.L.A., *Concept of law,* Oxford University Press, Oxford 1961.

31. Higashi K., *Five year follow up study of patients with Persistent Vegetative State,* "Journal of Neurology, Neurosurgery and Psychiatry" 1981, Vol. 44 (6).

32. Hobbes T., *Leviathan*, transl. C. Znamierowski, PWN, Warszawa 1954.

33. Hoerster N., *Sterbehilfe im säkularen Staat*, Frankfurt am Main 1998.

34. Hofmański P., *Konwencja Europejska a prawo karne*, TNOiK „Dom Organizatora", Toruń 1995.

35. Hume D., *Treatise on Human Nature,* transl. C. Znamierowski, Warszawa 1963.

36. *Instytucje Justyniana*, transl. C. Kunderewicz, PWN, Warszawa 1986.

37. Jan Paweł II, *Evangelium vitae*, Pallottinum, Poznań 1995.

38. Justyński J.L., *Evolution from the rights of state and estate to the rights of man,* in: J.L. Justyński (ed.), *The origin of human rights*, Wydawnictwo Adam Marszałek, Toruń 1991.

39. Koranyi K., *Powszechna historia państwa i prawa,* Vol. 1, *Starożytność,* PWN, Warszawa 1961.

40. Kant I., *Uzasadnienie metafizyki moralności,* PWN, Warszawa 1971.

41. Kass L.R., *Death with dignity and the sanctity of life,* "Human Life Review," Spring 1990.

42. Kołakowski L., *Determinizm i odpowiedzialność*, in: L. Kołakowski, *Pochwała niekonsekwencji. Scattered writings from 1955–1968*, Vol. 2, ed. Z. Mentzel, Puls, London 1989.

43. Kołakowski L., *O wolności*, in: L. Kołakowski (ed.), *Mini wykłady o maxi sprawach*, Znak, Kraków 2009.

44. Konieczak P., *W sprawie eutanatycznej pomocy do samobójstwa*, „Państwo i prawo" 1999, No 5.

45. Konner M., *The tangled wing. Biological constraints on the Human Spirit,* London, Heinemann, 1982. quoted by M. Midgley, *Origins of Ethics,* in: P. Singer (ed.), *Guide to Ethics,* Warszawa 2002.

46. Kryszak R., *Etyczne implikacje absolutnej wartości życia – spojrzenie buddyjskie*, in: H. Cyrzan (ed.), *Życie jako wartość w kulturach świata,* Gdańsk 1997.

47. Kurczewski J., *Prawo prymitywne*, Wiedza Powszechna, Warszawa 1973.

48. Lachowski J., *Stan wyższej konieczności w polskim prawie karnym,* Warszawa 2005.

49. Lang W., *Prawa podmiotowe i prawa człowieka,* in: J. Białocerkiewicz, M. Balcerzak, A. Czeszko-Durlak (eds.), *Księga Jubileuszowa Profesora Tadeusza Jasudowicza*, TNOiK „Dom Organizatora", Toruń 2004.

50. Locke J., *Dwa traktaty o rządzie,* PWN, Warszawa 1992.

51. Locke J., *Rozważania dotyczące rozumu ludzkiego*, transl. B. Gawęcki, Vol. 1, Warszawa 1995.

52. *Encyklopedia filozofii*, T. Honderich (ed.), transl. J. Łoziński, Poznań 1999.

53. Lockwood M., *Moral Dilemmas in Modern Medicine,* Oxford University Press 1985.

54. Łaszewski R., *Wiejskie prawo karne w Polsce XVII i XVIII w.,*UMK w Toruniu, Toruń 1988.

55. Makarewicz J., *Prawo karne ogólne,* Leon Frommer, Kraków 1914.

56. Malinowski B., *Prawo, zwyczaj, zbrodnia w społeczności dzikich*, introduction C. Znamierowski, DeAgostini, Warszawa 2001.

57. Maturana H., Varela F., *De máquinas y seres vivos. Autopoiesis: La Organización De Lo Vivo*, Santiago de Chile 1973.

58. McLaren A., *Prelude to embryogenesis, Human ebryo research Yes or No*, London 1996.

59. Mik C., *Zbiorowe prawa człowieka,* Wydawnictwo Naukowe UMK, Toruń 1992.

60. Mill J.S., *O wolności,* PWN, Warszawa 1959.

61. Modzelewski K., *Barbarzyńska Europa,* Wydawnictwo Iskry, Warszawa 2004.

62. Morioka M., *Reconsidering Brain Death,* "Hastings Center Report" Jul-Aug 2001, Vol. 51, No 4.

63. Motyka K., *Prawa człowieka. Wprowadzenie. Wybór źródeł,* Oficyna Wydawnicza Verba, Lublin 2004.

64. Nelson H. L., *What child is this?* "Hastings Center Report" Nov-Dec 2002, Vol. 32, No 6.

65. Norkowski J.M, *Mózgowe kryteria śmierci człowieka. Analiza zagadnienia,* „Studia Theologica Varsaviensia UKSW" 2004, Vol. 42, No 2.

66. *Old and New Testament Scriptures, Millennium Bible*, Book of Numbers (35:31), http://online.biblia.pl/.

67. Oparin A.I, *The Origin of life,* Foreign Languages Publishing House, Moscow 1955.

68. Ossowska M., *Normy moralne,* Państwowe Wydawnictwo Naukowe PWN, Warszawa 1985.

69. Padmasiri de Silva, *Etyka buddyjska*, in: P. Singer (ed.), *Przewodnik po etyce,* Książka i Wiedza, Warszawa 2002.

70. Pence G.E., *Classic Cases in Medical Ethics,* McGraw Hill 2004.

71. Petrażycki L., *Teoria państwa i prawa w związku z teorią moralności*, Vol. I–II, Warszawa 1959–1960.

72. Piechowiak M., *Filozofia praw człowieka w świetle ich międzynarodowej ochrony*, Towarzystwo Naukowe Lubelskiego Uniwersytetu Katolickiego, Lublin 1999.

73. Piechowiak M., *Filozoficzne aspekty regulacyjne prawnych dotyczących życia ludzkiego we wczesnych stadiach rozwoju. Zagadnienia podstawowe,* in: T. Smyczyński (ed.), *Wspomagana prokreacja ludzka. Zagadnienia legislacyjne.,* Poznań 1996.

74. Piechowiak M., *Knauera koncepcja wyboru moralnego,* „Roczniki Filozoficzne" 1989–1990, Vol. 37–38, J. 2.

75. Piechowiak M., *Prawo a wolność*, in: R. Hliwa, A.N. Schulz (eds.), *Prawa człowieka – prawa rodziny, 30 lat Poznańskiego Zakładu Instytutu Nauk Prawnych PAN*, Instytut Nauk Prawnych Polskiej Akademii Nauk, Poznań 2003.

76. Piechowiak M., *Rzeczywistość medycznego wspomagania prokreacji. Aspekty moralne i filozoficzno-prawne,* in: B. Czech (ed.), *Małżeństwo w prawie świeckim i prawie kanonicznym. Materiały Ogólnopolskiej Konferencji Naukowej zorganizowanej w dniach 12 i 13 maja 1994 r. w Katowicach*, Instytut Wymiaru Spraw. Ośr. Terenowy przy Sądzie Wojew. w Katowicach, Katowice 1996.

77. Platon, *Państwo z dodaniem siedmiu ksiąg, Praw,* transl. W. Witwicki, Vol. I, Warsaw 1958.

78. Platon, *Gorgiasz,* transl. W. Witwicki, Warszawa 1958.

79. Platon, *Gorgiasz,* Warszawa PWN 1958; *Protagoras,* Warszawa, PWN 1958; *Państwo,* Warszawa, PWN 1948; *Prawa*, Warszawa, PWN 1960.

80. Płachta M., *Prawo do umierania? Z problematyki regulacji autonomii jednostki w sprawach śmierci i umierania*, „Państwo i Prawo" 1997, No 3, pp. 53–55.

81. Płachta M., *The right to die or the duty to live: New legal parameters of an old dilemma*, "Comparative law review" 1999, Vol. 9–10.

82. Poklewski-Koziełł K., *The Supreme Court of Canada towards the problem of "assisted suicide,"* "Law and Medicine" 1999, Vol. 1, No 4.

83. Potter S.M., *The meaning of life,* Pasadena 1986.

84. Potts M., Byrne P.A. Nigles, R*, Beyond Brain Death. The case against brain death criteria for human death,* Dodrecht, Kulwer Academic Publishers 2001.

85. *Prawa człowieka. Wybór dokumentów międzynarodowych,* B. Gronowska, T. Jasudowicz, C. Mik (eds.), Toruń 1999.

86. Probucka D., *Etyka. Wybrane zagadnienia i kierunki,* Wydawnictwo Akademii im. Jana Długosza w Częstochowie, Częstochowa 2004.

87. Przetacznik F., *The right to life as a basic human right*, "IX Human Rights Journal" 1976, pp. 585–609.

88. Rachels J., *The end of life. Euthanasia and morality*, Oxford University Press 1986.

89. Rawls J., *A Theory of Justice*, Harvard University Press, Cambridge 1972.

90. Ridley M., *O pochodzeniu cnoty,* transl. M. Koraszewska, Rebis, Poznań 2000.

91. Du Pasquier Roger, *Unveiling Islam,* Islamic Texts Society 1992.

92. Safian M., *Eutanazja i autonomia pacjenta. Granice ochrony prawnej,* in: W. Bołoz, M. Ryś (eds.), *Między życiem a śmiercią. Uzależnienia, eutanazja, sytuacje graniczne,* Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, Warszawa 2002.

93. Sagan C., *Other worlds,* 1st edition, Produced by Jerome Agel, N.Y.: Bantam Books, Toronto 1975.

94. Sarbey B., *Definitions of death: brain death and what matters in a person*, "Journal of Law and the Biosciences," pp. 743–752., doi:10.1093/jlb/lsw054, Advance Access Publication, 20 October 2016, New Developments.

95. Schechtman M. (ed.), *The consitution of selves,* Cornell University Press*,* New York 1996.

96. Schrödinger E., *What is life?*, Cambridge University Press, Cambridge 2012.

97. Seagle W., *Weltgeschichte des Rechts*, C.H. Beck, München–Berlin 1958.

98. Seneca L.A., *Listy moralne do Lucyliusza*, transl. W. Kornatowski, PWN, Warszawa 1961.

99. Singer P*., O życiu i śmierci. Upadek etyki tradycyjnej,* trans. A. Alichniewicz, Państwowy Instytut Wydawniczy, Warszawa 1997.

100. Singer P., *Rethinking life and death. The collapse of our traditional ethics*, 2nd edition, St. Martin's Griffin, New York 1996.

101. Singer P., *O życiu i śmierci: Upadek etyki tradycyjnej*, Państwowy Instytut Wydawniczy, Warszawa 1997.

102. Singer P., *Practical Ethics*, Camridge University Press, Cambridge 1999.

103. Singer P., *Animal Liberation*, transl. A. Alichniewicz, A. Szczęsna, Państwowy Instytut Wydawniczy, Warszawa 2004.

104. Singer P., *Practical Ethics,* transl. A. Alichniewicz, Książka i Wiedza, Warszawa 2003.

105. Sójka-Zielińska K., *Historia prawa*, PWN, Warszawa 1995.

106. Suchodolski B., *Kim jest człowiek?,* Wiedza Powszechna, Warszawa 1976.

107. Sumner W.G., *Naturalne sposoby postępowania w gromadzie*, PWN, Warszawa 1995.

108. Surya Praksh Sinha, *Freeing Human Rights from Natural Rights*, „Archiv für Rechts- und Sozialphilosophie" 1984, No 3 (70).

109. Szeroczyńska M., *Eutanazja i wspomagane samobójstwo na świecie. Studium prawnoporównawcze*, Universitas, Kraków 2004.

110. Ślipko T., *Granice życia. Dylematy współczesnej bioetyki,* ATK, Warszawa 1988.

111. Świrydowicz K., Wronkowska S., Ziembiński Z., *O nieporozumieniach dotyczących norm zezwalających*, „Państwo i Prawo" 1975, J. 30.

112. Thompson P., *Evolutionary ethics: its origins and contemporary face*, "Zygon," September 1999, Vol. 34, no. 3.

113. Tirard S., Morange M., Lazcano A.,*The Definition of Life: A Brief History of an Elusive Scientific Endeavor*, "Astrobiology" 2010, Vol. 10, No 10, Published Online: 16 Dec 2010.

114. Tooley M., *Abortion and infanticide,* "Philosophy and Public Affairs" 1972, Vol. 2.

115. Vallee J., *Introduction to quantum theory,* Chicago University Press 1999. Vasak K., *For the third generation of human rights: The rights of solidarity.* Inaugural lecture to the Tenth Study Session of the International Institute of Human Rights, Strasbourg 1979.

116. Veatch R.M., *The impending collapse of the Whole-brain definition of death,* "Hastings Center Report," Jul–Aug 1993, Vol. 23, No 4.

117. Veatch R.M., *The whole brain orientated concept of death – An outmoded philosophical formulation,* "Journal of thanatology" 1975, 3:13-30.

118. Veatch R.M., *Definitions of life and death: Should there be a consistency? Defining Human Life, Medical, Legal and Ethical Implications,* Washington 1983.

119. Veatch R.M., *The conscience clause*, in: S.J. Youngner, R.M. Arnold, R. Schapiro (eds.), *The definition of death: Contemporary controversies*, John Hopkins University Press 1999.

120. Wąsek A., *Prawnokarna problematyka samobójstwa*, Wydawnictwo Prawnicze, Warszawa 1982.

121. Wolter S., *Zarys systemu prawa karnego część ogólnego*, Vol. 1, Kraków 1933.

122. *Wspólny standard do osiągnięcia. Stan urzeczywistnienia,* T. Jasudowicz (ed.), TNOiK „Dom Organizatora", Toruń 1998.

123. Zajadło J., *Godność jednostki w aktach międzynarodowej ochrony praw człowieka,* „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1989, Year LI, J. 2.

124. Zielińska E., *Powinności lekarza w przypadku braku zgody na leczenie oraz wobec pacjentów w stanie terminalnym.,* „Prawo i medycyna" 2000, Vol. 2, No 5.

125. Ziembiński Z., *Teoria prawa*, Warszawa, Poznań 1972.

126. Zmierczak M., *Prawo – ograniczenie czy warunek wolności?*, in: E. Cała-Wacinkiewicz, D. Wacinkiewicz (eds.), *Prawne aspekty wolności. Zbiór studiów*, Wydawnictwo Adam Marszałek, Toruń 2008.

Legal acts

1. *Declaration of the Rights of Peoples to Peace*, General Assembly Resolution 39/11,12 XI 1984, available at: http://www.vilp.de/Enpdf/e070.pdf.

2. Resolution of the Stockholm Conference of 14.6.1972, concerning the human environment, text available at: http://greenworld.serwus.pl/deklaracja_stockholm1.htm.

3. Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine of 4 IV 1997, http://conventions.coe.int/treaty/en/treaties/html/164.htm.

4. *Konstytucja RP*, DzU 1997, nr 78, poz. 483, art.73.

5. *Ustawa z dnia 17 marca 1921 r Konstytucja Rzeczpospolitej Polskiej*, Dz.U.RP z 1 czerwca 1921.

6. *Komunikat Ministra Zdrowia o wytycznych w sprawie kryteriów stwierdzania trwałego i nieodwracalnego ustania funkcji pnia mózgu*, DzU MZiOS 13 poz. 36.

7. *Ustawa z 18 grudnia 1998 r. o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu*, DzU z 2007 nr 63 poz. 424, z późn. zm.

8. *Ustawa o zawodach lekarza i dentysty z 5 grudnia 1996 r.*, DzU 05.226.1943.