

To Live or Not to Live: International Human Rights Law's Biases on Agency in Suicide

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A. Introduction

Medicalization has become a central feature of modernity's approach to suicide, leading to suicides being viewed as private acts that become public to the extent that medical intervention becomes necessary.¹ The advancements and contributions that medical sciences have made towards diagnosing, decriminalizing, and preventing suicide cannot be denied. However, it is possible to simultaneously critique the essentializing effect medicalization has had on understanding narratives of agency in suicides as they occur in various cultural contexts.

The scientific narrative of suicide is constructed in an objective language and then treated as being universally applicable. Ian Marsh critiques this empiricist discourse that is articulated as and accepted by scientific experts to be universal truths that are "acultural and ahistorical",² ignoring the cultural assumptions that are embedded in this understanding of suicide. This universalistic narrative pathologizing suicide tends to individualize the act while diluting social and communal constructions of suicide that frame it as an agentic act.³

The pathologizing of suicide also promotes the idea that ending one's own life, in most instances, cannot be a rational decision. This narrative stems from a modern assumption that "healthy people would not choose to take their own lives unless they were not healthy. Life thereby becomes the ultimate value, and the right to reject it is denied."⁴ The essentialization of all types of suicides prevents critical investigation on how pathologizing suicide projects cultural biases that may conflict with various societal understandings of death. Therefore, a critical study of suicide calls for an integration of the term agency in the study of social and cultural norms that influence human behavior.⁵

In this article, I do not take agency to be limited to actions that resist oppression and conform with certain ideals of human wellbeing. As Laura M Ahearn argues, "agentic acts may also involve complicity with, accommodation to, or reinforcement of status-quo[.]"⁶ Moreover, I adopt a relational approach to agency that recognizes the communal and social dimensions of agency. Catriona Mackenzie and Natalie Stoljar in their influential piece, "Introduction: Autonomy Refigured", adopt a feminist lens to challenge the idea that the notion of autonomy is

¹ Katrina Jaworski, "Suicide, Agency, and Limits of Power" in Ludek Broz & Daniel Munster, eds, *Suicide and Agency: Anthropological Perspectives on Self-Destruction, Personhood, and Power* (New York: Routledge, 2006)183 at 183.

² Ian Marsh, *Suicide: Foucault, History and Truth* (Cambridge: Cambridge University Press, 2010) at 32,39 [Marsh].

³ *Ibid* at 72-74.

⁴ Susan K. Morrissey, Margot Finn & Keith Wrightson, *Suicide and the Body Politic in Imperial Russia* (UK: Cambridge University Press, 2007) at 1 [Morrissey et al].

⁵ Laura M Ahearn, "Agency." (1999) 9:1/2 *Journal of Linguistic Anthropology* 12 at 13.

⁶ *Ibid*.

fundamentally individualistic and rationalistic.⁷ They propose that autonomy can be relational, thereby focusing on “social dimensions of selfhood.”⁸ Similarly, Jennifer Nedelsky disputes the Anglo-American tendency to equate autonomy to independence.⁹ Rather than insisting on traditional liberal individualism, respect for persons can be pursued by focusing on “relations that constitute those individuals and that make their values real for them.”¹⁰ A relational theory of law opens avenues of constructing agency without building purely individualistic ideals of autonomy.¹¹ Thereby, autonomy becomes complementary to cultural and social structures.¹²

In Part B of this article, I argue that International Human Rights Law jurisprudence on end-of-life decisions mirrors modernity’s universalistic assumptions about the agency of the person committing suicide. In Part C, I problematize these assumptions by comparing the idea of agency in International Human Rights Law pertaining to end-of-life decisions with specific narratives of agency constructed around deaths of suicide attackers. In doing so, I acknowledge that the agency exercised by the suicide attacker in their death presents a thorny issue with no straightforward explanations. The objective of this article is not to make categorical claims about suicide attackers’ agency but to evaluate scholarly analyses of how communities view their agency, for the specific purpose of critiquing assumptions in International Human Rights Law regarding the agency exercised when persons end their own lives.

B. Some assumptions undergirding International Human Rights Law’s views on end-of-life decisions

International Human Rights Law’s approach to assessing agency of those who make end-of-life decisions cannot be decoupled from the general legal approach towards suicide. Many Western countries criminalized suicide prior to it being decriminalized in late 19th and 20th centuries. It remained a crime in England and Wales until 1961 and in Ireland until 1993.¹³

One reason for its criminalization was that suicide was deemed to be against the objective normative framework set out by the State through its laws and a usurpation of the rights of the sovereign over its subjects.¹⁴ The legal condemnation of suicide disallowed the exercise of agency over one’s own death. This was an act forbidden by the State, who was the promulgator of the prevailing dominant normative framework over life and death decisions. Despite England’s decriminalization of suicide, through its colonial promulgation of criminal statutes, its own cultural values criminalizing suicide were replicated and continue to be preserved in penal codes of its

⁷ Catriona Mackenzie and Natalie Stoljar, “Introduction: Autonomy Refigured” in Catriona Mackenzie and Natalie Stoljar, eds, *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford University Press, 2000) 3 at 3.

⁸ *Ibid* at 4.

⁹ See Jennifer Nedelsky, *Law’s Relations: A Relational Theory of Self, Autonomy, and Law* (Oxford University Press: UK, 2012) at 5.

¹⁰ *Ibid* at 7.

¹¹ Andrea C. Westlund, “Rethinking Relational Autonomy” (2009) 24:4 *Hypatia* 26-49.

¹² John Christman, “Relational Autonomy, Liberal Individualism, and the Social Constitution of Selves” (2004) 117 *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 143 at 146.

¹³ Kay Redfield Jamison, *Night Falls Fast: Understanding Suicide* (Vintage: New York, 1999) at 18.

¹⁴ For an extensive critical examination of the history of suicide, see Georges Minois & Lydia G Cochrane, *History of suicide: voluntary death in Western culture* (Baltimore: Johns Hopkins University Press, 1999); and Marsh, *supra* note 2.

former colonized communities.¹⁵ The history of criminalizing suicide frames how it came to be seen as an inappropriate exercise of agency.

In contrast to the criminalization seen in the medieval period until the 19th century, the dominant approach to suicide today is defined by its medicalization.¹⁶ As early as 1821, Jean-Etienne Esquirol's article titled "suicide" was published in the *Dictionnaire des sciences médicales*, providing medical symptoms presented by the suicidal person.¹⁷ According to professionals studying mental diseases at the time, suicide was considered preventable given appropriate medical oversight, making suicidality "a pathological symptom of ill individuals, something to be identified, classified, institutionalized, and prevented."¹⁸

Today, suicidology remains relatively monolithic in pathologizing suicide as something that happens to a person and not an agentic act carried out by them.¹⁹ It is often considered by medical professionals as a behavior primarily caused by psychological issues affecting individuals, aggravated by socio-cultural factors.²⁰ The capacity to make rational decisions on the part of the person committing suicide is thereby questioned, creating a narrative that denies them agency over their own death.²¹ By considering that the person committing suicide lacks sufficient capacity to exercise agency due to a mental pathology, medical sciences gradually countered the rationale for legal sanctions attributed to this act. In this process, the person committing suicide moved from being an agentic yet deviant actor, to a pathologized victim incapable of exercising agency.

Parallel to decriminalizing suicide, the law has also investigated under which circumstances people can be allowed to exercise agency over other end-of-life decisions. Similar to the medicalized approach to suicide that led to its decriminalization, jurisprudence that examines the legality of end-of-life decisions adopts a highly individualized approach to assessing the agency of a person while also exposing certain cultural assumptions about the measure of wellbeing that make a life worth living.

Such cultural assumptions also shape international law's attitudes towards how persons exercise agency when their body undergoes pain and suffering, these conditions being those that modern

¹⁵ Mensah Adinkrah, "Anti-Suicide Laws in Nine African Countries: Criminalization, Prosecution and Penalization" (2016) 9:1 *African Journal of Criminology and Justice Studies* 729 – 792.

¹⁶ Francesca Di Marco, "Act or Disease? The Making of Modern Suicide in Early Twentieth-century Japan" (2013) 39:2 *The Journal of Japanese Studies* 325 at 325.

¹⁷ See Jean-Étienne Dominique Esquirol, "Suicide," *Dictionnaire des Sciences Médicales* 53 (Paris, 1821): 213; see also Ian Marsh, "The Uses of History in the Unmaking of Modern Suicide" (2013) 46:3 *Journal of Social History* 744–756; see also Jean Etienne Esquirol, *Des Passions considérées comme causes, symptômes et moyens curatifs de l'aliénation mentale*, thèse de médecine de Paris, 1805.

¹⁸ J C Weaver & D Wright, "Introduction" in J C Weaver & D Wright, eds, *Histories of suicide: international perspectives on self-destruction in the modern world* (University of Toronto Press; Toronto, 2009) 3 at 4.

¹⁹ Margaret Pabst Battin, *Ending Life: Ethics and the Way We Die* (Oxford: Oxford University Press: US, 2005) at 164.

²⁰ See Marsh, *supra* note 2 at 56-57.

²¹ See Dariusz Galasinski & Justyna Ziolkowska, *Discursive Constructions of the Suicidal Process* (London: Bloomsbury Academic, 2020) at 45: "the dominant suicidological discourse can be seen as removing the agency of the person involved in suicide."

society seeks to eliminate.²² Most human rights that are recognized under international law, too, attempt to minimize suffering caused to human beings either directly or indirectly. Amongst these, some rights relate more patently to the alleviation of human suffering, in the form of harm caused to the human person. Prohibition against torture is one such example and is often considered a peremptory norm.²³

The idea of universal human rights conceives people “as active cooperators in establishing and ensuring the respect which is due them”.²⁴ However, taking individuals to be active cooperators in eliminating suffering presents its own dilemma, where acceptance of their agency is confined to their willingness to conform to the universalizing normative framework that undergirds International Human Rights Law. ‘Cooperation’, therefore, translates to them being prevented from exercising their agency to waive their legally protected natural rights.²⁵ This idea is contained in treating human rights as inalienable. The preamble of the Universal Declaration of Human Rights (UDHR) recognizes “the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world[.]”²⁶ In this manner, the human rights regime expects individuals to be collaborators in its notion of what makes life worth living.

International Human Rights Law jurisprudence on the cases where carrying out assisted suicide or euthanasia do not violate protected rights also reflect modernity’s understanding of human wellbeing. Passive euthanasia, which entails the removal of life-supporting devices, is often premised on the idea that the loss of autonomy over one’s physical body equates to an undignified existence.²⁷ G. Montanari Vergalo and M. Gulino state that passive euthanasia can be justified because it is universally accepted that “advanced life-supporting procedures may preserve a biological and artificially sustained survival, (...) which is difficult to define from an ethical perspective.”²⁸ This is consistent with judicial determinations on assisted suicide that consider the essence of the European Convention on Human Rights to be “respect for human dignity and human freedom”.²⁹ Concerning active euthanasia, the European Court of Human Rights has agreed, at least in principle, that

“[t]he ability to conduct one’s life in a manner of one’s own choosing may also include the opportunity to pursue activities perceived to be of a physically or morally

²² Talal Asad, *Formations of the secular: Christianity, Islam, modernity* (Stanford: Stanford University Press, 2003) at 67; Charles Taylor, *Sources of the self: the making of the modern identity* / (Cambridge, Mass.: Harvard University Press, 1989) at 13: According to Taylor, a feature of the modern understanding of respect is the importance of avoiding suffering, which he claims to be unique among ‘higher civilizations’.

²³ E de Wet, “The Prohibition of Torture as an International Norm of jus cogens and Its Implications for National and Customary Law” (2004) 15:1 Eur J Int Law 97–121.

²⁴ Taylor, *Sources of the self*, *supra* note 22 at 12.

²⁵ *Ibid* at 11: Taylor makes reference to Locke to argue that the notion of ‘inalienability’ was intended to limit the waiving of rights through exercise of autonomy.

²⁶ *Universal Declaration of Human Rights*, UN General Assembly, 10 December 1948, 217 A (III).

²⁷ G. Montanari Vergallo & M. Gulino, “End-of-life care and assisted suicide: An update on the Italian situation from the perspective of the European Court of Human Rights” (2022) 21 *Ethics, Medicine and Public Health* at 2.

²⁸ *Ibid*.

²⁹ *Pretty v. United Kingdom*, Application no. 2346/02, Council of Europe: European Court of Human Rights, 29 April 2002 at para 65 [*Petty v. United Kingdom*].

harmful or dangerous nature for the individual concerned and even where the conduct poses a danger to health or, arguably, life[.]”³⁰

Despite this broad claim, conditions that circumscribe this freedom belie the cultural assumptions that undergird human right law’s notion of rational agency. A patient can be allowed to end their lives, if they suffer from a severe and irreversible illness, experience intolerable physical or psychological pain, or are kept alive through life support. These conditions indicate that to be allowed to die, the patient must present themselves as facing circumstances often beyond their control, and that severely questions their quality of wellbeing.³¹ Therefore, it is only when insurmountable pain makes life not worth living that agency exercised to end one’s life can be considered rational and legitimate. The agency over one’s own life or death is framed within this notion of human wellbeing.

In addition to drawing the contours of what makes life worth living, International Human Rights Law jurisprudence on end-of-life decisions also frames dying as an inherently private experience. In active euthanasia, “the right of an individual to decide how and when to end his life,” is granted if the “said individual was in a position to make up his own mind in that respect and to take the appropriate action[.]”³² This right is considered to form part of the right to respect for private life.³³ The individualized nature in which human rights assesses agency can be traced back to Enlightenment-period philosophy when suicide was seen as having the potential to be an ethical choice on the part of the person carrying it out.³⁴ During this era and beyond, some philosophers favored an individualized idea that valorizes the agency expressed in the act of committing suicide. In his essay “On Suicide”, David Hume argues that suicide should not be criminal given that it does not constitute a “transgression of our duty either to God, our neighbour, or ourselves.”³⁵ According to Hume, a person may use reason to decide that dying may cause more happiness to them rather than living and that, given the survival instinct, such a decision to end one’s life will be the result of serious deliberation.³⁶ Friedrich Nietzsche, in Zarathustra’s speech “On Free Death” considered suicide as an assertion of freedom and will.³⁷ Accordingly, suicide has been viewed to represent an individualized existential choice.³⁸ In this light, suicide becomes an agentic act where the person who commits suicide pursues an idea of life and death they themselves define based on their individual priorities. Reflecting this individualized notion of agency, the European Court of Human Rights has also acknowledged that terminally ill individuals are vulnerable to external influences which may be a cause to deny such person agency over their end-of-life decisions.³⁹ Here, not only is a life that contemplates death equated to vulnerability but external influences on a person thus situated are viewed as antithetical to agentic choice.

³⁰ *Ibid* at para 62.

³¹ Vergallo & Gulino, *supra* note 28 at 3.

³² *Haas v. Switzerland*, Application no. 31322/07, Council of Europe: European Court of Human Rights, 20 January 2011 at para 51.

³³ *Ibid*.

³⁴ Morrissey et al, *supra* note 4 at 1.

³⁵ David Hume, *On Suicide* (New York: Penguin, 2005) at 5.

³⁶ *Ibid*.

³⁷ See Friedrich Nietzsche, *Thus Spake Zarathustra*, translated by Thomas Common (New York: Dover Publications, 1999) at 46-48.

³⁸ Francesca Di Marco, “Act or Disease? The Making of Modern Suicide in Early Twentieth-century Japan” (2013) 39:2 *The Journal of Japanese Studies* 325 at 327.

³⁹ *Pretty v. the United Kingdom*, *supra* note 29 at 79: “Doubtless the condition of terminally ill individuals will vary. But many will be vulnerable and it is the vulnerability of the class which provides the rationale for the law in question.

As I discussed in this section, despite modernity's understanding of end-of-life decisions as being acultural and objective, the criteria adopted to determine when such decisions are acceptable are intrinsically intertwined with certain cultural biases on death.⁴⁰ First, life is deemed worth living when certain physical conditions are met, such as being in control of one's bodily autonomy and not undergoing unbearable physical pain. Second, life and death decisions are considered individual ones, disregarding these decisions' communal or relational dimensions. In Part C of this article, I contrast modern cultural assumptions reflected in International Human Rights Law's understanding of end-of-life decisions with suicide attackers' deaths, which are carried to defy a narrative of self-preservation and for a political purpose to engender communal narratives.

C. Problematizing modern assumption on suicide through narratives on suicide attacker deaths

Suicide attacks complicate modernity's understanding of end-of-life decisions as being acultural and objective. The narratives constructed around the deaths of suicide attackers compel a reassessment of the criteria adopted to determine when end-of-life decisions are deemed acceptable and to acknowledge that these decisions are intrinsically intertwined with certain cultural biases on death.⁴¹ As Hector N. Qirko notes, "[w]hy any given individual commits to suicidal action is influenced by many factors, including adherence to group and community norms and ideologies as well as personal disposition and circumstances, and so can never be fully known or predicted."⁴² Those who carry out suicide attacks, both the attacker and the armed group or military they are a part of, intend to spur the creation of public narratives. Some of these narratives, especially those formulated by the attackers' militaries and armed groups or by the communities to which they belong, imbue their act of suicide with political meaning, valorizing both the act and the attackers. Therefore, communities construct narratives that become particularly important to understand whether suicide attackers' deaths are considered agentic acts. In Palestine, each act of martyrdom by a suicide attacker generates new posters that commemorate the life and death of the martyr.⁴³ In Sri Lanka, the names of suicide attackers were publicized by the LTTE after their operations so they could be individually honored.⁴⁴ These narratives often glorify the death of the suicide attacker as an agentic act. The agency is not ascertained by factually delving into the attacker's intention but attributed *ex post facto* by the social symbolization of the act by the community that supported it.

The social construction of agency is not exclusive to suicide attacker narratives and is prevalent in how narratives on agency generally function. In legal adjudication, an act is deemed agentic, to some extent, based on how others view this act. For example, criminal courts would ascertain the agentic quality of an act based on how the evidence presented and the narratives constructed by legal counsel fit in with the legal norms applicable. This determination of agency remains a highly

It is primarily for States to assess the risk and the likely incidence of abuse if the general prohibition on assisted suicides were relaxed or if exceptions were to be created."

⁴⁰ Morrissey et al, *supra* note 4 at 6.

⁴¹ Morrissey et al, *supra* note 4 at 6.

⁴² Hector N. Qirko, "Altruism in Suicide Terror Organizations" (2009) 44:2 *Zygon* 289 at 292.

⁴³ Mia Bloom, *Dying to Kill: The Allure of Suicide Terror* (New York: Columbia University Press, 2007) at 30.

⁴⁴ Diego Gambetta, "Can we make sense of suicide missions?" in Diego Gambetta, ed. *Making Sense of Suicide Missions* (Oxford: Oxford University Press, 2006) at 103.

interpretive enterprise. As Thomas Osborne argues, in the case of suicide, the inherent ambiguity created by the inability of the person who committed suicide to clarify their state of mind, amplifies the need for external constructions of agency.⁴⁵ Dean Sharpe and Natalia Linos point out,

“Death, it seems, provides a new life for suicides, as their end becomes the object of others’ fascination, imagination, and need for explanation. Both their body and their history are taken over and reinterpreted by the broader culture.”⁴⁶

Similarly, despite the finality presented in the death of the suicide attacker, the public nature of these suicides tends to leave a mark over time, thereby prolonging narratives of agency surrounding this act.⁴⁷ In this context, the suicide attacker’s act becomes intertwined with a political or existential struggle of a larger community. Therefore, suicide attacks are not merely acts carried out by an individual, but acts imbued with cultural and communal meaning.

To understand how suicide attacks become a sacrifice for the collective rather than a purely private death, it is crucial to examine cultural understandings of suicide as a collective act. Ronald Niezen argues that in some cultural contexts suicide can become the source of “interpersonal connection and identity”:⁴⁸ an act of individual agency that is directed toward social belonging. Michael J Kral, exploring the idea of suicide as internalized through culture, similarly argues that suicide is a type of social logic and that the method by which people kill themselves can be highly local and deeply embedded in the cultural system of ideas.⁴⁹ The embeddedness in culture does not take away from the agency of the act. Kral insists that it is important to hold on to the idea of suicide as a conscious choice.⁵⁰ The understanding of agency in suicide as being culturally embedded does not sit comfortably with the idea in International Human Rights Law that rational exercise of agency is decoupled from external influences.

Viewing agency of the person committing suicide in a culturally contextualized manner also necessitates a reassessment of how International Human Rights Law principles require all individuals to cooperate with its project of a dignified life. Anthropologist Lisa Stevenson’s work on the psychic life of biopolitics critiques the State’s desire to make people live at the population level, in the context of the epidemic of suicides among Inuit youths. Her article evokes the possibility that those who kill themselves may be acting as agentive subjects by refusing to cooperate with a regime that purports that life is always worth living.⁵¹ She notes that

“[t]he self-evident truth of the ‘suicide apparatus,’ its unquestioned certainty, is that life is worth living, that life itself is its own value. (...) To be a good citizen means to cooperate in this regime of life.”⁵²

⁴⁵ Thomas Osborne, “‘Fascinated dispossession’: suicide and the aesthetics of freedom” (2005) 25:2 *Economy and Society* 280-294 [Osborne].

⁴⁶ Dean Sharpe & Natalia Linos “Dying to Live in Palestine: Steadfastness, Pollution and Embodied Space” in JC Weaver & D Wright, Eds, *Histories of suicide: international perspectives on self-destruction in the modern world* (Toronto: University of Toronto Press, 2009) at 205.

⁴⁷ Osborne, *supra* note 45 at 282.

⁴⁸ Sharpe & Linors, *supra* note 46 at 108.

⁴⁹ See Kral Michael J, “Suicide as social logic” (1994) 24:3 *Suicide and Life-Threatening Behavior* 245 at 248.

⁵⁰ *Ibid.*

⁵¹ See Lisa Stevenson, “The psychic life of biopolitics: Survival, cooperation, and Inuit community” (2012) 39:3 *American Ethnologist* 592-613.

⁵² Lisa Stevenson, *Life Beside Itself: Imagining Care in the Canadian Arctic* (Berkeley: University of California Press, 2014) at 10.

She underscores the importance of recognizing other cultural views that perceive life and death with more uncertainty.⁵³ Similarly, International Human Rights Law seeks to make people live by dictating the limited and exceptional circumstances needed for a person to be permitted to end their life. It would therefore consider suicide attacks as being irrational given that their deaths deviate from the assumption that a rational individual in a good physical condition would make decisions that favor self-preservation.

The narratives constructed around the deaths of Kamikaze pilots offer an example that challenges the equivalency between rational agency and preserving one's life. Hazel R Markus and Shinobu Kitayama have adopted a critical lens towards agency, taking into account how many Asian cultures tend to construe individuality as intertwined with the "fundamental relatedness" of one another.⁵⁴ The Japanese notion of agency translates to a person's efforts to harmonize their personal goals and emotions with those of the collective.⁵⁵ Hence, in the Japanese cultural context the notion of self-preservation is reconsidered in light of how the idea of self is seen as embedded with one's community. Samurai ethics shaped how the deaths of Kamikaze pilots were understood. Renouncing self-interest, even the interest in one's own survival, is fundamental to the Samurai.⁵⁶ Japanese cultural narratives present an idea of death that is not mutually exclusive with the preservation of self. In Samurai ethics, victory and defeat were temporary and circumstantial. According to the Japanese notion of courage, "life itself was thought cheap if honor and fame could be attained therewith: hence, whenever a cause presented itself which was considered dearer than life, with utmost serenity and celerity was life laid down".⁵⁷ Accordingly, "to an ambitious samurai a natural departure from life seemed a rather tame affair and a consummation not devoutly to be wished for".⁵⁸ Kamikaze pilots who died in battle were deified and their names inscribed in a national shrine.⁵⁹ Among these, the Yasukuni shrine received special status derived from the fact that the emperor himself paid tribute there to the souls of the war dead. A parting remark supposedly made by soldiers going into battle was "see you in Yasukuni shrine".⁶⁰ These cultural practices show how the Kamikaze pilots' 'selves' continue to be preserved long after their biological deaths. This is possible because their idea of the 'self' is socially embedded. This example reveals that in narratives constructed around Kamikaze suicide attackers the notion of well-being was assessed from a fundamentally different cultural point of view which adopted a more fluid understanding of life and death as well as a communal reading of what makes life worth living.

In addition to suicide attacks challenging International Human Rights Law's contours of when life is deemed not worth living, narratives surrounding these attacks also problematize the idea that end-of-life decisions are inherently private. This is most evident when considering the practice of

⁵³ *Ibid.*

⁵⁴ Hazel R Markus & Shinobu Kitayama, "Culture and the Self: Implications for Cognition, Emotion, and Motivation" (1991) 98:2 *Psychological review* 224 at 224.

⁵⁵ *Ibid* at 228.

⁵⁶ Yamamoto Tsunetomo, *Hagakure: Book of the Samurai*, 2nd ed (Tokyo: Tuttle, 2005) at 1.

⁵⁷ Inazo Nitobe, *Bushido, the Soul of Japan* (2004) at 97.

⁵⁸ *Ibid* at 131-132.

⁵⁹ Samuel P Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (US: Harvard University Press, 1956) at 129.

⁶⁰ Peter Hill, 'Kamikaze', in Diego Gambetta (Ed) *Making sense of suicide missions* (Oxford: Oxford University Press, 2005) at 15.

martyrdom. The label of martyrdom is attached to certain suicide attacks ex post facto,⁶¹ and requires that the death be witnessed by others. The Arabic term for martyr, *shahid* appears in the Quran “primarily in the sense of ‘witness’ – that is, Muslims should act as a living testimony for the rest of mankind”.⁶² Raphael Israeli connects this notion of bearing witness to martyrdom to the ancient Hebrew idea of “*Kiddush Ha-Shem*” which relates to the praising of God’s name “in the public square, in speech and in deeds, on every occasion, to the point of sacrificing one’s life in that endeavor”.⁶³ Therefore, martyrdom is performed publicly.⁶⁴ In these cases, it is not only the person who faces death who engages in the practice of bearing witness. The public nature of the death means that it is communally witnessed as well. Those who witness the death sanctify and commemorate it as heroic martyrdom.⁶⁵ It is, therefore, an act that is done in public and then given meaning by the public.

The public dimension of martyrdom makes it a political and performative act. For example, the narratives found in *Dabiq*, a magazine issued by ISIS, memorialize the deaths of martyrs depicting them as intentional deaths towards the revolutionary goals of ISIS’ political project.⁶⁶ It speaks not to self-interest but to an interest of serving a larger political project. The act is inherently beyond the individual and influenced by external factors. This characteristic of their deaths spurs the attribution of agency by armed groups and the larger public that view its performance. Performativity relates to the repetitive character of acts and their ability to generate new realities and meanings.⁶⁷ Nasser Abuharfa alludes to this performative nature of Hamas’ use of martyrdom operations and how this led to the creation of a culture of martyrdom in the Palestinian context.”⁶⁸ Due to the public nature of martyrdom, it transforms the individual sacrifice of the martyr to a cultural performance which helps the construction or the preservation of the identity of a community. Rather than diluting the agency of their act due to external influences, as International Human Rights Law suggests, the performativity of suicide attackers’ deaths sustains a project that values the agency of those who engage in martyrdom operations for a political project external to themselves.

D. Conclusion

In this article I argued that International Human Rights Law reflects the medicalized approach of adopting seemingly objective and universal assessment of end-of-life decisions. This approach is challenged by the narratives that portray suicide attackers’ deaths as agentic. A precondition to a more culturally sensitive International Human Rights Law is the acknowledgement of biases that undergird its own framework. This is more important given that international law acts as a belief system that does not encourage critical examinations of the “hidden patterns” of its “modes of

⁶¹ Friedrich Avemarie & Jan Willem van Henten, *Martyrdom and Noble Death : Selected Texts from Graeco-Roman, Jewish and Christian Antiquity* (Routledge, 2005) at 3.

⁶² Meir Hatina, *Martyrdom in Modern Islam: Piety, Power, and Politics* (Cambridge: Cambridge University Press, 2014) at 36.

⁶³ Raphael Israeli, *Dying as a Shahid: Martyrs in Islam* (Strategic Book Publishing & Rights Agency, 2019) at 6.

⁶⁴ *Ibid* at 2.

⁶⁵ *Ibid*.

⁶⁶ Erkan Toguslu “Caliphate, *Hijrah* and Martyrdom as Performative Narrative in ISIS *Dabiq* Magazine” (2019) 20:1 *Politics, Religion & Ideology* 94 at 96.

⁶⁷ *Ibid*.

⁶⁸ Nasser Abuharfa, *The Making of a Human Bomb: An Ethnography of Palestinian Resistance* (2009) at 195.

legal reasoning”.⁶⁹ One such hidden pattern that the international legal system thrives on is the liberal idea of a perceived “rational consensus” within the international community, while its truth or meaning rests neither on rationalism nor on empiricism but on “the deployment of certain transcendental validators that are unjudged and unproved rationally or empirically.”⁷⁰ By highlighting the importance of viewing end-of-life decisions through a non-essentialized and less individualized lens, this article identifies the biases that undergird International Human Rights Law’s approach to agency, and takes a step in the direction of making it more culturally responsive.

⁶⁹ Jean d’Aspremont, *International Law as a Belief System* (Oxford: Oxford University Press, 2017) at 14.

⁷⁰ *Ibid* at 5.