

Aiding and Abetting Suicide: The Current Debate in Italy

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Abstract: The article analyzes the recent ruling of the Italian Constitutional Court amending article 580 of the Italian Criminal Code, relating to aid and incitement to suicide. According to the first Assize Court of Milan, article 580, conceived in 1930, reflects the fascist culture of its author. The problem of the Constitutional Court was therefore to establish whether a democratic state can still place limits on aid for suicide and in what terms it can do so.

Keywords: Aiding suicide; abetting suicide; end of life ethics; Marco Cappato; Fabiano Antoniani; Alfredo Rocco; Italian Constitutional Court

Background: The Case of Fabiano Antoniani

The topic of assisted suicide bursts into public debate in Italy with a well-known news event, which was followed by an important ruling of the Italian Constitutional Court. The event in question concerned Fabiano Antoniani, a famous disc jockey, better known by his stage name “DJ Fabo.” On 13 June 2014, Antoniani was involved in a serious road accident, in which he lost his eyesight along with his ability to move his arms and legs, breathe, and eat and empty his bowels autonomously. In addition to these serious limitations, Antoniani experienced acute pains due to recurrent spasms and contractions, which were impossible to assuage pharmaceutically, if not by means of deep sedation.

Antoniani retained all his intellectual faculties, and for 2 years, he underwent countless rehabilitation treatments. After witnessing their failure, he decided he wanted to die. To overcome his relatives’ opposition to this choice, Antoniani embarked on a hunger and silence strike with unwavering determination.

In May 2016, with the help of his fiancée, Antoniani got in touch with the association Dignitas, which practices assisted suicide at its headquarters (in Pfaffikon, Switzerland). He sent them all the medical notes concerning his health and complete possession of his faculties. After examining these documents, the association approved the request and set a date for the lethal injection.

On 25 February 2017, Marco Cappato, a political activist from the Partito Radicale, took his car and drove Antoniani from his residence in Milan to the Swiss clinic where they were expecting him. On 27 February 2017, by activating a plunger with his mouth, Antoniani injected himself with the lethal drug provided by the Swiss doctors.

The Court Case Against Marco Cappato and the Precedent of Angelo Tedde

Upon his return to Italy, Cappato turned himself in to the police. The crime committed by Cappato fell under Article 580 of the Italian Criminal Code, according to which:

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Whoever abets someone to commit suicide, or reinforces someone's intent to commit suicide, or in any way facilitates its execution, shall be punished, if the suicide occurs, with imprisonment from five to twelve years ...

Article 580 of the Criminal Code, therefore, forbids both the abetting of suicide and the aiding of suicide, which are two very different things. Cappato's case only pertained to the aiding of suicide, certainly not its abetting. Cappato had simply offered to drive Antoniani to the Swiss clinic, and Antoniani—judging from the evidence adduced—would appear to have reached the decision to die before, and independently of, Cappato's intervention.

A similar case occurred in Italy a few years before. Angelo Tedde, a 60-year-old concierge from Chiavari was accused of aiding suicide for having driven 85-year-old Oriella Cazzanello to a Swiss clinic, where the latter had undergone the assisted suicide procedure. The incident had occurred on 30 January 2014, with the support of the Turin-based association Exit, at the "Life Circle" clinic in Biel-Benken, near Basel. Angelo Tedde and Oriella Cazzanello had met in Liguria in 2007, and, despite their age difference, they began an intimate relationship. When the woman chose to pursue assisted suicide, Tedde did his best to dissuade her, but in the face of her firm resolve, in the end, he decided to accompany her. This only became a legal case when Cazzanello's heirs read her will and discovered that Tedde was to inherit roughly EUR 600,000 from Cazzanello. According to the plaintiff, Tedde had done nothing to make the woman change her mind and, by accompanying her to Basel, had aided her in committing suicide, knowing that he would receive the inheritance. According to the defense, by contrast, Tedde was the only person who remained close to Cazzanello during the last years of her life. In the end, Tedde was acquitted, as the judges ascertained that there had been no abetting of suicide: Cazzanello had made her choice independently and the steps taken by Tedde had all been aimed to dissuade her. Moreover, according to the judge for preliminary hearings (*Giudice Udienze Preliminari*, henceforth GUP), in this case Massimo Gerace, this specific situation could not be equated with aiding suicide, since a car ride does not constitute a direct or instrumental facilitation to committing suicide, as would be the case with the administering of a lethal drug. The GUP's verdict reads:

On the subject of instigation of, or aid to, suicide (Art. 580 of the Italian Criminal Code), the only conduct which is criminally relevant is the one directly and instrumentally connected to the material implementation of suicide, the one which essentially represents a condition facilitating the moment of suicide itself, for example providing the means for suicide (offering instructions on the use of the same etc.). The conduct of those who limit themselves to accompanying the would-be suicide victim from his home in Italy to a facility for assisted suicide in Switzerland, without affecting their desire for carrying out the suicide, determining it, or encouraging it, is not included in the crime referred to in Art. 580 of the Italian Criminal Code.¹

According to the Vicenza GUP, a lift is:

facilitating the mere potentiality of implementing the self-suppressing program, without any direct connection to the would-be suicide victim, except on the motivational level, as regards carrying out the suicide. In fact, carrying out the suicide constitutes (and must be regarded as) a final, separate phase.²

The Venice Court of Appeals later accepted this interpretation of the law with verdict no. 9/2017, rendered on 10 May 2017, confirming that the law only sanctions conduct that is “necessarily related to the moment of execution of the suicide, which is to say directly and instrumentally connected to this act.”³

Given this precedent, it would have been easy for the judges of the Milan Court of Assizes to acquit Cappato, who had performed the same kind of action by offering a lift to someone planning to kill himself—an action that had been considered legally irrelevant in Tedde’s case by the courts of Vicenza and Venice. Both in Tedde’s case and in Cappato’s, the person planning to commit suicide could have changed his mind after reaching Switzerland and renounced his intentions,⁴ something which would not have been possible if he had been administered a lethal drug. No doubt, the two cases differ in certain respects, yet none of these differences makes the argument applied to Tedde inapplicable to Cappato. If anything, the first difference between the two cases would make it easier to acquit Cappato than Tedde; the former did not receive any inheritance from Antoniani and hence had nothing to gain from his death. The second difference between the two cases would also put Cappato in a better condition: Antoniani was seriously ill, without any prospect not only of improvement, but not even of effective containment of the pain that afflicted him daily, and he lived thanks to a series of medical supports (artificial feeding, partial respiratory support, etc.), while Ms. Cazzanello was not affected by any pathologies and her life did not depend on supports of any kind, which makes her suicide more difficult to accept.⁵ The third difference seems irrelevant in that Antoniani could not have traveled to Switzerland alone, whereas Ms. Cazzanello would have been capable of doing so. In this respect, Tedde’s action was fungible. This detail, overlooked in the GUP’s verdict, has been taken into account by the Venice Court of Appeals as another factor regarding Tedde’s putative justification. However, it may be noted that Cappato’s action too can be regarded as fungible; Antoniani could have called a taxi or found some other way to reach Switzerland. A taxi passenger is only required to pay the fee, not to tell the taxi driver the reason for his journey—nor does the taxi driver have any right to enquire about it.

The question that needs to be addressed, at this point, is: Why did the judges of the Milan Court of Assizes not acquit Cappato, as the Vicenza Court had done with Tedde?

A Law on Trial

History teaches us that great turning points, both on the legislative level and on that of social mores, almost invariably occur in the wake of a single fact or case which, from a given moment onward, acquires universal significance. Often, it is a court of law that lights the spark, by turning—through the help of the mass media—a court case into a trial against the very law on the basis of which the defendant is being prosecuted. It was this process that led to the passing of the law on abortion in the 1970s in Italy (see Gigliola Pierobon and Minella Carmosina cases⁶) and in France (see Marie-Claire Chevalier case⁷). We are now witnessing the same process, based on public self-incrimination and on the consequent public use of trials, in relation to assisted suicide. Another significant difference between the Tedde and Cappato cases is the fact that Tedde did not turn himself in but was rather turned in by the relatives of the woman he had

accompanied to Switzerland. Cappato, by contrast, reported himself to the police for the purpose of stirring up the public opinion. Tedde, moreover, was an ordinary citizen who found himself involved in a similar situation, whereas Cappato was a shrewd politician who had long been campaigning in favor of euthanasia and who intentionally sought out this situation.

Cappato's move finally produced the desired effects, as the Milan Court of Assizes, instead of following the precedent of the Vicenza Court's ruling on the Tedde case, chose to bring up the issue of the constitutional legitimacy of Article 580 of the Criminal Code before the Constitutional Court. Thus, it is no longer Cappato who is on trial but the law itself.

The Order of the First Court of Assizes of Milan and the Allegedly Fascist Character of Law No. 580 of the Criminal Code

In order to put a law on trial, one needs to come up with a charge against it, and the strongest charge one can find is that of Fascism. If the Italian Constitution sprung from resistance against Nazi-Fascism so much so that the expression "arco costituzionale" (literally, "constitutional arch") is used to refer to all the anti-Fascist political forces that contributed to drafting the Constitution, then the Fascist connotation of a law makes it intrinsically unconstitutional. Such has been the strategy adopted by the Milan Court of Assizes, which through its order has attacked the Criminal Code condemning aiding suicide by arguing that it is rooted in Fascist political and juridical culture. The order states:

The regulations currently in force on the consenting to, on the instigation of and on the aid to suicide, were introduced in 1930 by the Rocco code.

At the origin of the indictment provided for by Art. 580 of the Italian Criminal Code it was considered that suicide was a behaviour characterised by elements of negative value because it is contrary to the fundamental principles of society, that of the sacredness/unavailability of life in correlation to the social obligations of the individual considered prominent during the fascist regime.⁸

To strengthen this claim, the Milan Court order quotes, in a note, the explanatory memorandum of the Criminal Code, given by the President of the Ministerial Commission Appiani, which states:

There is no doubt, for reasons (and here is not the place to repeat such reasons again and again) which are connected with the prevalence of state and social concern in individual selfishness, that human life and physical integrity are goods of which one cannot freely dispose.⁹

The Relationship Between the State and the Individual in Alfredo Rocco's Mind

This reference to Fascism by the Milan Court of Assizes is striking and worthy of further investigation, given its philosophical implications. The author of the Italian Criminal Code, which came into force in 1930, is—as the Milanese court recalls—Alfredo Rocco, Mussolini's Justice Minister. Indeed, the Criminal Code is often referred to as the "Codice Rocco." As can be easily inferred, Minister Rocco had a clear idea of what the

relationship should be between the individual and the State, and he sought to make this idea concrete through the complete body of laws he promoted. Rocco believed that the Fascist revolution ought to awaken within the masses “the idea of the subordination of the individual to the Nation.”¹⁰ According to Rocco’s way of thinking,

Fascism replaces the formula of liberal, democratic and socialist doctrines – society for the individual – with a different one: the individual for society.¹¹

Within this theoretical framework, there is nothing strange in questioning individual rights. Rocco goes on to argue:

For liberalism (as for democracy and socialism), the fundamental problem for society and the State is that of the rights of the individual (...). For Fascism the pre-eminent problem is that of the rights of the State and of the duties of the individual and of social classes.¹²

Such ideas were intended to find concrete application through the legislative reforms that Rocco himself had promoted. In the volume that brings together his political texts and speeches, Rocco writes:

As Justice Minister of the Fascist Government in this eventful period, I had the opportunity to contribute to most legislative reforms, by virtue of which upon the ruins of the agnostic and apathetic liberal State – the democratic State, dominated by petty interests – the Fascist State is rising.¹³

The reform of legal codes, already authorised by Parliament and by now under way, will also contribute to lending the State the kind of concrete content it has lacked so far. In the civil code, as in the criminal code, the State will vigorously assert itself as the champion of morality and family order.¹⁴

The same conception of the relation between the State and the individual is to be found in the thought of Giovanni Gentile, one of the most authoritative Italian philosophers of the Fascist era and Mussolini’s Minister of Education. In an article entitled *Che cosa è il fascismo (What is Fascism)*, Gentile illustrates his organicist conception of the State by observing that Fascist ideology takes the Fatherland to mean “law and religion, requiring the subordination of particular interests to a general and everlasting interest.”¹⁵

The Relational Personalism that Inspired the Italian Constitution

The Italian Constitution is inspired by a principle of relational personalism that marks a clear break with the perspective of 18th-century liberal individualism, rooted in the theory of natural law. In the Italian Constitution, the most relevant and most emphasized rights are not the rights to property and liberty and all those other rights which may be described as “freedom from” excessive interference by the State and the community to which a person belongs. These kinds of rights, which acquire a primary role in the various vindications of rights and constitutions drafted in the 18th century, reflect a conception of the State and the community as something artificial. According to many modern political theorists, people associate with others out of necessity, forcing and degrading their own nature, to ensure the preservation

of their own life. Consider here—to take but two relevant examples—Thomas Hobbes' conception of the State¹⁶ and Jean Jacques Rousseau's depiction of the noble savage.¹⁷ According to the latter thinker, the truly fulfilled person is to be found in primordial times, whereas society and history, however, necessary and inevitable they may be, represent a source of corruption for mankind.

By contrast, the Italian Constitution is informed by a different kind of perspective, according to which society does not corrupt people but rather offers a crucial means for them to realize and develop their own personality. It is this premodern as well as postmodern idea of the relationship between individuals and society that places the fully realized person not at his primordial age (the noble savage), but at the end of his development of relational maturity. According to the ancient Aristotelian-Thomistic tradition, which influenced the contemporary personalism of Jacques Maritain,¹⁸ man is a *telos*, an end to be accomplished, and the community is the natural avenue for this accomplishment. This perspective was firmly endorsed by a considerable number of founding fathers of the Italian Constitution, especially within the Catholic democrats' ranks. However, this perspective was also popular among leftists, who sought to strike a balance between the principles of liberty belonging to the liberal tradition and the socialist principle of solidarity. Finally, even the liberal tradition represented within the Constituent Assembly proved receptive toward values based on solidarity.

According to this conception, people by their very nature are social animals, so that being human means "being-in-relation." As further evidence of this general perspective, it is worth quoting the agenda presented by Giuseppe Dossetti on 9 September 1946 for the meeting of the first Subcommittee:

Having examined the possible regular approaches to a declaration of the rights of man, excluding that inspired by a merely individualistic view and that inspired by a totalitarian view, which traces the attribution of the fundamental rights of individuals and communities back to the State, the Subcommittee maintains that the only approach truly in keeping with the historical requirements which the new Statute for Italy must meet, is the one which a) acknowledges the essential precedence of the human person (understood in the fullness of its values and needs, spiritual as well as material) over the State, and the fact that the latter is at the service of the former; b) acknowledges the necessary sociality of all persons, who are destined to complement and perfect one another through reciprocal economic and spiritual solidarity: primarily in various intermediate communities arranged according to a natural gradation (familial, territorial, professional, and religious communities), and secondly – wherever such communities are not sufficient in complementing and perfecting one another – through the State; c) must therefore affirm both the existence of fundamental individual rights and communal rights, prior to any State concession¹⁹.

These words of Dossetti's constitute one of the cornerstones of the work of the Constituent Assembly.

Certainly, so-called first-generation rights are also to be found in the Italian Constitution, yet in a different form. The right to liberty, for instance, is not understood as a static right, but as a dynamic reality, that must be promoted and enabled to flourish through the positive contribution of the community. Articles

3 and 4 of the Constitution refer to the removal of economic and social obstacles that may *de facto* limit liberty and to the role of the community in promoting participation in the life of the country at all levels. In other words, even rights previously understood as “freedom from” something—the rights typical of the atomistically isolated individual of liberal society—are reinterpreted in such a way as to take the form of “freedom to” something, typical of a personalistic conception of society and the State. The same applies to the right to equality guaranteed by Article 3 of the Constitution, which acquires a substantial rather than merely formal character.

Article 32²⁰ of the Constitution

A key value that helps better understand the personalistic-relational perspective that underlies the Italian Constitution is health. In Article 32 of the Constitution, health is understood not just as a “right of the individual,” according to an individualist logic, but as “a collective interest,” according to a social perspective. Again in Article 32, the Constitution also establishes that the Republic “guarantees free medical care to the indigent,” thereby emphasizing the role of the State, which promotes and guarantees what is regarded as a fundamental good, insofar as it represents a precondition for the fruition of all other goods. We are very far here from the old logic of the liberal State, which merely guarantees the freedom of individuals from excessive intrusion by the community they belong to. The logic underlying this article strongly reflects the solidaristic perspective of Catholic personalism and socialist humanism, as well as the particular form that liberalism had taken in Italy through the Partito d’Azione and Partito Liberale.

To claim that each person’s health is in everyone’s best interests places some limitation on individual freedom. For example, at the constitutional level, it means justifying the State’s capability to curtail citizens’ freedom for their own good, so as to safeguard their health. This capability is not equally justified by other constitutions. For instance, it is nowhere to be found in the American Constitution, which is far more concerned with protecting individuals from any encroachment in the sphere of their personal liberties. Based on this principle, in the United States, motorcyclist associations pressured those States which had introduced laws requiring the use of a helmet and succeeded in having such laws abrogated.²¹

Italy, on the other hand, has no difficulty accepting laws that restrict personal freedom, such as those requiring cyclists to wear a helmet or drivers to use seatbelts. These restrictions are accepted and even enjoy constitutional backing, as they are aimed at citizens’ own good and at the safeguarding of their health, which concerns not just each individual citizen but also the community in which he or she lives.

Restrictions of freedom can take a number of forms: obligations pertaining to safety in the workplace, policies discouraging unhealthy habits, etc. However, all these restrictions are intended to promote health as a “common good” or, in other words, as a “collective interest.”

The idea that each person’s health is in everyone’s best interests and that the State has the duty to promote and safeguard it, even at the cost of curtailing certain freedoms, was already present—as we have seen—in Italian culture and laws even before the founding of the Republic. The Civil Code ratified in 1942 does not grant absolute freedom to dispose of one’s body. Article 5 makes this very clear when it states:

Deeds of disposition of one's own body are forbidden when they cause a permanent diminution of physical integrity, or are otherwise against the law, public order, or public morality.

Even the Criminal Code, as we have seen, has the value of life's inalienability as one of its cornerstones. This principle, in the Code, trumps that of respect for individual self-determination. As we have seen, the Italian Criminal Code forbids the aiding or abetting of suicide and does not even allow the action of killing someone with his or her consent (Article 579): the value of life and the need to safeguard it are assigned greater weight than the need to respect the will of someone who voluntarily and freely asks to be killed.

The Italian Constitution takes up this view in support of life yet sets it in dialectical relation with other principles and values. Hence, in the first paragraph of Article 32, the Constitution discusses health not so much as an "inalienable good" but rather as a good to be safeguarded and promoted, as a collective interest. The difference is substantial because it concerns the possibility of coercion, which would be admissible according to the logic governing the Civil Code and the Criminal Code but not on the basis of the Constitution. The latter only states that it is not a matter of indifference for the community whether one of its members takes care of his or her own health, but, at the same time, the Constitution shuns the idea that anyone can be forced to undergo treatment.

The years in which the Constitution was drafted witnessed the dawning of a new world. Totalitarian regimes fell, and freedom was affirmed. The Nuremberg Trials (1946) against Nazi criminals included a section especially devoted to crimes committed by doctors and researchers in concentration camps. The trials ended not only with the sentencing of criminals but also with the ratification of the so-called *Nuremberg Code*: a document which states, as its first point, that the voluntary consent of subjects to medical experimentation and treatment is absolutely essential and that doctors cannot act without this consent.

The Italian Constituent Assembly, which carried out its work between 1946 and 1947, was fully aware of the *Nuremberg Code* and shared its new voluntaristic sensibility. And it is precisely this sensibility that is reflected by the second paragraph of Article 32, which marks a break with respect to the logic of the Civil Code and the Criminal Code, both of which are exclusively oriented toward the safeguarding of the value of life and the inalienability of the latter. The second paragraph of Article 32 proclaims the freedom to refuse to undergo treatment, without entering in contrast with the first paragraph of the same article, since the two paragraphs obey the same overall logic: society must promote health and defend the value of life, without remaining indifferent whenever this asset is jeopardized; however, it cannot do so at any cost and by any means. We cannot derogate from the dignity of the person; it cannot be subjected to coercion and violence. Indeed, the second paragraph of Article 32 reads:

No one may be obliged to undergo any health treatment except under the provisions of the law. The law may not under any circumstances violate the limits imposed by respect for the human person.

Article 32 of the Constitution thus reflects the new republican and democratic sensibility, with a significant innovation compared to previous laws.

No one can be obliged to undergo any medical treatment, *except under the provisions of the law*, without infringing upon the respect due to the human person. The laws to which this paragraph of Article 32 refers concern—as is clear from the stenographic minutes of the parliamentary proceedings—those cases in which refusal to undergo medical treatment may prove detrimental to the community as a whole. The wording of the second paragraph, therefore, discloses the possibility of resorting to coercion in a very limited number of cases, such as for instance obligatory vaccination for particularly aggressive infective diseases or obligatory involuntary psychiatric treatment for psychiatric patients who are particularly dangerous to themselves and others. In most cases, instead, coercion ought to be excluded.

Often the second paragraph of Article 32 is set in relation to Article 13 of the Constitution, which does not concern medical treatment, but the safeguarding of individual freedoms more generally. Article 13 reads:

Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law.

The Relation Between the State and the Individual in the Italian Constitution and the Decision of the Constitutional Court

Similarly to what I have suggested above, the First Court of Assizes of Milan notes that the Italian Constitution, which entered into force in 1948 (that is, 18 years after the Codice Rocco), is based on opposite principles compared to those guiding and informing Alfredo Rocco's thought:

The cardinal principle of the Constitution is individualistic; it places "man", and not the State, at the centre of social life and affirms "the inviolability of his rights" as a pre-eminent value. Although significant obligations are incumbent on the individual (obligations of political, economic and social solidarity as defined in Article 2 of the Constitution), because of the superiority of the individual in the social structure of the country, human life cannot be conceived as a function of a heteronomous objective with respect to its holder. Each individual is also guaranteed personal freedom with respect to arbitrary State interference (Article 13 of the Constitution) and from this primary right derives, for what matters for the purposes of deciding, "the power of the person to dispose of his own body" (Constitutional Court no. 471 / 1990) and that "the person cannot be forced to undergo undesired medical treatment in the absence of a rule that explicitly imposes it"²².

As regard this point, one cannot but agree with the Milan Court of Assizes. The Italian Constitution sprung from the Resistance movement, and its principles are no doubt antithetical to those on which the previous Fascist State was based. Although according to Fascism, the State is the goal and the individual the means, for the Constitution, it is the State that plays an instrumental role, for the purpose of safeguarding the rights and fulfilling the goals of the human person. However, this does not mean that the article of the Criminal Code prohibiting the aiding and abetting of suicide is a necessary consequence of the Fascist conception of the

relationship between the State and its citizens. A perfectly similar article was also to be found in the previous criminal code, conceived and ratified within the context of the liberal State that preceded Fascism (see Article 370 of the 1889 Criminal Code). Moreover, the Codice Rocco remained in force even after the fall of Fascism. Certainly, some articles have been amended or abolished, but many more have remained applicable.

For this reason, with ruling no. 207/2018, the Constitutional Court has not subscribed to the theory of the Milan Court of Assizes and has instead acknowledged that the crime of aiding or abetting suicide does not stand in contrast to constitutional principles. According to the Constitutional Court, it is necessary to introduce this kind of crime in order to safeguard the right to life of weaker and more vulnerable individuals. The Court writes:

The prohibition in question retains its own obvious reason for being also, if not above all, directed towards sick, depressed, psychologically fragile, or elderly and lonely people, who could easily be induced to leave their lives prematurely if the order allowed anyone to cooperate even only in the execution of their suicidal choice, perhaps for reasons of personal gain. The criminal legislator cannot therefore be prevented from prohibiting conduct that paves the way for suicidal choices, in the name of an abstract conception of individual autonomy which ignores the concrete conditions of hardship or abandonment in which such decisions are often conceived. On the contrary, it is the task of the Republic to put in place public policies aimed at supporting those who are in such situations of fragility, thus removing the obstacles that prevent the full development of the human person (Article 3, second paragraph of the Constitution).²³

As regard this point, I find the decision of the Constitutional Court perfectly reasonable. The Italian judicial system does not punish suicide, it only punishes those who contribute to another person's suicide. A similar case, in Italian law, is prostitution, which is not punishable in itself: only exploitation is. In both cases, lawmakers have sought to take account of the condition of fragility, vulnerability, need, and suffering of subjects who might find themselves in the situation of having to kill or prostitute themselves, by refraining from adding punishment to punishment (for suicide too could be punished, at any rate when it amounts to attempted suicide).

The law, in such cases, aims to protect individuals from decisions they can only make to their own detriment. Deeming it inappropriate to punish directly the person affected by the crime, it creates a safety net around them, by preventing others from cooperating with this person in any way.

In conclusion, Article 580 of the Criminal Code is designed to protect the right to life of weak and vulnerable people who find themselves in particularly difficult or painful circumstances. After all, those who push or help such people take their own life might sometimes be doing so to reap some benefit.

Ultimately, the logic that led Fascism to punish the aiding of suicide was profoundly different from the logic on the basis of which suicide is prohibited in the democratic State. In the former case, the law begins with the idea that an individual belongs to a community and that the person is to the State as a means is to its end. In this respect, in taking their own life, an individual commits an action that does not only affect himself but also the State of which he is an essential part. Such

actions are prohibited because the State comes before the individual and the latter has no right to deprive the former of an essential element—even if that element is themselves. A similar logic also governs the prohibition of abortion in totalitarian States, which—generally speaking—do not ban abortion out of concern for the foetus' right to life (as might be the case in a democratic State) but rather because “there is power in numbers,” that is out of concern for collective rather than individual interests.

The State Refrains from Punishing Suicide Assistance but only in Certain Specific and Well-Defined Cases

After having clarified the constitutional legitimacy of the law prohibiting the aiding and abetting of suicide, the Court stresses the fact that a case such as that of Fabiano Antoniani would have been unimaginable at time in which Article 580 of the Criminal Code was drafted. In more recent years, advances in medical science and technology have made it possible to snatch from the clutches of death many patients who remain in critical conditions. Certain patients, like Antoniani, are affected by incurable diseases, racked by unbearable physical and psychological pain, and kept alive on life support. As the Court notes, such patients already have the option of requesting an end to life support, based on Law no. 219 of 22 December 2017, even though the cessation of treatment will necessarily result in their death. Nevertheless, the Court notes that the legislation in force today does not allow physicians to directly cause the death of the patient, even if required by a patient in the conditions described above. In such cases, physicians can only withhold or withdraw treatments, but in this way, says the Court, “the patient is forced to undergo a slower process, that could correspond less to his vision of dying with dignity and cause more suffering to the people who are dear to him.” In fact, as the Court notes, renouncing technological support does not always lead to a swift and dignified death. The current Italian legislation on advanced directives, according to the Court, does not respond to this problem in a wholly satisfactory manner. What is required, in the Court's opinion, is a legislative intervention designed to solve this specific problem, by introducing the ability, in certain cases, to resort to some kind of assisted suicide. However, the law should prevent abuse in such cases by providing adequate means to verify whether the particular conditions enabling this course of action apply. Moreover, according to the Court, the law ought also to entrust the national health system with the procedure in question, in addition to guaranteeing palliative care and medical workers' opportunity for conscientious objection. For these reasons, in October 2018, the Constitutional Court granted Parliament a year to approve a law that took these indications into account. Only after Parliament failed to find a solution to the constitutional problems highlighted by the Court, the latter was forced to step in place of the legislative authorities by means of sentence 242/2019,²⁴ which incorporates the fundamental lines of the previous sentence of 2018, as reported above. The Court, with this second sentence, identifies an area of nonpunishability, in which recourse to punishment for aid in suicide would be unconstitutional, under the following conditions: (1) If the patient is suffering from an irreversible pathology; (2) If this pathology is source of physical or psychological suffering considered by the same patient absolutely intolerable; and (3) If the patient is kept alive by means of life support and, at the same time, remains capable of making free and informed decisions.

The logic of these two sentences is consistent with Article 32 of the Italian Constitution and avoids unilaterally opposing the right to life and the right to self-

determination. Aid for suicide remains illicit, but this does not mean that it should always be punished as a crime. The decision of the Court has, as a consequence, a redefinition of the crime of aid to suicide, rather than in its legalisation. Assisted suicide remains a crime, at least in principle, but the penalty prescribed could no longer be applied in certain specific cases, whereas in other, more serious cases of actual abetting, the penalty would continue to be harsh. Moreover, in such a way, cases of assisted suicide would continue to be open to juridical scrutiny and to evaluation by a judge, and this will help to better assess individual cases, safeguarding the value of life. Finally, this solution could meet the concerns of those who fear that an abolition of the crime of aiding suicide might create a “slippery slope,” disclosing a chasm the long-term consequences of which are difficult to foresee.

Notes

1. Court of Vicenza, 14 October 2015.
2. See note 1.
3. Court of Appeals of Venice, 10 May 2017.
4. Even more so because after hospitalization both patients, in compliance with Swiss law, were examined by a psychologist to verify their psychic abilities and the freedom of their choice.
5. I mean “more difficult to accept” from a human point of view, but also from a legal point of view. In fact, in the Cazzanello case, it would not be possible to establish any analogy with the cases of refusal to medical treatment regulated by Italian law (219 of 2017), as has been done by several parties in the Antoniani case.
6. In 1973 Gigliola Pierobon, a 17-year-old girl who had been left pregnant and then abandoned by a 27-year-old, was brought to trial in Padua on the charge of having violated the articles of the Italian Criminal Code pertaining to abortion (Pierobon 1974). Previously, many other girls had found themselves in similar situations and very few had been convicted. It was sufficient for a defendant to deny the crime in order for the judges to acquit her for lack of evidence. Gigliola Pierobon, however, had become acquainted with the feminist movement and this encounter led her to adopt a different attitude from that of other young women who had found themselves in the same situation. Instead of denying the charge, as her lawyers suggested she do, Gigliola confessed to the crime, claiming a right to free choice (see Pierobon G. *Processo degli angeli. Storia di un aborto*. Rome: Tattilo; 1974). The decisive case, however, was that of Minella Carmosina, charged with the crime of abortion in the court of Milan. It was in fact the investigating judge who dealt with this case to raise the question of the constitutional legitimacy of art. 546 of the Criminal Code, in particular where it provided for the punishment of those who cause the abortion of a consenting woman, without the necessity required by art. 54 of the Criminal Code (order issued on 2 October 1972). In response to the request of the court of Milan, the Constitutional Court, on February 18, 1975, declared the partial constitutional illegitimacy of art. 546 of the penal code. This ruling paved the way for the new law on voluntary termination of pregnancy approved by parliament three years later.
7. Marie-Claire Chevalier, had been brought to trial at Bobigny, together with her mother and some other women, accused of having illegally undergone an abortion after having been raped by a school friend at the age of 16. These women were defended by Gisèle Halimi, who in 1971 had signed Simone de Beauvoir’s manifesto, in which 343 French women admitted to having had illegal abortions. Again, with Simone de Beauvoir, Halimi had also founded the pro-abortion association, Choisir (To Choose). Gisèle Halimi, then, turned the trial into a platform for debate, to address the country and the public, rather than the magistrates. What was at stake was no longer the case of Marie-Claire Chevalier, but the law itself, along with the system and policies that supported it. The book discussing the trial is significantly entitled *A Law on Trial* (see Association Choisir. *Avortement: une loi en procès. L’affaire de Bobigny*. Paris: Gallimard; 1973).
8. Court of Milan, 14 February 2018.
9. Royal Commissions for the orders of lawyers and prosecutors of Rome. *Report on the preliminary draft of a new code of criminal procedure*. Rome: Soc. an. tipografica edit. Sallustiana; 1929, at 478.
10. Rocco A. *Scritti e discorsi politici, vol. III, La formazione dello Stato fascista (1925–1934)*. Milan: Giuffrè; 1938, at 772.
11. See note 8, Rocco 1938, at 1101.

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12. See note 8, Rocco 1938, at 1102–3.
13. See note 8, Rocco 1938, at 772.
14. See note 8, Rocco 1938, at 781.
15. Gentile G. *che cosa è il fascismo*. In Cavallera H, ed. *Politica e cultura*, I. Firenze: Le Lettere; 1990, at 22.
16. Hobbes T. *Leviathan*. Oxford: Oxford University Press; 2012.
17. Rousseau JJ. *Discourse on the Origin of Inequality*. Indianapolis: Hackett Publishing Co; 1992.
18. Maritain J. *Man and the State*. Washington, DC: The Catholic University of America Press; 1998.
19. Dossetti G. *Ordine del giorno. Assemblea Costituente, Prima Sottocommissione 1946*; available at https://www.camera.it/dati/constituente/lavori/I_Sottocommissione/sed003/sed003.pdf (last accessed 4 Dec 2019).
20. Italian Constitution, Article 32: “The Republic safeguards health as a fundamental right of the individual and as a collective interest, and guarantees free medical care to the indigent. No one may be obliged to undergo any health treatment except under the provisions of the law. The law may not under any circumstances violate the limits imposed by respect for the human person.”
21. The American Motorcyclist Association has affirmed motorcyclists’ right to individual freedom, leading many States to abolish the mandatory use of a helmet. What is particularly interesting, in this respect, is the case of Michigan, where the use of a helmet remains mandatory only for those motorcyclists without health insurance to cover costs in the event of an accident. The State guarantees the freedom to put one’s own health at risk, but refuses to cover the expenses this entails.
22. Court of Milan. 14 February 2018.
23. Italian Constitutional Court. 24 October 2018, no. 207.
24. Italian Constitutional Court. 25 September 2019, no. 242.