

**An ethical analysis of the role of dignity in the 'weary of life'-debate**

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**Abstract**

Dutch elderly people who are weary of life are looking for assistance to end their lives. According to the organizations *Nederlandse Vereniging voor een Vrijwillig Levenseinde* (NVVE) and *Uit Vrije Wil*, the dignity of these elderly people is under threat. Therefore arguments based on personal dignity were constructed to justify possible assistance for elderly men and women in this situation. The main question is: “What is the role of dignity in the current Dutch ‘weary of life’ debate?”. This thesis also focuses on the potential role of dignity within the Dutch ‘weary of life’-debate.

The different categorizations provided by Nordenfelt, Sulmasy, Schultziner and Beyleveld and Brownsword provide different uses and forms of the concept of dignity. The analytical framework, based on dignity as empowerment, dignity of identity and inflorescent dignity, shows the role of dignity in the arguments based on personal dignity made by the NVVE and *Uit Vrije Wil*. To conclude, dignity can justify assisting elderly people who are weary of life.

*It is difficult to define what human dignity is. It is not an organ to be discovered in our body, it is not an empirical notion, but without it we would be unable to answer the simple question: what is wrong with killing?<sup>1</sup>*

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<sup>1</sup> Adaptation of Leszek Kolakowski, "What is left of Socialism", *First things* 126 (2002), 42-46.

## 1. Introduction

In September 2013, the case of Albert Heringa stirred up the Dutch 'weary of life'-debate. His 99-year old mother, 'Moeke' had indicated multiple times that she wanted to end her life, but physicians were reluctant to assist her. In the end, Heringa assisted, documented and filmed the process and showed this documentary to the public. He was prosecuted and found guilty, but was not sentenced by the Dutch Court. Both the public prosecutor and Albert Heringa filed for an appeal, but this appeal has not yet been processed. The appeal was done with the support from the Dutch Association for a Voluntary End of Life (Nederlandse Vereniging voor een Vrijwillig Levenseinde), the NVVE. This association aims to promote "the best possible implementation of the Euthanasia Law, especially for groups that do not get help in practice, such as people with dementia, chronic psychiatric patients and elderly people who feel that their life is complete"<sup>2</sup>.

The Heringa case illustrates the opinion of Dutch physicians towards assisting elderly people who are weary of life to end their lives. The Royal Dutch Medical Association, the KNMG, does not approve of physicians assisting the elderly to end their lives when there is no medical cause for suffering. In other words, a request for ending-of-life assistance solely as an autonomous choice or on the grounds of 'free will' will not be granted. According to their reasoning, and since the 'privilege' of performing euthanasia is a physician's prerogative, the cause of suffering currently needs to have a medical origin, but can be complemented with a notion of unbearable suffering.<sup>3</sup> Since 'being weary of life' does not constitute medical grounds to receive assistance of the sort Heringa's mother would have liked, physicians are neither allowed nor willing to assist the elderly like her.

The Heringa case can be seen as the latest 'weary of life' case. Heringa, however, was not sentenced for assisting his mother in her final wish but rather, for administering assistance

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<sup>2</sup> "Over de NVVE", Frontpage of <https://nvve.nl/>, leading to <https://www.nvve.nl/over-nvve/organisatie/>. (Last checked on January 5th)

<sup>3</sup> KNMG, "Voltooid leven: de rol van artsen", October 18th 2011, <http://knmg.artsenet.nl/Nieuws/Overzicht-nieuws/Nieuwsbericht/103977/Voltooid-leven-de-rol-van-artsen.htm> (last checked on January 5th)

himself. The verdict of the court concerned the accusation that Heringa should have searched for a physician willing to assist his mother, instead of doing it himself. The court did not pronounce itself on the position of Heringa's mother, other than that there might have been physicians willing to assist her.<sup>4</sup>

In short, elderly people who are weary of life are requesting assistance to end their lives whenever they see fit, based on an argument of autonomous choice, free will and dignity. Since dignity is being used by the NVVE as their main reason for justifying assistance in weary-of-life cases in the elderly, dignity will be the focus of this thesis. The main question is then what is the role of dignity in the current Dutch 'weary of life' debate?. Also, can dignity be used to justify assistance in the ending of life of elderly people who are feeling weary of life?

To better understand the problem of elderly people who are weary of life, it is necessary to provide background on the notion of weary of life itself and on the core elements of the target-group. Why is this only now becoming an issue? And what is 'being weary of life' or 'having led a completed life'?

The second section of the present work focuses on the question of dignity. It should be noted that for this research, the scope of the concept is limited to when the elderly person is still alive. The 'diminishing' dignity that comes with age will be the focus of this research, instead of other interesting fields like dying with dignity or the request for a dignified death. Since it is difficult to find a core definition of dignity, it is necessary to understand the different views on dignity and find out how these are being used in the debate. Thus the question of what is 'weary-of-life' for the purpose of the debate is also analyzed. To answer, the different categorizations presented by Nordenfelt, Sulmasy, Schultziner and Beyleveld and Brownsword are looked at, to form a framework for understanding the concept of dignity.

In the final part of this thesis, these categorizations provide the basis for analyzing the arguments made by the NVVE and *Uit Vrije Wil*. In the end, the analysis will be expanded from

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<sup>4</sup> Uitspraak Rechtbank Gelderland, October 22th 2013, <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBGEL:2013:3976> (last checked on January 5th)

how dignity is currently used in the debate, towards the question of how dignity can be used to further the debate. Can dignity perhaps justify assisting elderly people feeling weary of life to end their lives?

The many different interpretations and definitions of dignity currently seem to muddle the debate. The hope is that this thesis clarifies what dignity is and, more importantly, its role in the conversation about assisted death in elderly individuals who are not medically eligible but are weary of life. Secondly, it seeks to provide a framework in which the current debate can be continued, instead of fencing different notions and definitions of dignity, without a common understanding of this concept.

## 2. Background

According to David Hume, "... modern medicine has eliminated a traditional way of dying and has nothing to offer in its stead."<sup>5</sup> Thanks to modern medicine, people are able to reach a higher age than they would have otherwise reached. People who feel their lives to be completed cannot turn to the medical field for an answer; physicians will not perform voluntary euthanasia without 'unbearable suffering', nor will they openly distribute deadly medication to the elderly in this situation. The need for the presence of unbearable suffering comes from the original idea of mercy-killing. Mercy-killing was previously only performed in situations where there was no possible cure for the specific illness and no hope for improvement, therefore it was often logically viewed from a solely medical perspective of a physician. However, since elderly people who are weary of life are not suffering unbearably, compared to, for instance, mercy-killing in acute military situations, these elderly individuals have no means to end their lives in a way they acknowledge to be humane. They start looking for inhumane ways, for instance by hanging or suffocation, or by searching for deadly medication without any medical guidance.

Several different parties in the Netherlands, among which the most relevant are the *Nederlandse Vereniging voor een Vrijwillig Levensinde* (The NVVE) and (the now disbanded association) *Uit Vrije Wil*<sup>6</sup>, have been trying for several years to find a solution for elderly people who are weary of life. In 2011, *Uit Vrije Wil* drafted a preliminary Dutch Euthanasia Law that included weary-of-life elderly people. They proposed that autonomous choice and respect for personal dignity should be the leading grounds on which to base lawmaking<sup>7</sup>, instead of the notion of unbearable suffering, on which the Dutch Euthanasia Law is currently rooted. The majority in the Dutch Parliament did not support the preliminary draft of this citizens' initiative, since the Euthanasia Law in its current state first needed to be evaluated. Furthermore, the

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<sup>5</sup> David Hume, *On Suicide*, (London: Penguin, 2005), 6-7.

<sup>6</sup> English Translation: The Right to Die-NL in the Netherlands.

<sup>7</sup> Eugene Sutorius, Jit Peters and Samantha Daniels, "Proeve van wet", <http://www.uitvrijewil.nl/index.php?id=1006> (last checked on January 5th)

preliminary draft needed more explanation and substantiation, for instance by explaining dignity in the 'weary of life' context.

### *Weary of Life*

During a parliamentary debate on euthanasia legislation in 2001, a completed life was defined as: a life in which “without having an unmanageable disease or ailment paired with profound suffering, from a medical point of view, the situation for these advanced aged people dictates for them that the quality of life has diminished to such an extent that they prefer death over life.”<sup>8</sup> One of the leading reports on the topic of completed life, written by the Dijkhuis Committee in 2004, defines the target-group as: “[people] suffering of the perspective of having to live in a way without any or with barely any quality of life, which leads to a persistent death wish, while the main reason for this absence or deficient quality of life is not a somatic or physical illness.”<sup>9</sup> Later on, in the same research they define suffering of a completed life as “suffering under the prospect of having to continue life at a profoundly diminished level of quality, which results in a persistent and recurring longing for death, without being able to determine a somatic or psychological reason.”<sup>10</sup> The Dijkhuis Committee found the parliamentary definition to be inadequate, since the degree of suffering and level of despair were not adequately addressed. In more recent research, the target-group was defined as: “elderly people (defined as age 60 and above) who had expressed the wish to die without being terminally ill or having a severe psychiatric disorder.”<sup>11</sup> It becomes clear that the incentive for the wish to die is not in an acute life-threatening disease or psychological factors. The only demonstrable element seems to be age, and possibly additional ailments as a result of age.

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<sup>8</sup> Parliamentary Debate, “Burgerinitiatief legalisatie stervenshulp ouderen”, March 27th 2012, <https://zoek.officielebekendmakingen.nl/h-tk-20112012-61-10.html> (last checked on January 5th).

<sup>9</sup> Dijkhuis Commissie, “Op zoek naar normen voor het handelen van artsen bij vragen om hulp bij levensbeëindiging in geval van lijden aan het leven”, Utrecht: 2004, p. 15, <http://knmg.artsennet.nl/Publicaties/KNMGpublicatie/Op-zoek-naar-normen-voor-het-handelen-van-artsen-bij-vragen-om-hulp-bij-levensbeëindiging-in-geval-van-lijden-aan-het-leven-rapport-Commissie-Dijkhuis-2004.htm> (last checked on January 5th).

<sup>10</sup> Dijkhuis Commissie, “Op zoek naar normen voor het handelen van artsen”, p.14.

<sup>11</sup> Els van Wijngaarden, Carlo Leget, Anne Goossensen, “Experiences and motivations underlying wishes to die in older people who are tired of living: a research area in its infancy”. *OMEGA--Journal of Death and Dying*, 69(2), (2014), 191-216.

The NVVE and *Uit Vrije Wil* state that ‘done with living’, ‘tired of life’ and ‘unduly suffering in life’, are terms used by people who persistently express a death wish when they are under the impression that they have lived their lives fully. By requesting assistance to end their lives based on the term completed life, elderly people are asking for more than what is currently allowed under the ‘unbearable suffering’ rule. These people decide not to wait for a natural death process, but are decisively taking steps to end their lives, with or without assistance.<sup>12</sup> Elderly people feel that their situation is not adequately addressed, since the need for a medical cause of suffering remains present before euthanasia is allowed. Their situation would already be damaging their dignity and, instead of prolonging their happy lives, they feel like they are only postponing their death. The elderly people who are weary of life, supported by the NVVE and *Uit Vrije Wil*, now claim dignity to be the ground for allowing them assistance to end their lives.

Even though the NVVE and *Uit Vrije Wil* value different elements in the definition of weary-of-life, there seem to be recurring characteristics in the different interpretations of this specific situation:

- There is no presence of a severe somatic or psychiatric illness. However, often there is the element of bodily decline due to aging leading to a loss of participation in active social life, a loss of independence and possibly a loss of personal dignity.<sup>13</sup>
- There is no possible improvement of the current situation. This is often accompanied by a feeling of hopelessness and even despair. The absence of any positive prospect seems to be present in all cases.
- The final characteristic is the loss of a social network. In most cases, aging causes the loss of friends, but it is also common that people lose a partner, or even children. As said before, physical dependence does not improve the possibility of autonomous acting, which further limits the possibilities for expanding the social network.

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<sup>12</sup> M.H.A. Peters, *Voltooid leven: waar praten we over?*, (Amsterdam: NVVE, 2011), 9

<sup>13</sup> A loss of personal dignity is what the NVVE and *Uit Vrije Wil* claim to be true, but which is being investigated.

According to the NVVE and Uit Vrije Wil, the notion of dignity should replace the current medically-founded ‘unbearable suffering’ criterion, possibly even allowing the euthanasia-procedure to be performed by individuals other than physicians.

Under current regulation, no specific article addresses requests for euthanasia or physician-assisted suicide based on a completed life. In practice, there is no solution for ending a life with assistance from others for elderly people who are ‘only’ weary of life. In all related fields - medical, political, social, and judicial- there is still no consensus on the core definitions of unbearable suffering or loss of dignity. Therefore, it is difficult to base objective guidelines and a policy on the current understanding of dignity.

At the moment opinions on the limits of the current policy seem to diverge. This difference of opinion, between the NVVE and Uit Vrije Wil on the one side, and the physicians on the other, is becoming a serious problem. The demand for assistance in dying whenever an elderly person feels his or her life to be completed, is increasing<sup>14</sup>. The emerging and growing group requesting to end their lives based on completion, the so-called baby-boomers (also known as the protest-generation) is, in contrast with the pre-war (or silent) generation, more focused on autonomy, aimed at making their own choices and on giving social criticism. The baby boom-generation seeks to establish free will, assertiveness and to stand up for one’s own interests and rights, self-determination. They want to decide for themselves how to live and die, and will not let others tell them how.<sup>15</sup> Recent polls among members of organizations for the elderly show that there is increased support for the NVVE’s initiative. Ignoring this problem means ignoring a reasonably broad-based request for help in a comparatively invisible, but large,

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<sup>14</sup> Petra de Jong, “Haalbaarheid levenseindekliniek (fase 2)”, December 2010, 4-5, <https://www.google.nl/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCEQFjAA&url=http%3A%2F%2Fvvt.captise.nl%2FDesktopModules%2FBring2mind%2FDMX%2FDownload.aspx%3FEntryId%3D1434%26PortalId%3D0%26DownloadMethod%3Dattachment&ei=feiqVJnQKYUabLtgcAG&usq=AFQjCNHTJRbp8xdd8RxYtVqIFYQwrT9NoA&sig2=6w8sS0uHWH6EP1xHns0S6g> (last checked on January 5th)

<sup>15</sup> Peters, “Voltooid leven: Waar praten we over?”, 10.

group. This seems to be a form of denial which, according to *Uit Vrije Wil*, does not take Dutch elderly men and women seriously.<sup>16</sup>

The notion of dignity has been extensively discussed in philosophy. The goal of this thesis is to provide a better understanding of the different uses of dignity present in the 'weary of life' debate. Currently, there does not seem to be a clear notion or definition of dignity upon which to base all different opinions. However, the topic has gained relevance in recent times.

Since research on the notion of dignity already exists, philosophy could -and possibly should- be able to provide assistance to find a solution for the situation of weary-of-life elderly individuals. This thesis hopes to contribute to a better understanding of dignity in the current debate. Hence, the main question under discussion is: "Can a notion of dignity justify assisting elderly people who are weary of life?" Several sub-questions follow: What is dignity and what are the different categorizations of dignity? Could arguments based on dignity justify assisted dying for elderly people who are weary of life?

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<sup>16</sup> J. Peters e.a., *Uit Vrije wil: waardig sterven op hoge leeftijd*, (Amsterdam: Boom, 2011), 30.

### 3. What is dignity?

One of the most common uses of dignity is that of the United Nations Organization (UN) in the Universal Declaration of Human Rights and related conventions: "... Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."<sup>17</sup> In this Declaration, the word dignity is used five times. Surprisingly enough, none of these five uses actually defines the concept, nor do they explain what exactly it is based upon. However, had the UN defined dignity, it is likely that fewer countries would have signed the declaration. The lack of a specific definition of dignity seems to prevent refusal or agreement with the declaration.

The central question of this chapter is: "What is dignity?" To analyze the concepts of dignity used by the NVVE and *Uit Vrije Wil* in the debate concerning providing end-of-life assistance to elderly people who are weary of life, it is important to understand how dignity is used and defined in ethics, which concepts of dignity exist and in which categories they can be placed.

It is, however, not possible to provide one clear definition of dignity. The different interpretations and uses do not allow for this. Therefore, it is necessary to look at the different uses and categorizations of dignity in ethics debates today. These different uses, categorizations, and definitions will help understand the different positions of the participants in the Dutch debate. They could even provide a solution to the current problem of elderly people who are weary of life.

This chapter looks at four different categorizations. The first is the categorization of dignity by Lennart Nordenfelt, who distinguishes four different categories: dignity as merit, dignity as moral stature, dignity of identity and dignity of *Menschenwurde*. Then, the categorization of Daniel P. Sulmasy is analyzed. He distinguishes intrinsic dignity, attributed dignity and inflorescent dignity. Further, Doron Schultziner defines two different categories: the Thick Meaning of dignity and the Thin Meaning of dignity. The fourth and final categorization under

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<sup>17</sup> United Nations, "The Universal Declaration of Human Rights", <http://www.un.org/en/documents/udhr/> (last checked on January 5th).

scrutiny is that by Beyleveld and Brownsword who distinguish between dignity as empowerment and dignity as constraint. These specific categorizations have been chosen to set up the analytical framework, since they do not only show commonalities between the different uses of dignity, but also show some clear differences, not only in the chosen categories, but also in the uses, concepts and definitions of dignity. Furthermore, these specific categorizations seem to be most applicable to the situation of elderly people feeling weary of life.

### 3.1 Dignity by Lennart Nordenfelt

Lennart Nordenfelt is best known for his theory on health, where he defines the concept of health itself in terms of the subject's ability to realize his or her "vital goals"<sup>18</sup>. In line with this theory, Nordenfelt then researched the meaning of a dignified death<sup>19</sup>, and identified four different notions of dignity: dignity as merit, dignity as moral stature, dignity of identity and the dignity of *Menschenwurde*. In summary, dignity of merit depends on social rank and formal positions. Dignity as moral stature is the result of the moral deeds of the subject. Dignity of identity is tied to the integrity of the subject's body, mind and self-image. Finally, dignity of *Menschenwurde* belongs to all human beings to the same extent and cannot be lost as long as the person exists. These categories are further elaborated below.

#### *Dignity as Merit*

Dignity as merit is used by Nordenfelt to refer to "excellence and distinction."<sup>20</sup> He further distinguishes between the formal and the informal use of dignity as merit. The former refers to the dignity of merit that comes with a persons' position in a specific context. The military hierarchy is an example for this formal use. In the military, a general holds a specific high-ranked position with its accompanying rights. A colonel holds a similar position with accompanying rights, but has a lower standing in the military hierarchy; therefore his dignity is

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<sup>18</sup> Lennart Nordenfelt, *Health, science, and ordinary language*, (Amsterdam: Rodopi, 2001).

<sup>19</sup> Lennart Nordenfelt, "The Varieties of Dignity", *Health Care Analysis* 12 (2), (2004), 69-81.

<sup>20</sup> Nordenfelt, "The Varieties of dignity", 70.

of a lesser degree. This form of dignity can come and go, by way of promotion or demotion, and therefore holds different degrees of presence.

The informal use of dignity as merit is acknowledged in cases where people have earned general merit through their deeds and achievements. This can be achieved, for instance, by athletes who have managed to set a world record and therefore earned a form of personal value. However, when this athlete would lose the world record, they could also lose this type of dignity. Also, unlike in the formal use of dignity as merit, these individuals are not able to claim specific rights based on their achievement. Nordenfelt does acknowledge that these individuals are often treated as if they had such 'rights'<sup>21</sup>.

### *Dignity as Moral Stature*

According to Nordenfelt, this type of dignity is "very much dependent upon the thoughts and deeds of the subject."<sup>22</sup> Dignity as moral stature is a value which can be earned through acting in accordance with one's convictions or acting in line with the contextual moral standards or moral law. Nordenfelt also describes this form of dignity in terms of respect. Not only the respect of others, but also self-respect.

The author sets Socrates as an example of this type of dignity. The philosopher drank poison to end his life since this was in line with his moral reasoning. Socrates therefore earned dignity as moral stature, since his (final) act was in line with his thoughts, thus earning respect, not only in the eyes of other persons, but also in self-respect. Had he refused to end his life in this manner, his deeds would not have been in line with his thoughts; therefore he would not have earned this type of dignity. Nordenfelt then refers to Szawarski who stated that to earn this type of dignity, the subjects' deeds have to be in line with the subjects' thoughts, respecting and preserving his moral identity.<sup>23</sup>

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<sup>21</sup> Nordenfelt, "The Varieties of dignity", 72.

<sup>22</sup> Nordenfelt, "The Varieties of dignity", 71.

<sup>23</sup> Nordenfelt, "The Varieties of dignity", 72.

### *Dignity of Identity*

This type of dignity, according to Nordenfelt, is grounded on the “subject’s integrity and autonomy, including his or her social relations.”<sup>24</sup> This dignity of identity is related to a person’s integrity and the identity of the person, and could be taken away by external events like aging or a disability stemming from a traffic accident. For Nordenfelt, dignity of identity: “...is the dignity that we attach to ourselves as integrated and autonomous persons; persons with a history and persons with a future with all our relationships with other human beings.”<sup>25</sup> Besides the subjective experience of dignity of identity, this form also holds objective value. It can be said that the autonomy of a person could be considered limited from a perspective different than that of the person itself.

Nordenfelt ties this type of identity specifically to the elderly who experience illnesses and other age-related ailments, since they would be experiencing social exclusion in a specific way. To explain this, he refers to disabled persons who are, in his view, almost per definition persons with restricted autonomy.<sup>26</sup> This restricted autonomy is already causing the disabled individual to inherently be socially excluded on the grounds of autonomous restrictions. For instance, if a disabled person is restricted to a wheelchair, the person is not able to enter buildings without a wheelchair ramp. Although this seems like a simple case, the same could be said for other restrictions which could cause certain groups to experience a form of social exclusion and therefore experience a diminished form of value or dignity. For the elderly, who experience disabilities related to aging, like becoming hard of hearing or having reduced vision, the same description applies. Nordenfelt furthers the argument: “Their disablement is often irreversible. The old person believes or knows that he or she will remain disabled for the rest of life. The identity is forever drastically changed.”<sup>27</sup> It could be said that the idea of a changed identity can be even stronger for elderly people than for the disabled person, if the disabled person has had the disability from birth. The change in identity from a fully autonomous person into an elderly

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<sup>24</sup> Nordenfelt, “The Varieties of dignity”, 76.

<sup>25</sup> Nordenfelt, “The Varieties of dignity”, 75.

<sup>26</sup> Nordenfelt, “The Varieties of dignity”, 76.

<sup>27</sup> Nordenfelt, “The Varieties of dignity”, 76.

individual with reduced autonomy due to age-related conditions could cause problems too difficult for the person to bear.

Specifically for elderly people, the dignity of identity can diminish even further if the person is in need of assistance from others. If specific care is needed around the clock, an elderly person could experience outside help as a burden on their own dignity. Nordenfelt states that when taking care of one self is relegated to others: “The risk of intrusion into one’s private sphere, i.e. of a violation of one’s integrity, then becomes high.”<sup>28</sup> The need for another person to assist in actions that the elderly person was previously able to perform autonomously can cause an invasion of the elderly person’s integrity.

The author also emphasizes that the loss of autonomy, and thus dignity, can differ strongly between individuals. One might find a decrease in walking distance without assistance, for instance, a strong breach of their autonomous person, whereas others would not have to feel the need for a walk. Later on it will be seen that the differences in experiencing diminished dignity of identity can be quite broad.

Contrary to dignity as merit in the formal way, there are currently no rights attached to dignity of identity. No rights are violated when a person grows older and has declining health. However, it does provide food for thought as to whether there should be rights attached to the loss of identity. This point will be further analyzed later in the present work.

### *The dignity of Menschenwurde*

Dignity of *Menschenwurde* holds a specific place in Nordenfelt’s categorization, mostly since this type of dignity cannot change as long as the person is alive. He defines this type of dignity as follows: “In short, Menschenwurde is a dignity belonging to every human being to the same degree all through his or her life. It cannot be taken away from any person and it cannot be attributed to any creature by fiat. The dignity of Menschenwurde is the ground for the specifically human rights.”<sup>29</sup> It is an equal worth in the person, independent of race, sex, time or

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<sup>28</sup> Nordenfelt, “The Varieties of dignity”, 76.

<sup>29</sup> Nordenfelt, “The Varieties of dignity”, 79.

any other possible distinguishable factor, based on the human being's consciousness and reason, unfixed position in the world, and autonomy.

Interestingly, according to Nordenfelt there is no difference in the amount of dignity of *Menschenwurde* between an elderly person and a young person. In the case of elderly people who are feeling weary of life, the dignity they may experience to be decreasing or already being diminished cannot be the dignity of *Menschenwurde*, since this type of value is independent from factors other than being human.<sup>30</sup> However, it is possible to threaten this type of dignity when other individuals do not respect this elementary form of dignity. This would not diminish the dignity of *Menschenwurde*, but does show that this type of dignity can be respected or not. Nordenfelt regards this dignity of *Menschenwurde* as the grounds for basic human rights.

In the next section, the work of Daniel Sulmasy provides insights into why *Menschenwurde* should be considered, not only present, but also relevant for any other form of dignity.

### **3.2 Dignity by Daniel Sulmasy**

Daniel Sulmasy is convinced of the idea that dignity cannot mean one thing to one person and another thing to another because, with the same concept for two different forms of content, the concept of dignity could not be used to resolve any ethical dispute. By providing an analysis of different meanings and definitions of dignity, he tries to provide a useful role of dignity for moral debate. According to Sulmasy, "dignity is fundamentally a value term. All uses of the word refer to the worth, stature or value of some entity. In ordinary usage, this entity is a human being."<sup>31</sup> For his categorizations Sulmasy presents three different categories of dignity: intrinsic dignity, attributed dignity and inflorescent dignity. The content of these three uses of dignity is further explained in the following section.

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<sup>30</sup> Also debatable, but it would be going to deep into the matter to also include speciesism.

<sup>31</sup> Daniel Sulmasy, "The varieties of human dignity: a logical and conceptual analysis", *Medicine, Health Care and Philosophy* 16 (4), (2013), 938.

### *Intrinsic dignity*

The first category he distinguishes is intrinsic dignity. According to Sulmasy: “this type of dignity means that worth, stature or value are things human beings have, simply because they are human.”<sup>32</sup> Thus, no individual elements or characteristics are considered when discussing this type of dignity. It is not a created position from which certain rights can be derived, nor a value which can be lost, diminished or returned. It is a value similar to what Nordenfelt describes when discussing *Menschenwurde*.

### *Attributed dignity*

In contrast to intrinsic dignity, attributed dignity is a created form of dignity. Sulmasy claims this to be “the worth, stature or value that human beings confer upon others by acts of attribution.”<sup>33</sup> Similar to Nordenfelt’s dignity as merit, this type of dignity is a conventional form of value. It is a worth given to people with particular skills or talents and can therefore be earned or inherited. This would also mean that there is a certain standard, and so it can be said, that certain circumstances are undignified and unworthy of living. In the case of the elderly, for instance, it could be stated that age-related afflictions could create degrading and even undignified living conditions. Attributed dignity can be earned and can be lost, and there are different levels of attributed dignity.

### *Inflorescent dignity*

The final category by Sulmasy, inflorescent dignity “refers to individuals who flourish as human beings – living lives that are consistent with and expressive of the intrinsic dignity of the human.”<sup>34</sup> The process of flowering or blossoming is referred to when an individual human being expresses human excellence. Sulmasy describes this type of dignity as coming forth from an understanding of intrinsic dignity. Inflorescent dignity is used to describe a behavior in which the individual shows behavior in line with an understanding of intrinsic dignity.

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<sup>32</sup> Sulmasy, “The varieties of human dignity”, 938.

<sup>33</sup> Sulmasy, “The varieties of human dignity”, 938.

<sup>34</sup> Sulmasy, “The varieties of human dignity”, 938.

Sulmasy specifically states that these three categories of human dignity are not mutually exclusive: "Attributed dignity, intrinsic dignity and inflorescent dignity are often at play in the same situation."<sup>35</sup> There is an overlap, but an overlap of different distinguishable concepts of dignity. To show this overlap, Sulmasy shows the function of these three different categories by using them in the debate on euthanasia.<sup>36</sup> Those who are opposed to euthanasia often argue that the practice is a violation of human dignity because all persons have equal dignity that cannot be taken away by disease or injury, or the way a person appears or is treated (intrinsic dignity). However, other commentators argue that euthanasia ought to be legalized because human beings should not be forced to accept the indignities that often accompany terminal illness (attributed dignity). Still others posit that euthanasia ought to be illegal because it is undignified for human beings to flee from a confrontation with their own limits or the reality of human finiteness(florescent dignity). In this example, it becomes clear how the three different approaches to dignity can be used for different positions within the euthanasia debate.

After this explanation of the three different concepts of dignity Sulmasy continues by proving that both attributed dignity and inflorescent dignity are based on intrinsic dignity. For this purpose he states that attributed dignity requires a certain context in which dignity can be attributed. To do so, there is the need for a 'natural kind' upon which dignity can be attributed. An example of this mechanism is the idea of an undignified life in the case of elderly individuals who are weary of life. Even though there is a difference in whether elderly people feel their lives to be dignified or not, it is necessary to acknowledge that these elderly people have dignity in the first place. Without the presence of inherent dignity, it would not be possible to distinguish dignified circumstances from undignified ones. Whatever the elderly person thinks of the circumstances he or she is in, the notion of inherent dignity has to be present before any qualification could have been given to it. In the case of inflorescent dignity, it would be hard to claim that a person is flourishing in his or her capabilities if it is unclear what those capabilities are. The characteristics of a human being, for instance the ability to reason, must already be

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<sup>35</sup> Sulmasy, "The varieties of human dignity", 938.

<sup>36</sup> Sulmasy, "The varieties of human dignity", 939.

present for an individual to excel at them. Therefore, Sulmasy states, to be able to appoint attributed dignity and inflorescent dignity to a person, an understanding of respect for intrinsic dignity must already be in place.

### 3.3 Dignity by Doron Schultziner

A third categorization of dignity can be found in the theory of Doron Schultziner. Schultziner states: "There is no one 'true' meaning of human dignity, but rather different levels of 'thickness' and 'thinness' of dignity that are culturally determined in each society."<sup>37</sup> He points specifically to the different values, cultures and therefore contents and interpretations of dignity. He shows the difficulties to define dignity with the use of dignity in the Declaration on Human Rights. According to Schultziner, "Human Rights are derived from human dignity while the latter encompasses the essential characteristics of human beings. Legal instruments do not specify what these traits are or what exactly human dignity consists of..."<sup>38</sup> This is not necessarily a negative feature however. On the contrary, since a relatively empty notion of dignity allows different parties with different understandings of dignity to agree on, for instance, international human rights. With one core definition of dignity it would be difficult to succeed, but now, all parties are able to use their own interpretation and definition of dignity. Nevertheless, this could cause dignity to become a notion with symbolic representation only, due to the lack of fixed content. The symbolic representation and lack of fixed content enable agreement on quite vague grounds, whereas, the practical implications of rights require more than this. A starting point can be that several completely different cultures, with completely different moral frameworks, all recognize human dignity as a supreme value. However, further exploration of the consequences of recognizing and valuing dignity require further research into the topic. Schultziner therefore separates dignity into two elements, the thick meaning and the thin meaning, both of which are discussed in further depth.

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<sup>37</sup> D. Schultziner, "Human Dignity - Functions and Meanings", *Global Jurist Topics* 3 (3), (2003), 1.

<sup>38</sup> D. Schultziner, "Human Dignity: Functions and Meanings", *Perspectives on Human Dignity: A Conversation*, ed. Jeff Malpas and Norelle Lickiss (Houten: Springer, 2007), 73-92.

### *The thick meaning of dignity*

The thick meaning of dignity is characterized by all the different understandings, categorizations, uses and definitions of dignity. Different cultures, different religions, different historical background, all can cause different notions of the thick meaning of dignity. Therefore, there is no objective or universal notion within the thick concept of human dignity. It could even be stated that the thick meaning of dignity is context-dependent and culturally bound and emphasizes societal morals over individual ideas of dignity. Schultziner states that: "...the thick meaning of human dignity is a particular cultural understanding of what it means to be human and have a dignified life with fellow human beings. In the thick meaning of human dignity, the emphasis is on the particular and subjective, not on the universal and objective."<sup>39</sup> In essence, the thick meaning of dignity shows the variety of ways in which human dignity can be defined and understood. There are three main components within this thick meaning of dignity, namely: Rights and Duties, Honor and the Thin meaning.

The rights and duties "are the main echelon in creating an affinity between a human's basic worth and his dignified existence."<sup>40</sup> They could be seen as the elements giving shape to the practical implications of accepting human dignity as the supreme value. As with the Declaration of Universal Human Rights, the interaction of societies with the dignity of their members requires certain rights and duties to be present. Even though there is no need for establishing one core definition of dignity, the implications of accepting this form of dignity does require certain basic needs, such as food or shelter. Yet, the exact content of these rights and duties are, again, context-dependent.

Honor could be considered the second echelon of what constitutes dignified or moral conduct. As Schultziner puts it: "Honor is a *social-appreciation* given to moral conducts, achievements and characteristics that are considered worthy by the relevant group, and this appreciation is expressed and *conditioned* by a certain *attitude* of society."<sup>41</sup> As established in previous

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<sup>39</sup> Schultziner, "Human dignity" (2007), 78.

<sup>40</sup> Schultziner, "Human dignity" (2007), 79.

<sup>41</sup> Schultziner, "Human dignity" (2007), 80.

categorizations, honor could be considered a value which can be lost or gained, depending on the act of the person. If this act is considered honorable in a specific culture, dignity can be obtained.

The final element, but perhaps the core element of the thick meaning of dignity, is the thin meaning. Schultziner explicitly states that it is not possible to define the thin element in one core definition, which makes it seemingly different from the concepts of inherent dignity or *Menschenwurde*, previously examined. He refers to the thin element as: "That what is being offended when a person is being humiliated."<sup>42</sup> Even though this thin meaning does seem to point at a form of inherent dignity, according to Schultziner, this thin meaning is not static. The thin meaning of dignity is still dependent on cultural perspective and can therefore have different content in different cultures.<sup>43</sup> However, even though Schultziner focuses on the different cultural contexts and differences in how dignity is being used and worked with, he does make a statement on the use of dignity in liberal democracies: "Especially in liberal democracies, human dignity is inseparably understood as granting all citizens equal rights without any sort of discrimination."<sup>44</sup> This will become more relevant in the analysis of the Dutch debate later on in this thesis.

### **3.4 Dignity by Beyleveld and Brownsword**

Beyleveld and Brownsword state that human dignity has a legitimate place in the bio-ethical debate, even though it is sometimes misused. They distinguish two different uses of dignity; dignity as empowerment and dignity as constraint. Where dignity as empowerment focuses on autonomy and respect for the acts of the person, dignity as constraint is focused on limiting autonomy and preventing acts that could damage a person's dignity. Both uses, however, are based on the notion of dignity as an intrinsic value.

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<sup>42</sup> Schultziner, "Human dignity" (2007), 82.

<sup>43</sup> Schultziner, "Human dignity" (2007), 88.

<sup>44</sup> Schultziner, "Human dignity" (2007), 91.

Beyleveld and Brownsword claim that when one is to be treated as having value, one would have the right to be respected as belonging to the class of human beings; that is, as one who has the distinctive capacities of being human. These distinctive capacities are the foundation of the intrinsic value of the human being, therefore granting this human being intrinsic value or dignity. According to the authors this entails that a person should not be instrumentalized, but should be seen as an end in his or herself. Beyleveld and Brownsword state that this intrinsic human dignity acts as “the source of the fundamental freedoms to which all humans are entitled.”<sup>45</sup> Elderly people who are weary of life seem to be making a claim based on dignity to have their lives ended whenever they choose. This claim could possibly be based on dignity as empowerment, with the focus on autonomous choice and individuals’ own responsibility. This will have to be further researched.

### *Dignity as Empowerment*

Beyleveld and Brownsword state that certain rights can be derived when inherent dignity is acknowledged. Thus, dignity is being used as empowerment, since it is being used to claim specific rights, to empower the autonomous choice of the individual. They define the right to be treated as one who has dignity in the following three ways:<sup>46</sup>

- A) a right to be respected as one who belongs to the class of human beings, that is, as one who has the distinctive capacities of being human;
- B) A (negative) right against unwilled interventions by others that are damaging to the circumstances or conditions that are essential if one is to flourish as a human; and
- C) A (positive) right to support and assistance to secure circumstances or conditions essential if one is to flourish as a human.

Dignity as empowerment shows the connection between inherent dignity and derived rights. When one is acknowledged as having dignity and this acknowledgement is used to demand specific rights, dignity is being used as empowerment.

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<sup>45</sup> Deryck Beyleveld, Roger Brownsword, *Human dignity in bioethics and biolaw*, (Oxford: Oxford University Press, 2001), 14.

<sup>46</sup> Beyleveld and Brownsword, “Human dignity”, 15.

### *Dignity as constraint*

Dignity as constraint does not focus on deriving rights for individuals, but relates to human dignity as a collective ideal. Dignity as constraint is not used to achieve rights, but rather to constrain these rights based on collective values. The rights and liberties individuals can derive from dignity as empowerment are restricted by the ideals of, for instance, the society in which the individual exists. This argument is often referred to when it is stated that: 'We live in a society in which ...' For example, in Dutch society it is collectively agreed upon that the sale of organs is not allowed, even though an individual could want this. As a society, it has been agreed upon that specific acts are simply not in line with collective ideals, thereby limiting individual autonomous acts.

Therefore, whenever an individual is empowered by dignity to claim specific rights, dignity as a constraint functions in the sense that the right in question has to be in line with the values of society. Therefore, not all individual preferences and choices are permitted, limiting the autonomous acts of the person based on arguments of protecting the dignity of the individual.

Beyleveld and Brownsword's idea of dignity, with its focus on practical reasoning and rational action, does fit well with the idea of elderly people wanting to control their lives and doing whatever they think is just. This form of dignity could allow these elderly people to end their lives whenever they feel that their time has come, since it would be respecting a person's autonomous choice. However, demanding the right to end one's life based on dignity, with a general policy or general rights as a consequence, should also be in line with the values of society. It could perhaps even be stated that elderly people who are weary of life should be protected from ending their lives, since this would not be respecting their dignity. The categorization of Beyleveld and Brownsword could be used to support assistance to elderly people being weary of life in the form of dignity as empowerment. When dignity as constraint is considered, however, the assistance of elderly people who are weary of life could be denied, if this assistance would damage the dignity of these individuals. These different uses of dignity are expanded upon later.

#### 4. Analytical Framework

This chapter is used to set up an analytical framework based on the four categorizations of dignity as previously discussed. Nordenfeldt distinguishes between dignity as merit, dignity as moral stature, dignity of identity and dignity of *Menschenwurde*. Sulmasy distinguishes among intrinsic dignity, attributed dignity and inflorescent dignity. Schultziner distinguishes Thick dignity, including rights and duties, honor and his second category, Thin dignity. Finally, Beyleveld and Brownsword talk about dignity as empowerment and dignity as constraint.

Elderly people who are weary of life, in the absence of an unmanageable disease or ailment, are making a claim on dignity to be helped in ending their lives. They claim to be suffering under the prospect of having to continue life at a profoundly diminished level of quality, with suffering and despair. Since their situation is also irreversible, it would be damaging to their dignity. The arguments they provide are based on physical limitations on their autonomous choice and act, a loss of independence and a loss of identity, all due to aging. In this chapter it becomes clear why these specific notions are of utmost importance, instead of, for instance, notions of honor or attributed dignity.

In essence, the presence of identity, choice and the ability to flourish are necessary requirements to respecting the dignity of the person. These elements are reflected in the dignity of identity, dignity as empowerment, and inflorescent dignity. When any of these forms of dignity is under threat –as seems to be the case with elderly people who are weary of life– their intrinsic dignity is being threatened. The issue identifies the elderly individual as having an identity as an autonomous person able to make autonomous choices and being able to flourish. Respecting these three different types of dignity could be seen as respecting the persons' dignity as a human being, acquired by the fact of being human. Now, in the case of elderly people who are feeling weary of life these three elements are under threat, and therefore their dignity as human beings is being threatened.

What is at stake in this debate is the identity of the person, the possibility of autonomous choice, and the capacity to flourish as a human being. The elderly who are weary of life

experience their abilities and capabilities being threatened by old age. Their identity is changing; their current being is different from their former being. Their autonomous choices become limited, since their environment does not allow them assistance to end their lives. Further, their ability to flourish is diminishing, because of the physical restrictions brought about by increased age. The typically human capacities of the elderly individual are being threatened and therefore his or her dignity is under threat. Dignity could therefore even serve as a justification for having the lives of elderly individuals ended, since the capacities needed for dignity are diminishing.

There is a threat to identity, due to growing older, which is irreversible and the elderly person cannot be protected from. There is a threat to the flourishing of the elderly person, also irreversible and impossible to shield from. However, what can be respected is the inherent dignity, based on autonomous choice and the ability to make choices about one's own life. The threat of the irreversible diminishing or loss of identity and the ability to flourish could provide the ground for an argument on the protection of the final element of dignity by means of respecting the autonomous choice of the weary-of-life elderly person.

Therefore, based on the three forms of dignity and referring to inherent dignity, a normative judgment could be made. Since these three forms of dignity are under threat due to aging, it could be said that inherent dignity is being threatened, since all three forms of dignity are based on the concept of inherent dignity. This could be expressed in the same way Schultziner expresses his categorization. He refers to the thin meaning as the roots of a tree, without his thin meaning, the tree would not be able to exist.<sup>47</sup> The same goes for the connection between the three types of dignity and inherent dignity. Without the notion of inherent dignity, the other three forms would not be able to exist. Therefore, these three specific forms of dignity require attention, since these fit best in the Dutch weary-of-life debate. First, however, some notes on inherent dignity still need to be clarified.

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<sup>47</sup> Schultziner, "Human dignity", 90.

### *Inherent dignity*

It is important to note that inherent dignity is still controversial. Even though certain specific human capacities can be considered the base for dignity, like autonomous choice, free will, the possibility of flourishing, there is still no common understanding about which capacity is necessary, or the most important. Thus, it is important to set boundaries on the notion of inherent dignity, to be able to incorporate it into the analysis of the Dutch debate. The core idea of inherent dignity is similar to the idea of intrinsic dignity or the dignity of *Menschenwurde*. It is the core value of a human being, without any other necessary requirements or attributes. This value is similar to all persons and is always present. Nevertheless, it can be respected or disrespected.

Elderly people who are weary of life have inherent dignity. Because of their aging, there is a change in their identity, they are limited in their autonomy and limited in their ability to flourish as human beings. Since they are experiencing their situation as problematic, they feel these age-related ailments are a threat to their being; to their dignity. Since there is no assistance for them ending their lives, and they are growing even older, this threat is becoming more and more present.

In essence, elderly people who are weary of life are currently restricted in their wish to be aided in ending their lives. The process of growing old is making the urgency of their wishes even more apparent. These elderly people argue that diminishing of capacities like autonomy, identity and the ability to flourish, are endangering their inherent dignity, since these capacities are related to their inherent dignity. Thus it can be stated that the constraints brought about by old age are best reflected in the concepts of autonomy, identity and the ability to flourish. These concepts can be related to the equivalent notions of dignity and when these notions are threatened, inherent dignity could be threatened as well. In other words, dignity as empowerment, dignity of identity and inflorescent dignity can be considered different expressions of inherent dignity.

### *Dignity as Empowerment*

Dignity as empowerment is based upon the intrinsic notion of dignity and reflects the autonomous choice and acts of the elderly individual. This type of dignity entails a specific use of dignity, namely that used to protect the autonomy and reason of the elderly individual. In short, this dignity is used to empower the elderly person in his or her decision-making. In the case of the baby-boomer generation, who are currently arguing for assistance in ending their lives whenever they want to, claiming that they should be able to decide for themselves whenever they do not want to live anymore, this concept of dignity is of utmost importance.

The so-called baby-boomers are focused on autonomy and making their own choices. Their aim is free will, assertiveness and standing up for one's own interests and rights, for self-determination. Their argument therefore seems based on dignity as empowerment, with a strong focus on an individual's own autonomous choice and individual responsibility.

### *Dignity of Identity*

Nordenfelt states that dignity of identity is attached to a person's integrity and identity as a human being. The elderly people who are weary of life are experiencing bodily decline due to aging, which leads to a loss of participation in an active social life and a loss of independence. As Nordenfelt proposes with his notion of social exclusion, this causes some difficulties for the identity of the elderly. In the case of elderly individuals who are weary of life, experiencing bodily decline and eventually becoming unable to do what they want, the integrity of the individual can come under threat. Loss of autonomy means a need for help from others. This aid, whether from caregivers or not, causes an intrusion into the private sphere of these elderly people, who were once perfectly capable of taking care of themselves. This change in their life could risk an intrusion into the persons' integrity and therefore threaten his or her dignity.

Another element of the dignity of identity refers to individual identity; in other words, personal identity. The elderly individual changes, not only in the tasks he or she has been able to perform, but in appearance as well. The identity of the elderly person is irreversibly changing. In Chapter 2 on the background of elderly people who are weary of life, it is established that the

second characteristic of being weary of life was the lack of possible improvement in their current situation. This is often accompanied by a feeling of hopelessness and despair. Moreover, the elderly person experiences bodily decline, restricting his or her autonomy and therefore is forced to accept this 'new' identity. As seen before, the 'new' identity of being restricted in autonomy, could also lead to feelings of social exclusion.

This type of dignity also entails self-respect. Growing old could mean losing self-respect, since the inability to act autonomously could become a burden for the elderly individual. It is necessary to emphasize this element, since it is often related to a feeling of humiliation or the feeling of loss of self-respect. Nordenfelt also emphasizes that this type of dignity, of a person's feeling of worth, is greatly influenced by how other people look at them.

In essence, there is the need for a specifically human identity. Even though there are differences between people with different identities, a certain standard can be discerned. It could therefore be stated that there is a certain threshold under which dignity of identity could be threatened. Whenever this seems to be the case, or whenever the elderly person believes this to be the case, this threat should be considered a threat to the identity of the person. Dignity of identity is therefore a relevant form of dignity that protects the identity of the human being, and also shows the relation to the inherent dignity of the human being.

### *Inflorescent dignity*

Sulmasy refers to inflorescent dignity as the value of a process that is conducive to human excellence. Inflorescent dignity is thus based on the notion of intrinsic dignity.<sup>48</sup> In the case of elderly people who are weary of life, this type of dignity can be specifically threatened when they experience physical restrictions. These restrictions could render an elderly individual incapable of flourishing and, with that, an inability to act how they would like to act. These physical restrictions which cause the person not to be able to flourish, could therefore be considered a threat to this type of dignity.

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<sup>48</sup> Sulmasy, "The varieties of dignity", 941.

Respecting inherent dignity is also dependent on the potential to flourish. The question arises, to which degree is it necessary to develop or flourish in capacities to be able to make a claim based on inherent dignity? Secondly, and perhaps more important in this specific case, when is this aspect under threat? It would be safe to say that when a person is not able to excel or flourish in his or her capacities, his or her inflorescent dignity is under threat.

This analytical framework will now be applied to the case of the Dutch 'weary of life' debate. In the next chapter the arguments of the debate will become clear, as well as the similarities and differences between the use of dignity in the Dutch debate and the use of dignity in the analytical framework itself.

## 5. Dignity in the Dutch 'weary of life'-debate

### 5.1 Introduction

This chapter seeks to find out the degree to which participants in the Dutch 'weary of life' debate are already referring to the possibilities of the uses of dignity as set out in the analytical framework. Secondly, the focus will be on other possible uses of dignity, to reinforce its role in the Dutch debate. The emphasis will be on the different uses of dignity promoted by the Nederlandse Vereniging voor een Vrijwillig Levenseinde (NVVE) and *Uit Vrije Wil* to justify assisting elderly people who are weary of life to end their lives. The first question that is answered in this chapter is: "Which concepts of dignity are being used by the NVVE and *Uit Vrije Wil*?" These two parties were chosen for examination since they presented the most dignity-based argumentation over the past years. It was only by mid-2014 that more research has been carried out on this specific topic.

The second question that runs throughout this chapter is: "Do the arguments based on dignity proposed by the NVVE and *Uit Vrije Wil* justify assisting elderly individuals who are weary of life to end their lives?" In section 5.2, the notions of dignity used by the NVVE and *Uit Vrije Wil* are clarified. These notions will be mostly defined by the specific characteristics of dignity described in their leaflets and in their online profiles. In section 5.3 the arguments of the NVVE and *Uit Vrije Wil* based on these notions of dignity will be clarified using the analytical framework described in the previous chapter. Finally, section 5.4 describes the notions of dignity in the arguments of the NVVE and *Uit Vrije Wil* to find on their possible justification for helping elderly people who are weary of life.

Before looking at the argumentation, it is important to emphasize that the focus of this thesis is on the dignity of elderly individuals feeling weary of life. The available argumentation of the parties arguing for this group to be helped to end their lives is not only difficult to find and limited, but is also not confined to one specific definition or use of dignity. To better understand their argumentation it is therefore imperative to go beyond only examining the argumentation according to the analytical framework presented before. It will be necessary to

examine the definitions and uses of the concept of dignity as used by the NVVE and *Uit Vrije Wil*. This wider scope should clarify the arguments used by the proponents of assistance to elderly people weary of life. In the analysis, the analytical framework will come back into play, allowing to support or devalue the argumentation of the parties under examination. Therefore, even though the NVVE and *Uit Vrije Wil* use the concept of dignity differently than ethical theory, the focus of this thesis remains on the dignity of the elderly person while they are living; not on a dignified death.

## 5.2 Dignity as used by the NVVE and *Uit Vrije Wil*

### *NVVE*

The NVVE exists to help all people in the Netherlands who would like to die in a dignified manner. They would like an optimal execution of the euthanasia law, especially for those groups that are currently not receiving any help, like people suffering from dementia, chronic psychiatric patients and elderly people who believe their lives to be completed<sup>49</sup>. The NVVE states that elderly people who are ‘weary of life’ could already be provided assistance according to the current euthanasia law. The loss of ‘personal dignity’ should be regarded as a form of suffering, therefore assistance would be allowed, but physicians are reluctant.

In one of their policy documents, the NVVE states that: “Personal dignity refers to the value someone holds for himself and his existence.”<sup>50</sup> The feeling of dignity and the feeling of being valued are personal feelings. Therefore, in their view, it is not easy to establish a common definition for the ‘loss of dignity’, as is also the case for the unbearable of suffering. Every human being experiences “the loss of his dignity in his or her own way.”<sup>51</sup> Consequently, it would not be possible to establish a common definition of what the loss of dignity comprises. Further on in the NVVE policy statement it is said that research has shown that an ‘irreversible

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<sup>49</sup> Frontpage NVVE-website, [www.nvve.nl](http://www.nvve.nl) (last checked on January 5th).

<sup>50</sup> NVVE, *Perspectieven op waardig sterven*, (Amsterdam: NVVE, 2008), 19, <http://www.palliatief.nl/Portals/31/publicaties/perspectieven-op-waardig-sterven-nvve-2008.pdf> (last checked on January 5th)

<sup>51</sup> NVVE, “Perspectieven op waardig sterven”, 19

loss of human dignity' is the decisive factor in an end-of-life request for many people.<sup>52</sup> The NVVE states that, in the current euthanasia law, the unbearable and hopelessness of the patient's suffering is decided by the physician. However, the loss of human dignity should be decided through the perspective of the patient in the final stage of his or her life. The NVVE would therefore like to introduce '*the irreversible loss of dignity as an unbearable suffering*' next to illness and disease.<sup>53</sup>

At the end of one of its leaflets, the NVVE explicitly states that there is no need to establish a definition of dignity, and justifies this as follows: "Since the notion of unbearable and hopeless suffering is not expanded upon in the euthanasia law, the NVVE chooses not to further elaborate on the notion of 'irreversible loss of personal dignity'."<sup>54</sup> Instead, they claim jurisprudence and other experts should expand upon the notion of human dignity in this specific context.

#### *Uit Vrije Wil*

Before *Uit Vrije Wil*<sup>55</sup> halted their campaign in 2013, they proposed that elderly people who were 'weary of life' could not be assisted in their requests to end their lives. The current euthanasia law does not allow physicians to end the lives of elderly people who are weary of life. Therefore, *Uit Vrije Wil* initiated a law draft. In it they proposed that the limits of the current euthanasia law should be debatable. Not only should autonomous choice be regarded as one of the main subjects of this law, but the idea of self-determination should be present as well.<sup>56</sup> The individual should be able to choose freely when his or her life was fulfilled, and he or she should also be able to act upon this choice. These two elements formed the ground for the notion of personal dignity proposed by the organization.

The *Uit Vrije Wil* initiative was posited on the notion that every human being has the right to arrange his or her own life the way he or she prefers. This freedom would also entail end of life

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<sup>52</sup> NVVE, "Perspectieven op waardig sterven", 4

<sup>53</sup> NVVE, "Perspectieven op waardig sterven", 19

<sup>54</sup> NVVE, "Perspectieven op waardig sterven", 21

<sup>55</sup> Out of Free Will

<sup>56</sup> Yvonne van Baarle, "Het Burgerinitiatief Voltooid Leven", *Uit Vrije Wil: Waardig sterven op hoge leeftijd*, (Amsterdam: Boom, 2011), 9.

decisions and, with that, all decisions concerning living and dying. Nobody has the duty to live, according to the organization. Also, there is no inherent dignity all people without exception should have.<sup>57</sup> There is only personal dignity, the presence or absence of which can only be judged by the individual. If he or she would come to the conclusion that personal dignity has been lost, that person would be justified in ending his or her life.

This Dutch initiative is pushing the notion of dignity to become the leading ground for allowing euthanasia-requests based on a completed life. They define their goal as: “wanting to allow the elderly who feel their lives to have been completed to have a dignified death, solely based on their explicit requests.”<sup>58</sup> In their law draft, they specifically qualify these elderly as individuals of 70 years or older, who are Dutch citizens or members of a member state of the European Union and have been residing in the Netherlands for the previous two years.<sup>59</sup> This means that they assist people who are ‘weary of life’ only once they reach the age of 70.

According to *Uit Vrije Wil*, “people are sometimes confronted with the loss of value they have for their lives. Physical, social or emotional tarnish, the loss of mental abilities and their own identity and the experience of meaningless existence can be summarized as the irreversible loss of personal dignity. This loss of dignity, as research has shown us, appears to be a more important reason to choose the ending of life, than for instance pain, anxiety or any other form of suffering.”<sup>60</sup>

In their perspective, surrounding requests for help concerning the ending of a life, this loss of ‘personal’ dignity is central. According to *Uit Vrije Wil*, this ‘personal’ dignity can become an adequate and useful frame of reference for assisting in the death of individuals who feel their lives to have been completed, and refers to the value someone holds for himself and his existence. The feeling of self-esteem and the feeling of being valued by others are personal

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<sup>57</sup> W.J. Eijk, “Euthanasie: Naar aanleiding van euthanasiestandpunten van KNMG en Uit Vrije Wil”, (2011) <http://www.medische-ethiek.nl/modules/news/article.php?storyid=1233> (last checked on January 5th).

<sup>58</sup> *Uit Vrije Wil*, “Burgerinitiatief Voltooid Leven”, <http://www.uitvrijewil.nu/index.php?id=1000> (last checked on January 5th).

<sup>59</sup> J. Peters, “Uit Vrije wil: waardig sterven op hoge leeftijd”, 50.

<sup>60</sup> NVVE, “Perspectieven op waardig sterven”, 4.

feelings. Therefore, according to *Uit Vrije Wil*, it is impossible and unnecessary to come to an absolutely clear determination of the definition of 'loss of dignity'. Every human being experiences the loss of personal dignity in a personal way.

In sum, the NVVE and *Uit Vrije Wil* both define dignity as personal dignity, which is defined as the value someone holds for himself and his existence. Every human being experiences the loss of dignity in his or her own way. Therefore, the personal dignity of weary-of-life elderly people should be the main issue when discussing the loss of dignity in the final stage of life. Since the feeling of dignity and the feeling of being valued are personal, it is not possible to establish one common definition of personal dignity. The irreversible loss of personal dignity does not even need further expansion according to the NVVE and *Uit Vrije Wil*, since the concept of 'unbearable suffering' is not exactly defined in current law either. The NVVE and *Uit Vrije Wil* both agree that dying with dignity is in the way elderly people who are weary of life choose for themselves, and it is not something they should do on their own, but they should be assisted in carrying out their choice.

### 5.3 Analyzing the Argumentation

The different categorizations and uses of dignity were discussed in previous chapters, followed by an analytical framework for the specific problem of elderly people weary of life who want help to end their lives. This analytical framework is based on the concept of inherent dignity and refers to the notions of dignity as empowerment, dignity of identity, and the notion of inflorescent dignity. These specific notions of dignity could provide assistance in determining whether elderly people could make an appeal to dignity for having their lives ended when they feel weary of life. So, can dignity be used as an argument to justify end-of-life assistance to elderly people feeling weary of life?

In this section, the argumentation of the NVVE and *Uit Vrije Wil* will be examined with help of the analytical framework. What is personal dignity? And does it relate to any form or use of dignity in the theoretical background? Secondly, the analytical framework will be used to find whether there are more arguments based on dignity in this debate.

#### *Personal Dignity*

In the argumentation of the NVVE and *Uit Vrije Wil*, dignity is not always referred to as the dignity of the human being when living, but often also concerns dignified death or dignified dying. When discussing the dignity of the elderly person, the NVVE and *Uit Vrije Wil* make a claim based on personal dignity. Thus, what exactly is personal dignity?

The NVVE and *Uit Vrije Wil* seem to be arguing based on dignity without explicitly defining this concept. It could be said that these parties are trying to find agreement on dignity without a concrete definition, as was also done by the UN when trying to reach an agreement on the International Human Rights Convention. However, later on the organizations argue for a specific goal, thereby adding specific elements to their notion of personal dignity. Not only do they not define their notion of dignity, even though they are trying to base their argument on it, but they also explicitly refuse to define or expand upon the idea of dignity, since 'unbearable suffering' is not further elaborated upon either.

Also, the concept of personal dignity proposed by the NVVE and *Uit Vrije Wil*, and the lack of common definition for 'loss of dignity',<sup>61</sup> seems exactly what Sulmasy has been trying to refute<sup>62</sup> by establishing his categorization. Sulmasy specifically refutes the idea that dignity can mean one thing to one person and something entirely else to another. If this were the case, dignity would not be able to resolve any ethical disputes. The NVVE and *Uit Vrije Wil* strongly adhere to a notion of personal dignity to such an extent that it is not simple to establish a common definition of 'the loss of dignity', since every person can only decide this for him or herself. This automatically denies the possibility of establishing objective guidelines on which physicians can base a policy, and establish if they should assist in ending the lives of the elderly in question. This is unfortunate, since a clear resemblance between the use of dignity of the NVVE and *Uit Vrije Wil* and some of the uses as shown in ethical theory seems to exist already.

What can be deduced from the arguments of both the NVVE and *Uit Vrije Wil* is that the presence, absence or diminution of personal dignity can only be determined by the elderly. Furthermore, personal dignity refers to the value someone holds for himself and his existence. *Uit Vrije Wil* adds that the elderly should not only be able to make the choice whenever they feel their life not be worth living anymore, but that they should also be enabled to end their life. In this manner, what personal dignity is not also becomes clear. It is solely based on autonomy as core element of the argumentation. Therefore, when examined with help of the analytical framework, the closest use of dignity would be dignity as empowerment. If the NVVE would use dignity as empowerment, an argument could be made for assistance in ending the lives of elderly people, since this would be respecting the autonomous choice of these elderly. An argument could even be made that assisting these elderly is reinforcing the elderly individual's autonomous choice and act.

It is true that an elderly person is not punishable whenever he or she chooses death over life, but the possible ways to reach this goal would be inhumane, according to the NVVE. A possible

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<sup>61</sup> NVVE, "Perspectieven op waardig sterven", 19.

<sup>62</sup> Sulmasy, "The varieties of human dignity", 938.

option, like starvation, is not seen as an option by the organization.<sup>63</sup> The NVVE could therefore use dignity as empowerment to make an argument that assistance in the final wish of these elderly people is respecting their dignity and should therefore be made available. This use of dignity as empowerment does show a type of dignity in which assistance to elderly people could be justified. This does not mean that this assistance should be legal or even available, since other factors could be playing a part as well.

Personal dignity, as established by the NVVE and *Uit Vrije Wil*, is used to empower elderly individuals to make a claim on the right to end their lives. This argument is based on dignity insofar it is based on autonomous choice and self-determination. It is, however, not the only use of dignity that is appealed to by the NVVE and *Uit Vrije Wil*.

#### *Dignity in the analytical framework*

Previously, the NVVE and *Uit Vrije Wil* described the situation of the elderly people being weary of life according to specific characteristics. When the analytical framework is used on the problem under research, other arguments can be found to consider dignity as supporting the argument set forth by the NVVE and *Uit Vrije Wil*. The recurring characteristics were:

- There is no presence of a severe somatic or psychiatric illness. However, often there is the element of bodily decline due to aging leading to a loss of participation in active social life, a loss of independence, and possibly a loss of personal dignity.
- There is no possible improvement of the current situation. This is often accompanied by a feeling of hopelessness and even despair. The absence of any positive prospect seems to be present in all cases.
- The final characteristic is the loss of a social network. In most cases, aging causes the loss of friends, but people can also lose a partner or even children. As said before, the physical dependence does not improve the possibility of autonomous acting, which limits the possibilities for further expanding the social network even more.

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<sup>63</sup> NVVE, "Perspectieven op waardig sterven", 28.

These characteristics already resemble the different uses of dignity shown in the analytical framework. These characteristics could help to buttress arguments, on dignity justifying assisting elderly people weary of life in their final request.

For instance, the elements of bodily decline without any possible improvement refer to a changing identity. The elderly individual notices he or she is, or is becoming, a different person. Even more so, these changes will continue in the near future and the effects will be irreversible. The autonomous and capable person of the past can now be expecting care and assistance around the house, possibly threatening the his or her integrity as well. As seen in the characteristics, this prospect can lead to hopelessness and despair, so much so that the elderly person only wishes for life-ending. The threat towards dignity of identity could be considered as too great to refuse the elderly person assistance in this final wish.

Even more so, the loss of a social network could lead to social exclusion. Nordenfelt specifically referred to this problem. Not being able to participate in society, due to bodily decline, together with losing the social network, due to aging, could both lead to a form of social exclusion, therefore, threatening the dignity of identity, and even more when combined with the previous argument.

The similarity with dignity of identity rests in the way that there is a subjective element changing due to old age. *Uit Vrije Wil* adds the notion of dignity as empowerment in the way that autonomous choice and self-determination are emphasized. It could even be stated that personal dignity could hold the notion of inflorescent dignity, since the circumstances could be considered to be limiting or threatening the ability of the elderly individual to flourish. The physical restrictions limit the possibility of expressing human excellence, thereby threatening the inflorescent dignity of the elderly person who is feeling weary of life.

### *Final note*

In sum, the grounding human capacities for inherent dignity, based on identity, autonomous choice and the ability to flourish, are being threatened when people grow old. In the elderly who are weary of life, these capacities are diminishing and being lost. Since this effect is irreversible and the elderly person cannot be protected from old age, dignity of identity and inflorescent dignity cannot be respected or protected. Inherent dignity, or dignity as empowerment, however, can be respected and possibly protected. This is based on the autonomous choice of the elderly person who is weary of life.

This does seem to be in line with the goal of the NVVE and *Uit Vrije Wil* which have arguments based on dignity and respect for the dignity of the elderly people feeling weary of life. These arguments can justify respecting the autonomous choice of the individual. Even though the NVVE and *Uit Vrije Wil* emphasize the notion of personal dignity and even reject the idea of inherent dignity, different uses of dignity could reinforce their point of view and argumentation. It could therefore be argued that the NVVE and *Uit Vrije Wil* should expand their idea of personal dignity to other forms of dignity as proposed in the analytical framework. The threat towards the dignity of identity, inflorescent dignity and dignity as empowerment could justify ending the lives of elderly people feeling weary of life. This could be seen as the final respect to the dignity of the elderly person.

## 6. Conclusion

After a short introduction to the problem of elderly individuals being weary of life, the background of the problem was expanded upon. The protest-generation is focused on autonomy and aimed at making own choices. Now these elderly people are becoming older and feel their identity, autonomy and possibility to flourish being threatened. They thus make the claim that growing old is diminishing their dignity. This led to the main question of this thesis, namely “What is the role of dignity in the Dutch ‘weary of life’ debate?” Even further, what could be the role of dignity in this debate?

Philosophy provides several different categorizations within which dignity can be defined and used. After having looked at the categorizations of Nordenfelt, Sulmasy, Schultziner and Beyleveld and Brownsword, an analytical framework was set up. In it, the notion of inherent dignity, dignity as empowerment, dignity of identity and the inflorescent dignity proved to be of most value when trying to find a solution for the problem. These forms of dignity were therefore used to set up the analytical framework.

After analyzing the notion of personal dignity of the NVVE and *Uit Vrije Wil*, it became clear that there was a need for a more coherent notion of dignity than these parties proposed. The analytical framework provided these more coherent uses of dignity within the Dutch ‘weary of life’ debate. In the end, it appears that dignity can be used to justify assistance to elderly people who are feeling weary of life, in line with the goals of the NVVE and *Uit Vrije Wil*. It could be stated that inherent dignity should in the end be respected, since it is represented in the form of dignity of identity, inflorescent dignity, and dignity as empowerment. Therefore, there does seem to be a role for dignity within the Dutch ‘weary of life’ debate, justifying assistance to elderly people feeling weary of life.

It should be noted however, that this thesis primarily focused on the role dignity currently plays in the Dutch ‘weary of life’ debate. Secondly, since there only seems to be a notion of personal dignity put forward by the proponent parties, the concept was expanded upon to include the

question whether dignity could play a role in justifying assistance in the ending of the life of elderly people who are weary of life.

It seems justified to conclude that dignity can indeed be used to justify assistance to elderly people feeling weary of life. It cannot be concluded from this thesis that this assistance should become a right or a general law, or even that this assistance is completely acceptable. Even though it is possible to justify assistance through the use of dignity, this does not end the debate on the topic, since other complex topics are involved as well. This specific topic, elderly people being weary of life, should definitely be expanded upon further, and it should be clear that this topic deserves attention.

Hopefully, this thesis has provided an insight into the difficulties surrounding the concept of dignity in the Dutch 'weary of life' debate. Secondly, it is also a hope that the possible role of dignity in this specific debate has become clearer, thus justifying the possible assistance to elderly people weary of life based on a threat of their inherent dignity.

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