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Consider two scenarios:

1. In **scenario 1**, a woman called Diane has an incurable neuro-degenerative disease, and she fears that she will die in undignified conditions as a result of the progress of the disease. She wishes to commit suicide to put an end to her suffering and to spare to her loved ones the sight of her gradual degenerescence. Unable to commit suicide on her own, she wishes to be helped by her husband in putting an end to her life. The law prohibits this, however: in order to protect vulnerable persons from the risk of abuse, aid to committing suicide is defined as a criminal offence. Diane denounces this as unjustified State paternalism. She does not want to be encumbered by such "protection". Invoking her right to personal autonomy and to self-determination, she claims that she has a right to "waive" the right to life, or the right to bodily integrity.
2. In **scenario 2**, Stuart, a drug addict, commits suicide while in jail. His family members then allege that the prison authorities should have done more to prevent him from putting an end to his life. They submit that, if Stuart had been provided proper medical assistance, he would not have committed suicide: indeed, the risk should have been known to the authorities. The State argues, however, that the suicide took the prison authorities by surprise: Stuart did not call upon a medical doctor, and thus he "waived" his right to receive drugs to alleviate his pain; the State cannot be accused of not helping people who deliberately choose not to seek help.

(Scenario 1 is illustrated by the case of *Pretty v. the United Kingdom* (/c4x/LouvainX/Louv2.01x/asset/_Materials__Duty_to_Protect_and_waivers_-_Pretty_Final_.pdf), and Scenario 2 by the case of *Younger v. the United Kingdom* (/c4x/LouvainX/Louv2.01x/asset/_Materials__Duty_to_Protect_and_waivers_-_Younger_Final_.pdf), both decided by the European Court of Human Rights, respectively in 2002 and 2003. In order to gain a deeper understanding of the issues, you may wish to read excerpts from these cases).

As you can see from these examples, essentially the same argument (that the individual should be allowed not to be encumbered by the protection provided by the State) is invoked alternatively by the individual right-holder and by the State:

1. The *individual right-holder* may seek to invoke, against the paternalistic pretense of the State, a right to sacrifice her rights against an advantage to which she attaches greater value, for instance a well-paid employment. She may also consider that waiving her right is part of her individual freedom, that the State ought to respect: by seeking to restrict that freedom, she may add, the State is in fact imposing on all the members of society its own conception of the 'good life', in violation of the requirement of moral pluralism. This is, indeed, the core of the anti-paternalistic argument.
2. As to the *State*, it may justify its failure to protect the enjoyment of a human right by the freedom exercised by the individual right-holder, and it may be tempted to invoke the existence of a right of the individual not to have imposed an unwanted paternalism as a reason for the public authorities to remain passive in the face of certain risks facing the individual. (For instance, in the case of *Younger* illustrating scenario 2 above, the United Kingdom could have argued that permanently monitoring the prisoners' behavior by close-circuit TV would have led to disproportionate restrictions

Both arguments invoke the idea that the individual should be free to make certain choices, even though they may not be in her best interests. But in Scenario 1, the individual right-holder will be denouncing the State for wanting to protect too much; in Scenario 2, the State will be seeking to justify why it has been protecting so little.

Note that the two arguments are related, to a certain extent: where the individual is recognized a "right to waiver" (for example, a right to commit suicide, in the name of individual self-determination), it follows that the State will be justified in explaining its failure to provide protection by the requirement to respect that individual right. But a State may be excused from not protecting the individual even if the conduct of that individual, by which he or she has waived his/her right, is not protected as a right: as we have seen, the duty to protect is not infinite, and the State may argue that it has done all it could reasonably be expected to do even if, ultimately, it fails to prevent the violation.

But can the State leave the individual at the mercy of market forces? What if an individual were induced to renounce certain rights against the promise of a financial reward, allowing actors with the highest purchasing power to bribe other actors into waiving their rights? Would this be acceptable? Consider the next case.

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