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Is there a right to die? Assisted suicide, assisted dying and changing the law.

‘To have a right to do a thing is not at all the same as to be right in doing it’. These words from G.K. Chesterton’s *A Short History of England* are a salutary reminder to those who claim certain rights, and for some time now a new right has been proposed: the right to die. Even though a number of bills advocating for a change in the law to allow for assisted dying or a right to die have failed so far in parliament, proponents of assisted dying are continuing their campaign. Indeed, some campaigners argue that the recent pandemic has given a real impetus to change the law since more and more people have been forced to think about their death and the choices they would like to make.¹ Two prominent organisations promoting a right to die are My Death My Decision (MDMD), formerly The Society for Old Age Rational Suicide, and Dignity in Dying, formerly known as the Voluntary Euthanasia Society. While Dignity in Dying focuses on the right to die for people who are terminally ill, My Death My Decision seeks the right to die by the choice of medically assisted death even if they are not dying.²

Chesterton’s play on words indicates an interesting problem – that of the use of language. Those calling for a change in the law choose to speak about assisted dying. Specifically, Dignity in Dying say that they are not campaigning for assisted suicide since, they argue, the people who will be eligible under their proposed legislation are terminally ill.³ However, under the proposed legislation it is expected that the person would take the life-ending medication themselves, and suicide is when a person deliberately and voluntarily takes their own life. My Death My Decision argues for assisted dying because it seeks to include those people who are unable to do the final act themselves. It campaigns not only for assisted suicide but also for euthanasia. Another thing to notice is that each organisation has adopted appealing language in their names – ‘dignity’, ‘my decision’. Who could argue against dignity and choice, or against rights?

Perhaps more significantly Chesterton’s words point to some real difficulties with rights language itself, difficulties that Catholic social teaching has often highlighted. Catholic social teaching reminds us that rights sit alongside duties and responsibilities as well as concern for the common good. Moreover, as the Second Vatican Council’s declaration *Dignitatis Humanae* explains, the identification of human rights is an important way of responding to and recognising the demands of human dignity, dignity that belongs to every human being. This means that human rights do not have their source in the will or choice of the individual or of governments or of states. Rather, the source of rights is human dignity and of course the ultimate source of human rights and human dignity is found in God the Creator who created human beings in His own image. And human dignity remains no matter the situation or condition of the person, and no matter if they think that their life is worthless.

Clearly, people who are not believers in God can also understand the concept of human dignity, as shown by the Universal Declaration of Human Rights which states in the preamble that the ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’. According to Article 1 of the Declaration ‘all human beings are born free and equal in dignity and rights.’ However, one real problem is when dignity is understood purely as an aspect of autonomy, and my ‘right to choose’ becomes the essential expression of my human dignity. It seems to be the case that Dignity in Dying and My Death My Decision have conflated dignity with choice in precisely this way.

¹ <https://www.dignityindying.org.uk/news/health-secretary-evidence-assisted-dying-lockdown/>

² <https://www.mydeath-mydecision.org.uk/>

³ <https://www.dignityindying.org.uk/assisted-dying/not-campaigning-for/>

In English law human rights can be found specifically in the Human Rights Act 1998. There, among other rights we can find the right to life (Article 2), the right not to suffer torture, inhuman or degrading treatment (Article 3), the right to respect for private and family life (Article 8), and the right to freedom of thought, conscience and religion (Article 9). Rights language, and specifically the rights in Article 2,3,8 and 9, have been vigorously employed in the push to legislate in favour of assisted suicide or assisted dying. If there is a right to life, why not a right to die? Is not the failure to enact assisted dying legislation an instance of prolonging a person's suffering against their will and therefore against the right not to suffer torture, inhuman or degrading treatment? Why does the right to freedom of thought and conscience not include the right to choose how and when to die? Why does the right to private and family life not include protecting a loved one from assisting in suicide? This kind of shift in argument has moved the debate on assisted dying and suicide away from simply the relief of unbearable suffering. In this debate one of the main arguments is that there is a right to personal autonomy, and that the impossibility of exercising that autonomy is an assault on dignity. Thus, it is argued that this can only be corrected by a change in the law allowing for choice and therefore 'dignity' in dying.

There are many persuasive arguments that point to the mistake of seeing assisted dying as authentic choice or an expression of dignity. However, arguments from rights also require a critique. An exploration of rights-based arguments for assisted dying shows that these arguments cannot be merely another aspect of that human right: the right to die is not simply another aspect of the right to life. The right to life is not a right to decide whether one will or will not continue living. Death is, after all, inevitable and in many cases unpreventable. The right to life prohibits unjust deprivation of life; the right protects an individual. The right not to suffer torture refers to the prohibition against the deliberate infliction of torture or cruel suffering on another person. While it is true that some people feel that their suffering is unbearable, it is not deliberately inflicted by the state. Moreover, people generally receive very good care, including palliative care. Certainly, it is sometimes impossible to treat the kind of pain – soul pain or existential pain – that lead some to ask for assisted dying, but again this pain is not deliberately inflicted by another. At the very least suffering requires compassionate accompaniment not the elimination of the sufferer. While people may have the right to hold certain thoughts and beliefs, this does not automatically translate into a right to put those thoughts and beliefs into action. The right to privacy and family life is a broad right and encompasses the element of protection of personal autonomy. A ban on assisted suicide does seem to interfere with personal autonomy. However, this right is subject to a proviso that accepts interference in personal autonomy to further certain specific interests including the protection of the rights or lives of others. Moreover, privacy and family life are often the scenes of harms like domestic abuse and controlling behaviours. But even more significantly, the ending of life is simply not a private matter. After all, that is why the UK government has put in place strategies to prevent suicide, and as the strategy says, every suicide is both an individual tragedy and a terrible loss to society; 'one death to suicide is one too many', suicide prevention is everyone's business. What kind of society are we to become if we do not think that a person's death by assisted dying or assisted suicide is equally an individual tragedy and terrible loss to society, and so should be prevented not promoted?

The idea that there could be a right to assisted suicide and so there needs to be a change in the law comes in part from confusion over the law on suicide itself. As promoters of assisted dying legislation point out, assisting in suicide is the only crime where the actual act itself – suicide – is not a crime. However, this in part does not consider the rationale behind current legislation. Suicide was decriminalised under the Suicide Act 1961 because it became increasingly clear that prosecuting people who had attempted suicide but survived was not

helpful for them or for society. However, the decision not to treat suicide as a crime does not make suicide a right: people do not have a right to commit suicide. Under section 2 of the 1961 Suicide Act assisting suicide does remain a crime. This is because the Act recognised that people who are vulnerable, weak, a danger to themselves, need protection. However, to take account of the varied circumstances surrounding assistance, the Suicide Act gives the Director of Public Prosecutions discretion as to whether to bring a prosecution. Certainly, many of those who advocate for assisted suicide claim that they are not vulnerable and so do not require the protection of the law. Nevertheless, surely the answer to a man who is thinking about jumping off a tall building is not to suggest taking him to an even taller building to ensure he does the job properly, and give him a push if necessary. Again, perhaps it is useful to draw attention to the government's suicide prevention strategy that is keen to show that even if a person thinks life is not worth living, every human life is worthwhile and deserving of protection. If the UK ends up with legislation giving the right to die by assisted dying, Chesterton's words may indeed be the source of deep reflection.