



Suicide and Death with Dignity

Kevin M. Simmons*

Duke Law and Graduate Schools, Duke University, Durham, NC 27713, USA
Corresponding author. E-mail: kevin.simmons@lawnet.duke.edu

KEYWORDS: Autonomy, Death with Dignity, Suicide

Suicide is a response to two, often-overlapping stimuli, pain and despair.¹ Pain may be physical or psychological. In either aspect, it consumes the person until he seeks only release. A person experiences despair when he concludes that he can no longer hope for an acceptable experience of life. Cluster headaches, so called ‘suicide headaches’,² typify the kind of pain that might drive a person to suicide. A person might despair in response to her prognosis of her glioblastoma multiforme, ‘the most aggressive and lethal form of brain cancer’.³

To provide relatively simple and painless relief, many states have permitted physicians to assist their patients in suicide.⁴ Oregon was the first American state to pass a PAS bill, which it titled ‘Oregon Death with Dignity Act’.⁵ The law permits Oregonian citizens with less than six months to live due to a terminal illness to request and receive lethal medication to end their own lives.⁶ More than ten years later, Washington became the second state with its ‘Washington Death with Dignity Act’, modeled

* Kevin Simmons has a bachelor’s degree in philosophy and classics from the University of Dallas and is expected to graduate from Duke University with a J.D. and an M.A. in Bioethics and Science Policy in 2018.

¹ I use ‘despair’ as a term denoting an intellectual and reasoned response to the world, rather than denoting an emotion, that is, the first definition in the Oxford English Dictionary. *Despair*, v., Oxford English Dictionary Online (June 2017) (‘To lose or give up hope; to be without hope’).

² See Salynn Boyles, *New Treatment for Cluster Headaches*, WEBMD, Mar. 8, 2007, <http://www.webmd.com/migraines-headaches/news/20070308/new-treatment-for-cluster-headaches> [<https://perma.cc/R9PM-WCMF>] (accessed April 18, 2018).

³ Compassion Choices, *The Brittany Maynard Fund*, YOUTUBE (Oct. 6, 2014) <https://youtu.be/yPfe3rCcUeQ> (accessed April 18, 2018).

⁴ Termed ‘physician assisted-suicide’ (PAS) or ‘physician assisted dying’ (PAD).

⁵ Oregon Death with Dignity Act, OR. REV. STAT. § 127.800 (2015).

⁶ *Id.* at 127.805 § 2.01(1).

off Oregon's act.⁷ Vermont,⁸ California,⁹ Colorado,¹⁰ and the District of Columbia¹¹ have all adopted similar acts since 2013. In 2009, Montana's Supreme Court declared PAS consistent with Montana's statutes and constitution,¹² but the legislature has not passed any legislation further defining the terms or requirements.

I. JUSTIFICATIONS GIVEN FOR DEATH WITH DIGNITY ACTS

The most common justifications cited for supporting a Death with Dignity Act (DWDA) have been the principles of autonomy and dignity. First, patients themselves have said so. 'Losing autonomy' is the most cited reason for DWDA patients to choose PAS: 91% of Oregonian respondents¹³ and 87% of Washingtonian respondents¹⁴ named it a concern. Further, they said that autonomy was far more universal a concern than both '[i]nadequate pain control or concern about it' (26%, 41%) and '[l]osing control of bodily functions' (47%, 43%). Further, '[l]ess able to engage in activities making life enjoyable' (90%, 84%) and '[l]oss of dignity' (77%, 66%) were the second and third most common responses. Pain and loss of physical control (to a lesser extent) correspond to the pain stimulus. However, each of the other three concerns—those most commonly cited—are signs that the patient has despaired; they are intellectual and reasoned responses to their situation.

Second, politicians and judges have emphasized loss of autonomy, even more than relief from suffering. The states that have legalized PAS title their acts with either some form of 'Death with Dignity'¹⁵ or with reference to 'choice'¹⁶ or 'option'.¹⁷ Further, Colorado cited three reasons to support its PAS ballot initiative, the first two of which emphasized that the law would expand 'options' and allow individuals to 'decid[e]' for themselves and give them a 'choice'.¹⁸ It was not until the final reason that 'suffering' was first mentioned, but even then, Colorado said that a DWDA was 'insurance against suffering' not a relief from it. Thus, all three reasons were prospective rather than reactive; they referred to reasons to despair, not to responses to pain. Further, in the court case that legalized PAS in Montana, the Montana Supreme Court justified its decision on the 'long-standing, evolving and unequivocal recognition of the terminally ill patient's right to self-determination at the end of life' found in the State's statutes.¹⁹

⁷ Washington Death with Dignity Act, WASH. REV. CODE § 70.245 (2016).

⁸ Patient Choice at End of Life, VT. STAT. ANN. tit. 18, § 5281 (2016).

⁹ End of Life Options Act, CAL. HEALTH & SAFETY CODE § 443.22 (2016).

¹⁰ Colorado End-of-life Options Act, COLO. REV. STAT. § 25-48-101 (2017).

¹¹ Death with Dignity Act of 2016, D.C. CODE § 7-661 (2017).

¹² *Baxter v. Montana*, 224 P.3d 1211, 1220 (2009).

¹³ PUBLIC HEALTH DIVISION, CENTER FOR HEALTH STATISTICS, OREGON DEATH WITH DIGNITY ACT: DATA SUMMARY 2016, 10 (2017) (Statistics refer to all respondents since Oregon legalized PAS).

¹⁴ WASHINGTON STATE DEPARTMENT OF HEALTH, DISEASE CONTROL AND HEALTH STATISTICS DIVISION, DEATH WITH DIGNITY ACT REPORT 8 (July 2017).

¹⁵ Oregon Death with Dignity Act, OR. REV. STAT. § 127.800 (2015); Washington Death with Dignity Act, WASH. REV. CODE § 70.245 (2016); Death with Dignity Act of 2016, D.C. CODE § 7-661 (2017).

¹⁶ Colorado End-of-life Options Act, COLO. REV. STAT. § 25-48-101 (2017); Patient Choice at End of Life, VT. STAT. ANN. tit. 18, § 5281 (2016).

¹⁷ End of Life Options Act, CAL. HEALTH & SAFETY CODE § 443.22 (West 2016).

¹⁸ LEGISLATIVE COUNCIL OF THE COLORADO GENERAL ASSEMBLY, 2016 STATE BALLOT INFORMATION BOOKLET 44–45 (Colorado also cited three reasons to oppose.).

¹⁹ *Baxter v. Montana*, 224 P.3d 1211, 1220 (2009).

Third, prominent third-party advocates also emphasize autonomy over relief from pain. The mission of the Death with Dignity National Center—the author of the first DWDA in the United States and a prominent advocate of PAS²⁰—is, in part, ‘to provide an option for dying individuals’.²¹ Brittany Maynard, the 29 year old who sparked California’s DWDA while preparing for her own PAS, said in her CNN Op-Ed:

I would not tell anyone else that he or she should choose death with dignity. My question is: Who has the right to tell me that I don’t deserve this choice? That I deserve to suffer for weeks or months in tremendous amounts of physical and emotional pain? Why should anyone have the right to make that choice for me?²²

Although she clearly feared her forecasted pain, she seemed more indignant that anyone else should have the ability to prevent her from seeking relief. Further, Archbishop Desmond Tutu, Nobel Peace laureate, said that ‘[d]ying people should have the right to choose how and when they leave Mother Earth [and that] their choices should include a dignified assisted death’.²³ Counterintuitively, it is difficult to find DWDA proponents whose only interest is pain and suffering. From PAS participants to politicians to third-party advocates, the main interest they all seek to vindicate is autonomy.

II. RESTRICTIONS ON PAS

Even though the first priority of PAS advocates is respect for the autonomy of the individual, every state restricts PAS in ways unrelated to assuring autonomy or state citizenship. Oregon, the state with the oldest DWDA statute, only allows those with a terminal illness and less than six months²⁴ to live to request lethal medication.²⁵ So too do California,²⁶ Colorado,²⁷ Vermont,²⁸ Washington,²⁹ and Washington, DC³⁰ restrict access to PAS.

Not only does each state restrict who can request assistance, but so too does each forbid anyone—including the physician of record—from helping otherwise eligible patients administer the lethal medication. This includes when the patient is both lucid and unequivocal about his desire for the medication, yet only physically incapable of

²⁰ *About Us*, DEATH WITH DIGNITY, <https://www.deathwithdignity.org/about/> [<https://perma.cc/C8BU-SE77>] (accessed April 18, 2018).

²¹ DEATH WITH DIGNITY, <https://www.deathwithdignity.org> [<https://perma.cc/D98C-KZ7F>] (accessed April 18, 2018).

²² Brittany Maynard, *My Right to Death with Dignity at 29*, CNN (Nov. 2, 2014, 10:44 PM), <http://www.cnn.com/2014/10/07/opinion/maynard-assisted-suicide-cancer-dignity/index.html> [<https://perma.cc/AXS7-NTSR>] (accessed April 18, 2018).

²³ Desmond Tutu, *Archbishop Desmond Tutu: When my Time Comes, I Want the Option of an Assisted Death*, WASHINGTON POST, Oct. 6, 2016, https://www.washingtonpost.com/opinions/global-opinions/archbishop-desmond-tutu-when-my-time-comes-i-want-the-option-of-an-assisted-death/2016/10/06/97c804f2-8a81-11e6-b24f-a7f89eb68887_story.html?utm_term=.f9b20f966490 [<https://perma.cc/ZZLC-NAQW>] (accessed April 18, 2018).

²⁴ OR. REV. STAT. 127.800 § 1.01(12).

²⁵ OR. REV. STAT. 127.805 § 2.01(1).

²⁶ CAL. HEALTH & SAFETY CODE §§ 443.1(q), 443.2(a).

²⁷ COLO. REV. STAT. § 25-48-103.

²⁸ V.T. STAT. ANN. tit. 18, §§ 5281(a)(10), 5283(a)(5).

²⁹ WASH. REV. CODE §§ 70.245.010(13), 70.245.020.

³⁰ D.C. CODE §§ 7-661.01(16), 7-661.03.

bringing the pill to his mouth and swallowing it. California's language prohibiting mercy killing and euthanasia is typical: 'A person who is present may, without civil or criminal liability, assist the qualified individual by preparing the aid-in-dying drug *so long as* the person does not assist the qualified person in ingesting the aid-in-dying drug.'³¹ Oregon implicitly but clearly also excludes active assistance: 'No person shall be subject to civil or criminal liability or professional disciplinary action [...] for] being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner.'³² Colorado,³³ Washington, DC,³⁴ Vermont,³⁵ and Washington³⁶ state prohibit in these two ways any assistance by the physician, after prescribing and dispensing the deadly medication. In addition to these direct citations, each statute as a whole emphasized the phrase 'self-administered' in numerous places.

III. ETHICAL JUDGMENTS

As for the assistance restrictions, the state has legitimate and undisputed interests in both regulating the medical profession and preserving the PAS system from murders disguised as legal suicides. Nevertheless, it should have been easy enough to develop safeguards for both interests, such as witness requirements. Thus, it seems that these clauses evidence that, though waning, opposition to PAS remains influential.

The restrictions on who has access to PAS, though, have nothing to do with the States' interests in the autonomy of their citizens. This paradox reveals tacit ethical judgments that contradict the justifications given for DWDA. Simply put, DWDA States have concluded that some lives may not be worth living. They have not concluded—despite the rhetoric—that competent state citizens should be able to decide when to die. If that were the case, then they would not restrict assisted suicide to physically able patients with an arbitrary time left to live. Instead, they have concluded that a certain manner of living, ie having death imminent because of disease, is a worthy reason to commit suicide. Neither cluster headaches nor chronic depression nor a general weariness of life nor having seven months to live nor wanting to die with one's sick spouse are worthy reasons. These States are making the same ethical judgment, they are exercising the same paternalism that made general suicide illegal, now makes PAS illegal in 44 states, and even where PAS is legal, prevents people from helping their loved ones die on their own terms.

Ethical and legal opprobrium for suicide in the USA are relics of Christian theology. When society used to hold that God created life and directed all things by his will, suicide was a final, terrible, and irredeemable rejection of God as both creator and lord. In our secular society, why does he remain even partially throned?

³¹ CAL. HEALTH & SAFETY CODE § 443.14(a) (emphasis added).

³² OR. REV. STAT. 127.885 § 4.01.

³³ COLO. REV. STAT. § 25-48-121.

³⁴ D.C. Code § 7-661.15.

³⁵ VT. STAT. ANN. tit. 18, § 5292.

³⁶ WASH. REV. CODE § 70.245.190(1)(a).