# A Right but Not a Duty: The Morality of Dying

*I aim to establish that a limited right to die is ethical, but that a duty to die is unjustifiable. I argue for the morality of complying with requests for assistance in dying in cases of terminal and painful illness, drawing on existing social and medical precedent around requests for withdrawal of treatment. I then deny that this right implies any moral duty to die, arguing that any such duty is dependent on unduly placing social responsibilities on individual patients, as well as on a broader and troubling rejection of human interdependence. Finally, I examine the Canadian implementation of a right to die as an example of how, when not carefully implemented, such a right can lead to a social imposition of the duty to die. I argue that this is unconscionable, and explore how we may avoid it while maintaining the limited right to die.*

## Scope and Definitions

For the purposes of this essay, which seeks to discuss whether there is a right to die, the method by which the right to die is exercised will not be explicated. I will treat withdrawal of treatment, physician-assisted dying, family-assisted dying and unassisted dying as interchangeable and will not be considering their particular ethics. This is not to say they are, in reality, interchangeable; they all do have distinct implications. However, finding the correct means of exercising a right to die is not relevant to a discussion of whether or not a right to die exists. This essay will substantively engage with *why* we should specifically treat withdrawal of treatment as equivalent to other forms of assisted dying in the next section.

## A Case for a Limited Right to Die

In *Justifying Physician-Assisted Deaths*, Tom L. Beauchamp (2020) lays out the concept of a *valid refusal* and a *valid request*. "Valid" refusal of treatment is usually considered to be a legally protected and morally justified right: people should not be allowed to touch others (in a literal physical sense or a broader medical one) without their consent, and therefore, by withdrawing it, one can rightly refuse to be treated. We can thus justify a right for refusal of treatment on a purely individual basis, stemming from the bodily autonomy of the patient and without regard for their context.

One could argue that a physician, through that same right of bodily autonomy, has the right to *not* 'touch' a patient; this is often used as a justification for honoring refusals, but not requests. The position of physician comes with an implied contract of responsibility; however, we would hold a doctor responsible for not administering CPR to a patient whose heart has stopped. The social contract between a doctor and patient is one where the doctor necessarily takes some responsibility for their inaction and action both (Beauchamp 2020, 80-81).

Beauchamp argues that there is, in some cases, a moral responsibility to comply with a *request* for death, in the same way one would comply with a refusal of treatment leading to the same fate (Beauchamp 2020, 81). We can argue in favour of this using that same conception of responsibility for action *and* inaction. Let's say a patient, Jane, has a condition that is incorrigibly going to lead to her death and is physically and/or mentally painful. Jane's condition is such that she is alive without ongoing treatment, if only for a period of time. If Jane requests an early, painless death, and her physician refuses, that is a form of doing harm, for the inaction of the physician condemns her to suffer significant pain. If Jane’s condition required ongoing treatment, she’d have unconditional access to the right to die: she could simply rescind her consent to treatment, and that'd be it. In this kind of situation, I find it unjustifiable to condition the right to die on the method by which it is exercised.

We have, then, found that (i) there is existing social consensus on the existence of the right to die in cases of withdrawal of treatment and that (ii) the limitation of it to only those circumstances is not justifiable, even though it is currently accepted by many.

## A Duty to Die?

*It may seem that medical assistance in dying involves just two persons – one who wants to have it done and the other who is willing to do it. The reality is much more complicated.*

*(Kotalik & Shannon, 2023, p. 9)*

John Hardwig, in his article *Dying at the Right Time* (2020), posits that sometimes, death comes too late. Right away, we can see a reflection of that in the previous example of a terminally ill patient being forced to live out their remaining time in agony because they are denied the right to die. Hardwig, however, focuses on other obligations, stating that one should die before they become a burden to their family (Hardwig 2020, 107).

Going beyond the right to die, Hardwig develops this into an argument for a *duty* to die. Hardwig reminds us that the pain of death and illness does not solely affect the patient and physician and has a profound impact on the friends and family of the patient. In illness, especially terminal, we impose a burden of responsibility—whether it be social, financial, or physical—upon our loved ones, and this can often be overwhelming.

Hardwig argues that when this burden becomes overwhelming, the patient has the moral obligation to relieve them of it through death.

I don't deny that caring for a terminally ill loved one is strenuous. I do, however, doubt that we can place the responsibility for said strain solely on the patient. Despite calling out theories of euthanasia for being overly individualistic in ignoring the patient's loved ones, I believe Hardwig has committed the same error in not considering any context beyond the patient's immediate social connections. For example, it is unfair to place the issue of financial burden on the patient and not on the systems that demand payment for healthcare in the first place. In the same way, the burden of emotional and physical care can be relieved by increasing the accessibility and quality of mental health professionals and care homes, rather than demanding the death of an ill person.

Hardwig seems to imagine a fully voluntary sacrifice, wherein the patient makes a self-contained choice to relieve their connections of any responsibility to care for them. I find this a jarring contradiction of his earlier condemnation of conceiving of death as an atomistic, individual phenomenon. On one hand, he asks us to consider death as a communal affair, while on the other, he attributes to the patients the sole responsibility for the systemic context of healthcare which exacerbates—or even creates—the hardships faced by the patient and their connections.

I find in Hardwig's essay a troubling internalization of the attitude displayed by J. David Velleman in his *Against the Right to Die,* where he says that "unfortunately, our culture is extremely hostile to any attempt at justifying an existence of passivity and dependence" (Velleman 2020, 90). This idea exists in Hardwig's argument as well: that depending on our loved ones is so repulsive that we should avoid it by death if necessary. Hardwig does acknowledge that we should not assume we have a duty to die unless our loved ones are (i) exceedingly burdened by our continued life, and (ii) resent such a burden being placed upon them.

His first point, as I've previously argued, misplaces the responsibility for such burdens solely on the patient. His second point relies on the patient having an accurate judgement of their caretakers' attitude. Hardwig goes on to state that in cases where a caretaker does not openly admit to resenting their role, we may instead pick up on behavioural clues as evidence of their attitude. Relying on behavioural clues to assess how someone feels about you can be inaccurate in the best of times, and to rely on it in such a high-stakes situation feels deeply dangerous to me.

## The Creation of a Duty

Velleman further asserts that the right to die denies patients "the possibility of staying alive by default" (Velleman 2020, 89). Without it, patients are not making any active choice to stay alive, but simply are. Whereas, with the introduction of the *intention right*, the patient must *choose* to stay alive, and thus, *justify* why they should be allowed to remain alive, against both perceived and real social pressures.

The burden of justifying one's life and its consequences may seem like a new challenge to our ethics, but we can actually find evidence of how it operates in a rather distinct context: sinking ships. The captain of a vessel, morally and often legally, carries responsibility for their ship and whoever is aboard it. In a naval accident, this has been legally interpreted to mean the captain is to do everything possible to assist in the rescue of passengers and crew and the salvage of the vessel, which seems rather reasonable. The moral interpretation has been at times much more extreme, though: in the sinking of the ocean liner *Andrea Doria* in 1956, its captain vowed to stay on the ship until tugboats arrived to salvage it, even though its sinking was already foreseeable and inevitable; he only abandoned the ship after being forced to do so by his crew. So did Captain Henrik Kurt Carlsen, in a 1952 sinking, when he stayed on his ship for seven days after his crew and passengers were rescued, only leaving it after he was forced off it by a storm. The perceived duty to die here is created by the notion that one could not justify their life after failing their responsibility to their ship (Allen 2012). This phenomenon creates significant enough issues to warrant modern training to warn captains not to "be burdened by nineteenth century stories of captains going down with their ships" (Allen 2012, 7).

Hardwig's argument can be interpreted as saying that the duty to die comes from a failure to one's loved ones, like a captain to their passengers. It is true that illness causes significant strain on our loved ones, but such is the nature of having loved ones in the first place—reliance is a normal part of human connections. As I've previously stated, I also do not believe it is right to call external, structural pressures like paid healthcare or a failing care home system the *patient's* failing.

### A Canadian Case-Study

As I've argued, I do not believe in the inherent existence or morality of a duty to die. I do believe, however, that the socioeconomic and cultural climate of our society has *imposed* one onto many people.

In 2015, the Supreme Court of Canada ruled that a prohibition of medical assistance in dying (MAID) went against the Charter of Rights and Freedoms, leading to the legalization of MAID by the Canadian parliament in 2016 in Bill C-14. Later, in 2021, parliament passed Bill C-7, which significantly relaxed the eligibility requirements for assisted death, including removing the requirement for a patient to have a "reasonably foreseeable natural death" (Beaudry 2023, 85-86). Most controversially, Bill C-7 allows patients suffering from mental illness or disability to access MAID (Beaudry 2023).

As Grunaul et al. write in *Medical Assistance in Dying and Suicide* (2023), suicide and the classical case of assisted dying (such as my Jane example) have wholly distinct ethical characteristics. MAID for terminally ill patients can be understood as choosing the *modality* of an already predetermined death in order to minimize harm, as opposed to *choosing* to die in the case of non terminally ill patients—which we can clearly define as committing (assisted) suicide (Beaudry 2023). Therefore, the "right to die" as we've previously described is not a unified entity, but is actually two distinct rights. For brevity, I'll be referring to the right to choose *how* one dies as the *modal right*, and the right to choose *to* die as the *intention right*.

We can then split our analysis of public policy into legislating the modal and intention rights. Should only the *modal right* be allowed to exist—as in the widespread tolerance of withdrawal of treatment, or Bill C-14's model for MAID—or the *intention right*, as in Bill C-7, too?

One of the most problematic implications of the latter is its undeniable effect on disabled people. As Tim Stainton describes in *Assisted Life Before Assisted Death* (2023), disabled people are some of the most economically vulnerable members of Canadian society and thus, in the absence of proper disability support programs, are especially likely to rely on family support, leading many to perceive themselves as burdens—something expressed by 35.9% of people seeking MAID in Canada (Stainton 2023, 312). That perception can also be external, as in the case of Satoshi Uematsu, who claimed his murder of disabled people was "mercy killing" (Stainton 2023, 313), or in the experience of Canadian Roger Foley, who was without request approached *twice* about the possibility of MAID by hospital staff who were already pressuring him to leave the hospital (Stainton 2023, 315).

While these cases highlight the socially imposed *duty* to die, even more troubling is a socially imposed *need* to die. This arises in cases where systems fail a disabled patient so thoroughly that their life becomes one of unavoidable suffering which can only be resolved by the one support still accessible, MAID. This is a situation which has occurred multiple times after the implementation of Bill C-7, according to Heidi Janz in *MAID to Die by Medical and Systemic Ableism* (Janz 2023, 304).

## Conclusion: A Right to Live

These cases show the unacceptable consequences of the unalloyed right to *choose* to die. At the start of this essay, however, I made a case for the allowance of the right to at least choose *how* one dies. How can we reconcile these two arguments? We may simply follow my proposed separation of *modal right* versus *intention right*, and allow only the *modal right* to exist. I believe this to be the correct policy choice to make, based on the context I've established in this essay. I also, however, fear it might be too late, in the aftermath of Bill C-7, to roll back the *intention right*. In this case, I turn again to Velleman's article, and the phenomenon of duty imposition via social pressure around failing one's responsibility. If the *intention right* is to be allowed, I think we ought to make sure to make it as easy as possible for a patient to justify their continued life, and not be thought of by themselves or others as a burden. This means ensuring the accessibility of complete support for those facing disability, poverty and/or mental illness. Only with the external forces imposing hardship on a patient and their connections replaced with external supports may we truly have a minimally harmful implementation of a right to die. Only with a right to live.

## References

Allen, C. H. 2012. "The Captain's Duty on a Sinking Ship." SSRN Scholarly Paper 1985576. https://papers.ssrn.com/abstract=1985576.

Beauchamp, Tom L. 2020. "Justifying Physician-Assisted Deaths." In *Ethics in Practice: An Anthology*, edited by Hugh LaFollette, 5th ed., 78–85. Wiley Blackwell.

Beaudry, Jean-Sébastien. 2023. "The 'Reasonably Foreseeable Natural Death' Requirement in Bill C-7, and Expressivist Harm." In *Medical Assistance in Dying (MAID) in Canada: Key Multidisciplinary Perspectives*, edited by Jocelyn Kotalik and D. W. Shannon, 85–95. Springer International Publishing. https://doi.org/10.1007/978-3-031-30002-8_5.

Grunau, Melissa, Rob Olson, and Craig Walker. 2023. "Medical Assistance in Dying (MAID) and Suicide: A Community Perspective." In *Medical Assistance in Dying (MAID) in Canada: Key Multidisciplinary Perspectives*, edited by Jocelyn Kotalik and D. W. Shannon, 245–52. Springer International Publishing. https://doi.org/10.1007/978-3-031-30002-8_15.

Hardwig, John. 2020. "Dying at the Right Time: Reflections on (Un)assisted Suicide." In *Ethics in Practice: An Anthology*, edited by Hugh LaFollette, 5th ed., 106–17. Wiley Blackwell.

Janz, Heidi. 2023. "MAID to Die by Medical and Systemic Ableism." In *Medical Assistance in Dying (MAID) in Canada: Key Multidisciplinary Perspectives*, edited by Jocelyn Kotalik and D. W. Shannon, 299–308. Springer International Publishing. https://doi.org/10.1007/978-3-031-30002-8_19.

Kotalik, Jocelyn, and D. W. Shannon, eds. 2023. "Preface." In *Medical Assistance in Dying (MAID) in Canada: Key Multidisciplinary Perspectives*, Vol. 104, 7–9. Springer International Publishing. https://doi.org/10.1007/978-3-031-30002-8.

Stainton, Tim. 2023. "Assisted Life Before Assisted Death: Disability Discomfort Regarding MAID." In *Medical Assistance in Dying (MAID) in Canada: Key Multidisciplinary Perspectives*, edited by Jocelyn Kotalik and D. W. Shannon, 309–23. Springer International Publishing. https://doi.org/10.1007/978-3-031-30002-8_20.

Velleman, J. David. 2020. "Against the Right to Die." In *Ethics in Practice: An Anthology*, edited by Hugh LaFollette, 5th ed., 86–94. Wiley Blackwell.