

## **Submission to Quebec Parliament's *Select Committee on Dying with Dignity***

June 21, 2010

The Association for Reformed Political Action (ARPA) Canada thanks you for taking the time to consider our perspective on what it means to die with dignity.

### ***Introduction***

ARPA Canada is a Christian non-profit organization devoted to promoting political awareness and action among members of Canada's Reformed churches (including the Église Réformée du Québec, Canadian Reformed Churches, Free Reformed Churches, United Reformed Churches, and Heritage Reformed Churches). Alongside the 16 regional ARPA groups that operate across the country, we provide encouragement, resources, and assistance so that grass-roots Canadians can have the assistance they need to be involved in the public square.

The author of this submission has devoted two years of graduate study (Masters of Arts, Political Science, University of Lethbridge) toward the topic of human dignity in Canadian law and society. You can read the full MA thesis on this subject at <http://www.uleth.ca/dspace/bitstream/10133/671/1/penna,%20mark.pdf>. A book version of this thesis is titled "Building on Sand: Human Dignity in Canadian Law and Society" and is available upon request. What follows is a product of this research.

### ***Summary***

Understanding the concept of dignity is essential to answering the question of what it means to die with dignity. Canadian courts and society increasingly define dignity synonymously with individual autonomy. As a result, asking what it means to "die with dignity" naturally leads to supporting options that best affirm individual feelings and choices, including euthanasia and assisted suicide. But this understanding of dignity has serious consequences on what it means to be human and to possess dignity. Because autonomy can be diminished or lost, the logical conclusion is that dignity is also being diminished or lost. This understanding of a subjective and violable human dignity would undercut the entire structure of human rights. If autonomy is required for dignity to be upheld, suddenly the dignity of every human is challenged at some point in life (including the pre-born, infants, disabled, injured, sleeping, aged, and senile). In contrast, a Christian account of human worth, which has been the basis for Western law and human rights, holds that humans, simply by being human, have an intrinsic worth (dignity) that does not diminish because of ability, age, or illness. Dying with dignity means that Canadian and Quebec society care for the lives of all its members, regardless of their degree of autonomy. In the face of terminal illness and death we must show the honour, love, and care that all humans are worthy of.

***Outline of Submission:***

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- **Implications of Equating Dignity with Autonomy**
  - **Exploiting the Vulnerable**
  - **Exploiting the Power of a Concept**
- **A Christian Account of Human Dignity**
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***Contemporary Canadian Legal Understanding of Dignity and Sanctity***

The Supreme Court of Canada (hereafter the Court) has said multiple times that the *Charter of Rights and Freedoms* is “inextricably bound” to “concepts of human dignity.”<sup>1</sup> This is the case despite the fact that the word dignity is not even mentioned in our Charter. Given the priority that our Court has given to this concept it is a sad irony that it has reduced human dignity to simply an affirmation of individual autonomy and human equality.<sup>2</sup> As a result, the inviolable worth of human life has been hurt by self-serving demands for individual freedom and choice.

By adhering to an account of dignity that is synonymous with autonomy and equality, the Court is increasingly marginalizing all individuals and groups who are not capable of living autonomous lives to a sufficient degree. The unborn, disabled, and elderly are the first to be discriminated against and treated as second-class citizens (or worse) because of their dependence on others. And in removing the objective foundation from human dignity, the Court has weakened the philosophical basis for all human rights because rights are absolute only if human dignity is truly human (both objectively and exclusively). The subjective interpretation also means that dignity is defined according to the interests of those invoking the concept for their cause. It has become both a goal for society and at the same time its meaning is determined by society. Consequently it empties the concept of any meaning and begs the question why the Court would emphasize the concept as being integral to all Charter interpretation.

Section 7 of the Charter states that “Everyone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”<sup>3</sup> The first and perhaps most significant case which set the precedent for the concept of dignity as it relates to Section 7 is the 1988 ruling of *R. v. Morgentaler*.<sup>4</sup> In that case Justice Wilson stated:

To be able to decide what to do and how to do it, to carry out one’s own decisions and accept their consequences, seems to me essential to one’s self-respect as a human being, and essential to the possibility of that contentment. Such self-respect and contentment are in my judgment fundamental goods for human beings, the worth of life itself being one condition of having or striving for them. If a person were deliberately denied the opportunity of self-respect and that contentment, he would suffer deprivation of his essential humanity.<sup>5</sup>

Wilson employs a definition of dignity which agrees with her account of individual liberty and then relies on this definition to explain what she feels the Charter expresses. All of this is done without defending her belief that dignity is constituted by autonomy. It is striking how much the Supreme

Court relies on equating dignity with autonomy without defining it until the 1999 case of *Law v. Canada*.

The *Morgentaler* case is important because the Court's use of the concept of autonomy to restrict dignity to those who demonstrate an ability to make choices has set a precedent for future cases relating to the value of life. A prime example is the case of *Rodriguez v. British Columbia* in which the appellant Sue Rodriguez, a 42 year old woman who suffered from amyotrophic lateral sclerosis (Lou Gehrig's disease) resulting in a rapid deterioration of her health, requested that a physician be allowed to assist her in ending her life when she chose. Section 241(b) of the Criminal Code prohibits anybody from helping somebody else to commit suicide. Rodriguez went to court to challenge this law by declaring that it violates her sections 7, 12, and 15 rights of the Charter. In a narrow 5-4 decision, the Supreme Court of Canada dismissed Rodriguez's appeal, stating that the liberty and security of the person's interests cannot be separated from the third value in s. 7 which is the sanctity of human life.

The *Rodriguez* case is very useful for analyzing the Court's understanding of the concept of human dignity because the majority uses the principle of the sanctity of human life to trump human dignity (understood as autonomy subsequent to *R. v. Morgentaler*), even though many people would view these as synonymous principles. Understanding how and why these principles are seen as competing by the Court will help to clear up the confusion.

For both the majority and the minority of the Court, the concept of dignity in *Rodriguez* maintains the same connection to the philosophy of autonomy that was present in the *Morgentaler* ruling. **The fact that the Court narrowly ruled that Rodriguez should not be granted a physician assisted suicide means that it realized that this principle of dignity as autonomy should not trump all other considerations.** Rather, it must work together with the other values in s.7 including life and the security of the person. None of these three values trumps the others. "All must be taken into account in determining the content of the principles of fundamental justice and there is no basis for imposing a greater burden on the propounder of one value as against that imposed on another."<sup>6</sup> **The majority ruled that the value of the sanctity of life cannot be subordinated by the choice for death, even if that choice is an exercise of liberty. Choice is not an absolute principle.**

To understand how it came to this ruling, it is important to analyze its use of the concept of the sanctity of life. Justice Sopinka begins his explanation of the sanctity of human life by arguing that security of the person cannot include a right to end one's life "as security of the person is intrinsically concerned with the well-being of the living person."<sup>7</sup> In essence, he is questioning whether it really is possible to have a right to die with dignity since rights are meant to uphold life rather than to end it. He explains that "This argument focuses on the generally held and deeply rooted belief in our society that human life is sacred or inviolable (which terms I use in the non-religious sense described by [Ronald] Dworkin... to mean that human life is seen to have a deep intrinsic value of its own)."<sup>8</sup> Regardless of the circumstances, suicide is a choice for death over life. The values of liberty and security of the person must work alongside the value of life of the person making the choice, rather than undermining it.

This case may seem confusing because Sopinka uses the concept of human sanctity to challenge human dignity. Human dignity and the sanctity of human life are made to be polar opposites; the former being understood by the Court as a licence to end one's life and the latter understood by the majority of the Court as an intrinsic value which cannot be legally usurped by choice. It is clear that Sopinka believes that the sanctity of human life refers to intrinsic worthiness when he asks "As

members of a society based upon respect for the intrinsic value of human life and on the inherent dignity of every human being, can we incorporate within the Constitution which embodies our most fundamental values a right to terminate one's own life in any circumstances?"<sup>9</sup> The problem is that the Court had already agreed to the appellant's use of the concept of dignity as autonomy in *R. v. Morgentaler* as well as in the majority's acceptance of Rodriguez's argument that her disease robbed her dignity.<sup>10</sup> How can dignity be inherent if it can be lost as a result of sickness or how one feels about themselves? So the Court needs to look elsewhere to ground its belief that human life cannot be marginalized as a result of a choice to end it. It looks for an objective rather than a subjective grounding for human life. This may be the reason why it refers to the intrinsic value of life as the sanctity of life rather than the dignity of life. This is important because it reveals how the Court is attempting to dig itself out of the hole which it already dug itself into. In *Morgentaler* the Court chose to usurp (unborn) life with choice, but now that it wants to put restrictions on choice it can no longer use the language of dignity because they already defined dignity as autonomy.

## **Implications of Equating Dignity with Autonomy**

### **1) Exploiting the Vulnerable**

When dignity is tied to autonomy, individuals who do not demonstrate autonomy are no longer seen as having dignity, at least not to the same extent as others. In *Rodriguez*, the majority of the Court agreed with Sue Rodriguez's claim that her disease was taking away her dignity.<sup>11</sup> When dignity is seen as something that is not intrinsic to humanity but is instead a function of our choice-making, it is not just those with disabilities who risk being treated as though they do not have dignity. Neither is this only about the rights of the unborn. All humans are unable to make autonomous choices in their early years of life and many die in a similar way. It is no surprise that it is exactly these groups that are the first to be denied their right to life through abortion, infanticide, mercy killing, and euthanasia. At some point(s) in our lives every human is not autonomous and risks having their very life subjected to the choice of somebody else's convenience. British philosopher Derek Parfit goes so far as to say that even sleep or temporary unconsciousness results in someone ceasing to be a person!<sup>12</sup> And all of this is being done in the name of dignity. This is a remarkable contrast from the post-WWII context in which the concept of dignity was used to fight the crimes of genocide and murder. Now it is being used to favour the select group of humans who have power over the vulnerable because they can make choices as they see fit.

One example of this exploitation of the vulnerable is evident in the case of Robert and Tracy Latimer. In 1993 Saskatchewan farmer Robert Latimer killed his 12 year old daughter Tracy in the name of "mercy killing."<sup>13</sup> Because she was severely handicapped he did not think her life should continue so he put her in the cab of his pick-up truck and piped carbon monoxide from the exhaust into the cab and watched her die. There was no question that he was responsible for killing her. However, because he made the case that it was an act of mercy, he was only found guilty of second degree murder (thought it was clearly premeditated) and given only a two-year sentence (of which only one would be spent in prison). Eventually his sentence was appealed and he received the minimum ten year sentence. Because it is minimum security he is able to complete apprenticeships in prison and still manages his farm. Apparently disabled people like Tracy are not protected by the law to the same extent as fully autonomous people because they do not demonstrate the same degree of autonomy as others. Understood this way, human dignity is not really for humans – it is dignity for autonomous agents.

Legalizing euthanasia and assisted suicide further would weaken the legal protection for Canada's most vulnerable people. The sad reality is that in countries where euthanasia is legalized, a large percentage of those who die never give their consent. Others decide for them that their life isn't worth living. For example, the 2009 statistics from the Netherlands that were just released show that 550 deaths happened without explicit request or consent. To add to that, the overall number of euthanasia deaths increased by an astounding 13% over 2008.<sup>14</sup> Why are these numbers skyrocketing? Who decides when someone no longer has the "dignity" to continue to live? In an aging welfare society where seniors and the disabled are increasingly seen as a burden on the state, it is hard to believe that the patient's dignity is what determines whether they live. Using "dignity" talk to justify this shameful reality reveals that the concept itself is being exploited.

## **2) Exploiting the Power of a Concept**

In *Rodriguez*, the majority of the Court recognized that there must be a value in human life that goes beyond autonomy because autonomy can be used to end life itself. This value must be intrinsic because if it were simply some extrinsic property or characteristic (such as a physical feature), our society is in a lot of trouble. How do we decide which characteristics we will value? When these are lost as a result of disabilities or age, how do we treat those with less value? The liberal principle of equality is on shaky ground as long as there is no recognition of intrinsic value. But by granting that there is sanctity of human life, the Court has also begged the questions: Why do we have this intrinsic value and should it not apply to all humanity, regardless of age or ability?

The majority in *Rodriguez* wanted to emphasize that it understands sanctity in a non-religious manner. This is somewhat obscure as sanctity means "to be set apart" or "made holy" which generally points to a higher authority (i.e. God) who has set us apart from the rest of Creation (i.e. to be stewards of the earth and to reflect God's image).<sup>15</sup> In choosing to adopt a non-religious interpretation of a concept that is clearly religious in origin, the Court is only asking to be barraged with questions; the leading question being whether something can even be sanctified if it is only humans who sanctify it. If sanctity is not to be understood in a religious sense, then why bother using the word at all? Why not just say that the right to life cannot be used to take life?

**It seems that the Court is using the principle of sanctity because it realizes that it will gain power from the connotations of the word, even if they have to deny its religious grounding. This is similar to what many are doing with the concept of human dignity.** Human dignity is strongly rooted in the Christian doctrines of the *Imago Dei* and the *Incarnation*. In his article "The Use of Religious Concepts in a Post-Religious Age: Canada's Continuing Edwardianism," Iain Benson explains that "Like literature at the hands of the Edwardian novelists, law and medicine still needed the "metaphors" of religion to give a kind of meaning or substance to their decisions – however hollowed out that substance had become."<sup>16</sup> Alongside the reference to the sanctity of life in *Rodriguez*, Benson refers to the "Montreal Swinger's Case"<sup>17</sup> and its rejection of morality as a guiding principle for law. These illustrate his argument that "The comforting language and terms from the age of religions are still employed until we are satisfied that we no longer need them and then we can unveil the new without its old trappings."<sup>18</sup> If this is true, it is only a matter of time till the sanctity protection is rejected.

Given the way that dignity is being defined, it will not take long for the concept to be understood as useless since other concepts such as autonomy can easily replace it. Indeed, this is already being advocated. In an editorial in the *British Medical Journal*, Ruth Macklin, a professor of medical ethics makes this case:

Why, then, do so many articles and reports appeal to human dignity, as if it means something over and above respect for persons or for their autonomy? A possible explanation is the many religious sources that refer to human dignity, especially but not exclusively in Roman Catholic writings. However, this religious source cannot explain how and why dignity has crept into the secular literature in medical ethics. Nor can the prominence of the concept in human rights documents, since only a small portion of the literature in medical ethics addresses the links between health and human rights.

Although the aetiology may remain a mystery, the diagnosis is clear. Dignity is a useless concept in medical ethics and can be eliminated without any loss of content.<sup>19</sup>

How long will it take till this argument wins in society? The language of dignity and sanctity may carry a limited amount of power for the time being, but the more it gets used, the more it is being weakened. The problem is not that dignity itself is a useless concept. The problem is that the Court (as one example) has emptied it of its philosophical and moral foundation and used it for its own purpose so that it can easily become useless.

What is needed is a philosophically grounded explanation of a dignity that is truly human (protecting all humans equally) and that carries moral weight and impetus. It cannot change with the times and whims of those who interpret it if it is to have objective and longstanding meaning.

### **A Christian Account of Human Dignity**

Western ideas of human dignity have, to a large degree, flowed from the Christian account of humanity's place in the world. Philosophy professor Kurt Bayertz explains that the origins of the term human dignity "lie at least partly in the Christian idea of the *Imago Dei*....From this religious context, the idea of an inherent human dignity became part of Modern Philosophy and was reformulated in categories of secular reason."<sup>20</sup> Since the modern and postmodern accounts of human dignity give rise to significant shortcomings, it would be wise for our Western society to take a look back and re-examine the Biblical doctrine which originally grounded human dignity and which has been largely ignored outside of theological circles.

A Christian account of dignity holds that all humans, simply by being human, possess intrinsic and inviolable worth that elevates us above all other creatures, regardless of our age, race, sex, ability, health, or feelings of self-worth. This dignity does not come from who we are in ourselves. Rather, it comes only from the One who made us, set us apart, and didn't abandon us after we rebelled against Him. A Christian account of dignity also includes a moral calling to love God and other humans and to fulfill the roles for which we were made, including caring for the earth and ruling over it. For a detailed look at this Christian perspective, please refer to the MA thesis referenced at the beginning of this submission.

Theological ethicist Gilbert Meilaender, in his review of the book *The Difference Between "Someone" and "Something"* by notable German philosopher Robert Spaemann, writes that "in order to think philosophically about persons we must give attention to the history of Trinitarian and Christological dogmas as they developed in the early centuries of the Christian era."<sup>21</sup>

In short, it was Christians—trying to figure out how they ought to speak about Jesus and the God who had been revealed in Jesus—who first learned what it means to be a

person. **They learned to distinguish between what we have (our nature) and what we are (our person).** And the consequences are incalculable. **Were human beings simply members of their species, it might sometimes, Spaemann notes, make sense to sacrifice “this or that member to the interest of the species as a whole.”** **But, as persons, human beings are incommensurable.** “That is why we prefer to speak of human ‘dignity’ (*Würde*) rather than human ‘value’ (*Wert*). The value of ten people may be more than that of one, but ten are no more than one in point of dignity.” Thus, persons are incomparably unique and of “incommensurable dignity [emphasis added].”<sup>22</sup>

So what really is a person? Meilaender makes it quite simple: “A person is someone who has a history, not something that has certain properties.”<sup>23</sup> All humans are persons, but the idea of a person is richer than simply being a member of a species. “Persons have that species-specific nature, but the singular individual who has it is more than a member of a species. Likewise, persons are not instances of a universal concept. They are members of a community in which each ‘occupies a unique and distinctive position entirely his or her own.’”<sup>24</sup> He goes on to explain that “There is a certain two-sidedness to persons, as is already evident in saying that persons *have* their nature or exist *in* their nature.”<sup>25</sup> We can understand this because we experience an “inner distance” from ourselves. “A stone falls from a building and is simply an object constrained by laws of nature. I fall from that same building and know myself as a falling object—which I both am and am distanced from.”<sup>26</sup>

What does this talk of falling rocks have to do with human dignity? Quite a lot. **When we understand ourselves as persons – as a “someone who” we maintain an intrinsic dignity that does not get lost or minimized as a result of possessing less autonomy than others. There is no way that disease can rob us of who we are.** The “someone who” continues on through whatever happens to their body or intellect. Every human being, from conception onwards, fit the requirement for being persons. They are unrepeatable beings with history. Some might immediately object that a pre-born or young child is not capable of understanding the “inner distance” from themselves. But this is a misunderstanding of persons – an attempt to shift the discussion from persons to personhood (i.e. an attribute) which runs contrary to our everyday experiences. If someone were to ask you whether you were conceived, the answer would be obvious – of course you were (usually about nine months before you were born). It was not a “something” that was conceived and then became you upon birth or at some point between conception and birth. As Meileander (reviewing Spaemann) rightly points out, the idea of a “potential” person is absurd because “Nothing that is not a person can develop into a person.”<sup>27</sup> Likewise, if one were to get into a severe accident and lose their mental capacities, it does not mean that they no longer exist. It is that *person* who is brain-dead. The person does not cease to exist when their mental capacities leave.

This account of human dignity recognizes the importance of our bodily existence (in contrast with the dualism that has plagued Western philosophy for so many centuries), the importance of personal relationships and interconnectedness (grounded in the Biblical command to love our neighbour as ourselves), the permanence and inviolability of dignity as a result of its intrinsic nature (in contrast with the ever-increasing claims of dignity being lost as a result of decreasing autonomy), and also points to a *telos* which is able to provide objective direction to many of the issues that we all encounter in living and dying. Again, for details on each of these points, please refer to the MA thesis that is referenced at the beginning of this submission.

## The Role of a Christian Perspective in a “Secular” Society

A major obstacle that needs to be overcome in understanding the role of religion is to challenge the faulty definition of secular and its unsubstantiated claim to neutrality that has been swallowed by many. When it can be proven that it is impossible for the Supreme Court or even this select committee on dying with dignity to be value-neutral then the debate shifts to examining the various worldviews and choosing the best one. The Christian account is one of the worldviews that can be considered.

In his article “Notes Towards a (Re)Definition of the ‘Secular’” Iain Benson provides some examples of when the Court appeals to this false neutrality. Chief Justice Lamer, in his dissent in *Rodriguez*, said that the Court should look at the constitutionality of the issue of physician assisted suicide “without reference to the philosophical and theological considerations fuelling the debate on the morality of suicide or euthanasia.”<sup>28</sup> Although it has already been explained how the majority chose to uphold the sanctity of life over the choice for death, even that was claimed to be used “in the non-religious sense described by Ronald Dworkin....”<sup>29</sup> Unfortunately Justice Sopinka does not enlighten us on how it is possible to ground a belief in the sanctity of life apart from religion and metaphysics. Nor does Justice Lamer explain how it is possible to talk about the issue of physician assisted suicide without referring to philosophy or theology. Every informed choice is based on some premise which is in turn based on a more general philosophy or worldview. Lamer may attempt to not ground decisions on any pre-existing philosophy or worldview but he still has to base it on something.

This attempt to escape from religion and metaphysics is evident in the Court’s use of the term “secular.” Benson lists three ways that the term “secular” seems to be used most often and then follows it up with a fourth definition which understands it quite differently:

1. The state is expressly non-religious and must not support religion in any way (neutral secular);
2. The state does not affirm religious beliefs or any particular religious group but may act so as to create conditions favourable to religions generally (“positive” secular);
3. The state is not competent in matters involving religion but must not act so as to inhibit religious manifestations that do not threaten the common good (“negative” secular)....;
4. The state must not be run or directed by a particular religion or “faith-group” but must develop a notion of moral citizenship consistent with the widest involvement of different faith groups (religious and non-religious).<sup>30</sup>

Although the first definition seems to be the most prevalent in public discussions of issues like physician assisted suicide, it is seemingly impossible to maintain. Judges are human as well. They were raised in families which held to certain beliefs, they are part of communities which expose them to many different worldviews, they are aware of what is going on in the media, and they possess a human nature like everybody else. It is impossible to separate these experiences and this nature from one’s profession. Even if it were possible, the Charter is a very limited document and does not include a comprehensive answer to most issues that are raised in the Court. It requires interpretation.

If neutrality is being espoused, one has only to dig a little deeper to find a worldview behind it. In the past, terms like “community standards” were used to maintain an appearance of value-neutrality while still making a principled decision. Now the Court simply employs different language which

attempts the same value-neutrality but with very different results. **Regardless of which faith is ultimately grounding the decisions, what matters is that the so-called neutrality is a sham that is being used to promote the Court's decision over all other perspectives without a legitimate discussion.**

Calling the bluff does not mean that Christianity begins to dictate society's decisions. It just means that all faiths (including secular humanism) should get an equal opportunity to be voiced and be able to espouse their respective contributions as to what is best for our society as a whole. It also means that there is no reason why this committee on dying with dignity should avoid a Christian perspective simply because it is "religious".

### **Conclusion: What does it mean to die with dignity?**

The answer to this question is crucial to deciding whether euthanasia or physician assisted suicide is a compassionate response to suffering or giving up on a suffering person who needs help. Sue Rodriguez made it clear that she thought that dying with dignity meant an end to her suffering through death. Many people seemed to share this feeling. But legislators and courts need to go beyond feelings and understand what is really going on.

Our secular world fears death because it is an unknown. In response, a common thought is that controlling the timing of our death is one answer to controlling death itself. As a result, it is common to call euthanasia and physician assisted suicide "death with dignity." This flows logically from the way that the Court interpreted dignity in *Morgentaler* – dignity is all about choice and control over one's life. But we have already demonstrated the logical inconsistency with this perspective of dignity. If removing choice and control (autonomy) is tantamount to removing dignity, than dignity is subjective and easily lost. Infants, the disabled, seniors, and even people who are sleeping have lost control over themselves. Another example is a prisoner of war in a concentration camp – what dignity would they have if they lost the ability to make choices in accordance with their aspirations? If the Court is going to be consistent, it would have to conclude that these people have also lost their dignity. Yet this is contrary to reality. We recognize prisoners of war with medals of bravery and hold them in high esteem for what they went through. Rather than hoping that their lives be extinguished to preserve them further suffering, we rejoice when they persevere against all odds. Likewise we treat our grandparents with even greater care when they lose some of the functioning that makes it more difficult to look after themselves. We also applaud the disabled for their determination. **In all of these situations, it is apparent that dignity is not about making a choice to give up. Rather, it is about facing life with courage, gentleness, kindness, decency, hope, determination, and faith in spite of the circumstances of life.**<sup>31</sup>

In reality, there is little dignity evident in physician assisted suicide. There is no courage to brave the difficult life, no support from loved ones to be by their side through thick and thin, and no hope for a better future. "Death with dignity" is a politically-correct way of giving up on life and taking away the responsibility of others to care for those who are suffering.

A glimmer of light shines in the *Rodriguez* court case. The Court realized that autonomy could not be a trump card over every other value in the charter. It had to be upheld alongside the principle of the sanctity of life. This means that the Court realized that there has to be limits to autonomy – even when the subject of the action is the person making the choice (i.e. with assisted suicide). The justices were willing to set a limit on autonomy because they realized that even disabled and sick

people had inviolable worth or sanctity. They refused to give credit to the Christian faith for grounding this and instead were sure to mention that they meant this only in a secular way. By benefitting from the Christian concept of dignity (though denying its source) the Court was able to uphold dignity, at least to a limited extent. They recognized the dignity of human being, as opposed to the full dignity of *being* human. Rodriguez's life was recognized as inviolable. But their concession that she had lost her dignity was a mistake. The dignity of being human means living in accordance with our purpose and *telos*. It means showing love to Sue Rodriguez by helping her rather than abandoning her.

Most of us cannot claim to understand the pain that Rodriguez went through in the time leading up to her death. Her disease may very well have made her feel undignified but that is very different from not having dignity. She was still Sue Rodriguez – a person – and therefore she possessed inviolable dignity. The state is called to uphold life and never to end it. To treat her with real dignity would be to prove to her that she has value by the way that she is treated. Combining this with the relational component of human dignity it would mean that her fellow humans provide love and care for her. **True compassion would mean helping those who are terminally ill to live rather than reaffirming to them that they have no value and that their lives are not worth living. When society concedes to the suicide requests of suffering people, we only further confirm to them that we do not care enough for them to be willing to look after them. A terminally ill person can live a dignified life no less than a healthy person.**

This Christian account of dignity does not mean that we make every effort to extend life as long as it is technologically possible. Just because human life itself is inviolable does not mean that we have to extend life at all costs, making life unbearable for those who are dying. A common problem in this debate is confusion between letting someone die and making someone die. The account of dignity that has been advocated so far does not in any way suggest that we have to cling to life as if life itself is what matters. The most compassionate thing to do in some cases may be to let a loved one die. But that is very different from actively ending their life. With the increasing powers of technology come more responsibility to use it wisely. This applies just as much to whether we choose to use technology or to turn it off.

The Christian emphasis on love and relationships fits well with the practice of palliative care. Palliative care involves physically, emotionally, and spiritually caring for dying people by alleviating suffering as much as possible. Dr. Margaret Cottle is a palliative care physician and a clinical care instructor at the University of British Columbia. In an interview on the topic of assisted suicide she makes the astute comment that

It's a real privilege, when someone is at a place where his or her body is not all that beautiful anymore and they don't have anything to contribute from a worldly standard, to be able to say, "It's not your job to feel significant; it's our job to impart that significance to you." There is something very healing for the person who receives that and also for the person who gives that.<sup>32</sup>

Dr. Cottle also noted that in studies done about the biggest fears that dying people have and the reason why they would want to die earlier, physical pain is a small concern. "Their big fears are fear of being a burden and fear of being abandoned. As a community, we need to realize that it may be a burden for one person or family to give care. But it doesn't have to be a burden if all of us get involved and help out."<sup>33</sup> **That is exactly the point that policy makers and judges need to keep in mind. The root of the problem which is leading to a call for physician assisted suicide is not something that can be solved by getting rid of laws which keep people from committing suicide**

**or receiving help in doing so. Looking to the law as an answer does not satisfy the thing that dying people need most – love and care. It is society's duty to provide this. The Christian account of dignity provides the moral foundation to promote this ethic.** The individualism of the contemporary accounts of dignity fails miserably because there is no moral reason why anybody *ought* to consider the dignity of others.

Palliative care costs money and results in even more hospital beds being filled. But that does not mean that euthanasia is a prudent solution to this costly problem. It is only when we look beyond the economics of human dignity that we begin to uphold it. This comes at a cost to ourselves: our time, our leisure, our aspirations, our wants, our finances. State funding tends to decrease our responsibility rather than increase it. The state may have to step in to look after those whom no one else is looking after, but they should only do so because they *have* to, not because we would prefer them to.

ARPA Canada urges the Parliament of Quebec and the *Select Committee on Dying with Dignity* to uphold the inviolable dignity of all humanity, including those who do not demonstrate the same degree of autonomy or the same quality of life as others. The onus is not on individuals to feel dignified and worthy in the face of suffering. Rather it ought to be the responsibility of society in general to affirm the dignity of the terminally ill, aged, and suffering by showing compassionate care and love. Giving the option of euthanasia and assisted suicide would send a clear message that those who are suffering have to justify their own existence (including the costs associated with their care). Society would be conveniently forfeiting our responsibility to show these individuals that they are valuable, not because of what they can do, but because of who they are. True death with dignity is about showing love and care to life in all stages and then accepting death when it naturally comes.

Respectfully Submitted,



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Executive Director  
ARPA Canada

## End Notes

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<sup>1</sup> Lorne Sossin, "The 'Supremacy of God', Human Dignity and the *Charter of Rights and Freedoms*," *University of New Brunswick Law Journal* 52, (2003), 227-228, quoting the discussion of human dignity in *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307 at para. 76.

<sup>2</sup> This will be explained later in this submission in reference to the Section 7 cases of *R v. Morgentaler* [1988] 1 S.C.R. 30 and *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519.

<sup>3</sup> Department of Justice Canada, *Canadian Charter of Rights and Freedoms*, <http://laws.justice.gc.ca/en/charter/>.

<sup>4</sup> *R. v. Morgentaler*, [1988] 1 S.C.R. 30.

<sup>5</sup> *Ibid.* 164.

<sup>6</sup> *Rodriguez v. British Columbia*. No page or paragraph number is available from the decision provided by the Supreme Court of Canada's website.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> David Brown, "'Human Dignity,' Human Rights, and the End of Life: The North Wind Blowing from Canada" (Houston: *University of St. Thomas Conference on Suffering and Hope*, Nov. 10-13, 2005), 10, [www.stthom.edu/Public/getFile.asp?File\\_Content\\_ID=23](http://www.stthom.edu/Public/getFile.asp?File_Content_ID=23), referring to *Rodriguez v. British Columbia* at paragraph 137.

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<sup>11</sup> *Rodriguez v. British Columbia* at paragraph 137. See also David Brown's extended discussion on this in "Human Dignity," *Human Rights, and the End of Life*," 10.

<sup>12</sup> Robert Spaemann, *Persons: The Difference Between 'Someone' and 'Something'*, trans. Oliver O'Donovan (Oxford: Oxford University Press: 1996), 3 citing Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1985).

<sup>13</sup> BBC News, "Despatches," *BBC News*, Dec 2, 1997. <http://news.bbc.co.uk/2/hi/despatches/36224.stm>.

<sup>14</sup> DutchNews.nl, "Sharp growth in euthanasia deaths." June 16, 2010.

[http://www.dutchnews.nl/news/archives/2010/06/sharp\\_growth\\_in\\_euthanasia\\_dea.php](http://www.dutchnews.nl/news/archives/2010/06/sharp_growth_in_euthanasia_dea.php).

<sup>15</sup> As described in the Biblical account of Creation in Genesis 1.

<sup>16</sup> Iain Benson, "The Use of Religious Concepts in a Post-Religious Age: Canada's Continuing Edwardianism" Centre for Cultural Renewal: *CentreArticle 125*, (Sept 25, 2006) [www.culturalrenewal.ca](http://www.culturalrenewal.ca).

<sup>17</sup> This was actually two separate cases (*R. v. Kouri* and *R. v. Labaye*) which both dealt with the legality of promiscuous "swingers" clubs in Montreal. The Court ruled that these clubs are not harmful to Canadian society and as such should not be criminal.

<sup>18</sup> Ibid.

<sup>19</sup> Ruth Macklin, "Dignity is a Useless Concept" *British Medical Journal* 327 (2003): 1419-1420.

<sup>20</sup> Kurt Bayertz "Human Dignity: Philosophical Origin and Scientific Erosion of an Idea" from Kurt Bayertz, ed, *Sanctity of Life and Human Dignity* (Dordrecht: Kluwer Academic Publishers, 1996), xiii-xiv.

<sup>21</sup> Gilbert Meilaender "Looking for personality" a review of *The Difference Between "Someone" and "Something,"* by Robert Spaemann, *First Things* (October 2007): [http://www.firstthings.com/article.php3?id\\_article=6047](http://www.firstthings.com/article.php3?id_article=6047).

<sup>22</sup> Ibid. Almost every parent can attest to the truth of this idea of incommensurable dignity. Their child is not simply another human, even a human that they have a special attachment to. The child has a worth that cannot even be compared. The older we get the more it simply becomes a given that another person is irreplaceable and more valuable than any *thing*.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Iain Benson, "Notes Towards a (Re)Definition of the "Secular" in *The University of British Columbia Law Review: Special Edition – Religion, Morality and Law*, Volume 33, Jason Kuzminski, ed. (Vancouver: UBC Faculty of Law, 2000), 524, quoting *Rodriguez* at 366.

<sup>29</sup> Ibid, quoting *Rodriguez* at 389.

<sup>30</sup> Benson, "Notes Towards a (Re)Definition of the "Secular," 530.

<sup>31</sup> Paul Chamberlain, *A Cautionary Tale on Death, Dignity & Physician Assisted Suicide* (Downers Grove, Illinois: Intervarsity Press, 2000), 73.

<sup>32</sup> Frank Stirk "A Natural Death: An Interview With Dr. Margaret Cottle" *IMFC Review* (Spring/Summer 2006): 9, [www.imfcana.org](http://www.imfcana.org).

<sup>33</sup> Ibid.