



# Justice

## A Matter of Life and Death

“While there’s life there’s hope” observed Theocritus, the Ancient Greek (3rd century BC) poet.<sup>1</sup> It is difficult to imagine a more fundamental human right than the **Right to Life**. But we have to recognise that life and death are two sides of the same coin. There can be no life without death and no death without life. The two are absolutely inseparable. If life is a fundamental human right then death is too.

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ARTICLE BY: **RODNEY CRISP**

**W**e also need to agree on what we mean by life and death, how we should perceive them, and exactly what those rights are. And as there can be no rights without corresponding duties, we need to define those duties and agree on them too.

Life is a self-sustaining process that began a long time ago. It shows no signs of ceasing despite all the wars and destruction and irreversible damage caused by mankind to the eco-system. Birth is not the beginning of life. It is its continuance. Living cells are constantly renewed, some more frequently than others. Life is relayed by the individual members of each species, in exclusivity, to the next generation of the same species.

On the other side of the coin, death is the permanent cessation of the vital



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functions of a living organism or cell, due to either natural or accidental causes. It affects each and every member of the species individually or, in some exceptional circumstances, collectively. When all the members of a species are affected by death, the species is said to be extinct.

For Socrates and the ancient philosophers, a “good death” meant accepting it with courage, calm and self-control.<sup>2</sup> For today’s religious fanatics, a good death is dying a martyr in a suicide terrorist bomb attack. For much of the Western world, it is having a peaceful and painless death, preferably in a warm, cosy environment.

Whatever our personal outlook may be, it is important for society as a whole to clarify the rights and duties to be adopted, in the common interest, on such fundamental matters as life and death. We need to define the terms and conditions of the social contract that binds us all as citizens and applies throughout the nation.

If the “good life” we want is freedom to do as we please, limited only by the freedom of all others and whatever other restrictions we voluntarily consent to in the common interest, then that should be made law through the democratic process, as should the fundamental, and inalienable right to life. The same goes for death. If the “good death” we want is a peaceful and painless death, preferably in a warm, cosy environment, then that too should be made law and apply throughout the nation, as should the fundamental and inalienable right to death.

The State alone, exercising the will of the sovereign people, should be empowered to prevent us from living or dying, against our will, in the common interest, if such is the decision of a democratically constituted court of justice and only after full exhaustion of all means of recourse available to defendants within the judicial process. All legal costs, including lawyers’ fees and other defence costs of the

defendant, should be borne by the State, the defendant being free to choose his own lawyers. There should be no distinction of any kind made among defendants, such as race, colour, gender, language, religion, political or other opinion, national or social origin, wealth, property, birth or other status. Everyone must confront justice on an equal basis.

In the instance where death is the conclusion of a deliberate, carefully reasoned decision, either on the part of the person concerned or on the part of a court of justice, that decision should be implemented with a maximum of humanity and as least pain, stress and suffering as modern science can allow. The best possible conditions of euthanasia (from the Greek eu, “good” and thanatos, “death”) should be provided in all instances, irrespective of whether the decision to terminate life is taken by the person himself or by a court of justice.

Euthanasia of convicted criminals must necessarily be carried out in conditions of utmost security, both for themselves and others. They should also receive appropriate psychological assistance and sedation where necessary in order to prepare them for an end of life that most would probably have difficulty accepting. Few could be expected to conduct themselves with the same calm, courage and dignity as that of Socrates, placed in a similar situation in 399 BC when he was sentenced to death by drinking an obnoxious mixture containing poison hemlock.<sup>3</sup>

Though many countries have abolished capital punishment, more than 60% of the world’s population live in countries where it continues to be practised.<sup>4</sup> Some countries

have a long history of having suspended the death penalty for many years before resuming practice once again. This includes the US<sup>5</sup>, The Philippines<sup>6</sup>, Japan<sup>7</sup>, Botswana<sup>8</sup>, Gambia<sup>9</sup>, India<sup>10</sup>, Pakistan<sup>11</sup>, Indonesia<sup>12</sup>, Kuwait<sup>13</sup>, Nigeria<sup>14</sup> and Vietnam<sup>15</sup>.

The arguments against capital punishment are well known:

- not all people affected by murder desire a death penalty
- it discriminates against minorities and the poor
- it encourages a “culture of violence”
- it is a cruel form of punishment
- it violates human rights
- it can lead to the wrongful execution of innocent persons

Capital punishment, as it continues to be carried-out, is often a sordid, degrading, humiliating, stressing, painful and inhumane process. This form of capital punishment should be totally abolished, world-wide, without the slightest shadow

of a doubt.

It is absolutely appalling to note that it was reported that as many as 39 executions were carried-out in the US during the twelve year period from 1992 to 2004 despite compelling evidence of innocence or serious doubt about guilt.<sup>16</sup> Newly available DNA evidence prevented

the pending execution of more than 15 death row inmates during the same period.<sup>17</sup>

DNA evidence is only available in a fraction of capital cases.<sup>18</sup> Its usage should be developed in order to make it standard practice in all cases where its findings may be used as evidence in establishing guilt or innocence.

Capital punishment, as it continues to be practised in many countries today, belongs

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to another age. It is a barbaric concept, which finds its roots in the development of retributive justice to the detriment of restorative justice which preceded it. Retributive or punitive justice was largely favoured and influenced by the Abrahamic religions which permeated and denatured justice, deflecting it away from its primal objective of pacification and reconciliation and reorienting it towards the pursuit of vengeance, retribution and punishment: *"Show no pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot".*<sup>19</sup>

The Book of Deuteronomy is the fifth book of the Hebrew bible (the Old Testament) and is thought by modern scholars to date from the 8th century BC. Its precepts have had a deep influence on much of the human psyche for nearly three millennia now and continue to

form the foundations of present day man-made, or to employ the technical term, "positive" law, in those parts of the world which remain under the influence of one or more of the four major Abrahamic religions (Judaism, Christianity, Islam and the Bahá'í Faith), i.e., roughly 55% of the world population.<sup>20</sup>

It will be a long time before mentalities change in order for justice to be seen simply as the rightful enforcement of the terms and conditions of the social contract to which we all voluntarily subscribe through the democratic process, and not

just as some cruel form of punishment.

Intentional murder is an act by which the murderer clearly demonstrates his refusal to recognise and respect life as a fundamental right of every human being, including himself. By his rejection of the right to life of his victim, he exposes himself to the risk of becoming a potential candidate for euthanasia.

Criminal court decisions of legal euthanasia should, however, be limited to crimes such as child murder, serial killing, torture murder, rape murder, mass murder, terrorism, and premeditated murder that is carefully planned and executed. Indications are that there is a fairly solid basis of continuous robust public support in most countries for the application of the death penalty for these particularly atrocious, cold-blooded crimes.



No doubt, this robust public support includes a large number of indomitable sadists who would have difficulty accepting that the death penalty be replaced by euthanasia defined as "a peaceful and painless death, preferably in a warm, cosy environment".

For those who have done no wrong, are beyond reproach and simply wish to end their lives in a calm, peaceful and orderly manner, access to the most modern, humane, scientific state of the art methods of euthanasia should be facilitated. Naturally there is a need for a certain

number of safeguards to protect the vulnerable from the malevolent influence of ill-intentioned persons in their entourage. Just as there should be psychological, medical and social assistance for those who are in need of them. It is more than likely that many of those who see no solution to their problems, apart from ending their lives, may change their minds on receiving competent, on-going assistance from somebody who cares. Professional assistance, provided with delicacy and tact, is a necessary prerequisite - but should not be a barrier - to any decision on euthanasia. The ill and suffering must, of course, continue to have full, unrestricted access to the best available professional palliative care at all times, irrespective of whether they are candidates for euthanasia or not.

Euthanasia is not, however, a question for the medical profession to decide. Many applicants may be in good health and have excellent perspectives in terms of life expectancy. Poor health and unsupported pain and suffering are not the only grounds for people wishing to end their lives. They may have other motives, perhaps of a purely personal nature, which they may not necessarily wish to reveal to others. Whatever their motives, their right to death is just as much a natural, moral and inalienable right as their right to life. It should also be a legal right.

According to the latest statistics,<sup>21</sup> there were 2,132 suicides reported in Australia in 2009 - six suicides per day. The median age of suicide was 43.4 years for males and 44.9 for females. In comparison, the median age of all deaths (from whatever cause) was

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77.8 years for males and 83.9 for females. Suicide was the leading cause of death for young people aged 15-24 with almost a quarter (22%) of all deaths within this group as a result of suicide.

It is even more significant that in 2007, the number of people who had serious thoughts about taking their own life in Australia was 368,100 and that 65,300 had actually made an attempt to commit suicide - equivalent to 179 attempts per day.

Almost one million individuals commit suicide worldwide, each year - one death every 40 seconds.<sup>22</sup> Many more attempt suicide (around 10-20 million) each year. Suicide is ranked as one of the three leading causes of death in the world among people aged 15-44.

It will not happen overnight but we must prepare for a radical change in our attitude towards life and death. Democracy and justice are solidly anchored in an ocean of inertia by the massive iron chains of archaic religious dogma in a position of opposition to the most fundamental of human rights. Our democracy and justice have been insensitive far too long to the pain and suffering of people wishing to lawfully exercise their right to life and death. They are left with no other choice but to have recourse, alone with their solitude and in a terrible state of despair, to the most barbaric, inhuman and expeditious methods in order to carry out their macabre enterprise.

Euthanasia is not something for religion or the medical profession to decide. The role of religion is to provide spiritual solace to those who require it and that of the medical

profession to provide the most effective medical assistance possible. Euthanasia, or "good death", has to be the personal decision of the individual exercising his free will without, or in spite of, any outside influence, or, in the case of those guilty of "atrocious" crimes, the collective decision of society, acting in the common interest.

It is the role of democracy to make this possible and that of justice to ensure that it is put into practice with full respect of the highest standards of integrity, diligence and professionalism.

Nor is euthanasia an ideology designed to supplant archaic religious dogma or obsolete, 4th century BC, Hippocratic oath.<sup>23</sup> It is simply the provision, by a mature, democratic society, of access to a "good death", in the best possible conditions of comfort and security.

It is difficult to anticipate the effect such a measure would have on the overall suicide rate. It has decreased in the Netherlands and Belgium since the legalisation of voluntary euthanasia for the terminally ill.<sup>24</sup> In Luxembourg, it has slightly increased. More significantly, it has decreased in Switzerland, which is the only country in the world that practises full "assisted suicide", not just euthanasia for the terminally ill.<sup>25, 26</sup>

There are as many good reasons to believe the suicide rate would increase as there are that it would decrease. They all tend to cancel each other out but, at least,

the debate helps pinpoint critical areas where safeguards are necessary to avoid undesirable forms of euthanasia.<sup>27</sup>

While the Swiss model is by no means perfect, its legalised form of "assisted suicide" is the broadest solution available in the world today, open to just about everybody.<sup>28</sup> The relevant legislation was passed in 1937 but it was not until the 1980s that it was implemented by setting up assisted suicide agencies, which are now thriving.<sup>29</sup> A referendum in the Canton of Zurich in 2011 confirmed overwhelming support for the practice.<sup>30</sup>

Although it appears that the current interpretation of the law does not reflect the original intent of the legislator, popular support for it is such that there is now no turning back.<sup>31</sup> This attests to the merits of the provision and of the high degree of satisfaction it procures for all those, Swiss and foreign nationals alike, who take advantage of it. It also clearly indicates that the fears and misgivings of its opponents are largely unfounded.

It is possible that as the Post-World War II baby-boomers become octogenarians in the 2030s, having, generally speaking, enjoyed a relatively "good life", they may wish to lay the groundwork, in preparation of their departure, for an equally "good death". If so they will need to change the rules, just as the Swiss did, though their world view might be quite different from that of the Swiss a century earlier. [AQ](#)



**AUTHOR:**

Born in Cairns and raised in Dalby on the Darling Downs, Rodney Crisp lives and writes in Paris near Montmartre, the favourite haunt of the 19th century impressionist painters, between the modest lodgings in which Suzanne Valadon gave birth to her son, Maurice Utrillo, and the elegant bourgeois apartment of Paul Cézanne. Following a career in international insurance and risk management, he turns a critical eye on the tenets and praxis of contemporary society.