

**Assisted Dying for Persons Deprived of Liberty. How a Relational
Conceptualisation of Dignity Strengthens the Argument that a Legalisation
of Assisted Dying Should Extend to Persons Deprived of Liberty.**

Abstract

Purpose:

This article argues that the eventual legalisation of assisted dying in England and Wales should extend to persons deprived of liberty, as well.

Approach:

Employing a relational view of dignity strengthens the argument that the need to protect the dignity of persons deprived of liberty requires the extension of the legalisation of assisted dying to persons deprived of liberty once generally achieved in England and Wales.

Findings:

Three aspects make dignity a relational concept – dignity being attributed by society, dignity working as a restraint on others and dignity requiring specific behaviours. All these elements support the claim that assisted dying should be available to persons deprived of liberty, once legalised in England and Wales.

Originality:

Both the legalisation of assisted dying for persons deprived of liberty and the concept of relational dignity have to date found little attention. With a legalisation of assisted dying being debated in England and Wales, it is pertinent to discuss its application to persons deprived of liberty, who would undoubtedly not automatically benefit from a future Assisted Dying Act.

Keywords: persons deprived of liberty - prisoners' rights – assisted dying – dignity – relational dignity

Introduction

Death in prison tends to be treated as a problem that should be avoided at all costs. However, this is easier said than done. In addition to deadly altercations and drug related deaths, prisons amplify the risk of suicides, due to, for example, the isolation of the persons deprived of liberty (PDL)ⁱ (e.g. Rickford and Edgar, 2003). To provide some context: in 2021, 350 PDL died in England and Wales, of which 75 were self-inflicted deaths; 47 are currently awaiting classification. In 2020, 319 PDL died, of which 67 were self-inflicted deaths (30 are still awaiting classification), and in 2019, 301 PDL died, of which 84 were self-inflicted deaths; 41 are still awaiting classification.ⁱⁱ Though many of these deaths resulted from mental health problems (see e.g. Inquest, 2020), the numbers do highlight the pressing need for policy makers to address the complexities around deaths in prison.

While accessing a dignified autonomous death can be problematic (even in the countries where assisted dying has been legalised, there are strict provisions that have to be fulfilled before a request to die will be granted, for example, the individual has to be suffering unbearably, see below), it is even more complicated for PDL. The State is under a duty to protect PDL, which includes preventing PDL from ending their own lives (among others, this duty arises under Article 2 of the European Convention on Human Rights (ECHR), the right to life, which imposes an obligation on the State to protect individuals whose life is at risk. See, for example, *Osman v UK*, application no. 87/1997/871/1083). Additionally, allowing PDL to choose when and how they die seems to undermine the aims of retributive punishment (see Reichstein, 2020). While many instances of (attempted) suicides in prison result from drugs and mental health issues,ⁱⁱⁱ there are some cases of PDL wanting to die, where that wish is not based on a treatable condition like drug abuse or mental illness, but on a genuine desire to not continue living (e.g. Frank van den Bleeken, see Devolder, 2016).

Accordingly, it can be argued that a variety of issues conflict with each other regarding assisted dying for PDL: the aims of punishment, the functions of prisons, the rights of PDL and the responsibilities of the State towards PDL. Due to the confines of this article, the focus will solely be on one of these notions – the rights of PDL and, more specifically, the right and need to have their dignity protected. This article proceeds on the premise that the protection of dignity cannot be overridden by the other aims of imprisonment; even the notion of punishment should not violate a PDL's dignity.

Thus, this article will follow the argument that once assisted dying has been generally legalised, it should also be available to PDL, based on the PDL's inviolable dignity. While the protection of PDL's dignity is being stressed in various human rights documents, this article will show how conceptualising dignity as a relational concept strengthens the protection of PDL's fundamental rights and supports the claim that receiving assistance in dying should be extended to PDL once legalised. Providing access to assisted dying is not the final step to a comprehensive protection of PDL's dignity, as many elements of imprisonment can pose a threat to dignity (e.g. over-crowding, solitary confinement, lack of meaningful activities, etc). However, with a legalisation of assisted dying becoming more likely, it is pertinent to discuss the need for its extension to PDL.

This article will focus on the situation in England and Wales, as well as drawing on case law of the European Court of Human Rights (ECtHR). Before turning to relational dignity, a brief overview will be given regarding the legalisation of assisted dying in Europe, followed by the idea of the retention of rights as a basis for the protection of dignity.

The Legalisation of Assisted Dying Across Europe

Currently, there is no such thing as a general right to die. Without a right to die, a legalisation of assisted dying is pertinent to enable suffering individuals who cannot, or do not want to

commit suicide unaided, achieve a dignified end to their lives. While suicide has been decriminalised in all European countries but Cyprus, this does not give anyone the right to end their lives, only the freedom to do so. Furthermore, this freedom only attaches to those who do not require assistance in dying, those who can commit suicide unaided. Individuals needing help in dying can, to date, only legally receive assistance in five European countries: Belgium (The Belgian Act on Euthanasia of May, 28th 2002), Luxembourg (Loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide), the Netherlands (Termination of Life on Request and Assisted Suicide (Review Procedures) Act, April 1, 2002), Spain (Ley Orgánica 3/2021, de 24 de marzo, de regulación de la euthanasia) and Switzerland (Swiss Criminal Code 1942, art. 115).^{iv} While Switzerland did not actively legalise assisted dying, the Swiss Penal Code of 1942 only ever prohibited assisted suicide if carried out for “selfish motives”. All other European countries that have legalised assisted dying restrict it to individuals suffering unbearably, be that mentally or physically. With only very few European countries having legalised assisted dying, we cannot yet speak of a right to die. The ECtHR stresses in its judgments that consensus among the Member States is required for the court to take a firm stand.^v

England and Wales, the focus of this article, have not yet legalised assisted dying. However, various Assisted Dying Bills have been introduced in Parliament in the last 20 years (by Lord Joffe in 2003, 2004 and 2005, Lord Falconer in 2014, Rob Morris in 2015 and Lord Falconer in 2020), with public and medical opinion shifting towards greater support of legalising assisted dying (see Iacobucci, 2019). All the proposed Bills focussed on legalising assisted dying for the terminally ill. Hence, the argument of this article will be based on extending the permissibility of assistance in dying to terminally ill PDL, once it has been legalised in England and Wales.

The countries that have legalised assisted dying have extended its remit to include PDL. In Switzerland, for example, once a PDL has been granted compassionate release, they have the same access to assisted dying organisations as everyone else. However, being able to receive this assistance in prison is much less likely (see Shaw and Elger, 2016), though not prohibited (see Handtke and Bretschneider, 2015). While in Belgium and Switzerland cases have been reported of PDL asking for an assisted death,^{vi} there are no known cases in the Netherlands, Luxembourg or Spain.

It is unlikely that a legalisation of assisted dying in England and Wales would automatically extend to PDL. PDL's rights are a contentious topic, which can be seen in the struggle to secure voting rights for PDL. It took more than 10 years for the United Kingdom to give some voting rights to a very small number of PDL, following the ECtHR judgment *Hirst v UK (no 2)* (application no. 74025/01) (see Celiksoy, 2020). It is highly likely therefore, that any legalisation of assisted dying will not automatically extend to PDL, which would potentially violate the PDL's right to a dignified end to their lives.

The following sections will demonstrate why a PDL with full mental capacity, who is suffering unbearably, should have a right to receive assistance in dying, just as every individual with capacity who is not imprisoned should. This is based on their inviolable dignity, which, as a relational concept, supports the quest for assistance in dying.

Retention of Rights

As dignity and human rights language are closely linked (see below), the retention of rights serves as a basis for the protection of PDL's dignity. The retention of rights by PDL has been reaffirmed by the ECtHR on numerous occasions, such as, for example, in its decisions on PDL voting. In *Hirst v UK (no 2)* (application no. 74025/01), a PDL claimed his rights under the

ECHR had been violated by the inability to vote while being imprisoned. The ECtHR (application no. 74025/01, para 69) reaffirmed that:

[P]risoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention ... Any restrictions on these other rights must be justified, although such justification may well be found in the considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment.

Similarly, the UN General Assembly's 1990 Declaration on the Basic Principles for the Treatment of Prisoners (GA Resolution 45/111, PARA 5) stresses that:

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

If detention carries the inherent risk of inhuman and degrading treatment (van Zyl Smit & Snacken, 2009), then this will only be exacerbated for someone not wishing to live and not wishing to return to society after serving his or her time. As Snacken (2015, p. 416) observes, "penal power-holders [those controlling the parameters of imprisonment] have an inescapable responsibility to determine whether we treat offenders as we want to be treated ourselves". If

we want the freedom to determine the end of our own life, which, it should be acknowledged, only very few people want, then we should give this freedom to PDL as well.

In *Dickson v United Kingdom* (application no. 44362/04), the UK government submitted that imprisonment automatically entailed the forfeiture of rights and that some measures were required in order to uphold public confidence in the penal system. Not being able to conceive while imprisoned, for example, was part of imprisonment. Furthermore, it was in the best interest of the child not to be conceived and start life with one parent in prison. Lastly, it stressed that refusing artificial insemination for prisoners was not a blanket ban; there could be instances where a request would be granted. Cases concerning assisted dying would, however, be a different matter. Those cases do not just concern the right to respect for private and family life, they also directly touch upon the PDL's dignity. The proportionality assessment required by the court would, therefore, take a different shape than it did in *Dickson*.

The retention of rights can, furthermore, be seen as an element of normalisation which could be achieved in prison by bringing conditions inside as close as possible to those outside. The principle of normalisation is stressed by the European Prison Rules (Council of Europe, 2006) as one of the fundamental principles to govern life in prison. Rule 5 states that "[l]ife in prison shall approximate as closely as possible the positive aspects of life in the community". Additionally, healthcare in prison shall be equivalent to that in society (rules 40.1-40.5). Assisted dying regulations are closely linked to medical care, especially when legalisation is restricted on medical grounds. It can therefore be argued that, based on normalisation and the retention of rights, a future right to assistance in dying should be extended to PDL. While retention of rights is an important foundation for granting access to assisted dying, it is not sufficient if the retention is not itself placed on a strong foundation. Using dignity as a foundation for the retention of rights of PDL and strengthening it further through the lens of

relational dignity, as will be explored below, supports the need for assisted dying legalisation to be extended to PDL.

The Dignity of PDL

Closely connected to, and building upon the retention of rights, lies the protection of PDL's dignity. When aiming to uphold PDL's dignity, we first must be clear about what dignity entails. Today, dignity is the basis for rights, as well as a right itself. Most strongly, dignity means respect; the respect for another human being, as belonging to the same species and therefore deserving the same treatment we would want for ourselves. Dignity has two aspects, one being ontological, giving humans an equal worth, the other being normative, requiring of others to respect said worth (Carozza, 2013, p. 616). Dignity, furthermore, protects our core being, our identity - it acts as a protective shield. When we speak of the protection of our dignity, what we really mean is protection of our most personal inner self, all the notions that make us who we are.

In Cicero's time, dignity was denoting rank, which was limited to a few State-officials (Rosen, 2012, p. 11). Socrates was one of the first to move towards a notion of equal status for every individual, though only within the very limited setting of Athenian democracy (Kateb, 2011, p. 8). During the Renaissance, this very narrow view of dignity was broadened to encompass every human being, based on human capacities such as self-determination (Rosen, 2012, p. 15). A widely postulated idea was the religious view that man was created in the image of God, which gave man a special value – dignity – but also required of man specific behaviour, for example, not to throw the gift given by God (i.e. life) away.^{vii} The next major step in the development of dignity was postulated by Kant, who based the special worth of human life on man being an end in himself, instead of a means to an end.^{viii} This meant a step away from dignity coming from a transcendental world, towards dignity being rooted in humanity itself

(Bayertz, 1996, p. 74). The individual was not a mere image of God anymore, but rather a God in themselves (Bayertz, 1996, p. 77).

Dignity as a legal concept can be said to go back to 1789 (at the domestic (French) constitutional level) (Dupré, 2013, p. 117) and, as an international legal concept, is seen to date back to the Universal Declaration of Human Rights (UDHR). After the Second World War, dignity was included in the emerging international human rights documents as a reaction to the atrocities of the war (Chapman, 2011, p. 5). While the lack of definition of dignity leads to criticism concerning its use (McCrudden, 2008, p. 655; Kuhse, 2000, p. 74), this can also be seen as an advantage in that the States involved in drafting and applying the documents could fill it with their own meaning (Chapman, 2011, p. 5; McCrudden, 2008, p. 678).

Dignity strongly influences the language around rights, especially human rights, which are based on respect for human dignity. The first United Nations human rights instrument, the UDHR, states in its first article: “All human beings are born free and equal in dignity and rights”. Though the ECHR does not mention dignity itself, critics believe it to be an underlying concept (Waldron, 2012, p. 200). While PDL give up their liberty, they do not forfeit their dignity.

The jurisprudence on PDL’s rights stresses the need for respect for dignity (see, for example, *Bouyid v Belgium*, application no. 23380/09, *Vinter and Others v the United Kingdom*, applications nos. 66069/09, 130/10 and 3896/10, and *Muršić v Croatia*, application no. 7334/13). In *Grant v Ministry of Justice*, the High Court stated that limiting a person’s dignity can infringe their human rights under Article 8 of the ECHR ([2011] EWHC 3379 (QB), para 80):

Where actions of the state (including treatment and conditions in prison) interfere with a person's privacy or dignity such that they adversely affect the physical,

psychiatric or psychological well-being of that person, that may constitute an interference with Article 8.

Dignity and imprisonment also raise issues under Article 3 of the ECHR. In *Wenerski v Poland* (application no. 44369/02), the ECtHR stressed that “under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity” ([55]). In this case, the lack of appropriate medical care in prison amounted to a violation of Article 3. Another example of imprisonment raising issues under Article 3 was the lengthy detention of an elderly sick person in *Papon v France (no. 1)* (application no. 64666/01). Combining the notion of retaining rights and protecting PDL’s dignity, as well as the equivalence of healthcare mentioned above, demonstrate the fundamental importance of extending a legalisation of assisted dying to PDL.

While it can be argued that English prisons are not truly designed to destroy dignity but are designed for security, in effect, the specifics of a prison sentence have the potential of violating dignity.^{ix} This is unacceptable, as “[o]ne ought to be able to do one’s time, take one’s licks, while remaining upright and self-possessed” (Waldron, 2012, p. 219). A PDL, though having committed a crime that justifies the deprivation of liberty, retains the full right to respect for their dignity. This then requires at least the possibility of dying in dignity, giving PDL an elemental choice and control over their life. Imprisonment surely involves some challenges to the PDL’s dignity, like having to share a small cell with a stranger, being told when to shower or exercise, having very limited control over one’s daily life, to name but a few. While these are justified elements of prison life based on the punitive nature of imprisonment, as well as organisational aspects of prison life, there has to be a general recognition of PDL’s dignity to ensure the upholding of certain standards in treatment. One element of this is to enable a premature death of a capable PDL, if this is the path they choose.

Admittedly, dignity is not an uncontested notion. Some argue that it is unnecessary to speak of dignity, that it adds nothing to the debate (see Macklin, 2008 and Pinker, 2008). However, with a clearer definition, dignity shows its worth in strengthening the protection of human rights and thus the rights of PDL. Seeing it as a relational concept can provide such a definition.

Relational Dignity

The idea of a relational concept is now well known through the discourse of relational autonomy (MacKenzie and Stoljar, 2000; Taylor, 2005; Westlund, 2009). What started as a feminist movement has spread into the acknowledgment that to be fully autonomous, humans rely on others. To fulfil the potential of our autonomy, we need societal structures. The following sections will demonstrate that the same is true for dignity. However, relational dignity differs from relational autonomy in that we not only need others to reach the full potential of our dignity, but the relational nature is also entailed in dignity acting as a protective shield against interference from the outside.

Relational dignity has so far been little addressed in the literature.^x While McCrudden (2008, p. 679) included a relational element in the minimum core that makes up dignity, together with an ontological element and a specific State-individual relationship, he does not explore this relational element, which is necessary for strengthening the role and protection of dignity in our lives. Conceptualising dignity as being relational has a multitude of advantages. For one, it explains why we attach dignity to all stages of life, including the unborn and corpses (see Rosen, 2012, chapter 3). The subject in question has no perception of its own dignity, it is being attached externally, through society. At what stage unborn life acquires dignity is highly dependent on society's views on when life begins. Similarly, the respect paid to the deceased depends on the specific society and their views on dignity. Furthermore, approaching dignity as a relational concept strengthens the protection of human rights. By seeing it as a protective

shield, a restraint on others, the core of the human being and their rights find stronger protection. By acknowledging that dignity requires specific behaviour from others, and from society as a whole, a stronger emphasis can be put on the positive obligations connected to human rights. As is often stated, human rights are most important in protecting minorities (see, for example Arnold, 2017. See also guiding principle 3 of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions). Therefore, it is advisable to strengthen the human rights of a minority like PDL through stressing the relational nature of dignity.

A. Dignity is Attributed by Society

The first aspect in which dignity functions as a relational concept is through it being attributed by society. In voluntary isolation, dignity does not play a significant role. It is important though to stress the voluntary notion of isolation, especially with PDL in mind, as involuntary isolation might itself be undignified. For the sake of the argument, voluntary isolation can entail personal life at home, it extends until one is to interact with others. In this state of solitude, dignity does not have to be considered. One can exist in whatever way one wishes to live. This can of course take into account what the individual believes to be a dignified existence, but dignity does not have to be actively considered. However, as soon as humans start interacting, dignity enters the playing field. Not just as a restraint on others and requiring specific behaviours (discussed below), it exists in the background as a common knowledge in society as to what is dignified and what is not. This can and does vary from one society to another. While dignity is seen as a universal concept – every human possesses dignity – the definition of what is dignified and what is not is not a universal truth. What is considered dignified in one society might be undignified in another, and vice versa. Our understanding of what is dignified behaviour is imparted to us during our upbringing but can change in accordance with societal changes.

Dignity being attributed by society shows itself very strongly in the regulation of prisons. Imprisonment should not violate the PDL's dignity, yet the prison conditions that are tolerated vary among societies – and of course also depend on other factors, such as economic constraints. Regardless of those external factors, what is deemed acceptable about prison life is also always dependant on society's views on a dignified existence.

B. Dignity as a Restraint on Others

Arguably, the strongest way in which dignity is relational is in its function as a restraint on others. The dignity of one human being sets boundaries that others should not cross. The mere statement that human dignity is inviolable shows the protective shield that human dignity forms around our core being. What it is that dignity shields us from is again dependent on the societal view on dignity. At the same time, dignity cannot be used as a protective shield to justify any kind of behaviour or claim; a balance needs to be struck if one's idea of a dignified action or life encroaches on that of someone else.

When it comes to PDL's rights, dignity functioning as restraint is paramount. Dignity sets boundaries that cannot be violated by prison conditions. By being a restraint, dignity protects the core of the PDL's identity. Dignity functions as a shield against other PDL, prison conditions and prison management, preventing them from encroaching too far into the core sphere of what makes the PDL an individual.

C. Dignity Requiring Specific Behaviours

Finally, dignity is a relational concept in that it requires specific behaviours from others. Like autonomy, for us to live a dignified life we need support from those around us (unless we are in voluntary isolation, see above). Protective measures need to be in place, especially when in a vulnerable state, for our dignity not to be violated.

Applying this to PDL's rights, viewing dignity as relational in that it requires specific behaviours means that a country's prison regulations need to entail specific elements that enable the PDL to uphold their dignity. Without proactive support, a PDL's dignity can easily be violated within prison. It is therefore important for all those involved in managing PDL's lives to take steps to respect and protect their dignity.

Relational Dignity and Assisted Dying for PDL

All three elements that make dignity a relational concept support extending a legalisation of assisted dying to include PDL. The third element of relational dignity especially – requiring specific behaviours of others – is of great significance when engaging with the issue of extending assisted dying provisions to PDL. For the dignity of PDL to be supported, active steps need to be taken by prison management to ensure that their dignity does not become violated. When suffering at the end of their lives, and should they wish to end what to them has become an undignified existence, a PDL's dignity should entitle them to the same assistance as an individual living in freedom would be able to receive. Not extending the possibility to PDL would be an affront to their dignity. This also raises the relational notion that dignity functions as a restraint on others. The prison system cannot force a PDL to continue living once their life has become undignified based on unbearable suffering. While compassionate release is an option for some terminally ill PDL, dying at home, cared for by family and friends is neither possible nor desirable in every single case. PDL might not have friends or family to care for them and compassionate release depends on the specifics of the case. Furthermore, palliative care, which would be available in a hospice or at home following compassionate release, is not the solution to every instance of suffering (see *Dignity in Dying*, 2019). Consequently, assisted dying should be an option, as well.

Lastly, while dignity is attributed by society, it does not imply that a society can refuse a group (in this instance PDL) the protection of their dignity while upholding it for the majority of society. Once it has been attributed, it must apply equally to all members of that society. Consequently, if dignity is seen as an argument supporting the legalisation of assisted dying – as it is indeed in England and Wales – it should be an argument that equally supports assisted dying for PDL.

It should be noted that the suffering caused by being imprisoned is not enough to justify the voluntary termination of life. However, if a PDL is suffering a terminal, or unbearable health condition, then their dignity demands an alleviation of their suffering. Unbearable suffering is, to a large extent, subjective, and difficult to define. Dees et al (2010), when considering requests for assisted dying, suggest that unbearable suffering “is a profoundly personal experience of an actual or perceived impending threat to the integrity or life of the person, which has a significant duration and a central place in the person's mind” (p. 350). Their study of 120 patients showed that “patients express their unbearable and unrelieved suffering in terms of pain, weakness, functional impairment, dependency, being a burden, hopelessness, indignity, intellectual deterioration, perception of loss of oneself, loss of autonomy, and being tired of life” (p. 342). Some of these elements can be brought on or worsened through the nature of imprisonment including, for example, the loss of autonomy, dependency and potential for indignity. In evaluating the unbearableness of the situation, great care should be taken to ascertain that the suffering is unrelated to the status of being imprisoned. This is especially difficult if the unbearable health condition is mental rather than physical (see also Verhofstadt et al, 2017).

Despite these difficulties, PDL should not be excluded from the option to receive assistance in dying, once assisted dying has been legalised in England and Wales (see also Reichstein, 2020). While the State undoubtedly has a duty to protect PDL, the case for allowing

a PDL to receive assistance in dying should be on an equal footing to that of individuals outside prison.

Conclusion

While the notion of punishment, as well as the duty of the State to protect PDL, both justify the aim to prevent all suicides within prisons, thus taking away the freedom to die when one wishes, this should not be taken to prevent all ‘premature’ deaths in prison. As the right to die advances in England and Wales, so should it advance in prison. While it still might take some time for assisted dying to be legalised, England and Wales are slowly advancing towards a legalisation. In the latest debates on assisted dying in the English Parliament, a slight change has become audible; the balance between opposition and proponents is slowly shifting towards those supporting legalisation. Once assisted dying for the terminally ill has been legalised,^{xi} the same assistance should also be available to terminally ill PDL. This is necessary to uphold the dying PDL’s dignity.

In addition to the general safeguards that feature in the Assisted Dying Bills previously introduced in Parliament (for example, the wish to die must be assessed by two independent medical practitioners to establish that the wish has been formed voluntarily), specific safeguards are needed within prison settings. As stated above, some of the specifics of imprisonment can lead to feelings that, if experienced outside prison, could amount to unbearable suffering. The evaluation of a request by two independent medical practitioners should therefore be strengthened when considering a PDL’s request for assistance in dying, by including a thorough psychological evaluation to ensure that the suffering is not based on the very nature of imprisonment, but brought on by other elements that cannot be alleviated. This

could further be supported by introducing a ‘cooling off’ period between being taken to a hospice or hospital, where the assisted death will take place, and the actual act, to ensure that the wish to die has not been unduly influenced by the prison setting. The medical practitioners required to ascertain that the request to die has been made voluntarily, by a capable adult, must be external to the prison setting. Furthermore, the final act should not be carried out within the prison, for reasons of transparency and to protect the dignity of the PDL and the prison staff.

With stringent safeguards in place, it should be possible to give PDL access to assisted dying once it has been legalised in England and Wales. This is vital for the protection of PDL’s dignity and is supported by viewing dignity as a relational concept.

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ⁱ In this article, the terminology ‘Person Deprived of Liberty’ is used, rather than ‘prisoner’. This is to employ respectful and person-centred language, which is especially pertinent when advocating PDL’s rights and the need to respect their dignity (See also Tran, 2018).

ⁱⁱ <https://www.inquest.org.uk/deaths-in-prison>, [Accessed 05 January 2022].

ⁱⁱⁱ See for example, <https://www.theguardian.com/society/2017/jul/11/prison-deaths-linked-new-psychoactive-substances-rising-rapidly-watchdog>, [Accessed 05 January 2022].

^{iv} Additionally, the German Federal Constitutional Court ruled on 26 February 2020 (2 BvR 2347/15) that the right to personal identity in German constitutional law encompasses a right to self-determined death, which could include seeking assistance in dying. While the Portuguese Parliament passed a law to legalise assisted dying in 2021 (Projecto de Lei n.º 67/XIV/1ª Regula o acesso à morte medicamente assistida), the Constitutional Court declared the law unconstitutional (Acórdão do Tribunal Constitucional n.º 123/2021).

^v See, for example in *Nicklinson and Lamb v UK* the stress by the Court that the UK Supreme Court “they were entitled to [leave the matter to Parliament] in light of the sensitive issue at stake and the absence of any consensus among Contracting States”, application nos. 2478/15 and 1787/15, para 85.

^{vi} The requests by Frank van den Bleeken in Belgium and Peter Vogt in Switzerland have led to some media debate about assisted dying PDL. See e.g. <https://www.thelocal.ch/20200106/will-switzerland-allow-assisted-suicide-for-its-prisoners/> and <https://www.telegraph.co.uk/news/worldnews/europe/belgium/11327541/Belgian-serial-rapist-will-not-be-euthanised-as-planned.html> [Accessed 05 January 2022]

^{vii} Of course there are also arguments that can be held against this still existing claim. For example, that God also created worms and viruses, which we do kill and try to get rid of. And that usually gifts can be rejected or given back, so why not the gift of life. See Lenzen, 1996.

^{viii} According to Kant, everything fell into one of two categories, either having a price or having dignity, dignity being an unconditional, incomparable value. See Kant, *Groundwork to the Metaphysics of Morals*, referred to in Rosen, 2012, p. 20 ff.

^{ix} The aspects that create vulnerability, arguably also infringe on dignity, e.g. having to share minimal living space with strangers, the complete lack of privacy, the lack of control over every aspect of life, etc.

^x I first analysed dignity as a relational concept in my PhD on assisted dying, ‘The Right to Life – A Duty to Live?: A Comparative Analysis of the Regulation of Active Assisted Dying in England, Germany and under the ECHR’, submitted to the University of Nottingham in 2015, followed by an the article ‘A Dignified Death for All – How a Relational Conceptualisation of Dignity Strengthens the Case for the Legalisation of Assisted Dying in England and Wales’ (2019) 19(4) *Human Rights Law Review* 733-751. Currently, the only other research engaging with the notion of relational dignity is Corbett, V. (2017).

^{xi} ‘Terminal Illness’ is generally understood in England and Wales to mean that an illness cannot be cured and will lead to death within six months. See, for example, <https://www.mariecurie.org.uk/who/terminal-illness->

definition [Accessed 22 December 2021]. The Department for Disabled People, Health and Work is working on reviewing the special rules for terminal illness, but at the time of writing these have not yet been published.