

Chapter 12

Assisted Suicide, Voluntary Euthanasia, and the Right to Life

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Introduction

One of the few significant freedoms still not legally accorded to people even in liberal democracies is the freedom either to obtain assistance from others in taking one's own life or to be actively and voluntarily euthanized by those willing to help one. While liberal societies accord competent adults extensive freedom to *lead* their lives in the ways they choose, all but a handful of such societies deny people freedom to obtain assistance to *end* their lives.

There is, to be sure, more freedom to end one's life now than there was before. Many countries that previously criminalized suicide itself, prosecuting those who made unsuccessful attempts or penalizing the estates or bodily remains of successful suicides, no longer prohibit suicide per se. However, with the exception of very few states, it remains a crime to assist others in suicide or to perform euthanasia on humans.

The legal freedom to kill oneself without the assistance of others is often insufficient for the same sort of reason that a freedom to treat oneself medically is often insufficient. Some of us are sometimes capable of medicating ourselves. We have a headache and thus we ingest a tablet that brings relief. We incur a minor cut, which we disinfect and then perhaps plaster. However, we are not expected to diagnose more complicated or serious ailments or to decide, unaided, which therapies to pursue. The reason is obvious. Most people lack the requisite training to diagnose and to treat effectively, and the consequence of prohibiting others from helping them would be that people would be much worse off.

Something similar can be said of those who want to die. While many people who find that their lives have reached an intolerably low quality *could* kill themselves unaided, they would run the risk, if acting without assistance, of either dying painfully or gruesomely or of botching the attempt. In any of these cases they would be worse off than if they had been able to secure professional assistance. Moreover, there are some people who simply *cannot* kill themselves unaided. There are others who cannot kill themselves even with assistance, as they are so paralyzed that they are unable to perform any action that will bring about

their deaths.¹ The people in the last category, if they are to die when they want to die, will need to have others kill them in an act of voluntary euthanasia.

The observation that a legal freedom to kill oneself unaided is often insufficient for a person to attain the death he² prefers is not intended to show, by itself, that assisted suicide³ and voluntary euthanasia are morally justifiable. Instead, it is intended only to ward off the claim that there is no need to allow assisted suicide or euthanasia, on the grounds that people currently, at least in some places, have the option to kill themselves without the threat of criminal or civil response.

Reference has now been made to suicide, assisted suicide and to voluntary euthanasia. While there are obviously some differences between each of these categories, they also have some elements in common. In speaking about suicide, whether assisted or otherwise, I shall restrict my attention to those cases where the person killing himself is competent to decide whether continued life is in his interests because it is these cases that are worthy of consideration alongside *voluntary* euthanasia. What these cases of suicide and assisted suicide have in common with voluntary euthanasia is that in all three situations the person who dies is competent to and does genuinely consent to his or her own death. The difference between them is that whereas in suicide, whether assisted or not, the person who dies is the same person as the one who kills, in euthanasia the person who dies is somebody other than the person who kills. Suicide is the killing of the self, whereas euthanasia is the killing of or by another, but always for the sake of the person who is killed.

In speaking about suicide and voluntary euthanasia I have described them as instances of *killing*. Although one could bring about one's own or another's death passively, my focus in this paper will be on killing, or actively bringing about people's death. This is because most of the controversy pertains to killing rather than to letting die.

Many people fail to recognize that there are two distinct moral questions one can ask about assisted suicide and euthanasia. The one is whether these practices

1 Where they are permitted to refuse nutrition, they could choose to die of dehydration or starvation, but again that is clearly a worse way to die than a more speedy method.

2 Although I shall sometimes also use the female pronoun I shall, for convenience, sometimes use only the male pronoun. For an explanation why this is not sexist, see Benatar 2005.

3 It is common in the literature to refer to 'Physician Assisted Suicide' (PAS). I eschew this convention for two reasons. First, 'Physician' is used in the American sense and thus means 'doctor,' and thus the phrase refers to 'Doctor Assisted Suicide.' Elsewhere in the English-speaking world, physicians are what the Americans call 'Internists.' The term 'Physician Assisted Suicide' is thus either potentially misleading outside of America or assumes that everybody must accommodate to American usage. Second, while the assistance of doctors is often what is needed, on account of their expertise, I do not want to preclude the possibility that assistance could sometimes come from somebody other than a doctor.

are morally acceptable, while the other is whether they ought (morally) to be legal.⁴ These two questions are often either confused or the answer to the one is thought to entail the answer to the other. Thus, some people think that if the practices are immoral they ought also to be illegal, and if they are morally permissible then they ought to be legal. It is possible, however, to answer the two questions differently.

One could think that while assisted suicide and euthanasia are immoral they ought not to be illegal. To make sense of this, consider the view, widespread in liberal democracies, that saying certain things may be immoral but ought nonetheless to be legally permitted. One possible justification for such a view is that it is not the state's business to interfere with the freedom of its competent adult citizens (except where they wrongfully harm others), even if what they are doing either is or is thought to be immoral.

Similarly, one could think that while assisted suicide and euthanasia are morally permissible, they ought nonetheless to be illegal. One common justification for such a view, which I shall discuss later, is that legalizing permissible instances of euthanasia or assisted suicide would soon lead to the performance of impermissible instances. On this view, although euthanasia may sometimes be permissible, legalizing it would be a bad public policy.

Although the two questions – whether euthanasia is morally acceptable and whether it should be legal – are distinct, the arguments I shall advance in this chapter will be relevant to both. More specifically, I intend to argue for affirmative answers to both these questions. I shall do so by focusing, at least in the first instance, on the right to life. I shall argue that a reasonable interpretation of such a right is sufficient to show that assisted suicide and voluntary euthanasia are morally permissible, and that there is no need to postulate a *separate* right to die in order to reach this conclusion. Although, in certain circumstances, I also endorse *non-voluntary* euthanasia – that is, euthanasia of beings that are not competent to make a judgement for themselves – I shall not argue for that here. Towards the end of the chapter, I shall consider and reject arguments for the view that even if assisted suicide and voluntary euthanasia are morally permissible they ought nonetheless to be illegal.

The Right to Life

Opponents of assisted suicide and euthanasia, who are often also opponents of abortion, frequently support their conclusions by appealing to a right to life. The assumption, it seems, is that if somebody has a right to life then it is wrong to kill him. Perhaps it is also thought that because a right is a 'trumping' moral principle,

⁴ The latter question should, in turn, be distinguished from a third question – whether assisted suicide or voluntary euthanasia *is* legal in a given jurisdiction. This third question is obviously a legal question rather than a philosophical one, and I shall not consider it here.

it cannot be overridden by other moral considerations that defenders of assisted suicide, euthanasia and abortion might advance.

Although attributing a right to life to foetuses is a contentious matter, the attribution of such a right to competent adults is widely accepted. Indeed, it is so widely accepted, both by opponents and proponents of assisted suicide and voluntary euthanasia that it cannot be what divides those on different sides of this issue. Instead the debate is often characterized as being over whether in addition to a right to life people also have a right to die. I plan to show, however, that there is no need to postulate a right to die in order to defend assisted suicide and voluntary euthanasia. I shall argue that if we understand the right to life in the most plausible way, we find that the attribution of a right to life to a competent adult entails the moral permissibility of assisted suicide and, if that is not possible, voluntary euthanasia.

The phrase ‘a right to life’ is ambiguous between ‘a right not to be killed’ and ‘a right to have one’s life saved’. Interpreted in the former way it is a *negative* right (a right *not* to be treated in a certain way), while interpreted in the latter way it is a *positive* right (a right *to* be treated in a certain way). It is entirely possible, of course, that people have both a negative and a positive right to life. However, both because the attribution of a positive right to life is more controversial and because discussing it does not add anything to discussion of the right not to be killed, I shall focus only on the negative right.

The right not to be killed is, at the very least, a *claim* on others not to kill the bearer of the right. In other words it is, minimally, what Wesley Hohfeld (1919) called a ‘claim right’. If the right in question is a moral right, then the claim is a moral one. If the right is a legal one, then the claim is correspondingly a legal one. The right not to be killed can, and often is, *both* a moral and a legal right. The claim right has a correlative duty – the duty (whether moral or legal, or both) not to kill the right-bearer.

With regard to assisted suicide and voluntary euthanasia the crucial question about the right not to be killed is whether it can be waived. The right not to be killed obligates others not to kill the right-bearer. However, if the right-bearer is entitled to waive his right, then he is entitled to release others from their duty not to kill him. Another way of putting the question is to ask whether the right not to be killed, consists not only of a *claim* that others not kill one, but also a *power*⁵ to alter the moral or jural relations in such a way that a specific person in specific circumstances may be released, by the right-bearer, from his duty. Obviously, if a right not to be killed included the power to waive the right, then the right not to be killed would not preclude assisted suicide and voluntary euthanasia. Indeed such a power would positively permit these practices.

Before I argue that the negative right to life is most plausibly understood as including this power, I want to clarify what a right waiving is and is not. Waiving a right sometimes involves its loss. If, for example, one (unconditionally) releases

5 This term is also Wesley Hohfeld’s.

somebody from a debt owed to one, then one no longer has a claim against that person for what was owed. Waiving one's right here involves losing it. However, waiving a right need not always involve its loss. If one invites guests to one's home, one waives, for the duration of the visit, one's right that those people not enter one's home. One does not thereby lose one's right. One could re-assert it and ask the guests to leave if one so chose. Moreover, even for the duration of one's guests' visit, the right remains in full effect against everybody other than one's guests.

Given this, it is apparent that even if a right not to be killed is what some call 'inalienable' – a right that may not be given up – it could still be waived.⁶ One could grant a specific person at a specific time permission to kill one in a specific way. One could withdraw that permission at any time until one lost the ability to do so. The method of killing would be restricted in accordance with one's directive. Through all this, everybody else would remain under a duty not to kill one.

Why should we understand the right to life as including the power to waive the right? The answer lies in the moral basis of the right. The justification for a right to life lies in the importance that continued life ordinarily has. The right protects against others violating our very strong and valid interests in continuing to live. Now, although continued life is *ordinarily* in our interests, it is not *always* so. The quality of one's life can be so bad that one reasonably judges death to be less bad than continuing to live in one's condition.

We need not agree on how bad life must get before continued life ceases to be in one's interests. Indeed, part of the point of assisted suicide and voluntary euthanasia is that decisions about whether the quality of a competent person's life is bearable or unbearable are largely left up to that person. I say 'largely' rather than 'entirely' because once second parties are involved in one's death, as is the case in both assisted suicide and euthanasia, the perspective of those second parties is also relevant. One person cannot be expected to kill another if he lacks adequate reason to see the death as being in the interests of the person who is killed. The issue for second-party involvement is not merely whether the death is in the interests of the person who dies, but whether it is sufficiently clearly so that the second party acts reasonably in providing assistance. I shall say more about this later, but all we need agree upon here is that it *does* sometimes get so bad that a second party could reasonably see that continued life was no longer in that person's interests. And it seems to me that one cannot reasonably deny that life does sometimes get this bad for at least some people.

Consider, for example, those people who face unremitting excruciating pain. Opponents of assisted suicide and voluntary euthanasia often respond to such cases by noting that in such cases there is always an alternative to death – palliation. Although there are parts of the world where people do not have access to the medication that can relieve their pain, the claim is true for many people. However, the assumption here is that life in the palliated state is worth continuing.

6 That is, unless one takes 'inalienable' to mean 'unwaivable'.

Some people may accept this for themselves. For others, however, the costs of sedation or analgesia – lingering in a state of minimal consciousness, which has no pleasures and in which one must be subject, even if only obliviously, to ongoing indignities – may be worse than death.⁷

Similarly, we can consider other conditions, which even if not excruciatingly painful (in the literal sense) nonetheless cause immense suffering. For example, there are people who are unable to move any of their limbs or, in still worse cases, anything other than their eyelids. They are bowel and bladder incontinent, must be turned regularly in an effort to avoid bedsores, and can breathe only with the assistance of machines. There are others who endure horribly disfiguring diseases or injuries. They have severe burns over much of their bodies, they suffer from some ulcerating condition, or the only treatment for a cancer is to undergo surgery that mutilates their faces, for example.

It is obtuse to insist either that there are not (many) people in such conditions or that everybody with such conditions must judge continued life of this kind to be preferable to death. Perhaps opponents of assisted suicide and euthanasia believe that their own lives would be worth continuing in such situations. Even if they are correct that this is what they would believe if they actually found themselves in such situations, it is immensely arrogant to think that everybody else must be bound by their own preferences or judgements in such cases.

John Keown, arguably one of the most sophisticated opponents of euthanasia, rejects the idea that ‘life can lose its worth so as to make death a benefit’ (Keown 2002, 39). This is because he maintains humans possess ‘an intrinsic dignity [that] grounds the principle that one must never intentionally kill an innocent human being’ (Keown 2002, 40). In its religious form, this is the sanctity of life doctrine, according to which, ‘human life is created in the image of God and is, therefore, possessed of an intrinsic dignity which entitles it to protection from unjust attack’ (Keown 2002, 40). In its non-religious form, human dignity is grounded upon ‘that radical capacity, inherent in human nature, which normally results in the development of rational abilities such as understanding and choice’ (Keown 2002, 40).⁸

7 Empirical studies from those jurisdictions in which voluntary active euthanasia or assisted suicide are practised show that many people who elect to die, do so not (simply) because of pain but because of other impoverishments in their quality of life, including loss of autonomy and an inability to participate in activities which make life enjoyable. See, for example: Kissane, Street, and Nitschke 1998; Chin, Hedberg, Higginson, and Fleming 1999; Ganzini, Nelson, Schmidt, Kraemer, Delroit, and Lee 2000; Sullivan, Hedberg, and Fleming 2000.

8 Actually Dr Keown says this about both the religious and the non-religious form of the argument. The problem with that, however, is that it need not be the case that being created in God’s image is the same as having the capacity for the rational abilities of understanding and choice. If it is, then it is unclear what work is being done, in the religious form, by the claim that humans are created in the divine image. However, it makes no

These views face many problems. First, it is unclear whether the claims are true. Whether or not humans are created in God's image is at least as controversial as the euthanasia question and thus is an unpromising means to resolving the latter. Nor is it clear that humans have dignity on account of their rational nature. There are many humans – infants and those who are seriously mentally disabled – whose understanding and ability to choose is less than that of many animals. Dr Keown's response to those cases is to distinguish between a capacity and an ability. He says that one might have the capacity to learn Swahili but not (now) have the ability to speak it. Now, while it is true that normal human infants do have the capacity to learn any languages, it is not true that those who are seriously mentally disabled have that capacity. Although it is true that but for their disability they would have the capacity, it is equally true that but for the nature of their brains, squirrels would also have the capacity. Both conditions are actually immutable and it is not clear why the fact that one is a deviation from normal species functioning and the other is not, entails that one has the relevant capacity and the other does not.

Second, even if humans were created in God's image or had the rational capacities of understanding and choice, this would not entail that their lives cannot be so bad that it is no longer in their interests to continue living, or that it is always wrong to kill them. Indeed, one could argue that somebody's being created in God's image makes it especially important to spare that person life under horrific conditions. Similarly, one could argue that it is precisely because somebody has the capacity for understanding and choice, that he can understand the nature of his condition and choose whether or not he wants to continue living. Curiously, Dr Keown extends the inviolability principle only to *innocent* humans, and seems to allow for the capital punishment of those convicted of a sufficiently serious crime. But surely even guilty humans are created in God's image and have the rational capacities of understanding and choice? Indeed, if they lacked the latter capacities, punishment would be inappropriate (at least on a retributivist view). Thus, if we may sometimes kill rational beings purportedly created in the divine image, why may we not make a similar exception for those who are suffering unbearably? While the latter, unlike the former, may be 'innocent', the relevance of this is merely stipulated by opponents of euthanasia and certainly does not follow from the notion that humans are rational beings created in the divine image.

In defending the claim that human life is inviolable against the claim that life is valuable only when of a sufficient quality, Dr Keown tendentiously says that those defending the latter view distinguish between 'worthwhile' and 'worthless' *patients* (Keown 2002, 47). This, he says, stands in contrast to the 'sanctity/inviolability of life' view's distinction between 'worthwhile' and 'worthless' *treatments*. But those of us who think that a life can be of so poor a quality that it is not worth continuing do not think that this is because the *patient* (whether oneself or another) with such a life is worthless. Indeed, if one thought that the *person* were worthless one would

difference to what I shall say if one views the sanctity of life view making both claims and the non-religious version only one of the claims.

not care whether he or she continued to endure horrid conditions. Why worry about worthless beings? Recognizing the value of a person is not incompatible with recognizing that that person's life may have ceased to be in that person's interests.

Dr Keown's position is not strengthened by claiming that 'human life is not only an *instrumental* good, a necessary precondition of thinking or doing, but a *basic* good, a fundamental basis of human flourishing' (Keown 2002, 41). The problem is that life is not only a fundamental basis of human flourishing, but also a fundamental basis of human floundering. One cannot languish without living. Perhaps, then, we cannot say categorically whether life is a basic good, but rather only that its status as such depends upon whether it is the basis of flourishing or of its opposite. And if this is thought to sound too much like instrumental value and that we *can* categorically classify life as a basic good because it *usually* is the basis of human flourishing, then it is unclear why its being a basic good entails that that basic good may not be sacrificed when it *is* the basis of floundering.

Once we recognize that life could become so bad that continued life is no longer in one's interests, we must recognize that a right not to be killed can outlive its moral purpose – to protect an individual's important interests. If a right to life does not include a power to waive the right then instead of the right serving the interests of the right-bearer it becomes the right-bearer's master. And the worse the quality of life is, the more cruel a master it is.

Those who would deny that the right to life includes a power to waive a claim that one not be killed seem committed to treating the right to life very differently from other rights, where we routinely recognize the right-bearer's power to waive his claim. If, for example, one could not waive one's property claims, one could never lend, sell or give one's property away. Similarly, if one could never waive one's right to bodily integrity, one could never grant a surgeon permission to operate on one. Just as a negative right to property or to bodily integrity would become an oppressive principle if one could never waive it, so the same can be said of a right to life that the bearer has no power to waive.

This does not entail that the waiving of a right is sufficient to justify a second party's acting in accordance with the waiving. In other words, we are not morally entitled to do to others *whatever* they voluntarily consent to. If a person consents to my harming him, there is something presumptively problematic about my acting on this. But the kind of case we are considering here is one in which a person's voluntary consent to his death *benefits* rather than harms him.

Now it might be suggested that in arguing that a right to life must be liable to waiving if it is to serve the interests of its bearer, I have implicitly presupposed a particular view of rights. According to this view, known variably as the Interest or Benefit theory, rights essentially protect interests. In one way my argument does indeed presuppose this theory because I have said that the power element in the right is explained with reference to the right-bearer's *interest*. At the same time, however, my argument is not liable to criticism from those holding the opposing view, namely the Choice or Will theory, which maintains that rights essentially

protect choices. This is because the permissibility of assisted suicide and voluntary euthanasia would be even easier to derive from a right to life if it were conceived in accordance with the Choice theory. Instead of the power to waive the right being derivative from the interests of the right-bearer, the Choice theory makes the power basic. The right consists in the power to choose whether or not others may kill one. I happen to think that the Interest theory is preferable, but those who reject this view in favour of the Choice theory cannot reject assisted suicide and voluntary euthanasia on the grounds that I have presupposed a contested view of rights. Had I accepted the opposing, Choice view, the argument for assisted suicide and voluntary euthanasia would have been even easier.

Beyond the Right to Life

Next it may be suggested that my argument presupposes that one has a right to life. Once the implications of such a right for assisted suicide and voluntary euthanasia are made clear, opponents of these practices might reconsider the notion of a right to life, preferring to eschew it. This is not a promising line of argument. Irrespective of whether one thinks that people have a (waivable) right to life, one is going to be hard-pressed to explain why it is wrong to (help) bring about the death of somebody whose quality of life has deteriorated to the point that his life is not worth continuing. In other words, the argument for assisted suicide and voluntary euthanasia can be recast without reference to rights. The argument might be formulated as follows:

1. Sometimes the quality of somebody's life is so bad that the life is not worth continuing.
2. When somebody's life is not worth continuing, it is better (or less bad) for him if his life were to end.
3. Sometimes there are no countervailing moral considerations that are sufficiently strong to override such a person's interest in ending his life.
4. When one's life is not worth continuing and there are no overriding reasons why one should nonetheless not end one's life, it is permissible to kill oneself.
5. Sometimes to ensure one's own death without making one's life still worse, the assistance of others is necessary (or preferable).
6. When it is permissible to end one's own life for one's own sake, but one needs the assistance of others, it is permissible to obtain or for others to provide such assistance.
7. Therefore, it is sometimes permissible to obtain assistance in ending one's life or to provide such assistance to those who need it.

I argued earlier for the first and fifth premises. The second premise is analytically true. To say that one's life is not worth continuing is to say that death would be

preferable to continued existence. The third and sixth premises are the ones to which opponents of assisted suicide and voluntary euthanasia are most likely to object. However, the objections are not promising.

Those rejecting the third premise must show that countervailing moral considerations *always* override such a person's interest in ending his life. This is a highly implausible claim. Many people try to defend it by saying either that life has sanctity or that it is inviolable. It implies that no matter how bad the quality of a life is and no matter how little benefit its continuation brings others, there is always some stronger moral consideration that outweighs this and requires the suffering person to continue existing. This amounts to a (negative) *duty* to live – a duty never to kill oneself or to allow others to do so. But such a duty is much harder to defend than is a right to life, which I have suggested permits assisted suicide and voluntary euthanasia. The view that life has sanctity or is inviolable is one common way to defend a duty to live, but I have already argued that such a view fails.

Objections to the sixth premise are also likely to fail. It may well be true that we are not *always* warranted in helping others to do things that they are themselves permitted to do. For example, it is arguably impermissible for doctors to help people sacrifice themselves *for the benefit of others* (by, for example, transplanting the heart of a perfectly healthy willing donor into somebody else). However, it is very difficult to see how it would be impermissible to help somebody spare *himself* unspeakable harm when, all things considered, there was no moral reason for him to endure it. Now those who object to the sixth premise might argue that even when there are no moral considerations that override an individual's interest in killing himself there may be moral considerations that override somebody else's helping him. I am willing to grant that there could sometimes be such considerations. However, those wishing to object to the sixth premise need to show that there are *always* overriding reasons not to help others to end their own lives. But this is as implausible as the objection to the third premise. It implies that no matter how bad the quality of a life is and no matter how little benefit its continuation brings others there is *always* some stronger moral consideration not to help him end his life. It is hard to see how this could be the case, at least if we are speaking about the morality of individual acts of assisted suicide or euthanasia. However, if the objection is not to the morality of individual instances of assisted suicide or euthanasia but rather to morality of legalizing them, then the objection is not as flimsy and requires further investigation. I turn now to consider a number of reasons that have been advanced against legalizing assisted suicide and euthanasia.

Concerns about Legalizing Assisted Suicide and Voluntary Euthanasia

I have argued so far that assisted suicide and voluntary euthanasia are sometimes morally permissible. It is highly implausible to think that in *every* instance in which somebody's continued life is worse than death for him there is some stronger moral

consideration not to help him end his life. However, when we think about law or public policy we need to think not of individual acts but of groups of acts. This is because the rules or laws must apply to sets of acts. Thus, for example, there may be some small set of individuals who could and would drive as safely at somewhat higher speeds as most people do at somewhat lower speeds. Yet, when determining the appropriate speed limit, the regulations must be concerned not with what would be a safe speed for some or other individual, but rather with what would be a safe speed for the great mass of drivers. Of course, when making laws we can pay attention to exceptional cases. For example, we can exempt ambulances, fire trucks and police vans from adhering to the speed limit when they are responding to an emergency. There is good reason to grant these exemptions and it is relatively easy to determine when such exemptions apply. Other kinds of exemptions would be much harder to grant. We cannot easily and reliably determine the optimum speed for each individual driver and then set a personal speed limit for each driver, thereby allowing more skilful drivers the right to drive faster. Thus the focus when judging what law would be morally appropriate is different from when judging the morality of individual actions.

A number of critics of assisted suicide and voluntary euthanasia have argued that even if these practices are sometimes morally permissible, legalizing them would be morally unacceptable. It is usually the case that those who think they would be illegal also think they are immoral and I suspect that the arguments that these practices ought to be illegal are actually often attempts to enforce a particular moral view. Nevertheless, because it is possible to think that a practice ought to be legally prohibited even if it is morally permissible, we should consider, on their merits, the arguments for making assisted suicide and voluntary euthanasia illegal.

The Slippery Slope Argument

Arguably the most common line of reasoning for this conclusion is a slippery slope argument. According to this argument, although a given act of assisted suicide or voluntary euthanasia may not be wrong in itself, legalizing such practices will lead to the performance of actions that are wrong. Therefore, the argument concludes, these practices should not be legalized.

A slippery slope of this kind is certainly a possibility and one to which one ought to be sensitive. However, because it is so much easier to assert rather than to demonstrate the existence of a slippery slope, we need to greet claims of its presence with a great deal of caution. If we are to evaluate the argument, we need to be clear about what precisely it is. The first problem in clarifying the argument, as it pertains to assisted suicide and voluntary euthanasia, is that there are many versions of it.

Versions of the argument differ both regarding the probability of the outcome and the seriousness of the outcome. In its most deterministic forms, the claim in

the premise is that taking the first step, inevitably leads to the undesirable end.⁹ On the less deterministic, but more unusual versions, a weaker claim is made – that the first step only *may* or (at most) probably will lead to the unacceptable actions. Regarding the seriousness of the outcome, the more extreme versions claim that the bottom of the slope is catastrophic, while more moderate versions claim only that it is bad (or very bad).

The worse the outcome and the greater its probability the stronger the reason we have to avoid stepping onto the ‘slippery slope.’ However, the worse and more inevitable the bad outcome is alleged to be the less plausible the claim is. The claim that legalizing assisted suicide and voluntary euthanasia will lead to mass murder, for example, is less plausible than the claim that it will lead only to some sporadic abuses. Similarly, the claim that one of these outcomes is an inevitable consequence of legalizing assisted suicide or voluntary euthanasia is less plausible than the claim that legalizing these practices merely *might* have such a result. In other words, the more likely the claim is true the less forceful it is, and the more forceful it is the less likely it is to be true.

There are some who have claimed that legalizing euthanasia leads to mass murder. Those who make this claim note that the Nazis started their killing with a euthanasia programme and ended with genocide. This, however, is very misleading. The Nazi’s was a ‘euthanasia’ programme in name only. Such euphemisms were typical Nazi fare and the acts of euthanasia they carried out were in fact attempts to rid the Reich of people who were deemed unable to contribute to it. It is quite unsurprising then, that one mass killing programme should have led to another more ambitious one. Moreover, it is quite clear that those few jurisdictions where assisted suicide and voluntary euthanasia have been practised have not slipped into genocide.

This is probably why more thoughtful opponents of assisted suicide and voluntary euthanasia claim that legalizing these practices will lead to less drastic, but nonetheless bad consequences. These practices are legal in only a few jurisdictions. The most notable examples are Switzerland and the especially the Netherlands,¹⁰ which are the two (modern) jurisdictions in which assisted suicide or euthanasia have been legal for the longest.¹¹ Has there been a slippery slope in such places?

9 A common distinction in the literature is between *logical* and *empirical* slippery slopes. I have primarily empirical slippery slopes in mind here, but a comparable point could be made about logical ones, where the claim is that accepting X logically entails Y.

10 For reviews of the Dutch practices see, for example: van der Maas, van der Wal, Haverkate, de Graaff, Kester, Onwuteaka-Philipsen et al. 1996; van der Wal, van der Maas, Bosma, Onwuteaka-Philipsen, Willems, Haverkate et al. 1996.

11 Other places where it is legal include Belgium and the state of Oregon. It was also briefly legal in Australia’s Northern Territory. For further information on assisted suicide or voluntary euthanasia in these contexts see the following: Deliëns, Mortier et al. 2000; Mortier, Deliëns et al. 2000; Chin, Hedberg et al. 1999; Ganzini, Nelson et al. 2000;

Although there is some debate about the facts, what divides opponents and proponents of legalization are primarily differing *interpretations* of the facts, either because they have different definitions of ‘euthanasia’ or because they have different evaluations of what has happened. However, it is clear that the law has become more permissive. In the Netherlands, for example, it has become permissible under some circumstances to assist the suicide of people who are suffering from severe mental anguish even though they have no bodily illness. The Netherlands now also allows *non*-voluntary euthanasia – euthanasia of those who lack the competence to decide whether their lives are worth continuing.

Opponents of legalization take this to be evidence of a slippery slope. However, it is a slippery slope¹² only if what is now permitted should not be permitted. Yet many proponents of legalization think that it is entirely appropriate that Dutch law has liberalized in the way it has.

To understand this point more clearly, imagine a defender of Apartheid in the 1960s employing a slippery slope argument against eliminating some item of so-called ‘petty’ Apartheid, such as separate entrances to the post office. He might argue that if we permit people of different races to use the same entrance to the post office this will lead, by a series of steps, to complete racial integration. Opponents of Apartheid could agree that some initial liberalizing step would indeed make it more likely that ‘white’ racists will adapt and realize that some next step is not so bad and then, eventually, lead to the complete dismantling of Apartheid. Indeed, many advances – in the abolition of slavery, the improved status of women, the protection of animals – have involved gradual changes. The ultimate goal cannot be achieved all at once and thus one makes what progress one can in the hope that further progress will follow.

The above example is not intended to be tendentious. Whether it is a good analogy for the legal changes pertaining to euthanasia in the Netherlands depends on whether one thinks that the Netherlands has progressed or regressed with regard to euthanasia. But that is exactly my point. It is not sufficient for opponents of legalization to show that the law has become steadily more tolerant of euthanasia. They must also show that what is now permitted is morally undesirable.¹³ Assuming that my earlier arguments are sound, they are unlikely to be able to make this case.

First, nothing in my defence of assisted suicide or voluntary euthanasia assumes that what can make one’s continued life worse than death must be some physical condition. One premise of my argument is that the quality of one’s life

Sullivan, Hedberg, and Fleming 2000; Ganzini, Harvath et al. 2002; Singer 1995; Kissane, Street, and Nitschke 1998.

12 I am reserving the term ‘slippery slopes’ to refer to dangerous declines. Although there can be slopes to better places, as I shall now show, that is not what opponents of assisted suicide and euthanasia mean when they caution that legalization will lead us down a slippery slope.

13 One must also show that the first step could not be taken without the later, undesirable steps (very likely) being taken.

can be so bad that continued life is not in one's interests. It is hard to see why only physical conditions could make one's life that bad. To suggest that it is only physical conditions is to underestimate just how bad mental anguish can be. Nor will it do to say that mental anguish is always irrational. Thus even where it can be cured chemically, that may come at a cost that a person reasonably deems to be unacceptable.¹⁴ In this way, mental anguish is not relevantly different from physical pain, which I said, often can be controlled but only at a cost that the person concerned deems to be unacceptable.

Second, just as the continued life of a competent person can be worse than death, so can the life of an incompetent being be that bad. Many people recognize this in the case of animals, but it is equally true of incompetent humans (because they are liable to the same conditions). Nor is it any more plausible to suggest in the case of non-voluntary euthanasia than it is in the case of voluntary considerations, that countervailing considerations *always* outweigh the suffering being's interest in ceasing to exist. To be sure, non-voluntary euthanasia does raise issues that do not arise in the case of assisted suicide and voluntary euthanasia. Whereas decisions about the quality of a competent person's life can be left largely to that person, decisions about the quality of incompetent beings' lives have to be taken by others. Making such decisions for others is clearly very difficult but there is no alternative. Never terminating the life of an incompetent being, no matter how poor its quality, is also a decision – a decision to allow suffering to continue. The appropriate response to a difficult decision is to make it as well as possible rather than to pretend that it need not be made. I shall not say here how such decisions should be made as my focus is on assisted suicide and *voluntary* euthanasia. I have mentioned non-voluntary euthanasia only to note that many of us take it to be both a morally acceptable implication of the defence of voluntary euthanasia.

If opponents of legalizing assisted suicide and voluntary euthanasia are unable to show that legalizing these practices will eventually lead to the legalizing of other practices that should remain prohibited, they could offer a still more moderate version of the slippery slope argument. They could argue that permitting assisted suicide and voluntary euthanasia will lead to instances of abuse. This is a more moderate claim because instead of saying that more and more kinds of euthanasia will be legally permitted, it claims only that there will be some instances of abuse.

However, this argument is also problematic. First, as far as I know, nobody advancing it has even considered whether, let alone shown that, there are more instances of inappropriate euthanasia when euthanasia is legal than when it is illegal.¹⁵ Yet that is exactly what one needs to show in order to demonstrate that

¹⁴ See Benatar (2010).

¹⁵ Opponents of euthanasia have noted that the incidence of euthanasia in the Netherlands, for example, has increased. However, this is to be expected in just the way that the number of people taking advantage of a new drug or surgical procedure is likely to increase as it becomes more familiar. In any event, what opponents of euthanasia need

legalizing euthanasia leads to (more) abuse (than not legalizing it). We know that there are instances of euthanasia even in jurisdictions where it is legally prohibited. Some of these instances are morally justified, but it is highly unlikely that all are. Yet when euthanasia is illegal the abuses may well be better hidden than when it is legal. This is because people are less likely to report performing euthanasia where it is illegal, and this in turn is either because they fear repercussions or because the illegality of the practice has led to a level of self-deception about what is and is not euthanasia.

However, even if we grant that there is more abuse if some instances of assisted suicide and voluntary active euthanasia are permitted, there is a second problem. Many things we do and should permit are abused. There probably is more abuse of cars and of *prescription* drugs than there would be if these were illegal, yet it would not be appropriate to prohibit the prescription drugs that so many people need. Even cars should not be prohibited because in the current context doing so would create considerable hardship and constitute an undue violation of people's freedom without comparable benefit. We can and should regulate these, which is why prescription drugs require a *prescription* and why cars require roadworthy certificates and licensing. There may also be scope for increasing restrictions to prevent abuse. However, it would be inappropriate to ban these and other things outright on the grounds that some people will abuse them. If we are to violate people's freedom we need to have very good reasons for doing so. The fact that some small number of other people will abuse the freedom because they are unwilling or unable to comply with clear regulations is not an adequate reason. This is especially so when the freedom is a very important one. The freedom to obtain medication for one's ailments is such a freedom. So is the freedom to end one's life when it becomes unbearable to continue. Those who think that *any* innocent deaths resulting from abuses of a freedom are sufficient to remove the freedom will have to prohibit automotive transport, building construction and many sports, to name but a few activities that result in the deaths of many innocents each year.

The 'Compromise of Voluntariness' Argument

I turn now to a second kind of argument that those opposed to legalizing assisted suicide and voluntary euthanasia may want to advance. They might argue that assisted suicide and 'voluntary' euthanasia ought to be illegal because the voluntariness of decisions to die will almost always, or at least very often, be dubious. This sort of argument does not deny that voluntary deaths are permissible. It denies only that voluntariness is a condition that can ordinarily be met in the sort of circumstances in which people consider euthanasia or assisted suicide. For that reason, it might be argued, these practices ought to be legally impermissible.

to show is not that the incidence of euthanasia is increasing but rather that the incidence of inappropriate euthanasia is increasing.

One version of such an argument claims that when people want to die on account of some terrible condition they have, the decision is very often not fully voluntary but is rather the result of clouded thinking induced by the pain, suffering or other negative features of the condition. According to this argument they are 'coerced' by their circumstances. Thus, even if there are some people who make the decision voluntarily, assisted suicide and voluntary euthanasia should not be legalized.

What this objection gets right is the obvious fact that the suffering leads to the decision to die. Were it not for their condition, these people would not want to die. But this does not entail that the voluntariness of the decision is routinely compromised. Although the person would not want to die in its absence, the suffering, far from being an impediment to a voluntary decision, could be a very rational basis for the decision. It is because of the unfortunate condition that continued life is no longer judged to be in the person's interests. This is not to deny that *some* people who want to die lack the capacity to make a truly voluntary choice. The same, of course, is true of some people who do *not* want to die. Instead, we cannot assume, because many people who are suffering want to die, that their decision to die is usually not truly voluntary. We must distinguish assessments of voluntariness or competence from the decision to die (or to live), and to recognize that a decision cannot be judged to be insufficiently voluntary just because it is a decision to die.

Another, more compelling, version of the 'compromise of voluntariness' argument suggests that although we might initially be able to distinguish voluntary from involuntary requests for euthanasia or assisted suicide, legalising these practices would lead to a situation in which they became commonplace. In such a society, it might be argued, an expectation might arise that people in certain circumstances will ask to die. People will internalize this expectation and then request euthanasia even if that is not their 'true' preference.

A helpful analogy to present this argument as charitably as possible is that of duelling. In a society in which duelling is an accepted practice, people are much more likely to challenge others to duels and those who are challenged are much more likely to accept the challenge. This is not accidental. Clearly the social acceptance of duelling plays an important role in the formation of people's preferences and choices regarding duelling. When those in duelling societies offer and accept duelling challenges, this is very likely attributable in large part to their social milieu. And even those who have not internalized the social expectations will nonetheless be aware of and liable to them. Failure to accept a duel in a duelling society leads to the sort of ostracism that people in those societies cannot ignore. The result is that whether somebody offers or accepts a duel depends in large part on whether he lives in a society that accepts duelling.

It might be argued that something similar would happen if we were to legalize assisted suicide and voluntary euthanasia. Once it became a legal option, more people would come to want it. And those who did not come to want it might feel pressure to request the ending of their lives if they became a burden on their families or other caregivers.

There is an important lesson to be learnt from this objection, but the objection itself fails to provide adequate reason for prohibiting assisted suicide and voluntary euthanasia. First, although it is true that many of our preferences are, to a significant extent, a product of our social context, it is far from clear that for this reason these preferences should not be respected.¹⁶ If it were otherwise, then the implications would reach far beyond preferences for ending one's life in intolerable circumstances. Consider, for example, the preference religious people have to practise their particular religion. It is no coincidence that the overwhelming majority of such people were either reared in that religion or had connections to it. Their background plays a significant part in the formulation of their preference. If, for that reason, it need not be respected as the preference of an autonomous person, then we would be permitted to override people's religious preferences much more often than liberal principles actually permit. If those preferences, notwithstanding the influences that shape them, are deemed sufficiently voluntary, then the same should be said of preferences to die.

Second, it is not clear that the social acceptance of euthanasia does impose pressures analogous to that of a duel in a duel-accepting society. The legalization of assisted suicide and euthanasia allows those who want to make use of these options to do so, but it also allows those moral and religious groups or individuals who reject them to condemn them. In a society characterized by plural views on euthanasia, those not wanting to be part of such practices have moral space into which they can withdraw.¹⁷ They are not like dishonoured duel decliners. The experience in those jurisdictions where assisted suicide or voluntary euthanasia is permitted bears this out. The proportion of people requesting active termination of their lives is small.¹⁸

16 I can imagine a species much more sophisticated than our own. The members of this species form preferences much more autonomously than we do. They are not as influenced by their context as we are. They have much greater capacity to imagine alternative scenarios and to consider them as real options. Ordinary humans would appear as mentally disabled to such a species. Perhaps in such a society, the preferences of ordinary humans would be less worthy of respect and more readily overridden by those much more advanced than us. However, we do not live amidst such beings and thus paternalistic overriding of our preferences by suitably more sophisticated beings is not possible.

17 Similar freedom is not accorded those who want assistance in ending their lives but find themselves in a society that prohibits euthanasia.

18 Although the opponents and proponents of euthanasia have very different readings of the figures, none of the estimates makes euthanasia even nearly so prevalent that it would be reasonable to think those preferring not to die would feel they were in even a large minority. Moreover, it is interesting that in the Netherlands only a minority of those who requested assistance in killing themselves were provided with that assistance. This, like other evidence from the Netherlands, bespeaks (although, of course, does not prove) a cautiousness that is incompatible with a societal perception that there is a duty for the old infirm to die.

Third, there is an important disanalogy between duelling and euthanasia. The costs of abandoning duelling are zero – at least in the long run, because alternative, more satisfactory ways of settling disputes become available. By contrast, the costs of prohibiting euthanasia are immense. Those who want such an end to their lives and are denied this option are condemned to endure lives they find unbearable and thus to suffer immense harm. Any concern about possible dangers of legalizing assisted suicide and voluntary euthanasia has to be balanced against the very serious and assured costs of prohibiting it.

Finally, none of the foregoing responses entail that we should be unconcerned about the possibility of people feeling pressured into requesting (assistance in) the termination of their lives. However, the appropriate response to those concerns, given the great costs of prohibiting assisted suicide and voluntary euthanasia, is to build robust safeguards into the legislation that legalizes these practices. Such legislation can protect not only against this pitfall, but also against others. No safeguard can be one hundred percent effective, but to expect perfect protection against error or abuse is to set the bar too high. We do not expect it in any other area and thus we should not expect it here.

Conclusion

I have argued that not only is a right to life compatible with assisted suicide and voluntary euthanasia, but that such a right, appropriately understood, actually entails the moral permissibility of these practices. I showed that there is no necessity to postulate a *distinct* right to die. The permissibility of obtaining assistance in one's suicide or of being euthanized by willing others could be expressed in terms of a right to die, but such a right is entirely derivative from a right to life.

I have also argued that assisted suicide and voluntary euthanasia ought to be legally permissible. The interest in terminating one's own life when it is not worth continuing, as well as the interest in determining when one's own life is not worth continuing are very strong interests. They are at least as important as our interests in freedom of speech, religion, association and movement, for example. If these interests are to be overridden, there needs to be excellent reason for doing so. Although there may be some cases where there is sufficient reason, there are not good reasons for a blanket prohibition on assisted suicide and euthanasia.

Although I differentiated assisted suicide from euthanasia descriptively, my *normative* discussion has not distinguished between them. This is because they are morally very similar. However, there are reasons to prefer assisted suicide to voluntary euthanasia. First, it is arguably psychologically a little more difficult to take one's own life, even with assistance, than to have somebody do the deed on one's behalf. For this reason, requiring those who want their lives to end to perform the final act that ends their lives provides additional assurance that these people really want to die. It is an additional hurdle or safeguard. Second, taking somebody else's life, even when it is in that person's interests, may be a greater

psychological burden than assisting somebody to kill himself. It is obviously preferable, all things being equal, if the suffering person can be helped without the imposition of the greater cost on the one who helps.

That said, the advantage of assisted suicide over voluntary euthanasia is a modest one, and there will be circumstances, such as advance motor neurone disease, where assisted suicide is not possible because the suffering person is unable to kill himself, even with assistance. In such circumstances, voluntary euthanasia is preferable to assisted suicide simply because suicide is not possible. Another reason why euthanasia is morally permissible and should be legally permitted is that it may actually prevent premature suicides. Some people elect to kill themselves earlier than they would prefer because they want to guarantee that they do not degenerate to the point that they can no longer kill themselves and there is nobody either to assist them or to terminate their lives for them. Providing people with the assurance that they can be assisted in killing themselves or euthanized if they are unable to kill themselves even with assistance, will minimize the number of people who fear being forced to endure the unbearable and who therefore kill themselves before their lives have ceased to be worth continuing.

With the exception of expressing a preference for assisted suicide over voluntary euthanasia where the former is possible, I have not said anything about the precise circumstances in which these practices are morally permissible and in which they should be legal. This has been largely to focus discussion on the key area of dispute – whether these practices are *ever* morally permissible and should *ever* be legally permissible. I have argued for affirmative answers. Once that is granted, there can be discussion about how bad one's life needs to be in order for its termination (by self or others) to be morally or legally permissible. This is a topic for another occasion.¹⁹

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