

Opinion

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EUTHANASIA AND THE NORTHERN TERRITORY INITIATIVE

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From Darwin, capital of Australia's Northern Territory and home to less than 250,000 people, has originated an extraordinarily controversial and problematic piece of legislation, the *Rights of the Terminally Ill Act 1995* (NT).

A number of points must be made in the context of the debate about the legitimacy of rendering deliberate homicide legal when it is done with the express wish of the "victim". The first is that it runs counter to the values traditionally espoused by our legal system. Only in 1993 did the English House of Lords reaffirm by majority that in general terms the fact that a person has consented to a serious assault or a death-causing act does not itself make the provision of consent a defence.

Secondly, the prevalence of euthanasia is significant, particularly within certain communities, such as that of AIDS sufferers. This does not justify it but it is indicative of a perception among sectors of the medical profession and of the general community that euthanasia is a legitimate response to the trauma of certain forms of disease for certain individuals who seek medical assistance for their release from disease. The attitudes of juries in the *Kevorkian* cases attest to this as does the relative unpreparedness historically in Australia and elsewhere of juries to find doctors guilty of "mercy killing".

Thirdly, there is a difference in principle between the provision of medication or treatment designed to alleviate pain, but which may result in death, and the taking of steps whose exclusive purpose is the bringing about of death.

Fourthly, the evolution of palliative care principles which are sensitive to and responsive to patients' experience of pain has meant that the level of pain endured by most terminally ill patients has been substantially reduced. However, there are exceptions and pain is more than physical - the awareness of the impending deprivation of faculties, the prospect of complete dependency and the loss of what may be regarded as dignified existence are themselves extremely painful considerations for many patients.

For doctors, there is the profound ethical dilemma of whether it is inimical to their role as healers to deprive a patient of life, even though such an action be at the request of the patient. Inherent in this dilemma is an attitude toward life, and death as its passage from life, which is reflective of general contemporary community attitudes. Among the *Corpus Hippocraticum* is the "Regimen in Health", at whose conclusion the author maintains that the wise man derives benefit from his own illnesses. The notion which

the author is raising a fundamental and has been developed by many others subsequently in different contexts. It relates to the view taken of the meaning and process of death by the patient, his or her relatives and friends and also medical practitioners. Our culture, as Mullen points out with what historically are most curious, and some would say unhealthy, values: "Death as a generator of meaning is being displaced by death as the destroyer of meaning". A real danger is that if euthanasia is legalised, it will come to be incorporated among standard medical responses to serious illnesses with a diminution in hospitals' and health care practitioners' commitment to sustaining life for the terminally ill, an erosion in respect for life and a pressure upon the soon-to-die to relieve society of the burden of caring for them. The notion that death represents an opportunity for all associated with the terminally ill person to derive meaning from the person's life may disappear.

If, through our elected representatives, the community says that it wishes euthanasia to be legalised in certain limited circumstances, the challenge for lawyers, bioethicists, parliamentary draftsmen and the medical profession is to construct legislation that protects the valuable and maintains the healing ethos of the medical profession but facilitates assistance to those desirous of ending their life before terminal illness performs that task. On any view of the Northern Territory legislation, the citizens of that jurisdiction - and of Australia generally, given that people may gravitate to the Territory for the purpose of euthanasia - have been poorly served by this legislation. The debacle over the role of those possessed of diplomas of psychological medicine is more than sloppy drafting. It goes to the heart of the regime by which decision-making is to be made in relation to those apparently expressing a wish to have medical practitioners end their lives. This in turn highlights the need for clear means of evaluating in the particular case and in the general context the way in which the legislation works. The roles of the pathologist and of the coroner in this regard are vital and ill-catered for under the Act.

The *Rights of the Terminally Ill Act* 1995 (NT) is one of few pieces of legislation worldwide which has endeavoured explicitly to lay out a procedure for humane medical assistance to be rendered to the terminally ill wishing to commit suicide. It has galvanised many within the legal and medical communities to polarised views and will continue to generate emotional debate. The legislation has many flaws which will need to be addressed by amendment in due course but its great advantage is that it focuses the controversies in a way which has the potential to enable informed and rational debate about the difficult issues which it raises.

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