
Opinion

The Inherent Instability of Euthanasia

By Zac Alstin

To the man who only has a hammer, everything he encounters begins to look like a nail. – Abraham Maslow

First, it is important to clarify what is meant by euthanasia. Euthanasia is a euphemism. While the term itself means 'an easy or happy death', what it actually refers to is the intentional killing of another human being.

Traditional ethics has set strict limitations on the intentional killing of other humans. In most cases, humans cannot be intentionally killed; but may die as a foreseeable consequence of proportional self-defense, including participation in a just war. They may also die as a foreseeable consequence of proportional medical treatment.

'Euthanasia' proponents therefore seek to relax these limitations on the intentional killing of human beings. 'Euthanasia' constitutes a new category by which – we are told – humans may justifiably be killed.

But what exactly is the justification for this new category of killing? How does it compare to established categories of self-defense, and medical treatment?

Firstly, we must recognise that in the two legitimate cases described above, killing is not the intended effect, but is an unintended, secondary effect of our action. Furthermore, our action in these two cases is directed toward a fundamental good, proportional to the unintended harm caused. In other words, if we are violently attacked, we are entitled to defend our lives with a proportional use of force. This defence of our lives is the primary goal and intent behind our action. If the attacker is killed as a result of proportional self-defence, then we can honestly say that the death was an accident – accidental to the aim of self-defence. If we adhere to this ethical principle, then we can say with a clear conscience that we did not mean to kill our attacker, merely to defend ourselves. The death of the attacker is therefore a regrettable accident, brought about by their own wrongly aggressive actions.

In a medical setting, when a patient requires treatment for the alleviation of pain or other symptoms, their doctor is usually obliged to provide such treatment. But in some instances, there is a foreseeable risk that the patient's life may be shortened by that same treatment. For the doctor to be able to say with a clear conscience that he did not intend to shorten the patient's life, it is necessary that the benefit provided by the treatment be proportional to the foreseen shortening of life. In other words, the doctor has adhered strictly to the best interests of the patient, and the shortening of life is a regrettable, yet proportional secondary effect.

A useful test in both these cases is to wonder what might happen if the death of the attacker or the patient did not eventuate. Would we be relieved or disappointed that our act of self-defense did not kill the attacker? If we are disappointed, then we cannot in clear conscience say that we acted solely in self-defense. Likewise, if we are disappointed that the patient's life was not shortened, then we cannot claim to have acted solely for the good of their health.

What of this new category for killing? When and how is 'euthanasia' justified? How does it differ from the cases illustrated above?

The first and most obvious difference is that in cases of 'euthanasia', death is the *intended* effect of our action. In such cases, disappointment will most certainly arise if the subject does not die. So from the outset, 'euthanasia' does not depict killing another human as unfortunate, unintended, or in any way accidental. In this sense, 'euthanasia' is a wild departure from the boundaries of traditional ethics, as we have seen from the prior two examples that traditional ethics does not actually endorse or allow the killing of other human beings. Rather, it demonstrates that in cases of self-defence and medical treatment, killing can only ever be an unintended accident. If it is not an unintended accident, then we are no longer dealing with pure self-defence or medical treatment.

These nuances of traditional ethics exist to reaffirm that killing other humans is never a good thing. Hence the best that can be said of the two legitimate scenarios depicted above is that we may continue to affirm our ethical opposition to killing, even if circumstances conspire against us. What matters most is that we have not succumbed to the falsehood that the killing of another human might somehow be good.

This falsehood is at the heart of the 'euthanasia' position. The premise of 'euthanasia' is that it may, in some circumstances, actually be good to kill another human being. This premise is unprecedented and revolutionary, because it attempts to set conditions upon the value of human life. Traditional ethics holds that all human life has infinite intrinsic value. In keeping with this principle, it allows no justification for the taking of human life. If human life has infinite intrinsic value, how can we be justified in destroying it? Thus the value we ascribe to human life is reflected and grounded in real world behaviour. We do not destroy the things we value, hence we are forbidden to destroy human life.

In our particular time and culture, various groups have argued against these principles of traditional ethics. Those who promote 'euthanasia' do not deal explicitly in the question of the value of human

life, but argue nonetheless that the killing of other human beings is justified according to three conditions¹:

1. Respect for personal autonomy, our right to make decisions that are primarily our own concern;
2. Compassion for those who are suffering with no prospect of relief;
3. Concern for the dignity of the person and his or her quality of life.

If we accept these 'euthanasia' principles, then in the context of traditional ethics, we can no longer assert without exception that it is wrong to kill another human being. Nor can we therefore assert that human life has infinite intrinsic value, or else how could we destroy it? Logically, if we accept the destruction of human life, then we deny its intrinsic value. Instead, value is assigned to one *aspect* of human life, such as human autonomy.

This is the crux of the 'euthanasia' problem: its inherent instability. In order to justify an act of killing, 'euthanasia' proponents must deny the intrinsic value of human life. Yet the intrinsic value of human life is the foundation of the traditional ethical prohibition against killing! In other words, to justify killing in one set of circumstances undermines the prohibition against killing in general. The exception denies the rule.

Traditional ethics states that given the intrinsic value of human life, we must not destroy it. This reasoning is grounded in basic human nature: we do not destroy what we value. On the contrary, those who destroy human life implicitly reject its intrinsic value. We cannot have it both ways; either value human life, or destroy it.

In this light, of what significance are the justifications and principles laid out by 'euthanasia' advocates? Once we agree to reject the intrinsic value of human life, we must devise a new set of principles by which to kill or let live. It must be understood that these principles do not constitute exceptions to the traditional prohibition against killing, but are in fact the new guiding principles for when to kill. In other words, the intrinsic value of human life per se is now replaced by the compound value of human autonomy, human suffering, human dignity, and quality of life.

Disintegration of the 'Euthanasia' Formula

Most 'euthanasia' bills incorporate some interpretation of the three principles quoted above. Typically, individuals requesting 'euthanasia' must do so autonomously, and must be in a condition of 'intolerable' suffering, or 'intolerable' impairment to their quality of life. Some bills specify that the subject must have a terminal illness, while most other safeguards are dedicated to ensuring the autonomy of the subject's request.

¹ <http://www.saves.asn.au/resources/facts/fs09.php>

The combination of these three principles constitutes the ideal scenario for both 'euthanasia' advocates and the general public. The three principles depict an individual who wishes to die, who suffers from an illness or disability, and finds their condition 'intolerable'. 'Euthanasia' advocates assure us that these three principles act as indelible safeguards against 'slippery slopes' or the future expansion of the 'euthanasia' regime.

But the depiction of these principles as safeguards is erroneous. Recall that by embracing 'euthanasia', we deny the infinite intrinsic value of human life. In the moral vacuum that follows, 'euthanasia' proponents offer the three principles of autonomy, suffering, and quality of life or dignity, as guidelines *not merely* for whom we may and may not kill, but as guiding principles *generally*. That is, if we endorse the three principles as a moral guide, we do so profoundly. These three principles are therefore the moral alternative to traditional ethics. The internal coherence of these three principles – the moral formula for 'euthanasia' – is therefore of supreme importance.

The problem therefore, is that the internal coherence of the 'euthanasia' formula is extremely weak, and therefore liable to expansion. How is this so? It is so, because the 'euthanasia' formula is derived *ad hoc* from the ideal 'euthanasia' case. It is derived from the point of greatest public sympathy toward the plight of an individual who declares a wish to die, amidst intolerable suffering. But what exactly does 'intolerable' mean to the vast majority of people who have never faced a relative or loved one in such a situation? As an abstract principle, 'intolerable' means 'impossible to tolerate or endure'. Yet this is surely a question-begging proposition. It implies, not an actual level of suffering or an objective medical condition, but an undisclosed set of circumstances that *cannot* be endured. For the majority of the public considering this proposition in abstraction, 'intolerable' suffering or an 'intolerable' quality of life are simply loaded terms.

If we remove the loaded terms, we begin to see that the 'euthanasia' formula is dangerously prone to disintegration. For we must now diminish the immediate impact of the 'ideal' case, to that of a person who expresses a wish to die, and is suffering either physically or in terms of dignity or quality of life. This is not so compelling, is it? We may now return to the carefully worded three principles put forward by the South Australian Voluntary Euthanasia Society (SAVES):

1. Respect for personal autonomy, our right to make decisions that are primarily our own concern;
2. Compassion for those who are suffering with no prospect of relief;
3. Concern for the dignity of the person and his or her quality of life.

Without the spectre of the 'ideal' case, the case of physical suffering that by definition cannot be tolerated, the instability of these three principles will hopefully become apparent.

Firstly, it seems that if we truly respected individual autonomy, this alone would provide sufficient reason to allow 'euthanasia'. If a person wishes to die, who are we to prohibit it? In the absence of a general prohibition against killing *per se*, why should we not simply kill those who wish to die? Surely the second and third principles are redundant?

We might refer to this as the 'subjective' logic of 'euthanasia'. Why should we discriminate against people who do not happen to be suffering from an illness or disability? How can we ascribe value judgments to another person's circumstances? After all, even suffering, dignity, and quality of life are – in the 'euthanasia' formula – dependent on the subjective interpretation of the individual. I might be enduring the most terrible suffering and the lowest quality of life, yet refuse the option of 'euthanasia'. Does this not imply that respect for autonomy is the sole justification for 'euthanasia'? Likewise, I might wish to die despite living in relatively good circumstances. I might have 'everything' to live for, yet desire 'euthanasia'; who can tell me that I am wrong? Who can refuse to respect my autonomous wish?

The point here is that if we deny the infinite intrinsic value of human life in favour of respect for autonomy, then there is no longer any need to further justify 'euthanasia'. The wish to die is sufficient justification; the second and third principles regarding suffering and dignity are indeed unnecessary. This 'subjective' logic explains how and why the Netherlands has moved beyond its initial 'euthanasia' regime, to the point where it is now considering the option for people over the age of 70 to be 'euthanased' simply because they are 'tired of life' or feel that their life is 'complete'.

Though the Netherlands tends toward this new distortion of their own fragile 'euthanasia' regime, not all 'euthanasia' proponents will be swayed by this 'subjective' interpretation of their principles. Yet there are equal dangers for those who are motivated more by compassion for the suffering of others, than by respect for their autonomy. The recognised prevalence of *involuntary* 'euthanasia' represents the complementary aspect of disintegration. What we shall call the 'objective' logic of 'euthanasia' is expressed in the tendency of 'euthanasia' doctors to kill their patients *without* an autonomous request. This phenomenon has been previously noted in the Netherlands, but is dismissed by 'euthanasia' proponents as beyond the ambit of their proposal. However, it is as much an extension of the 'euthanasia' principles as is the 'subjective' logic explained above.

The practice of involuntary 'euthanasia' is easy to understand as an expression of 'compassion' for the suffering of the patient, or 'concern' for their dignity. Consider a situation in which a doctor is responsible for two patients in very similar circumstances. Both are suffering terribly from their illness, and the doctor naturally feels compassion for each. Yet only one of the patients is able to make an autonomous request for 'euthanasia', while the other is unable to request such relief. Remember in this context that medicine is an objective, evidence-based discipline. Doctors are trained in accordance with objective 'best-practice' standards; to apply the best and most appropriate treatment to any given medical problem. So if 'euthanasia' is the appropriate response to an objective set of circumstances, such as a patient "suffering with no prospect of relief", then why should it not be applied objectively to all patients in that condition?

Of course, a doctor would be unlikely to 'euthanase' anyone *against* their expressed wishes, but why should they leave a patient suffering without prospect of relief, simply because the patient is unable to meet the criteria for an autonomous 'euthanasia' request? Why should we discriminate against people who are clearly, objectively, suffering both in terms of physical pain and loss of dignity; people whose quality of life is surely at zero; simply because they are unable to meet the formal requirements for an autonomous request?

A recent paper in the Canadian Medical Association Journal suggests that, in Belgium at least, the practice of involuntary 'euthanasia' is almost as common as voluntary 'euthanasia':

"We found that, five years after the euthanasia law was enacted in Belgium, euthanasia and assisted suicide occurred in 2.0% of all deaths in Flanders during the study period. They predominantly involved patients less than 80 years old, patients with cancer and patients dying at home[...]The use of life-ending drugs without an explicit request from the patient occurred in 1.8% of the deaths in Flanders during the study period. Most of these cases involved patients 80 years or older and occurred in hospital. In the majority of cases, the patient was not involved in the decision, primarily because of coma or dementia; however, relatives and other caregivers were often consulted. Considerations involving the relatives and needless prolongation of life were reasons indicated by physicians for reaching the decision."²

The third and most frightening expansion of the 'euthanasia' formula lies in the final principle: "Concern for the dignity of the person and his or her quality of life". We have seen this principle unleashed in our recent history, prior to the outbreak of the Second World

² Chambaere, K. et al. *Physician-assisted Deaths Under the Euthanasia Law in Belgium: a Population-Based Survey*. *Canadian Medical Association Journal*. 2010 May 17. [Epub ahead of print]. Pp 3-4

War. This principle, when taken beyond the context of the 'ideal' euthanasia scenario, has the potential to be expressed in the killing of those whose physical or mental condition is considered undignified or unworthy of life. It was this principle, beginning with the 'compassionate' killing of a disabled infant in 1938 with Hitler's approval, that set Nazi Germany down a path of systematic murder of the disabled, laying both practical and ideological foundations for the Holocaust to follow.

So the 'euthanasia' formula contains at least these three potential deviations. These different, more threatening expansions of the 'euthanasia' regime might potentially be embraced by distinct groups within the present 'euthanasia' movement. But they might just as easily be embraced by individual 'euthanasia' proponents, as the instability of their principles unfold naturally over time. At present, 'euthanasia' proponents are forced to narrowly define their 'ideal' cases, in order to appeal to public sympathy. If public sympathy is won, what will prevent the gradual expansion of the 'euthanasia' cause? In other words, on what principle or grounds will present 'euthanasia' proponents reject the three cases depicted above? Once the general prohibition against killing is forewarned, there can be no guarantees. If killing per se is not prohibited, anyone may conceivably be killed.

Such is the inherent instability of 'euthanasia'. If we allow only 'ideal' cases, then every unfair, inconsistent, or discriminatory case will emerge to challenge the legal regime. The three principles behind the regime cannot rebuff such challenges. Why, after all, should 'euthanasia' depend on a trinity of disparate principles, when any one principle alone would suffice? The problem is that these three principles are merely an *ad hoc* description of the 'ideal' case, the most compelling case available to 'euthanasia' proponents. These principles are not grounded in anything deeper than human sympathy for people in a miserable condition, expressing a wish to die. This emotional response, and the three principles that flow from it, are a woeful substitute for the infinite intrinsic value of human life, and the general prohibition against killing. Once 'euthanasia' is embraced and the intrinsic value of human life denied, the instability of the 'euthanasia' formula unfolds.

Of course, 'euthanasia' proponents will object to this assertion. Even if the principles behind 'euthanasia' are as unstable as claimed, surely we will reject any expansion of the legal regime? The law cannot change unless we *agree* to change it, despite these dire predictions of 'slippery slopes'.

But such an objection presumes that 'we' will always be in a position to decide legal change. What it fails to account for, are the many forces within society who may not adhere so strongly to the 'ideal' euthanasia case, nor the safeguards carefully established. In short:

"Slippery slopes may occur *even when a principled distinction can be drawn* between decisions A and B. The question shouldn't be "Can we draw the line between A and B?," but rather "Is it likely that other citizens, judges, and legislators will draw the line there?"

This is the crux of 'euthanasia' as a public policy issue. 'Euthanasia' advocates criticise 'slippery slope' arguments for failing to demonstrate actual plausible mechanisms for the expansion of any given 'euthanasia' regime. So let us make this 'slippery slope' as explicit as possible:

If 'euthanasia' is made legal, it will be because enough people sympathise with the 'ideal' scenario of a person suffering 'intolerably' who expresses an autonomous wish to die. But while the 'ideal' scenario is based on sympathy and compassion, sympathy and compassion provide poor guidance for a legal regime. We cannot, for example, legislate that all those who elicit our sympathy and compassion may be killed. Instead we must attempt to crystallise the 'ideal' scenario in principle. But there is no single principle that distinguishes the 'ideal' scenario from other scenarios. Thus we have the SAVES formula of two or three intersecting principles to guide our legislation.

However, as shown in this paper, the two or three principles do not naturally cohere. There is nothing about the intersection of these three principles – other than our sympathy and compassion – that holds them together. Hence we can expect to find very reasonable scenarios that elicit sympathy and compassion from some quarters, yet only meet one of the criteria established by the legislation. Those who support only the 'ideal' case will then find their former allies pushing for the acceptance of less 'ideal' cases, such as the killing of people who are clearly suffering, yet do not meet the criteria for an autonomous request.

As explained above, once we have accepted the 'ideal' case, proponents of less 'ideal' cases will be able to mount convincing arguments for the expansion of the legal regime. These arguments will have traction because we have already accepted the three unstable principles of respect for the autonomous request, compassion for suffering, and concern for dignity and quality of life.

There is no *in principle* reason why our respect for autonomy should be bolstered by compassion for suffering, or concern for quality of life. Is autonomy more valuable when its subject's plight is more pitiful? If we only respect autonomy because we judge the subject's life to be not worth living, then we are not truly respecting autonomy at all! If we truly wish to respect autonomy, we must respect it even when we cannot sympathise; we must respect autonomy even when it seems unwise or ill-conceived. Such is surely the nature of autonomy? We must indeed respect the autonomous request for 'euthanasia' of

people who feel for their own personal reasons that their life is complete, that life holds no more value for them. Such is true respect for autonomy.

Others will argue on entirely different grounds that withholding relief from those whose suffering is most dire, conflicts with the spirit of 'euthanasia' legislation. How is it that people can be allowed to fall through the cracks, merely because they cannot sign an official document? Their suffering is just as real, and their quality of life is virtually non-existent. Are we supposed to show compassion for human suffering only when the proper paperwork has been filled out in triplicate? Are family members and loved ones supposed to sit idly by and watch their parents, spouses, and children waste away in agony? The whole point of 'euthanasia' is that we allow such people to find relief from their suffering. Are we meant to withhold relief from those who are most in need?

This is the 'slippery slope' of 'euthanasia' at work. If we accept the 'ideal' case, others will promote less 'ideal' cases. They will appeal to the same principles we use to justify and legislate the 'ideal' cases. They will draw on our respect for autonomy to the point where it

seems noble and right to kill those who request it no matter what their circumstances. This is the path to the Netherlands latest proposal for 'euthanasia' for those over 70 who are 'tired of life'.

'Euthanasia' proponents will appeal to our compassion too. They will plead for the relief or 'release' of those who cannot even request it for themselves. They will make it seem that we unfairly discriminate against the weakest, the most vulnerable, the most deserving of mercy and compassion. This is the path to the 'Groningen protocol' for the killing of disabled infants, and the practice of involuntary 'euthanasia' throughout the Netherlands.

They will almost certainly argue for these two extremes, these two variations on the 'ideal' scenario that wins the most support. More importantly, we will almost certainly be swayed. There is no guarantee that we will not change our minds. If we are willing to embrace the 'ideal' case, willing to say that it is good to kill, willing to deny the infinite intrinsic value of human life, then why should we not find it more and more compelling that we bring the good of death to those who seek it, and to those who cannot ask?

Opinion

Fatal Licence: Commentary on the 'Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill 2008'

By Brian Pollard

Introduction

The criminal law throughout Australia, as in all other parts of the world, holds that the intentional taking of innocent human life is a capital crime. This is in accordance with the United Nations' Universal Declaration of Human Rights, to which Australia is a signatory, which declares that the right to the integrity of every person's life is equal, inherent, inviolable, inalienable and should be protected by law. Since the intentional taking of innocent human life is the specific aim of any euthanasia law, such a law would be unique in the following critically important ways:

- its intention is to subvert the existing law,
- it fails to respect the principle that all are equal before the law,
- it fails to respect the principle that all human lives have equal value and
- it attempts to gain legal recognition for the concept of life not worth living.

This would present an impossible task, if honesty were to prevail. In order to succeed, it must become what may be called a part of B Grade criminal law.

It would have to rely on such things as asserted but non-existent human rights, shades of deceit, inexact definitions and reliance on subjective, and therefore arbitrary, elements, including the support of opinion polls, which are totally subjective. When all such drafts to date, presented before the State parliaments over many years, are reviewed, it can be observed that they must go to extreme lengths to shield the doctor from the effects of A Grade law, no matter what he or she may have done negligently or by omission, while including many opportunities for endangering the lives of patients who did not want their life ended. By those criteria, every euthanasia law would be unjust and dangerous.

This examination of Mr Parnell's Bill will show how it comprehensively bears out that assessment, though only some parts will be discussed. All criminal laws should be framed objectively so they can be understood in the same ways by all who read them. Subjectivity is not compatible with justice.

Title

In the Bill's title, *Voluntary Euthanasia* follows immediately after *Medical Treatment and Palliative Care*, indicating that its author regards it as part of