
From: National Civic
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**RIGHTS OF THE TERMINALLY ILL
(EUTHANASIA LAWS REPEAL) BILL 2008
(Submission)**

1. Introduction

This private member's Bill, introduced by Senator Bob Brown, seeks to repeal the Andrews Euthanasia Laws Act 1997, which was itself introduced to overturn the Rights of the Terminally Ill Act 1995 passed by the Northern Territory Legislative Assembly. In effect, the intent of this Bill is not only to return to the position which prevailed in the Northern Territory in July 1996, but also to bring the ACT and Norfolk Island under its provisions.

The Bill attempts to overturn a tradition which stretches back through millennia, has served humankind well and which is firmly rooted in Judaeo-Christian morality; based as it is on the principle of 'do no harm'.

Arguments supporting euthanasia proceed from a number of directions but, effectively, according to Dr Peter Tran in his book: "Advancing the Culture of Death: Euthanasia and Physician-Assisted Suicide", may be reduced to four: the supposed moral equivalence between killing and allowing to die, arguments from compassion or mercy, individual autonomy and the right to die. The purpose of this paper is to examine each of these arguments and to draw conclusions about euthanasia of the terminally ill based on each of them.

2. Supposed Moral Equivalence between Killing and Allowing to Die

Advocates of euthanasia often liken it to the practice of allowing people to die when the end of life is near. They argue that if the condition of the patient is such that she is not responding to medication, resuscitation or other medical procedures, then the process of withdrawal of life support systems, which ultimately leads to death, is no different to that which occurs when that person is injected with some toxic, lethal cocktail which hastens the onset of death. Included in this line of argument is the case in which, in order to alleviate pain, the patient receives larger and larger doses of morphine which has the effect of precipitating death.

What is often overlooked, or ignored - and which is vital to a proper understanding of the difference between the processes - is the motive, or intention, behind the actions taken. Euthanasia always involves an intention to kill; it is deliberately aimed at terminating life, and is therefore morally wrong.

Permitting a patient to die, on the other hand, is not necessarily, an act of killing by omission especially if the intention is to relieve pain, or allow death to occur naturally. In this situation the physician is not omitting to do what he could to save the patient's life since, by definition, all possibilities have been exhausted. That is not to say, however, that medical staff are relieved of their obligations to provide normal services to maintain the comfort and well-being of the patient as death approaches. Any procedure which hastens death, such as the removal of tubes providing nourishment and hydration for the patient, since it is aimed at deliberately causing death, is motivated incorrectly, is always morally wrong, and to be deplored.

3. Compassion

Perhaps the most compelling argument advanced in support of euthanasia is the one based on compassion, especially for those who endure substantial pain as a result of a terminal illness; or even where the illness is not terminal, but there is an expectation that the level of pain will not decrease in the foreseeable future. This belief is more prevalent where patients are physically unable to terminate their lives unaided, having no access to medication or other means in order to do so. It is easy to see that support for euthanasia is forthcoming in this context, especially when the phrase 'mercy killing' is invoked to describe the situation.

It is probably important to distinguish between pain and suffering at this point. Although the two are often associated with one another, and can often occur together, yet they are not the same. It is possible for pain to be accompanied by feelings of euphoria or elation rather than suffering; as in the case of the winner of the gold medal in the marathon event at the Olympic Games. Alternately, knowing that one has contracted Alzheimer's disease may lead to acute mental suffering, without the presence of any physical symptoms of pain. Suffering can be assuaged by quality counselling so, the question we have to answer is this: "Is it morally permissible for a person to end her life, or indeed allow another to end it for her, in order to ease pain?"

The phrase 'mercy killing' arose in connection with putting animals to death in order to put them out of their misery. Can the same thinking be applied to the human situation? To those who consider that humans are purely animals, there is obviously no conflict; but should we assume that this is the end of the story?

Although possessing many characteristics in common with animals, it is precisely because humankind possesses faculties such as morality - not possessed by animals - that actions undertaken by human beings need to be scrutinised as to the manner in which they impact: firstly on themselves; and, secondly on society as a whole. As it presently stands the law recognises that, in order to responsibly protect individuals and society, and because different people are capable of making differing judgments in relation to what is merciful and compassionate, it is necessary to proscribe the taking of innocent human life. Even though the Parliaments in this country have, irresponsibly in the view of this organisation, commenced tinkering with this concept in the case of abortion, embryonic stemcell research and cloning, nevertheless, there cannot be any moral justification for variation of this general principle. So, guided by morality, encompassing the principle of 'do no harm', the first responsibility of any society, especially towards its members who are ill or sick, is for that society to provide the care and attention needed to keep such people in as comfortable an existence as is possible. Experts in the field of palliative care maintain that almost all terminally ill patients can experience adequate relief from pain through currently available treatment; hence there is no need to resort to the drastic action required by euthanasia.

4. Autonomy

The word itself is synonymous with individualism and represents a modern variant of the process which commenced with attempts by people to reduce the influence of the mediaeval Church in their lives. It received an impetus during the periods of the Reformation and the Enlightenment, and finally came to fruition during the Scientific Age. In essence what is meant here is that individuals have the right to make life's most personal and private decisions on their own, free of government or other interference. Thus, since decisions about beliefs, relationships, procreation and child-bearing belong to the realm of private decision, then so also do decisions about death: the individual should be entitled to control the time and manner of her death. If then, in the pursuit of such autonomy, a terminally ill person seeks the assistance of a physician in committing suicide, the physician ought, in practice, to render the service; provided the request is made freely and rationally. However, if personal autonomy is indeed the only yardstick, there is surely nothing to prevent people who decide - for reasons unrelated to terminal illness - that life has become intolerable from demanding access to similar services. Clearly, since such is not the intention of the framers of the proposed legislation at the present time, there is potential for the unscrupulous to exploit the provisions of the legislation in the future, and extend it to areas for which it is even more inappropriate. The proposed legislation possesses a glaring weakness in this regard.

Daniel Callahan in his books: “Misery, Murder and Morality: Perspectives on Euthanasia”, and: “Aid-in-Dying: The Social Dimension” identifies three reasons why euthanasia cannot be considered as autonomous.

Firstly, since it involves at least one other person, it must be viewed as a public action, and so be assessed in relation to its social implications.

Second, as a public act, it should be assessed via the perspective of societal ethics. In other words, does sanctioning private killing benefit society to a greater extent than its prohibition? Also, he argues that recognition of euthanasia not only extends personal autonomy, but also redefines the concept of private killing in society. The magnitude of this change needs to be evaluated, as well as its social impact.

Thirdly, and perhaps ironically, the right to personal autonomy on which euthanasia supposedly depends is actually contradicted when one cedes to another, either directly or indirectly, the right to take one’s life. Handing the power over one’s life to another destroys one’s freedom. Life is the pre-requisite for freedom; so in order to protect freedom, we must protect life.

As a final note in relation to personal autonomy, here is a quote from the pamphlet: “If people were dogs & other false arguments for euthanasia”, by Andrew Lansdown: “ According to its advocates, euthanasia is purely a personal affair. People should be free to choose to end their lives because such a choice is entirely individual and private.

On reflection, however, it is evident that euthanasia is not merely a personal matter. It is more than personal if it requires society to change its attitude to the sanctity of human life. It is more than personal if it encourages the community to view killing as a form of compassion and an alternative to care. It is more than personal if it requires governments to revise laws to allow certain types of homicide and suicide. It is more than personal if it requires doctors to assist in the killing. It is more than personal if it desensitises medical staff to the preciousness of human life. It is more than personal if it robs friends and relatives of extra time with a loved one. It is more than personal if it weakens a family’s will to make sacrifices to care for one of its members. It is more than personal if it creates an atmosphere in which other weak or unwanted people feel pressured to choose to die”.

5. Right-to-Die

There can be no doubt that the demand for the ‘right-to-die’ has been generated by three major influences: the civil rights movement in the USA; the rapid improvements in medical skill and technology leading to increased longevity; and two landmark decisions in the USA in which the power to switch off respirators, keeping the patients alive, but in a persistent vegetative state (PVS), was in one case denied and in the other awarded to the family of the patient by the courts. Incidentally, it is as well to observe that there is no uniformly accepted clinical definition of the condition described as PVS.

To a lesser extent, the courts drew upon the decision in the Roe v Wade case (which permitted access to abortion) to use an argument based on a concept of personal liberty, defined in that action, to be translated into a ‘right-to-die’.

Dr Peter Tran (ibid) declares that the phrase ‘right-to-die’ is ambiguous and can be misleading. He identifies at most four distinctive ‘rights’ that qualify for separate consideration. These are:

- A ‘right’ to be allowed to die.
- A ‘right’ to commit suicide.
- A ‘right’ to kill oneself through the agency of another, or assisted suicide.
- A ‘right’ to authorise others to kill one, directly and deliberately.

Of the four ‘rights’ above, the first has already been considered in this submission (See Section 2 above). The ‘right’ to commit suicide is fairly new, given that penalties for attempted suicide were, until recently, severe; and that, furthermore, there has been a realisation that if people are determined to commit suicide the threat of legal sanctions is unlikely to deter them; whereas if they are unsuccessful in their attempt then, in all probability, they will need counselling and community support rather than

to face court proceedings. However, it remains a criminal offence to assist a person to commit suicide.

Which brings us to the two remaining 'rights' as possible candidates in making a case for legalised euthanasia.

It should be obvious to all that, in the pursuit of self-determination by the patient, implied by a 'right' to euthanasia, she is never entitled to compel physicians or others to act contrary to their own moral or ethical values in carrying out her wishes.

Consequently, the debate now reduces to whether a 'right' exists to kill oneself through the willing agency of another. Note too what has occurred in the process: the 'right-to-die' has been subtly transformed into a 'right-to-kill'. Such a demand, even if it cannot be seen as immediately harmful to others, inevitably raises questions as to whether our actions can ever have minimal social impact. Humans are social beings, and actions by any one of us does have an impact on others; as we have seen in Section 3 above.

If the rationale behind the 'right-to-die' seems somewhat obscure, the consideration of just who may be entitled to avail themselves of this 'right' becomes nothing short of a nightmare.

Does a 'right-to-die' exist for those whose death is imminent, with or without medical treatment? On a pedantic note it might be pertinent to mention that, since death is the final fate for every human being, it can be considered as imminent from the moment of birth!

Or those who are incurably ill, though not in any danger of immediate death? The need for a 'right-to-die' for people facing a protracted period of pain is, arguably, far greater than for those whose death is imminent.

Does it apply to everyone, whether mentally competent or senile?

Is it possible for a close friend, or family member, to make the decision for a patient; especially if she is in a comatose state?

If so, can the patient, or the official authorities, be certain that the decision is not motivated by the prospect of personal gain; as in the case of a benefit likely to flow from a bequest or inheritance following the death of the patient? Alternately, is the decision taken by the close friend or relative made in accordance with the wishes of the patient; or determined by the preference of the person making the decision?

If a 'right-to-die' is an expression of personal autonomy, how can someone else make that decision for a patient?

Surely, where an element of doubt exists, it is preferable to employ the precautionary principle, and err on the side of caution, rather than allow, categorically, a 'right-to-die'.

6. Conclusion

This paper has examined euthanasia from a number of perspectives in order to assess whether or not claims made for its introduction are soundly based. Firstly, from the supposed equivalence of killing and permitting the patient to die, it was concluded that intention was paramount: that where there is a deliberate intention to end the patient's life, using whatever means, such action is always morally wrong. The action taken to terminate the life of Terri Schiavo in the USA, because her death was deliberately planned, belongs in this category.

Because humans are moral beings and not animals, 'mercy killing' under the guise of compassion, is certainly not appropriate for the former.

Three reasons are given as to why euthanasia cannot be described as autonomous.

Firstly, since it involves more than one person, it is a social action. Secondly, euthanasia redefines the concept of private killing. Thirdly, the terms euthanasia and autonomy are mutually contradictory.

Scrutiny of the phrase 'right-to-die' actually imbues it with the meaning of 'right-to-kill'.

One can only wonder at how difficult it would have been to obtain a conviction for Dr Harold Shipman (UK), found guilty of murdering 215 patients, in the event that the

concept 'right-to-die' as proposed in this Bill, had been in existence at the time. The slogan 'right-to-die' was certainly influential in convincing Nancy Crick in Australia to subject herself to euthanasia because she feared the pain she would experience from the cancer she believed she had contracted. Her mental capacity at the time must now be questioned since an autopsy conducted on her remains after death revealed that she was not suffering from cancer.

What this Bill seeks to do is to overturn a law that has served humankind well over centuries in order to pander to the predilections of the few who have decided that such a law is outmoded and is no longer applicable.

For the reasons outlined above, we believe that to proceed with this Bill would be a monumental mistake.

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