
From: Julia Blunden
Sent: Thursday, 3 April 2008 5:18 AM
To: Legal and Constitutional, Committee (SEN)
Subject: Submission in support of Brown Bill

To Senate Legal and Constitutional Committee

Submission in support of Terminally Ill (Euthanasia Laws Repeal) Bill 2008-04-03

Dr Ralph Blunden

3 April 2008

Dear Senate Committee

I wish to support the Private member's Bill of Bob Brown to repeal the Andrew's Bill 'Euthanasia Law Act 1997'. My reasons for supporting the Brown Bill arise from the arguments adumbrated in two books on the topic. I include reviews that I have written of these books below.

Robert Young (2007) *Medically Assisted Death*, Cambridge University Press, Cambridge, UK.

The author of this book, Dr Robert Young, is a former Reader in philosophy at La Trobe University, Australia.

In this review I will outline the form and content of Dr Young's wonderful book, but I will not be challenging any of his arguments or conclusions since I find myself largely in agreement with them. Yet, a characteristic of the book is that Dr Young draws attention to further literature that discusses issues in opposition to his own preferred position. Even those who disagree with Dr Young's conclusions will find guidance in this book to sources more congenial to their own philosophic leanings. Dr Young has a disquieting ability to both be gentle in the way he deploys arguments and to be uncompromising in the relentlessness of his logic.

Philosophy is notoriously difficult in its professional guise. *Medically Assisted Death* is unusual in its sensitivity to the reader. Dr Young takes enormous care to at all times inform the reader of what he is doing, why he is deploying certain arguments or discussing certain propositions and consistently throughout the book he summarises what he has done. The topic demands the reader's concentration, but there is nowhere the non-professional philosopher will find a more accessible account of the topic. This is not to say the book is without rigour as it certainly has that. It is to say that Dr Young has reflected on the topic of voluntary medically assisted death for many years and brings his meticulous analytic mind to bear on it in such a way as not only to provide lucidity, but to give the book a certain aesthetic dimension through the use of language that is elegant, succinct and precise. There is not a word out of place in Dr Young's book and none that need to be added.

Medically Assisted Death is, in effect, a connected series of essays on the central issues relevant to the topic of physician-assisted dying. Yet the book is entirely coherent and each chapter or essay forms a necessary part of the case that Dr Young argues. It will be useful here to provide a list the book's chapters:

- Chapter One: Introduction.
- Chapter Two: A case for the legalisation of medically assisted death.
- Chapter Three: Medical futility.
- Chapter Four: Physician-assisted suicide.
- Chapter Five: The sanctity of human life.
- Chapter Six: Killing versus letting die, the doctrine of double effect, and palliative care for the dying.
- Chapter Seven: Professional integrity and voluntary medically assisted death.
- Chapter Eight: Competence and end-of-life decision making.
- Chapter Nine: Advance Directives.
- Chapter Ten: Voluntary medically assisted death and slippery slope arguments.
- Chapter Eleven: Non-voluntary euthanasia.
- Chapter Twelve: Concluding remarks.

There is an extensive list of references and the volume is well indexed.

Given that my own post graduate research concerned professional ethics I was particularly interested in Dr Young's essay chapter 'professional integrity and voluntary medically assisted death'. This is a short piece of writing that should be read by all medical personnel and should be prescribed reading in medical and nursing courses. Dr Young, as in many of his chapter-essays, is at pains to begin with a conceptual analysis of the topic, in this case professional integrity. He writes:

Professional integrity differs from each of personal and moral integrity in that its focus is not on the personal, or even on the moral, nature of the values, standards or principles that the professional is committed to, but on the relationship between those values, standards or principles and the fulfilment of a particular professional role. (p. 114)

Dr Young, in this chapter, (Professional Integrity), argues that physician assisted death is not necessarily in conflict with the values and standards that apply to professional medical ethics, but in many cases is entirely consistent with them. He argues this because,

There has been so much social change since, for example, the formulation of the Hippocratic Oath, that medicine has had to re-conceive itself. It now incorporates the relief of suffering as well as healing, and hence should accommodate physician-assisted suicide. (p. 121, 'professional integrity')

He gives here an account of the tension between the autonomy and the self-determination (of the patient) and the professional integrity of the doctor and specialists involved. In this chapter ('professional integrity') Dr Young provides an especially nuanced argument. It may be useful if readers mostly concerned with the content of this chapter also to refer to Dr Young's earlier book (1986) *Personal Autonomy: Beyond Negative and Positive Liberty*, Croom Helm, London. This is acknowledged as one of the best books written on the subject of personal autonomy.

Dr Young writes in the introduction to *Medically Assisted Dying* that:

My central thesis is that there is a strong case for legalising physician-assisted suicide and voluntary euthanasia but that it is neither justifiable nor necessary to do so for non-voluntary euthanasia. (p. 1)

The first chapter of the book looks at landmark legal cases and their outcomes and the precedents that they set. Chapter two, 'A Case for the legislation of voluntary medically assisted death', provides a compelling case for the legislation of voluntary medically assisted death as the most appropriate public policy for today's circumstances. Here Dr Young outlines the sort of restraints and protections that are needed to protect the vulnerable.

The threat to the vulnerable is often appealed to by those who oppose medically assisted death. They argue that once we legalise a restricted form of voluntary euthanasia it will not be long before we advance to bumping off the vulnerable (ageing parents, or the disabled, for example). Dr Young devotes a chapter to refuting this slippery slope argument (and slippery slope arguments in general) as well as addressing the problem of medical futility – where further medical intervention in the sickness of a patient will not be curative, but will only needlessly prolong life for those with no reason to live. Related to this theme he also addresses the concept of a reverence for life, or a claim that human life is sacred. Here the arguments are quite devastatingly in support of his thesis.

There are many potential problems involved in legislation that makes it legal for physicians to assist their patients to die. Dr Young writes in his chapter on physician-assisted suicide:

Among the more important concerns specifically raised about physician-assisted suicide are the following: whether it is appropriate to place potentially lethal doses of barbiturates,

opioids, and other medication in the hands of the terminally ill; whether medical practitioners may with propriety agree not to play a supervising role at the time when a patient chooses to take a lethal dose of such drugs; whether physician-assisted suicide is of any use to sufferers from severely disabling conditions like multiple sclerosis or motor neurone disease (who would be unable to suicide in the way envisaged in physician-assisted suicide); whether (as opponents of physician-assisted suicide claim) there are available equally efficacious but less contentious strategies – like the refusal of food and fluids – which would enable competent terminally ill persons to end their lives; whether legalising physician-assisted suicide would pose any serious risks to others, especially those who constitute the more vulnerable members of society; and, whether requests for assistance with dying made in the advance of the onset of incompetence by, for example, victims of Alzheimer's disease, may legitimately be honoured through physician-assisted suicide. (p. 44)

Dr Young considers these problems consecutively and I found his discussion of the supervision of the use of lethal drugs especially pertinent. An important chapter deals with the doctrine of double effect, of the moral differences, if any, between acts and omissions (what we do and what we fail, or choose, to do or not to do). Although this is a good chapter it reworks well trodden ground. Nevertheless, it is a useful addition to the book for the sake of completeness especially given that many people who should read this book will not be familiar with philosophical analysis of acts and omissions.

There is much more to say about this book though I suspect that, given Dr Young's thoroughness, there will be little of consequence advanced against him. This book is an exercise in practical ethics and, in my view it is an exemplary instance of this genre. No one will come away from reading even a chapter of this book without feeling that light has been cast on the topic. In the best traditions of philosophy Dr Young illuminates his subject. He has done a public service in publishing this book which should be influential in developing public policy.

Dr Young concludes his book with the following:

[T]here is nothing in medical morality or the goals of medicine that precludes offering medical assistance with dying to those intolerably burdened patients who competently request it; that the imminence of death does not inevitably undermine competence; that directives made in advance of death have probative value in relation to a patient's end-of-life care; and, that the evidence from the couple of jurisdictions where voluntary medically assisted death has been legalised gives cause for confidence that its legalisation will not result in jeopardy to the life prospects of vulnerable incompetent persons. (p. 220)

Would that it were the case that Dr Young's cool rationality and compassionate, but fair, moral position were more evident in our community. In his book Dr Young does look at the importance of emotions or 'affect' as some taxonomies would describe our feeling selves and in this he acknowledges the influence and the importance of this aspect of our (human) nature. This aspect also places Dr Young's book in the great traditions of Western Moral Philosophy stretching back at least to the moral authority of the incomparable Scottish philosopher, David Hume.

Gail Tulloch, *Euthanasia – Choice and Death*, Edinburgh University Press, Edinburgh, 2005.

This is a remarkable book. It is comprehensive, exemplary in its structure and is written with very great clarity on a topic that is quite difficult and complex. For an overall account of the debates that arise from the topic of euthanasia there is no better book available. It is a book that should be read by every practicing doctor, nurse, health-care worker, and anyone involved in end-of-life choices.

The book's structure begins with a range of theoretical issues and concepts: Choice and death;

definitions of death including an account of how our definitions have evolved from difficult end-of-life cases. Tulloch, an academic at Griffith University, then moves on to examine a range of arguments and distinctions: The slippery slope argument; voluntary/involuntary, active/passive euthanasia; resource allocation; the individual, the state and a liberal society.

The book moves on at an easy speed to examine death and dying and legislation in America, particularly Oregon State; in England; in the Netherlands and in Australia – all liberal democracies.

At the end of the book Tulloch says:

I have described here some of the conceptual struggles this dilemma [legalising voluntary euthanasia] has posed, as people sought to negotiate the stark choices with the aid of distinctions such as ordinary and extraordinary means of treatment; killing and letting die; acts and omissions; foreseen but unintended effects. I have argued that these distinctions can be useful as a way of justifying and guiding practice, where one alternative of the binary oppositions is seen as acceptable. But in the case of ordinary and extraordinary, killing and letting die, acts and omissions, the boundaries have been challenged, so that the defensive potential blurs. 'Foreseen but unintended effect' however, remains intact, and influential – even if contested.

Tulloch explores all these important perspectives in her book along with the classification made by Dworkin – an American philosopher – of patients who are conscious and competent; those who are unconscious and incompetent; and those who are conscious and incompetent. The framing of legislation needs to be clear about what classifications are targeted – especially as a means of reassuring those who are fearful of slippery slopes. The author argues that,

[I]t is better to have legislation that even only partly permits voluntary euthanasia if this reflects the consensus in a particular society and is owned by that society, rather than have legislation forbidding it, which is not clear or not applied.

The author points out that the possibilities suggested by those who use the slippery slope argument to oppose legalising voluntary euthanasia are not supported by the evidence we now have from the Dutch experience. The Dutch who first decriminalised and later legalised voluntary euthanasia have not found that there has been a slide of the kind often envisaged. Partly that is because the Rotterdam criteria that make it legal for a doctor to administer voluntary euthanasia are explicit and comprehensive.

One of the intriguing aspects of the book is the early discussion of criteria for death. In 1989 three questions were posed by the Danish Council of Ethics:

- When does a human being die?
- When is it permissible to stop trying to keep a human being alive?
- When is it permissible to remove organs from a human being for the purpose of transplantation to another human being?

'What other answer could be given to the third question' asks Tulloch, 'if the answer is not "when the human being is dead"'. Opinion about the first question has changed over the years to what is now a focus on cortical death as the defining characteristic. Thus, a human being might be alive in a biological sense, but the personality, the conscious being is dead with cortical death – a very significant step away from the sanctity of life doctrine held to by many of religious faith.

Gail Tulloch's philosophical perspective is essentially based on the liberalism of John Stuart Mill. Mill holds that the state can only intervene on an individual's liberty when and if their actions are likely to harm others. Mill held that each individual was the best to judge of what is in their own best interests and opposed paternalistic government. Mill has written,

Neither one person nor any number of other persons is warranted in saying to another human creature of ripe years, that he should not do with his life for his own benefit what he chooses to do with it. He is the person most interested in his own well-being...With respect to his own feelings and circumstances, the most ordinary man or

woman has means and knowledge immeasurably surpassing those that can be possessed by anyone else. In this department, therefore, of human affairs, individuality has its proper field of action.

As Tulloch points out, 'For Mill it is axiomatic that a life cannot be a good life unless it is freely chosen'.

The book discusses many social issues such as advance directives and shows that for many people a dignified death is a stronger motivation for wanting assistance in dying than is pain per se. The book discusses many cases in the countries that it covers all of which are of intrinsic interest. Tulloch writes:

It is surely unacceptable in a civilised society that anyone could be driven to an end that is as sickening, tragic and fraught with risk as that of an 85 year old Perth man, who manoeuvred his wheelchair off a Perth jetty because he was suffering unbearably from throat cancer and could not find a doctor to help him die.

She notes that the Dutch society is one in which it is open, that in cases of physician assisted suicide the patient usually has a long-term relationship with their GP and that nursing home care is free. Thus, a community legalising voluntary euthanasia must ensure the hospice care or adequate palliative care is within the reach of everyone if pressure to shorten life on economic grounds is to be avoided.

This book is highly recommended. It argues a case for the legalisation of voluntary euthanasia and in doing so responds to all the current opposing arguments to assisted suicide. It is little less than a brilliant account and I think that no one could come away from reading this book except with the view that we do need some change in our society in regard to this matter if we are to retain the claim to a civilised and humane community and a medical practice that acts in the interests of patients.