Legalizing Euthanasia—a Tragedy of the Commons in the making

Public submission on the *Euthanasia Laws Repeal Act 2008*

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When the Northern Territory legislature made it "legal" for Bob Dent and Janet Mills to demand and receive assistance from Dr. Philip Nitschke to suicide, it erred against social prudence. Rash legislators did not consider that their seemingly compassionate legal endorsement of medicalized killing must cause, in the long run, an incalculably greater amount of misery than that which they were seeking to alleviate. They lacked the social prudence to discern that suicide and assisted suicide are not just moral problems—they are problems of *morale* that threaten human rights and human solidarity.

Essentially, the *Rights of the Terminally Ill Act 1995* threatens once again to sever human solidarity on care for the dying. The *Rights of the Terminally Ill (Euthanasia Laws Repeal) Act 2008,* will make way once again for introduction of the "choice" to relieve one's carers of their human obligations.

In seeking new rights, the Northern Territory will once again threaten the old right: the unspoken, unwritten, but absolute right to palliative care. It threatens also the absolute right to unquestioned and unquestioning care not just throughout the entire dying process, but throughout the entire life cycle—the very old and the very young have high levels of need as do those with disabilities and the terminally ill.

The euthanasia choice itself brings a tyranny. The "right to die" introduces the *duty* to die. For the incapacitated, it will introduce constraints where once there were none. In creating the choice of "doctor-assisted suicide" (a despicable euphemism for medicalized killing by doctors), governments will create the potential need to justify rejection of that choice. Legalized euthanasia introduces the heinous corollary that to remain alive the burdensome should be able to furnish adequate rational justification for "choosing" to remain alive. And it then damages the original, irreplaceable universal agreement that to be alive requires no justification--that it is sufficient simply that one *is* alive. To inadvertently sabotage such a crucial pivot of human civilization is a tragedy beyond the comprehension of a few well-meaning but obtuse legislators.

Thus the notion that euthanasia is a personal decision affecting no one beyond the person who demands medicalized suicide is absurd, as is the fiction that it is a states' rights issue. It's a *human* rights issue affecting not just all Australians but all humanity. It attacks a fundamental human right that has applied in principle to all human beings, by virtue of their being human—that the dying have a right to be cared for, no matter how long or how demanding the process.

The dying patient's basic human right to faithful, unstinting care must not be watered down to a mere choice. In this substitution of a choice for a human right, they will cheat us all of something that for centuries we had been able to take for granted—the

right not to be pressured to hasten our own death, the right to let nature take its course. Yet the pressure is now on, this pressure that insists it is a choice, not a right, to take time dying—a choice, not a right, to live our lives to the natural end.

Euthanasia Laws Act 1997 restored rights that were removed

Rights of the Terminally Ill (Euthanasia Laws Repeal) Act 2008, section 3 Object of the Act claims wrongly:

> *The object of this Act is, in recognising the rights of the people of the Australian Capital Territory, the Northern Territory and Norfolk Island to make laws for the peace, order and good government of their territories, including the right to legislate for the terminally ill, to repeal the* ***Euthanasia Laws Act 1997 which removed that right.*** [emphasis added]

It is misleading to assert that the *Euthanasia Laws Act 1997* "removed that right".

The people of the Australian Capital Territory, the Northern Territory and Norfolk Island retain their rights to make laws for the peace, order and good government of their territories, including the right to legislate for the terminally ill.

They retain, for example, their right and their duty to legislate for universal access to adequate palliative care, for provision of more hospice facilities and for better counselling and other services for the terminally ill; and for the carers of the terminally ill, they have the right and duty to legislate for better provision of respite care, of more financial assistance, of improved access to information and to funded support groups. Laws relating to the provision of all these benefits should certainly satisfy the rights of the Australian Capital Territory, the Northern Territory and Norfolk Island to make laws for the peace, order and good government of their territories, including the right to legislate for the terminally ill.

The *Euthanasia Laws Act 1997* removed no right to legislate for the terminally ill. All it removed was a spurious, ill-conceived and invalid "law" that attempted to legalize the medicalized killing of suicidal persons who are terminally ill. There is no human right for suicidal persons who are terminally ill to be killed by medical professionals. The Northern Territory law, far from legislating to protect a genuine human right, actually contravened certain non-derogable human rights of the terminally ill.

For all persons who are terminally ill, the *Euthanasia Laws Act 1997* restored the human rights principle of inalienability. In particular, it restored the non-derogable right to life and to all the necessities (including palliative health care) that sustain life until natural death.

Senator Bob Brown, in his second reading speech on *Euthanasia Laws Repeal Act 2008*, uses the oxymoronic term "medically assisted death". But this is a euphemism for intentional killing; and the medical profession, sworn to the Hippocratic principle

of nonmaleficence, can have no part in killing in the name of the State where killing is legally sanctioned by the State.[1]

Always it is life that is medically assisted, not death. Medical assistance may never in itself be intentionally lethal—the best possible palliative care should be available to all terminally ill people from the first knowledge of their terminal illness to their natural death.

The right *to make laws for the peace, order and good government of their territories*

The people of the Australian Capital Territory, the Northern Territory and Norfolk Island retain their rights to make laws for the peace, order and good government of their territories, including the right to legislate for the terminally ill, but those laws must conform to international human rights norms that have been guaranteed under the human rights instruments to which the Australian Federal Government is a party. It is the international community and international law that must guarantee the right to have rights.[2]

"The meaning of the word ' laws' in the context of a system for the protection of human rights cannot be disassociated from the nature and origin of that system." [3] The protection of human rights, is in effect based on the very first and singularly important affirmation in all three foundational human rights instruments of the *International Bill of Rights*:

> *…in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world…*

At the foundation of modern international human rights law is this recognition that "*the equal and inalienable rights of all members of the human family*" cannot be legitimately restricted through arbitrary exercise of governmental power or through arbitrary exercise of the majority's democratic will.

When a localized majority passes a law in violation of universal human rights

In order to guarantee universal human rights, it is therefore essential that, in a federation, state and territory actions affecting basic rights not be left to the discretion of localized governments but, rather, that they be surrounded by a set of guarantees designed to ensure that the inviolable attributes of the individual not be impaired. it is true that one of these guarantees is the requirement that restrictions to basic rights

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[1] Chelouche, Tessa: *"Doctors, Pregnancy, Childbirth and Abortion during the Third Reich"* IMAJ Vol. 9 March 2007
Also, see Caplan AL. *How did medicine go so wrong?* In: Caplan AL, ed.When Medicine Went Mad: Bioethics and the Holocaust. Totowa, NJ: Humana Press, 1992:71–7.

[2] J. E. Nijman***The Concept of International Legal Personality, An Inquiry into the History and Theory of International Law***. The Hague: T. M. C. Asser Press, 2004. p.473

[3] The Word " Laws " , Advisory Opinion OC-6/86, May 9, 1986, Inter-Am. Ct. H.R. (Ser. A) No. 6 (1986) para 21

only be established by a law passed by the Legislature in accordance with the Constitution. Such a procedure, according to one international court of human rights, not only clothes these acts with the assent of the people through its representatives, but also allows minority groups to express their disagreement, propose different initiatives, participate in the shaping of the political will, or influence public opinion so as to prevent the majority from acting arbitrarily.[4] The Court, however, goes on to sound a timely warning:

"Although it is true that **this procedure does not always prevent a law passed by the Legislature from being in violation of human rights –a possibility that underlines the need for some system of subsequent control**—there can be no doubt that it is an important obstacle to the arbitrary exercise of power."[5] [emphasis added]

While this is from an Advisory Opinion of the Inter-American Court of Human Rights, it has, I believe, a very real relevance to our own Constitution, Legislatures and formal obligations to conform domestic laws to international human rights conventions that Australia has ratified, such as the *International Covenant on Civil and Political Rights* (ICCPR).

Of special relevance is this understanding that the political will of a democratic majority **does not always prevent a law passed by the Legislature from being in violation of human rights –a possibility that underlines the need for some system of subsequent control** . Federal intervention in the form of the *Euthanasia Laws Act 1997* was an excellent demonstration of just such a need for some system of subsequent control when a localized majority (the Northern Territory Legislature) has acted arbitrarily to pass a law that is in violation of human rights.

In this respect, it needs to be emphasized that the term " peace, order and good government" may under no circumstances be invoked as a means of denying any right guaranteed by the *International Covenant on Civil and Political Rights* or to impair or deprive it of its true content.

Euthanasia—a human rights issue—ultimately a Federal responsibility

One of the rights guaranteed in this Covenant is the right to be protected by law from arbitrary deprivation of one's life. Euthanasia is, first and foremost, a human rights issue involving *per se* arbitrary deprivation of life. As a human rights issue, it is the purview of the Federal government which has both the authority and the obligation to override State and Territory laws when they are incompatible with the international human rights protections in instruments that the Federal Government has ratified.

Under international human rights law, the national legislature (i.e. the Federal Parliament) remains the primary line of legal defence of the human rights of the terminally ill.

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[4] ibid para 22
[5] ibid para 22

Parliament holds both the authority and the obligation under the Australian Constitution's external affairs power to demand and to monitor that each and every law permitting intentional deprivation of life in the States and Territories will be strictly compatible with the human rights treaty commitments solemnly undertaken by previous Australian governments, including compatibility with the *International Covenant on Civil and Political Rights* (ICCPR).

Rights "*extend to all parts of federal States without any limitations or exceptions*"

Article 50 of the *International Covenant on Civil and Political Rights* (ICCPR) states that "the provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions".

On all matters pertaining to the possible violation of the right to life of the terminally ill, the Federal Government is obliged to challenge State and Territories laws that have failed to provide adequate protection against the medicalized killing of the terminally ill.

"*Every human being has the inherent right to life. This right shall be protected by law No one may be deprived of their life arbitrarily*", says Article 6(1) of the *International Covenant on Civil and Political Rights* (ICCPR).

It is the Federal legislature's responsibility to provide laws that "***strictly control and limit the circumstances in which the State may condone deprivation of life***".[6]

In view of the irreversible nature of each act of intentional medicalized killing of a terminally ill person, Federal legislatures must scrupulously observe all international and regional standards protecting the right to life and must ensure that the states and territories of the Federation also observe these standards.

Northern Territory law incompatible with international human rights law

The *Rights of the Terminally Ill Act 1995* in the Northern Territory to be restored by the proposed *Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill 2008* is incompatible with the international human rights obligations of both the Federal Government and the Territory governments to protect every human being from arbitrary deprivation of life.

It is inadmissible under international human rights law because it introduces invalid limitations and exceptions to the right to life. Such a limitation of or exception from a non-derogable right, the right to life, is inadmissible under the provisions of the *International Covenant on Civil and Political Rights*. Article 4 of the ICCPR stipulates that no government can derogate from the right to life even in times of "*public emergency*". Article 50 states that "*the provisions of the present Covenant shall extend to all parts of federal States* [this applies to Northern Territory and the Australian Capital Territory] *without any limitations or exceptions*".

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[6] UN Human Rights Committee: General Comment 6, Para. 3

States which have ratified the *ICCPR* must at all times take positive steps to effectively protect the right to life of every human being. The right to life of the terminally ill, as protected by international human rights law, means, *inter alia*, that States have a strict legal duty at all times to prevent, investigate, prosecute, punish and redress violations of the right to life wherever such violations occur, both in private and in public, and even in public emergencies threatening the life of the nation (Article 4(2) *ICCPR*).

Only a corruption of this strict legal duty to prevent, investigate, prosecute, punish and redress violations of the right to life could enable a government to decriminalize medical interventions having the intended outcome of arbitrary deprivation of life.

States Parties' human rights obligation to provide legal protection for the terminally ill means that governments are prohibited from legalizing, promoting, condoning or paying for medical interventions where the intended outcome is arbitrary deprivation of the life of the terminally ill.

Any State or Territory law which legalizes medicalized killing of the terminally ill must be found sooner or later to be invalid. It will be found to have been void at the very time of its enactment because it is incompatible with the universal human rights commitments of the I*CCPR* to protect by law the inherent right to life of every human being, including the inherent right to life of the terminally ill.

The inherent right to life of the terminally ill shall be protected by law

The terminally ill are among the most vulnerable human beings; and legal systems must not place them at risk of lethal medical treatments. The terminally ill are entitled to have their rights fully respected in accordance with the special safeguards and duty of care guarantees as set out and agreed in the original international human rights instruments which the Australian Federation has ratified.

Article 2(2) of the *International Covenant on Civil and Political Rights* states

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Legislative or other measures must be adopted by each state party to the *ICCPR* to provide protection for the inherent right to life of the terminally ill.

Article 6(1) of the *International Covenant on Civil and Political Rights* asserts

> *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

Natural death or arbitrary death?

Natural death comes inevitably to all human beings. Natural death is an unprovoked, spontaneous natural event. Death is not a right, but an inevitability. Human rights are applicable to the living. For as long as the terminally ill are alive, their inherent right to life is to be protected by law. There are to be no exceptions and no limitations placed on the inherent right to life by individual states or territories within a federation. (ICCPR Art.50).

The single permissible limitation on the right to life in the *International Covenant on Civil and Political Rights* relates to "sentence of death which may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime…This penalty can only be carried out pursuant to a final judgment rendered by a competent court." (Art. 6(2))

Article 5(1) of the *International Covenant on Civil and Political Rights* states:

> *Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.*

Other than strict and very specific provisions for the death penalty, no other limitation is allowed on the right to life—certainly there is no provision for legalized killing of suicidal persons who are terminally ill.

The law must ensure that no one is arbitrarily deprived of his life. The term "arbitrarily' has immense significance in that it prohibits euthanasia and suicide where both the timing and the manner of death are arbitrary rather than inevitable.

Regarding the concept of arbitrariness, UN Human Rights Committee's General Comment No 16 explains that it is intended to guarantee that "*even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant...*". The terminally ill may not be deprived "lawfully" of their lives. Laws that arbitrarily deprive terminally ill of their lives are bad laws, impermissible under international human rights law because they allow for unjust deprivation of lives—the only just deprivation of life allowed for in the *ICCPR* under very limited conditions relates to State imposition of the death penalty for only the most serious crimes, and only after a final judgment rendered by a competent court.

From the very beginning of the drafting of modern international human rights instruments, a clear understanding of the term "arbitrarily" was established—it was to be interpreted as "without justification in valid motives and contrary to established legal principles."[7]

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[7] « …arbitraires (c'est-a-dire sans justification pour des motifs valables et contraires a des principes juridiques bien etablis)… » Verdoodt, Albert, *Naissance et Signification de la Déclaration Universelle des Droits de l'Homme*, Société d'Etudes Morales, Sociales et Juridiques, Louvain-Paris, Editions Nauwelaerts, 1964.p.143

Laws that pretend to establish the legality of routine medicalized killing of suicidal persons who are terminally ill are

- *without justification in valid motive*
  They aspire to do good (relieve suffering and/or pain) by doing evil (arbitrary deprivation of life); and
- *contrary to established legal principles*

  They contravene the established legal principle that the state may condone deprivation of life only for those who are judged guilty of serious crime. They contravene also the established human rights legal principles of the inherency and inalienability of the right to life.

Dr Stephen Hall, in a recent article in the *European Journal of International Law*, warns that it is when we are "unmindful of the richness of the common good under the natural law" that the temptation to turn moral wrongs into human rights arises; he intimates that laws authorizing the killing of human beings are *"radically unjust (and radically immoral)in that they permit choosing directly against a self-evident form of human flourishing; i.e. life."* [8]

It is the Federal legislature's responsibility to provide both laws and programmes in cooperation with the States and Territories that protect *the inherent right to life* and the inalienability of all the rights of the terminally ill, including access to palliative care and to all other necessities required during this last stage of life.

What are the rights of the terminally ill under international human right law?

The inherent right to life of the terminally ill is inalienable

The term "inalienable rights of all members of the human family" applied to the terminally ill means that these human rights cannot be taken from the terminally ill person, not by anyone, and not even by himself. Thus the right to life, because it is inalienable, rules out suicide and assisted suicide.

Medicalized killing cannot be offered as a legitimate response to the suicidal distress of a terminally ill person as it is in violation of the fundamental human rights principle of inalienability. Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own request.

The natural law principles relevant here are that a human entity should be allowed to persist in being; and that one must not directly attack any basic good in any person,

[8] Hall, Stephen: *The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism* European Journal of International Law, Oxford: 2001. Vol. 12, Iss. 2; p. 269

not even for the sake of avoiding bad consequences. This last principle, that the basic aspects of human well-being are never to be directly suppressed, is cited by Professor John Finnis as the principle of natural law that provides the rational basis for *absolute* human rights, for those human rights that "*prevail in all circumstances, and even against the most specific human enactment and commands".*[9]

The concepts of dignity, sanctity, status, worth, and ultimate value—*each individual an end in himself*[10] —underpin the understanding and acceptance by the drafters of the *Universal Declaration of Human Rights* of the first principle of natural law—the moral imperative to do good and avoid evil, and emanating from this, the precept that affirms preservation of each human life and proscribes arbitrary deprivation of any human life.

International humanitarian law has recognized that special safeguards must be accorded to persons in positions of extreme vulnerability. It is prohibited to subject such persons *" to any medical procedure which is not indicated by the state of health of the person concerned... even with their consent".* [11] Most significant here is the concept that some medical procedures are prohibited for human beings in vulnerable situations "even with their consent". There is indeed humane recognition here that some medical treatments are so lethal that even the consent of the persons concerned cannot give them legitimacy.

- **The terminally ill have the right to recognition of their inherent dignity**

The *International Covenant on Civil and Political Rights* (ICCPR) recognizes that all human rights derive from the inherent dignity of the human person.

Recognizing that these rights derive from the inherent dignity of the human person… (Preamble)

Inherent dignity is a core value of the *International Bill of Rights*:

> "*…recognition of the inherent dignity and inalienable rights of all members of the human family is the foundation of freedom , justice and peace in the world* ."

This appears in the Preamble of all three instruments and as such is a foundational premise upon which all the rights that follow are based. It is "the foundation of…justice" i.e. it is the foundation *inter alia* of international human rights law.

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[9] Finnis, John: *Natural Law and Natural Rights* (1980) and *Aquinas: Moral, Legal and Political Theory* (1998)

[10] Speech by Eleanor Roosevelt Adoption of the Declaration of Human Rights (December 9, 1948).

[11] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1, Article 11, "Protection of Persons"

Given this foundation, there is no "right to die" in the human rights instruments. Nor is there what euthanasia advocates call "a right to die with dignity". The confusion here is engendered in their failure to grasp that human rights belong to the living—that every human being, because of his/her inherent dignity, has a right to live – a right that stems from the inherent dignity of every human being and inheres in every human person from conception through to the moment of their death.

The terminally ill, although they are dying, are still alive. It is their life not their death that entitles them to all their human rights. It is their live humanity, their living membership of the human family that entitles them to "…*recognition of the inherent dignity and inalienable rights of all members of the human family".* It is this recognition that obliges us to travel in human solidarity with the terminally ill, to provide them with the best attainable palliative care, in their homes or hospices or intensive care units, to be attentive to their needs, to be with them to the moment of natural death. While every person with a terminal illness has a right to refuse burdensome medical intervention intended to prolong life, no person has a right to demand of carers a medical intervention intended to kill. There is no right to procure arbitrary deprivation of life. The terminally ill have no right to medicalized killing which is the antithesis of genuine recognition of the inherent dignity and worth of the human person who is terminally ill.

So even while living through the natural process of dying, the terminally ill retain that inherent dignity. The term "inherent dignity" applied in the spirit and purpose of the *Universal Declaration* means that every human being, from the first moment of existence as a discrete, genetically unique human entity to the point of natural death, has an immutable dignity, a dignity that does not change with external circumstances such as levels of personal independence, satisfaction or achievement, mental or physical health, or prognoses of quality of life, or functionality or wantedness. There is no conceivable condition or deprivation or mental or physical deficiency that can ever render a human being "non-human". Pejorative terms such as "just a vegetable" or "non-person in a permanent vegetative state" and dismissive attitudes such as "May as well put him out of his misery—he's going to die anyway…" cannot justify violation of the human rights of the human person so described. Such prejudices cannot destroy *the inherent dignity of the human person.* As long as a human being lives, he or she retains all the human rights of being human, all the rights that derive from his or her inherent dignity as a human being.

- The terminally ill have the right to security of person

Everyone has the right to life, liberty and security of person (*Universal Declaration* Article 3)

The terminally ill have the right to life, liberty and security of person. They have an inalienable right to life up to the very moment of natural death; and the right to security of person is very closely related to the right to life. The right to security of person means, *inter alia*, that the right to life is to be protected and *secured* for the terminally ill. They are to be protected from all attempts against their life, including self-harm and all other measures intentionally directed towards inflicting death. The right to life cannot be distorted to mean a right to be killed. All human rights "*derive*

from the inherent dignity of the human person" (ICCPR), and must be rightly ordered towards sustaining the human person in his/her being. Clear human rights obligations are set out in the *Universal Declaration* Article 25 (1):

> *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control*.

The terminally ill have a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of … sickness, disability…old age or other lack of livelihood in circumstances beyond his control. This last phrase has special relevance to the terminally ill—truly the terminally ill are *in circumstances beyond their control*.

The dependency, pain and deep sorrow that often accompanies terminal illness is part of the human condition—it is part of life, part of living. Dying is the final natural life event—it should not be transformed into an arbitrary medicalized killing. Medical technology has overreached the proper purvey of medicine when it is used to kill instead of to provide palliative relief for the terminally ill.

The limits of autonomy and the duty to secure the rights of all

The autonomy of the terminally ill is limited by respect for the rights of others and for the security of all. Laws endorsing medicalized killing of suicidal persons who are terminally ill result in an abrupt disconnect of autonomous rights from the natural context of responsibilities to the community. Even persons who are terminally ill cannot unilaterally divorce their human rights from their human responsibilities to their family, their community, and mankind.. Relationship between duties and rights remains valid for all human beings, including the terminally ill. Everyone has duties to the community. (UDHR Article 29 (1)).

The autonomy of the terminally ill may be limited by law in order to secure due recognition and respect for the rights and freedoms of others and to meet the just requirements of morality, public order and the general welfare in a democratic society. (UDHR Art.29(2).

States have a duty to maintain their part in a social and international order in which the rights and freedoms set forth in the human rights instruments can be fully realized for everyone. (UDHR Art.28) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. (UDHR Art.29(3))

Nothing in this Declaration [or in any of the subsequent human rights instruments] may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.(UDHR Art. 30).

Unfortunately, those proposing the *Euthanasia Laws Repeal Bill 2008* are engaging in an activity aimed at the destruction of the inalienable right to life of the terminally ill.

In promoting a spurious new right, they take from the terminally ill who are not suicidal the security of a much older assumption. Assumptions go far deeper in human nature and in basic social organizations like the family, than any merely legal right. In this case, the original assumption is that there exists an unlimited duty of care owed by the living towards the dying, on which hitherto we have all been able to depend.

This is one of the vitally important assumptions on which the fabric of civilization have been founded and which are far deeper than any merely legal right established by legislatures.

In a clumsy grab for the personal right to suicide more comfortably, those who support this Bill threaten to undermine the common respect for a fundamental right of all human beings—the right *not* to have to choose when to die, the right *not* to have to justify lingering on, the right *not* to have to consider suicide in order to relieve one's carers of physical, medical, or financial responsibilities. Although that assumption was not formally inscribed in any legal enactment, in fact all human beings in modern civilized societies have relied on it.

Increased pressure on the terminally ill who are not suicidal

In effect, with the re-endorsement of the Northern Territory pro-euthanasia law, the state is imposing a new morality, the practical effect of which is to relieve us of our duty of care towards the dying and to pressure the dying to release us from that duty of care. This pressure is directly heightened by state endorsement of not only the practice of euthanasia but also of its language and philosophy. Careful reading of the suicide letters left by Bob Dent and Janet Mills reveals a rationale based on two flawed concepts:

- "relieving the suffering of the carer":
  The State in endorsing euthanasia is led to endorse the concept that relief for one's carer is an acceptable motivation for "doctor-assisted suicide". Do the suicidal really believe that those who love them will cease to suffer with their deaths? And--

- "death with dignity":
  This concept requires as a pre-requisite for human dignity that human beings retain total independence, total control over bodily functions. It establishes the false proposition that human dignity resides in the individual's independence; that dependence on others for washing, feeding, etc., constitutes *per se* a violation of human dignity.

In this context, the duty of care we owe to the dying is grotesquely misrepresented as being instrumental in "depriving" the dying of human dignity.[12]

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[12] See Senator Bob Brown's second reading speech.

Nothing could be further from the truth. From first-hand experience (with my sister, I nursed both my grandmother and my father through long final ordeals, one with severe stroke, the other with cancer), I can assure euthanasia proponents that they are wrong. Dependence on others need not be synonymous with loss of human dignity. Perfect control over bowel functions is not the measure of "dying with dignity".

Medicalized killing—"a tragedy of the commons"

Regrettably, the proposed bill to withdraw universal protection from the terminally ill is irrational in its short-sightedness. Laws permitting the medicalized killing of suicidal persons who are terminally ill will alter most unjustly our present social environment in which the terminally ill are entitled unconditionally to whatever palliative care, financial and other resources are necessary. Social environmental economists might recognize in the making here a tragedy of the commons. Legalized medical killing of the terminally ill sets a socially engineered trap, in which individual interests freely and legally gain access to a public resource (a health care system that provides unconditional specialized care for the terminally ill) and proceed to change drastically the ethos of that public resource—to change it from unconditional palliative care to optional care together with the option of medically assisted suicide.

A tragedy of the commons will unfold as the terminally ill are pressured subtly to accept the cheaper swifter option. This will lead eventually to the complete depletion of the shared resource—the end of a truly universal, unconditional and beneficent system of care for the terminally ill. A gradual reduction of specialized clinics, hospices, palliative care resources and research dedicated to the needs of the terminally ill is therefore a typical "externality" – i.e., the unintended and negative consequence of private decisions that ends up affecting everyone.

Inexorably, more research resources, more clinics, more medical personnel will be directed towards the science of killing (ktenology)—the science of annihilation—as fewer research dollars, fewer palliative care facilities, fewer medical professionals are dedicated to looking after the terminally ill with true compassion which often requires a loving patience that does not seek to hasten or to abend abruptly or conveniently the natural process of dying.

Decriminalization of the medical killing of the terminally ill who are suicidal must lead to an immense paradigm shift in the ethical webbing that holds together our communal health care system. To remove the human rights principles of the inherent dignity and worth of all human beings and the equality of all human beings (irrespective of an individual's impaired quality of life or negative prognosis) is to begin an unravelling of the common good that has been painstakingly established over years of careful effort. Laws allowing and (implicitly) encouraging medicalized killing destroy an important aspect of our civilization's heritage—the profound good will that has been forged towards the terminally ill, the very vulnerable, the very young, the very old, the very disabled. Such laws are an attack on the fundamental human rights principles of human dignity and worth that inhere in every human being, in all members of the human family from conception to natural death irrespective of

externalities and individual circumstances—human rights are inherent and belong to all human beings precisely and only because they are human.

The great paradigm shift that will be wrought by legalizing medicalized killing involves the abandonment of principles of goodness of life, the triumph of endurance, the virtue of patience in adversity, of helping others in pain and distress, of loving the feeble, the discouraged, the incapacitated, the needy. It is our humanity that recognizes that we are all in this together—that we must go on carrying with us the very old, the very young, the terminally ill and all those who are troubled and in distress. Medicalized killing is not a humane response.

Progressive corruption of medical ethics

After the Weimar and Nazi regimes went down that path, the drafters of the foundation international human rights instruments condemned all forms of medicalized killing (including killing the terminally ill) as "*barbarous acts which have outraged the conscience of mankind*". [13] The World Medical Association concurred.[14] The Council of the British Medical Association writing to the World Medical Association in June 1947, begins:

> *The evidence given in the trials of medical war criminals has shocked the medical profession of the world. These trials have shown that the doctors who were guilty of these crimes against humanity lacked both the moral and professional conscience that is to be expected of members of this honorable profession. They departed from the traditional medical ethic which maintains the value and sanctity of every individual human being.*

The statement ends by enjoining the international medical profession to proclaim *inter alia* the "*duty of curing*" principle

> "*…the greatest crime being co-operation in the destruction of life by murder, suicide and abortion*". [15]

They urged members of the medical profession worldwide to publish and apply such principles nationally and internationally in medical education and in medical practice.

Dr. Leo Alexander, a consultant to the Secretary of war and the Chief Counsel on War Crimes at the Nuremberg Trials, writing in the New England Journal of Medicine in 1948, warns that the Holocaust began with a small modification of traditional medical ethics:

> *Whatever proportions these crimes finally assumed, it became evident to all who investigated them that they had started from small beginnings. The*

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[13] *Preamble* to the *Declaration of Human Rights* (19480

[14] **See the *World Medical Association's* Declaration of Geneva *(1948)* and the International Code of Medical Ethics *(1949.***

[15] Statement by the Council of the British Medical Association for submission to the World Medical Association, June 1947 (re-issued by The Medical Education Trust and reproduced by donoharm.org.uk/leaflets/war.htm)

> *beginnings at first were merely a subtle shift in emphasis in the basic attitude of the physicians. It started with the acceptance of the attitude... that there is such a thing as life not worthy to be lived. This attitude in its early stages concerned itself merely with the severely and chronically sick. Gradually the sphere of those to be included in this category was enlarged to encompass the socially unproductive, the ideologically unwanted, the racially unwanted, and finally all non-Germans.*[16]

Dr Alexander speaks of "ideologically conditioned crimes against humanity" and identifies systems in which there is a prevalence of thinking in destructive rather than in ameliorative terms in dealing with social problems. He observes the ease with which educational or ameliorative measures were ignored, and doctors turned instead to destruction of life for those considered either socially useless or socially disturbing:

> *All destructiveness ultimately leads to self-destruction; the fate of the SS and of Nazi Germany is an eloquent example. The destructive principle, once unleashed, is bound to engulf the whole personality and to occupy all its relationships. Destructive urges and destructive concepts arising therefrom cannot remain limited or focused upon one subject or several subjects alone, but must inevitable spread and be directed against one's entire surrounding world, including one's own group and ultimately the self. The ameliorative point of view maintained in relation to all others is the only real means of self-preservation.*[17]

Assault on human solidarity

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State subsidized and condoned medical programs used to destroy rather than to ameliorate the human condition of the terminally ill must be eschewed. As an assault on true human solidarity, the campaign to medicalize suicide will constrain the automatic entitlement of those living with a terminal illness—an automatic entitlement to have all their needs met for as long as the natural life cycle requires. It will introduce, unforgivably, a disturbing question that will threaten the peace of mind of all the terminally ill who may now be forced in subtle ways to answer this new question of *when* to die, of whether "to choose" medicalized suicide.

In making this choice, the terminally ill will be made to wrestle with their new "duty" to consider the burdensome nature of their continued life on their carers.

This pressure promises to be intolerable.

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[16] Leo Alexander, *"Medical Science Under Dictatorship," New England Journal of Medicine* (14 July 1949):39-47

[17] ibid