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Euthanasia, Virtue Ethics and the Law

Liezl van Zyl
Lecturer, Philosophy Department, University of Waikato, New Zealand

Abstract

Following the recent revival of virtue ethics, a number of ethicists have discussed the moral problems surrounding euthanasia by drawing on concepts such as compassion, benevolence, death with dignity, mercy, and by inquiring whether euthanasia is compatible with human flourishing. Most of these writers assert, or simply assume, that their arguments concerning the morality of euthanasia also support their views with regard to legislation. I argue, against these writers, that legislation cannot and should not be based on our moral and religious beliefs concerning whether euthanasia allows a person to die a good death. I then outline an Aristotelian approach to the role of law and government in a good society, according to which the task of the legislator is not to ensure that people actually act virtuously, but is instead to make it possible for them to choose to live (and die) well by ensuring that they have access to the goods that are necessary for flourishing. In the second half of the paper I apply this approach to the question of whether voluntary active euthanasia should be legalised by asking (1) whether euthanasia always deprives people of the necessary conditions for flourishing, and (2) whether the option to request euthanasia is ever necessary for flourishing.

Introduction

Because dying is a part of life, the virtuous person will be concerned with dying well, that is, with 'euthanasia' in its original sense of a 'good death'. He may be faced with questions such as, 'How can I die with courage?', 'How can I avoid becoming a burden on my family and friends?', 'How can I maintain my dignity in the face of pain, discomfort and dependence?', and 'Will it be best for me and my loved ones if I commit suicide?' Unfortunately, because our mental and physical powers often fade beyond the point where we are able to take charge of our own deaths, the dying process seldom goes according to plan. Many people spend their last days barely conscious and dependent upon invasive and often burdensome medical technology, although I suspect that few, if any, choose to die in this way. Because patients are often unable to realise their goals without the help of others, the central moral question for the virtuous caregiver is, 'How can I help or allow my patient to die well?' The more specific question may also arise, namely whether euthanasia, here understood in the modern sense of (actively or passively) hastening a patient's death to spare him or her further suffering, allows the patient to die a good or virtuous death. I regard the latter as the central question in determining when, if ever, euthanasia is a morally acceptable way of dealing with a person's suffering. This question formed the focal point of my book, *Death and Compassion* (Van Zyl, 2000), where I argued, against monistic theories such as utilitarianism and Kantianism, that in each particular case the moral acceptability will depend on a number of factors. These include the following:

1. whether the act of euthanasia is motivated by compassion, that is, by a concern with the patient's suffering rather than by the interests and preferences of the caregiver, the family, or society in general;
2. whether it is an act of responsible benevolence, that is, not only whether the action is intended to benefit that patient but also whether it will succeed in doing so; and
3. whether euthanasia conveys respect to the patient, in the sense of allowing him to be himself, to hold and act according to his own beliefs, values and goals.

On the basis of these considerations I concluded that in certain kinds of cases, ending the life of a patient may be the morally appropriate or virtuous response (2000, pp.177-212). I did not, however, address the further question as to whether euthanasia should be legalised. My aim in the present paper is therefore to apply (my account of) virtue ethics to the

question of whether and, if so, under which circumstances, euthanasia should be permitted by law. I shall focus specifically on voluntary active euthanasia, which involves actively ending the life of a patient at his or her request.

Following the recent revival of virtue ethics, a number of ethicists have discussed the moral problems surrounding euthanasia by drawing on concepts such as compassion, benevolence, death with dignity and mercy (see, for example, Kass, 1989; Mullen, 1995; Pellegrino, 1996.) These writers have all argued, in one way or another, that active euthanasia is incompatible with human flourishing, and that it should therefore also be illegal. In the first section I argue, against these writers, that legislation cannot and should not be based on our moral and religious beliefs concerning whether euthanasia allows a person to die a good death. I then outline an Aristotelian approach to the role of law and government in a good society, according to which the task of the legislator is not to ensure that people actually act virtuously, but is instead to make it possible for people to choose to live (and die) well by ensuring that they have access to the goods that are necessary for flourishing. In the second half of the paper I apply this approach to the question of whether voluntary active euthanasia should be legalised.

Morality and the Law

An obvious difficulty with a virtue-based approach to the morality of euthanasia is that its reliance on notions such as compassion, benevolence and respect seems to render it useless as the basis for law- and policy-making. How can we ever be sure that someone was or will be motivated by compassion to end another's life, and not merely by self-interest? In what sense can we ever say that someone is 'better off dead'? What does it mean to treat someone with respect or to die with dignity? Laws and policies are to be based on objective criteria, which virtue ethics seems unable to provide, since it is based on the view that the complexity of the moral life renders it impossible to codify morality, that is, to capture the demands of morality in a set of universal principles and rules. If we were confident that caregivers are fully virtuous, both morally and intellectually, we could formulate laws so as to allow them the discretion to make the appropriate decision based on a careful consideration of what they consider to be the morally relevant aspects of each particular case. As things stand, however, very few people possess sufficient practical reason to make decisions of such magnitude and complexity without the guidance of a clear set of moral rules that can be applied in every particular instance. One might want to conclude, then, that although virtue ethics is a sound moral theory, it is practically useless.

In response to this kind of objection I would begin by conceding that it is difficult, perhaps even impossible, to translate our views on whether euthanasia allows a patient to die a good death into law and policy. However, I think there are at least three reasons why our moral beliefs and intuitions concerning euthanasia *should* not serve to inform our views on legislation. First, in order to decide whether euthanasia should be legalised, we have to consider the consequences for everyone who will be affected by such a change in law, and not only the consequences for the small group of patients who may benefit from euthanasia. In particular, we need to consider the effect of legalised euthanasia on the ethos of medicine. In this regard Paul Mullen, while granting that palliative care cannot secure a gentle and easy death for certain patients, argues that 'the practical danger of designating medical practitioners as society's killers is of contaminating the whole practice of medicine with death as a legitimate objective' (1995, p.124; see also Foot, 1977). An argument to the effect that euthanasia is sometimes morally acceptable is therefore not sufficient to support the claim that it should also be legalised. As Grant Gillett correctly points out, it is neither inconsistent nor hypocritical to believe that killing a patient should continue to be against the law, even though this action may on occasion be the right thing to do (1994, p.312).

A second reason why our views on the morality of euthanasia should not inform our stance towards legalised euthanasia relates to the fact that the virtues, as well as the notion of human flourishing, allow for diverse and potentially irreconcilable interpretations. Members of modern societies do not share a singe conception of what it means to die with courage and dignity. This diversity is reflected in much of the recent literature on euthanasia. For example, Leon Kass expresses the traditional Christian view when he argues that euthanasia is incompatible with human dignity. He accepts that the only humane response to the suffering of an animal may be to put it out of its misery, for it cannot make sense of its suffering and thus cannot live out a fitting end. However, when a human being asks us for death, Kass argues, he displays by that very action the presence of something that precludes

us from regarding him as a dumb animal. Kass writes: 'Humanity is owed humanity, not humaneness. Humanity is owed the bolstering of the human, even or especially in its dying moments, in resistance to the temptation to ignore its presence in the sight of suffering' (1989, p.44; see also Mullen, 1995; Pellegrino, 1996). This view has increasingly come into conflict with the secular, individualistic attitude to death and dying, which is characterised by a desire to avoid suffering and a demand to maintain control over the dying process. In this view, human dignity resides in autonomy or self-determination. Mullen unsympathetically characterises this attitude as follows:

> Narcissism and a rampant sense of entitlement are emerging as strong competitors for the defining characteristics of [Western society], and it is these who feed a petulant and demanding form of autonomy which insists on the satisfaction of desires as a matter of right. My life is mine alone for the pursuit of my chosen pleasures and my satisfactions; this implies that purpose is impossible as an extension beyond my life span (1995, p.125).

Mullen is right to reject the view that euthanasia should be legalised because this is what some people desire, prefer, or demand. But neither can we, and nor should we, base legislation on Mullen's conception of a good death, for it is similarly based in the norms of a particular tradition or culture and thus does not have any normative force for people who do not share the same background. Mullen's main reason for rejecting the appeal for legalised euthanasia seems to be the fact that 'actions undertaken with the intention to kill a patient have been in our society unlawful, immoral, unethical and the antithesis of good practice' (1995, p.124). It remains unclear, however, why Mullen thinks that we should accept the Hippocratic morality and its injunction against providing deadly drugs to patients, and resist 'a revolution in the law, morality and ethics of medicine' (1995, p.124). Mullen further answers the pertinent question as to whether one can, on the basis of one's own religious commitments, deny others relief from suffering through euthanasia, by stating that he would personally favour the use of palliative care, 'even though this means rendering the patient unconscious and risks hastening death' (1995, p.127). One may (or may not) applaud Mullen for the stance he takes, but we cannot base legislation on personal preferences and intuitions. In this regard Jim Thornton (1999) convincingly argues that we cannot show that the distinction between killing and letting die is ethically relevant by appealing to the moral intuitions of clinicians and others who care for the terminally ill. Intuitive ethical judgements have to earn their right to be taken seriously, that is, they stand in need of rational support, for else there is no way in which we can distinguish sound intuitions from judgements founded on ignorance and prejudice (1999, p.418). In making a case for (or against) legalising active euthanasia, we need to provide reasons that go beyond an appeal to our own intuitions, traditions, religious beliefs, desires and preferences concerning what it means to die a good death.

Finally, even if we could reach agreement on what constitutes a good death, we cannot require people to act courageously, compassionately, or generously by law. As I shall argue more fully in the next section, it belongs to the essence of a virtuous action that it be performed freely and willingly. In the same way that I am not considered generous because I pay my taxes, a person who endures suffering because the law forbids active euthanasia, is not deemed courageous because of that.

For these reasons I believe that it is not the proper role of government to promote a specific view of the good life (or a good death). Before examining the question of whether euthanasia should be legalised, I will briefly outline an Aristotelian account of the proper role of law and government in a good society.

The Role of Government in a Good Society

Aristotle was well aware of, and often commented on the lack of agreement in the Athenian society with regards to conceptions of flourishing. He acknowledged that we can have competing accounts of virtues such as courage, and also that a particular virtue can have several different concrete cultural realisations (see 1992, III). According to Aristotle, the role of government is not to promote a specific substantial conception of human flourishing, but to distribute to individuals within a community the conditions in which a good human life can be chosen and lived: 'Obviously the best constitution must be one which is so ordered that any person whatsoever may prosper best and live blessedly' (1992, 1324a23-25). The task of government is to produce certain capabilities, that is, to make people able to choose to function in ways that are constitutive of a good human life. A good legislator would therefore make an enquiry into the necessary

conditions for human flourishing and make sure, as far as possible, that these are available to all of its citizens. He would ask, in other words, 'What arrangement of resources, educational system, medical care, cultural training is it that will enable people to realise their basic capacities (whether moral or intellectual) to the fullest extent?'

Aristotle includes among the necessary conditions for flourishing goods such as health, education, absence of repetitive labour, leisure, close ties to family and friends, sufficient nourishment and bodily care. Rather than pushing them into acting so as to secure these goods, the aim of the legislator is to make people capable of choosing to act in these ways. Plato's *Republic* serves as a vivid example of how oppressive a government would be if it were to impose upon people's lives a detailed script of what kind of work they may do, whom they may marry, or the kind of god they are to worship. By forcing people to act according to a specific conception of human flourishing, the legislator will undermine the very condition for the possibility of flourishing. It is for this reason that Aristotle centrally stresses the value of choice in his theory of the good. He argues, for instance, that if a 'right' result (such as giving to others) is accomplished by a coercive strategy rather than by personal choice, the action cannot be considered truly virtuous (1992, 1263b10-15). It is the role of the legislator to secure to people the conditions in which each of them, as individuals, will be capable of choosing to act in certain ways and to function according to their own practical reason, instead of promoting a specific conception of human flourishing (see Nussbaum, 1988 for a more detailed discussion of an Aristotelian account of the role of government).

The Aristotelian view of the role of government resembles the liberal view insofar as both require state neutrality with regards to different conceptions of the good. However, there are important differences between the liberal and Aristotelian defences of the requirement of state neutrality. Most contemporary liberal philosophers – most notably John Rawls (1971) and Robert Nozick (1974) – follow Kant in rejecting utilitarian theories that judge the rightness of actions and policies on the basis of their contribution to a final state of affairs. In their view, individuals should be free to make their own decisions even though in doing so they sometimes decide badly and end up disadvantaging themselves. The only legitimate reason for restricting individual freedom is where its exercise interferes with the legitimate freedoms of others. They therefore regard state neutrality as a principled restriction on the role of the state, rather than as a strategy for promoting individual well-being. Other liberal theorists have followed J.S. Mill in providing a consequentialist defence of individual freedom and state neutrality. In *On Liberty* Mill argues that, because of the irreducible plurality of conceptions of the good life, the individual is in the best position to decide what will or will not contribute to his welfare. Although Mill admits that individuals will sometimes get it wrong, he argues that we will all be better off if, as a rule, the state refrains from interfering in the private lives of individuals, thus leaving them free to pursue the satisfaction of their desires and preferences (provided they respect the right of others to do the same).

The Aristotelian account differs from the Rawlsian approach insofar as it provides a teleological justification for the requirement of state neutrality. It sees the ability to act freely and willingly as a necessary (though not sufficient) condition for being a moral or virtuous person. Freedom from state interference is not an end in itself but a means to human flourishing. The implication of this defence of individual freedom is that it allows the state to impose certain restrictions on freedom of choice where it is clear that such restrictions are necessary to protect the welfare of the individual and where it is clear that having the freedoms in question is not necessary for flourishing. In this regard it differs from Mill's view of the role of the state. Aristotle stresses throughout his political writings that people are not always reliable judges of what functions the good human life contains. For this reason a legislator should not base decisions on people's subjective preferences or in the satisfaction of their desires. Although the Aristotelian allows for a plurality of flourishing lives, this does not commit her to a form of relativism, for she can still maintain that a person whose life lacks a certain good – such as sufficient nourishment or education – is incapable of flourishing, whatever that person's own opinion in this regard (see Sen, 1980; Nussbaum, 1988, p.154.)

Should Voluntary Euthanasia Be Legalised?

Following an Aristotelian account of the role of law and government, then, the question we have to consider when deciding whether euthanasia should be legalised, is not whether it is virtuous to request euthanasia or to accede to such a request. As argued before, the contemporary virtue ethicist's concern when formulating laws or policies should not be with developing and trying to promote a substantive

conception of the good life. Instead, we should seek to identify the necessary conditions for flourishing or living well, with the aim of ensuring that laws and policies issued by government (and other institutions) contribute to, and do not detract from, people's ability to live well. When inquiring whether voluntary euthanasia should be legalised, we therefore need to ask whether the freedom to choose euthanasia is (ever) a necessary condition for flourishing.

The dying process completes the narrative of one's life, and as such it is one of the things that human beings can do (or fail to do) well. Aristotle particularly emphasised courage as the virtue that disposes people to act appropriately when facing important damages such as death. He himself thought that a courageous man would not try to avoid hardship by committing suicide, and that it is better to die a noble death in battle than to gain safety in a disgraceful fashion (1990, III. vii). However, as noted before, the Aristotelian can allow for different interpretations or cultural realisations of a single virtue. Thus, for example, we may agree that Socrates displayed in his last days the virtues of courage and honesty, while not denying the same of the Medieval Christian who, while dying, was primarily concerned with obtaining forgiveness for his sins, enduring suffering, and not giving in to demonic temptations. It is therefore not the task of the legislator to advance a specific conception of courage, but instead to make it possible for people to choose to die with courage.

Is the choice of whether to shorten one's life ever a necessary condition for living and dying virtuously? I think it is. What made it possible for Socrates, the Medieval Christian and the Greek hero to die with courage, is that they had available to them the choice of how to die. The Greek hero could have taken flight instead, Socrates could have escaped from prison, and the Medieval Christian could have given in to demonic temptation by calling for a doctor. Rather than being forced by law or circumstance, they chose to act in accordance with virtue. I would therefore argue that, insofar as freedom of choice is a necessary condition for flourishing, the prohibition of euthanasia prevents certain patients from actively choosing to realise their conceptions of a good death. A person's request for euthanasia does not simply involve the decision of whether he wants to live or die, but also, and more importantly, how he wants to spend the rest of his life. There are many reasons why a person might want to choose an earlier death. Some people consider it a sign of courage to face up to the fact that death is inevitable by choosing to hasten the process, rather than allowing nature to take its course or trying to prolong life for as long as possible. Some dying patients consider it virtuous to spare friends and family members the ordeal of witnessing a slow process of degeneration. Many people find it degrading to be reduced to a weak and dependent state.

Of course, legalising euthanasia will not ensure that someone actually dies a good death. Although dying people often seem to acquire a saintly status, they can, like everyone else, behave selfishly, with cowardice, or dishonourably. However, many people are unable to realise their conception of a good death – not because of a lack of courage or integrity, but because of their circumstances or physical limitations. Even where patients are physically capable of committing suicide, this mode of dying almost inevitably involves secrecy and loneliness, and may therefore conflict with many patients' conception of a good death. This is something Mullen loses sight of when he argues that 'the right to die with dignity when and where you choose is not denied currently by the law or by medicine and is available to all with the will and autonomy to suicide' (1995, p.125). Euthanasia does not only put an end to a person's life, it also determines the manner of his dying. Denying someone's request for euthanasia may therefore prevent him from realising his conception of a good death, in much the same way that forcing life-prolonging treatment on an unwilling patient would deny him his wish to die a natural death. Finally, we should note that the opportunity to opt for euthanasia may enable a patient to die well, even if he ends up not choosing in favour of an earlier death, by alleviating the fear that his suffering might become unbearable. Studies in the Netherlands indicate that, for many terminally-ill patients, the very knowledge that they may request euthanasia when their suffering becomes unbearable, serves to alleviate their fears and enables them to enjoy the time they have left (Van der Wal and Dillmann, 1994, pp.1346-1347).

Does this mean we should permit euthanasia whenever a patient requests it? Although a virtue-based approach sees the freedom to choose as a necessary condition for flourishing, this does not mean that voluntariness should be accepted as the sole criterion for permitting euthanasia. As noted before, Aristotelian virtue ethics acknowledges that people are not always reliable judges of the constituents of human flourishing, that is, of whether they are still capable of living well. This is particularly true at the end of life. As Gillett

points out, patients who are seriously ill are potentially subject to a number of subtle coercions, and may not possess sufficient clarity of mind to rationally weigh up their options (1994, pp.321-322). This problem is not overcome by allowing physicians to make life-and-death decisions based on their own intuitions about human flourishing, for they may not have a sufficient understanding of the patient's values, beliefs, and mental states, and may be influenced by their own subjective feelings and attitudes towards death and dying. The opponent of legalised euthanasia could therefore argue that, even though euthanasia might be morally appropriate in certain cases, our inability to distinguish between acceptable and unacceptable instances of euthanasia has the implication that a government that takes seriously its obligation to protect the welfare of all of its citizens, must prohibit euthanasia in all cases (see Gillett, 1994, p.328; Mullen, 1995, p.124). What seems to make a virtue-ethical approach particularly vulnerable to a slippery-slope type argument is its reliance on vague notions such as a 'good death' and 'human flourishing'. If, on the one hand, we rely on the physician's conception of human flourishing, there is nothing preventing him from employing elitist criteria such that everyone he deems not to be living a good life will be put out of their misery, whether they like it or not. On the other hand, if we base decisions about euthanasia on the patient's conception of flourishing, we will have to permit euthanasia in all cases where she feels that euthanasia will allow her to die a good death, whatever her circumstances or medical condition.

I agree that the complexity of moral life does not allow us to formulate a clear set of rules that can be applied by a non-virtuous person to render the correct decision in every particular case. However, I do not think that the fact of human fallibility and the uncertainty that surrounds the choice situation can be used to support an outright ban on active euthanasia. In my opinion, we can only avoid embarking on a slippery slope if we allow euthanasia only in cases where it is certain, based on an objective account of the capacities necessary for flourishing, that (1) euthanasia will not deprive the patient of the capacity to flourish and (2) having the option of euthanasia is necessary for the patient's flourishing.

Under Which Circumstances Should Euthanasia Be Permitted?

In what follows I will argue that euthanasia should only be permitted if the patient:

1. lacks or is significantly impaired with regards to a significant portion of the capacities that are necessary for human flourishing; and
2. repeatedly and consistently expresses a wish to die; and
3. is terminally or chronically ill.

It is only where all three of these conditions are met that it becomes possible to say with certainty that euthanasia will not deprive the patient of the capacity to flourish and that the opportunity to choose euthanasia will make it possible for the patient to die well. I will discuss each of these conditions in turn.

(1) Capacity to Flourish

Aristotle lists good health as one of the necessary conditions for flourishing. We need not follow Aristotle's perfectionism in this regard – we certainly do not require perfect health in order to be able to live a worthwhile life. Many people achieve excellence despite, or even because of, a disability. To be able to live well, one needs to possess a level of health that allows one to have conscious experiences, live without unbearable pain and/or discomfort, enjoy pleasurable experiences, and form mutually beneficial relationships with others. I would therefore argue that euthanasia should only be an option where patients lack, or are significantly impaired with regards to these capacities.

Consider, for example, patients who are suffering from the end-stages of diseases such as AIDS, multiple sclerosis or cancer, but who still possess the capacity for autonomous decision-making. Because of their medical condition, these patients may be prevented from participating in the kind of activities that constitute human flourishing. They may be permanently bed-ridden, suffer from severe pain and/or discomfort, be unable to enjoy simple pleasures such as eating, and have difficulty communicating and interacting with others. For these patients, the capacity to live well or to flourish is limited to forming and realising a conception of a good death. Some people may prefer a 'natural' death and be prepared to endure whatever hardships the dying process may bring. Others may want to make use of the palliative care services provided by Hospice to ensure that they do not suffer unbearable pain and discomfort while dying. Yet others may want to take charge of their own deaths, and decide when they want to die so that they could get their affairs in order and take leave of loved ones. I am not suggesting that all these patients should be euthanised or that euthanasia will

allow all of them to die a fitting end, but only that they should be given the option to request euthanasia.

It follows that euthanasia should not be an option where the patient still possesses some or all of the capacities for flourishing, even if he wishes to die or is considered competent to make decisions about his own life. In such cases it will never be true to say that euthanasia is an act of responsible benevolence, for it will deprive the patient of the potential to have further worthwhile experiences. Of course, we have to take a patient seriously when he expresses a wish to die and judges his life not to be worth living. However, this does not mean that we have to accede to his request for euthanasia, for he is wrong in thinking that dying well is the only option open to him. Quite simply, if he still possesses all or some of the capacities necessary for flourishing, there are other ways in which he can be benefited. As argued before, the recognition of pluralism with regards to conceptions of the good life does not commit us to relativism. We can reject certain claims as ill informed or irrational and need not accede to requests that are based on ill-informed or irrational views.

Supporters of the Hospice movement might want to object that there is always something that can be done for the patient, and that we overestimate the amount of pain and discomfort that patients have to put up with (see Campbell, 1993; Menard and Perrone, 1994; Mullen, 1995; Pellegrino, 1996). In response to this objection I would firstly point out that for some patients, albeit a tiny minority, palliative care does not allow a gentle and easy death, and this is something that Hospice supporters themselves admit (see eg. Mullen, 1995). Secondly, and more importantly, we need to keep in mind that eliminating or reducing physical pain and discomfort is not always the only, or even the main concern of dying patients. If it were, they would all be satisfied in knowing that the caregiver can always employ the use of 'whatever level of analgesia, hypnotics and tranquillisers ... [is] necessary to bring relief, even though this means rendering the patient unconscious and risks hastening death' (Mullen, 1995, p.127). There are countless reasons why someone might want to choose an earlier death. Some dying patients are concerned with avoiding a long, drawn-out dying process and a slow process of degeneration, for their own as well as their family's sakes. Others think that the resources spent on nursing and palliative care can be better employed elsewhere. We might not think that such reasoning is indicative of the virtues of courage, generosity, and integrity, but to insist that palliative care be provided to all patients as an alternative to euthanasia is to enforce upon them a specific conception of a good death as an easy death, a death devoid of unbearable suffering. It therefore needs to be emphasised that the position I am defending here is not that voluntary euthanasia should only be permitted where it is the only means of alleviating suffering (for as long as rendering the patient unconscious is an option, this will never be the case). Instead, my position is that euthanasia should be an option where realising his own conception of a good death is the only meaningful opportunity for flourishing that is left to a person.

Those who support the patient's right to self-determination might want to lay the opposite charge, namely that it is paternalistic only to allow euthanasia in certain narrowly defined instances. After all, patients who are considered competent have the right to refuse medical treatment for whatever reason, even where such treatment is necessary to save or prolong their lives. In the same way, the autonomist might argue, it would be paternalistic to allow active euthanasia only in cases where we agree that the patient has good reason to request an earlier death. Of course, Kantian supporters of the principle of patient autonomy do allow for 'weak' paternalism, that is, paternalistic decision-making in the case of incompetent or non-autonomous patients, and are therefore not committed to allowing euthanasia in all instances where a patient requests it. But the Aristotelian would seem to advocate a much stronger form of paternalism by allowing or requiring that the wishes of competent or autonomous patients be overridden where this is thought to be for their own benefit. According to the autonomist, this form of paternalism is disrespectful of the patient's dignity, which resides in his ability to direct his own life.

I cannot here fully defend my position against the liberal critique, and can only note the following. First, an Aristotelian account of the role of law and government is generally opposed to paternalistic interference in the lives of individuals, for it is necessary for the moral growth and education of individuals that they learn from their own experiences, including their mistakes. It therefore allows for paternalistic interference only where this is necessary to protect the individual from damages that will significantly hamper or thwart his ability to flourish. Secondly, the teleological defence of individual freedom, as well as the level of paternalism it allows, seems to me to be more in line with current societal attitudes and practices. For

example, the requirement to fasten our seatbelts is clearly paternalistic, yet we tolerate or even justify this requirement in light of the harm it is meant to protect us from, and in light of the fact that the ability to decide whether to fasten one's seatbelt is generally not seen as necessary for leading a worthwhile life. Only the most extreme liberal would accept that respect for individual freedom and the right to self-determination require that we allow all competent people to request 'euthanasia-on-demand'. Because of the finality of death, I would argue that euthanasia should only be presented as an option when all other opportunities for flourishing are permanently unavailable to the patient, for it is only in these circumstances where we can be certain that (1) euthanasia will not deprive the patient of the capacity to flourish and (2) the freedom to choose euthanasia is a necessary condition for dying well.

(2) Involuntary Euthanasia

Although almost everyone agrees that involuntary euthanasia, which involves a person capable of requesting euthanasia but who has not done so, is morally unacceptable, many people fear that once we allow voluntary euthanasia in some cases, we will gradually come to accept and practise involuntary euthanasia. This seems to be one of Herbert Hendin's central fears in his recent book on euthanasia in the Netherlands. He cites a case where a Catholic nun was killed against her explicit wishes on the grounds that the severity of her suffering rendered her incompetent to make a rational decision (1998, p.95). I share Hendin's concern over the abuse that may follow if we legalised euthanasia, but think that we can go some way towards preventing such abuse if we clearly defined the kinds of cases in which euthanasia should and should not be permitted. What allowed the attending physician to justify euthanasia in the case of the nun is, I suspect, the mistaken description of cases where the patient is considered incapable of making an informed or rational choice as non-voluntary, rather than involuntary euthanasia. Thus, for example, Tom Beauchamp employs this definition in *The Oxford Companion to Philosophy* (1995, p.252): '[I]f the person is not mentally competent to make an informed request, the action is called non-voluntary euthanasia'. The implication of this definition is that, once we accept the notion that a patient may be better off dead, we will have to allow patients who are suffering extreme pain to be euthanised against their wishes, on the grounds that they are incompetent because they failed to choose what any reasonable person would choose. This implication is avoided if we use the term 'involuntary euthanasia' to include both (1) an act of euthanasia that is against a patient's explicit wishes and (2) an act of euthanasia that is carried out without the consent of a patient who is able to communicate his or her wishes. In neither of these cases need the patient be considered autonomous, that is, capable of making a free and informed or rational choice, for an act of euthanasia to be involuntary.

I further suspect that what lies at the basis of the vulnerability to the slippery slope demonstrated by the case of the Catholic nun, is the reason most commonly given for why involuntary euthanasia (or any form of medical treatment which the patient does not consent to) is wrong. Contemporary liberal ethicists typically appeal to the principle of patient autonomy in support of their views on euthanasia. This principle requires, among other things, that we obtain informed consent for interventions with patients, respect their privacy, and tell the truth. In the liberal view, involuntary euthanasia is wrong because it is disrespectful of the patient's autonomy or a violation of her right to self-determination. However, as Beauchamp and Childress state, 'the principle [of patient autonomy] is not so broad that it covers nonautonomous persons', that is, 'persons who cannot act in a sufficiently autonomous manner because they are immature, incapacitated, ignorant, coerced, or exploited' (1994, 127). In such cases the principles of beneficence and nonmaleficence regain priority, so that our decision-making should be guided by a consideration of the patient's best interests. If we accept this reasoning, it does seem to follow that, where a patient is considered incompetent or non-autonomous, euthanasia does not violate the patient's autonomy, for she has none. Just as the patient's incompetence makes it permissible to override her wishes in order to provide life-saving medical treatment, it would be permissible to kill an incompetent patient against her wishes, where this is thought to be for her own benefit.

A virtue-based approach to euthanasia avoids this implication by holding that involuntary euthanasia is wrong, not because it is disrespectful of the patient's autonomy, but because the wish not to die is a clear indication that that person still finds life worth living. Such a person is still capable of some kind of flourishing, however attenuated, and despite what might appear to others to be intolerable suffering.

(3) Terminal or Chronic Illness

Some ethicists have questioned the condition supported by most proposals for legalised euthanasia, namely that only

patients who are either terminally or chronically ill should be allowed to request euthanasia. If the justification for voluntary euthanasia is based on the right to self-determination, it would seem discriminatory to restrict this right to a certain group of patients. By contrast, the teleological defence of euthanasia developed here does allow us to support the view that only patients who are either terminally or chronically ill should be allowed to choose active euthanasia. I have argued that for patients who lack or are significantly impaired with regards to all of the capacities necessary for living a good life, forming and realising a conception of a good death is the only remaining opportunity for flourishing. This is not true of patients who are neither terminally nor chronically ill, for however bleak their present circumstances, a very real possibility exists that they will be able to regain a level of functioning that will enable them to exercise other meaningful choices. This does not imply that we should deny a patient the opportunity to request euthanasia whenever there is the slightest possibility of cure or remission. If we were to restrict euthanasia to those patients considered incurable, where 'incurable' is understood as 'zero possibility of cure', we would restrict it to a very small group of patients indeed. To say that a patient is terminally ill does not mean that there are no forms of treatment that the patient might try to prolong his life, or even that his disease is incurable (for strictly speaking, we can never say that cure is impossible). To be terminally ill is to be in the final stages of a fatal disease. One of the options open to such a patient is to continue to seek out medical treatment, either conventional or experimental, in an attempt to prolong his life. Another, I want to argue, should be to request euthanasia.

Conclusion

My aim in this paper was to show how a virtue ethicist might go about attempting to answer the question as to whether voluntary active euthanasia should be legalised. A virtue ethicist should begin by acknowledging that the opportunity to choose how and when to die is not by itself sufficient to ensure a good death. To die a good death, a person needs to possess virtues such as honesty, courage, and integrity. Likewise, an act of euthanasia will only be truly virtuous if the caregiver is motivated by compassion, benevolence and respect for the patient. For this reason, legalising euthanasia should never be seen as a solution to the difficulties facing patients and their caregivers at the end of life. (In this regard, Grant Gillett (1993) provides an interesting discussion of the virtues that we need to foster in physicians so that they will retain a deep respect for life and yet be able to consider the option of deliberately ending a human life.) As in all other areas of life, a change in legislation cannot ensure that people actually live and die virtuously. I have argued that law and government can only make it possible for people to choose to function in ways that contribute to human flourishing. The question for the virtue ethicist, then, is whether having the option of requesting euthanasia is ever necessary for dying well. I have argued that it is – other virtue ethicists may disagree – and that voluntary active euthanasia should be permitted if the patient (1) lacks or is significantly impaired with regards to most of the capacities that are necessary for human flourishing, (2) repeatedly and consistently expresses a wish to die; and (3) is either terminally or chronically ill. Where these conditions are met, the prohibition of euthanasia prevents patients from realising the only opportunity for flourishing that remains to them – dying well.

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