



### *Book Description*

*Contributors explore the social, medical, and ethical dilemma of assisted suicide in this revised edition that includes international as well as domestic viewpoints. The federal government's continued challenges to Oregon's Death with Dignity Act, the disabled community's response to assisted suicide, and the "slippery slope" argument are all examined.*

## **Euthanasia**

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by [Bob Lane](#)

### **Part One: Introduction**

I started to write "the Sue Rodriguez case has reminded us all...." and then I realized how wrong that is. It is not the Sue Rodriguez "case"- it is Sue Rodriguez who has reminded us all of our own mortality and our need to think carefully about the kind of society we want to live and to die in. I knew Sue Rodriguez only through the media, heard her speak so eloquently and painfully in support of what she believed in, watched as her strength was sapped by the devastating disease (amyotrophic lateral sclerosis), and was moved by her clear thought and her bravery as a person facing death. Here was a woman who acted on her beliefs with courage and tenacity and whose grace has enriched us all.

She challenged us to think about the difference between what our law of the land says and what our people say. Her death, and her life, says to us "think carefully about these

matters of life and death for they are not academic and distant but are a necessary part of everyone's existence."

In this paper I want to focus on the controversial and difficult issue of assisted suicide or euthanasia. First some ground clearing and preparation: "euthanasia" means "a gentle and easy death" and has come to mean "the good death of another" or "mercy killing." It is controversial because it brings into focus and conflict some very powerful and competing values. Certainly one of society's traditional attitudes, expressed morally, legally, philosophically, and religiously is that human life merits special protection. In fact, some claim that human life is an absolute value. For them the taking of human life then becomes a wrong even in the case of voluntary euthanasia. And for some this perceived moral wrong should be prohibited by the full force of the law. The clash here is between protection of human life and the right to decisional autonomy, and as well raises the question of the extent to which the criminal law should be used to enforce particular moral positions. And the conflict is one of absolutism versus consequentialism. Are some acts absolutely morally prohibited, or do we assess the goodness or badness of acts based upon their consequences?

More ground clearing: one of the bad arguments sometimes used against euthanasia comes from an oft-cited article written in 1949 by Leo Alexander. Alexander was a judge at the Nuremberg trials after World War II who employed a classic slippery slope argument (a fallacy that occurs when the conclusion of an argument rests upon the claim that a certain event will set off a chain reaction leading in the end to some undesirable consequence, and there is not sufficient reason to think that the chain reaction will actually take place) to suggest that any act of mercy killing inevitably will lead to the mass killings of unwanted persons. He wrote: "The beginnings at first were a subtle shifting in the basic attitude of the physicians. It started with the acceptance of the attitude, basic in the euthanasia movement, 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." Critics of this position point to the fact that there is no relation at all between the Nazi "euthanasia" program and modern debates about euthanasia. The Nazis, after all, used the word "euthanasia" to camouflage mass murder. All victims died involuntarily, and no documented case exists where a terminal patient was voluntarily killed. The program was carried out in the closest of secrecy and under a dictatorship. One of the lessons that we should learn from this experience is that secrecy is not in the public interest.

Advances in medical science have also had a stunning effect on social policy. Medical advances and technology have made it possible, for example, for us to cure pneumonia in a person suffering from terminal cancer by administering antibiotics; before this discovery that patient would have died of pneumonia. Cardiac arrest and kidney failure are no longer fatal with the appropriate technological intervention. AIDS has intensified the debate over assisted suicide. Palliative care has improved, and it is rare now to find a physician who is worried about giving too much of a painkilling narcotic to a suffering

patient on the grounds that it may be habit forming. In the midst of all these changes in the art of medicine and care giving there remains the moral question of, not what can be done, but what should be done?

Euthanasia is discussed in churches, philosophy classes, pubs, street corners, homes, medical societies, nursing classes, hospices, journals, and in legislative assemblies across the land. There is no shortage of information and opinion. Anyone interested in obtaining more information will find an abundance of books and articles in the Malaspina University-College library. I suggest that you start with the Law Reform Commission of Canada's Working Paper 28 (euthanasia, aiding suicide and cessation of treatment) from 1982. This paper reviews the relevant issues of law, medicine, religion, and societal attitudes in a readable format, and after reviewing the situation makes several recommendations. Though a dozen years old now, it still provides an excellent overview of the arguments.

Here is the question: is it possible for us as a society to recognize and assert the fundamental importance of life while at the same time recognizing and asserting the right of a terminally ill patient to die with dignity?

#### **Part Two: The Law**

"There is no record in Canadian case-law of a single conviction of a doctor for having shortened the life of one of his or her terminal patients by administering massive doses of pain-killing drugs." (Law Reform Commission, 1982) [A news report on June 22, 1996 reads "Toronto Dr. Maurice Genereux ... became the first doctor in Canada to be charged with assisting a suicide" *The Weekend Sun, Vancouver*] [also consult the [Dr. Nancy Morrison](#) case.] [On November 19, 1998 that case was stopped by the courts; see also [crown.htm](#).]

Given that there have been few problems in case law, why should we consider changing the law?

One reason for considering change is that prosecution is possible for anyone assisting another in committing suicide, and the **Criminal Code of Canada** has a penalty of up to fourteen years for the act. (see sections 205-223) There is, as it stands, no degree of predictability for patients or physicians in how the courts will rule on the general rules established in the Criminal Code. Yet another concern is that according to recent polls (1989) some 77% of Canadians disagree with the law against assisted suicide. And yet another reason for considering legal changes to the Code is that many people believe that assisted suicides are being carried out now on humanitarian grounds even though the law forbids such action. It is often the case that laws lag behind society's attitudes, beliefs, and moral arguments.

The Criminal Code of Canada reads: (Martin's Annual Criminal Code, 1994)

222. (1) A person commits homicide when, directly or indirectly by any means, he causes the death of a human being.

(2) Homicide is culpable or not culpable.

(3) Culpable homicide is murder or manslaughter or infanticide.

224. Where a person, by an act or omission, does anything that results in the death of a human being, he causes the death of that human being notwithstanding the death of that human being might have been prevented by resorting to proper means.

In addition it is no defense to point to the fact that a person has requested to be killed: "No person is entitled to consent to have death inflicted upon him, and such consent does not affect the criminal responsibilities of any person by whom death may be inflicted upon the person by whom consent is given," which seems to mean that no one has a right to consent to have death inflicted on him or her. In addition, if a person causes the death of another, the consent of the deceased does not provide the person who caused the death a defense to criminal responsibility.

Section 217 says, "Every one who undertakes to do an act is under a legal duty to do it if an omission to do the act is or may be dangerous to life." But if one contrasts that with Section 45 which allows for protection to surgeons, one finds that the interpretation in case-law (Nancy B. V. Hotel-Dieu de Quebec, 1992) of that section reads, "The conduct of a physician in stopping the respiratory support treatment of his patient, is not unreasonable within the meaning of this section and would not attract criminal liability."

It seems then that the law is less than clear and consistent and that some changes to the Criminal Code would be useful.

A more basic problem however has to do with the use of criminal law to enforce moral positions held by some members of society. The challenge for us in Canada today is to allow for sometimes competing and strongly held moral principles in the euthanasia debate. On the one hand we should value autonomy and on the other we should value life. The Law Reform Commission Working paper of 1982 puts it this way: (p.37): "Law must also recognize, as it now does implicitly, the principle of personal autonomy and self-determination, the right of every human being to have his [her] wishes respected in decisions involving his [her] own body. It is essential to recognize that every human being is, in principle, master of his [her] own destiny. He [She] may, of course, for moral or religious reasons, impose restrictions or limits on his [her] own right of self-determination. However, these limits must not be imposed on him [her] by the law except in cases where the exercise of this right is likely to affect public order or the rights of others."

In 1972, for example, the criminal offense of attempted suicide was repealed. Laws should, in general, allow for the maximum expression of individual moral and religious beliefs, and should not be used to restrict or limit individual autonomy as long as that expression of autonomy is not harmful to others. Thus, even if one is religiously opposed to euthanasia, it does not follow that one has a right to insist, through the criminal law, that others follow one's religious beliefs. Dr. Gifford-Jones, writing in *The Ottawa*

*Citizen*, October 6, 1989, puts this point strongly: "I'm sure Canadian physicians will find a host of moral, ethical and religious reasons to damn... active euthanasia. Some would agree with it in the privacy of the doctors' lounge. But publicly they will not have the courage to say so. Current attitudes on ethical issues in this country worry me and they should concern others who believe in personal privacy and freedom of choice. I'm tired of listening to moralists who believe they have a profound understanding that the rest of us don't.. And that their moral code, having the stamp of the Almighty, is beyond reproach."

James Rachels, an American philosopher, in an influential paper titled "Active and Passive Euthanasia" writes: "Fixing the cause of death may be very important from a legal point of view, for it may determine whether criminal charges are brought against the doctor. But I do not think that this notion can be used to show a moral difference between active and passive euthanasia. The reason why it is considered bad to be the cause of someone's death is that death is regarded as an evil - and so it is. However, if it has been decided that euthanasia - even passive euthanasia - is desirable in a given case, it has also been decided that in this instance death is no greater an evil than the patient's continued existence. And if this is true, the usual reasons for not wanting to be the cause of someone's death simply do not apply."

Is there a difference, do you think, between a person who, at a dying person's request, prepares a poison and leaves it on the bedside for her to take, and a person who helps the patient to drink it or who administers it directly at the request of a dying person who is unable to take it herself? Is there, in short, a real distinction between killing and letting die?

### **Part Three: Killing and Letting Die**

Sue Rodriguez and Karen Ann Quinlan have done more than ethicists, doctors, and moralists to rivet public attention on the legal and moral aspects of euthanasia. In 1994 Sue Rodriguez chose to die. In 1975 Karen Ann Quinlan, for reasons still unknown, ceased breathing for several minutes. Failing to respond to mouth-to-mouth resuscitation by friends she was taken by ambulance to a hospital in New Jersey. Physicians who examined her described her as being in "a chronic, persistent, vegetative state," and later it was judged that no form of treatment could restore her to cognitive life. Her father asked to be appointed her legal guardian with the expressed purpose of discontinuing the respirator which kept Karen alive. After some delay the Supreme Court of New Jersey granted the request. The respirator was turned off. Karen Ann Quinlan remained alive but comatose until June 11, 1985, when she died at the age of 31.

These cases and others like them demand that we think carefully through a number of conceptual issues. *What is a person?* What is death? How does the difference between active and passive function in arguments for and against euthanasia? Is there any difference between killing and letting die?

The question of personhood bears on euthanasia as on abortion debates. What criteria should be used to determine personhood? Is it just a matter of species? That is, are all and only biological humans persons? That does not seem right because for the theist, it must

be the case that God or gods, angels and so forth are also persons in the moral sense. Further, if we do discover some alien race on a distant planet would their lack of a certain DNA string be sufficient to say that they were not persons, capable of making decisions and acting on them? And in fact, here on our own planet is there not a strong argument for treating the Great Apes as persons, as a recent book advocates? The importance of this conceptual issue is just that if we could establish the criteria for personhood then those qualifying enjoy the same rights as any other patient. It seems right to say, for example, that the person Karen Ann Quinlan died sometime in 1975 though her body survived until 1985.

It used to be that death meant the termination of breathing. Later physicians defined death as a total stoppage of the circulation of blood. This definition served well until recent technology made it possible to sustain respiration and heartbeat indefinitely, even when there is no brain activity. The need for still viable organs for transplantation has resulted in a refined definition based on brain wave activity.

It has long been held that the distinction between active and passive euthanasia is crucial for medical ethics. The idea is that although it may be permissible in some cases to withhold treatment and allow a patient to die, it is never permissible to take any direct action to bring about that death. North American Medical Associations base their ethical conduct on this distinction, as in this statement by the American Medical Association: *"The intentional termination of the life of one human being by another ... is contrary to that for which the medical profession stands...The cessation of the employment of extraordinary means to prolong the life of the body when there is irrefutable evidence that biological death is imminent is the decision of the patient and/or his immediate family."*

This so-called distinction between active and passive was challenged by the philosopher James Rachels in a paper first published in 1975 in the *New England Journal of Medicine*. In that paper Rachels challenges both the use and moral significance of that distinction for several reasons. First, he argues, active euthanasia is in many cases more humane than passive; second, the doctrine leads to decisions concerning life and death being made on irrelevant grounds; and third, the doctrine rests on a distinction between killing and letting die that itself has no moral significance. Rachels urges doctors to reconsider their views. He writes: "To begin with a familiar type of situation, a patient who is dying of incurable cancer of the throat is in terrible pain, which can no longer be satisfactorily alleviated. He is certain to die within a few days, even if present treatment is continued, but he does not want to go on living for those days since the pain is unbearable. So he asks the doctor for an end to it, and his family joins in this request."

"Suppose the doctor agrees to withhold treatment...The justification for his doing so is that the patient is in terrible agony, and since he is going to die anyway, it would be wrong to prolong his suffering needlessly. But now notice this. If one simply withholds treatment, it may take the patient longer to die, and so he may suffer more than he would if more direct action were taken and a lethal injection given. This fact provides strong

reason for thinking that, once the initial decision not to prolong his agony has been made, active euthanasia is actually preferable to passive euthanasia, rather than the reverse."

Is killing someone worse than letting them die? Rachels asks us to consider these two cases: In the first Smith will gain a large inheritance if anything should happen to his young cousin. One evening while the youngster is taking a bath, Smith sneaks into the bathroom and drowns the child, and then arranges things so it will look like an accident. In the second parallel case, Jones will gain a large inheritance and plans to drown his cousin, but as he enters the bathroom Jones sees the child slip and hit his head and fall face down in the water. Jones watches and does nothing. Now, Smith killed the child while Jones "merely" let the child die.

Rachels' question: did either man behave better, from a moral point of view? "If the difference between killing and letting die were in itself a morally important matter, one should say that Jones's behavior was less reprehensible than Smith's. But does one really want to say that?"

If the crucial issue in the euthanasia debate is the intentional termination of the life of one human being by another, then how can it be consistent to forbid mercy killing and yet deny that the cessation of treatment is the intentional termination of a life? What is the cessation of treatment if it is not the "intentional termination of the life of one human being by another"? The so-called distinction between active and passive does not provide a useful moral distinction.

#### **Part Four: Deliberations**

Courts in the United States and Canada have upheld the right of competent adult patients to refuse life-preserving medical treatment. The famous *Cruzan v. Missouri Health Services* case went to the United States Supreme Court in 1990, and the court ruled that even if the patient is not competent to make the decision to stop treatment it may be made by a surrogate acting according to the patient's wishes. One consequence of such rulings is the increased interest in so-called Living Wills.

Living Wills as yet have no legal status in Canada, but efforts are being made to allow for people to express their wishes in the form of advance directives to physician, next of kin, and lawyer as to the treatment desired when the situation arises.

In the meantime, we need to consider carefully the arguments for and against Voluntary active euthanasia. And after that deliberation is complete, the second part of the debate will centre on what we want the law to allow or prohibit. Euthanasia raises two basic moral issues that should be distinguished: the morality of euthanasia, and following that, the morality of euthanasia legislation.

#### **Arguments for Voluntary Active Euthanasia**

- Individuals have the right to decide about their own lives and deaths.
- Denying terminally ill patients the right to die with dignity is unfair and cruel.

- The golden rule requires that we allow active euthanasia for terminally ill patients who request it in certain situations.
- People have the right to die with dignity and lucidity.

The words of two recent letter writers (*Vancouver Sun*, Feb. 23) add another dimension to the discussion, reminding us again of the human dimension, the personal, lived, existential component of the decision. Gayle Stelter writes, "For almost seven years I have been living with cancer, mostly joyously and gratefully, but gradually seeing the disease encroaching relentlessly on my once healthy body. Throughout these years, I have thought long and hard about death and I've discovered that it's not the prospect of death itself that is so frightening, but the process of dying. So to give myself courage, I have held an option in reserve. When I can see no quality ahead, when I am capable of bidding my loved ones a coherent farewell, when I am still in control of my resources, I will enlist someone's help to speed me on my journey. ... For those of us who may choose to leave while there is still an element of control, of coherence, may we be fortunate to have a friend, a loved one, a health professional who will use their gifts in order that we may be excused. To deny such expert guidance in this last rite would be both heartless and inhuman."

Or, listen to Susan Hess from Vancouver, "I have multiple myeloma...a rare bone marrow cancer...[that] destroys the blood, bones, immune system, kidneys and sometimes liver and spleen. The worst of it is the disintegration of the skeleton...Unless one is lucky enough to die of sepsis first, the death is long and agonizing. The act of sitting up can fracture the vertebrae and lifting the dinner tray can fracture both forearms. Who deserves that? For what principle?"

### **Arguments against Voluntary Active Euthanasia**

- Active euthanasia is the deliberate taking of a human life.
- We cannot be sure that consent is voluntary.
- Allowing active euthanasia will lead to abuses.
- There is always the possibility of mistaken diagnosis, a new cure, or spontaneous remission.

The philosopher J. Gay-Williams has argued against euthanasia in this way: "I hope that I have succeeded in showing why the benevolence that inclines us to give approval of euthanasia is misplaced. Euthanasia is inherently wrong because it violates the nature and dignity of human beings. But even those who are not convinced by this must be persuaded that the potential personal and social dangers inherent in euthanasia are sufficient to forbid our approving it either as a personal proactive or as a public policy." ("The Wrongfulness of Euthanasia," 1979)

Everyone has heard of the Netherlands experiment with legalized euthanasia, and I recommend Barney Sneiderman's paper "Euthanasia in the Netherlands: A Model for Canada?" published in *Humane Medicine*, April, 1992, for a sensitive and intelligent review of the Dutch approach. Sneiderman argues that we must provide the best care, the best pain control, but when the patient is still plagued by unbearable and unrelievable

suffering and asks for release then "we will abide by your request because there is no other way that we can show you our compassion."

### **Recommendations for now**

I believe that there are some circumstances when euthanasia is the morally correct action. I also understand that there are real concerns about legalizing euthanasia because of fear of misuse and/or overuse and the fear of the slippery slope leading to a loss of respect for the value of life. We do need to proceed with caution. We need full and open discussion, improvements in research, the best palliative care available, and above all we need to think about the topic together. Our best approach at this time may be to modify homicide laws to include motivational factors as a legitimate defense. **Just as homicide is acceptable in cases of self-defense, it could be considered acceptable if the motive is mercy.** Obviously, strict parameters would have to be established that would include patients' request and approval, or, in the case of incompetent patients, advance directives in the form of a living will or family and court approval.

Euthanasia is homicide. Some homicides are justified.

*NB: On January 18, 2001 the Supreme Court of Canada declined to create a new category of compassionate homicide. The result of the case is that Mr. Lattimer will have to serve a ten year sentence for killing his daughter.*