Chapter 13

Euthanasia

13.1 Movie: *A death of one's own*

13.1.1 Summary of *A death of one's own*

Jim – Horse breeder and veterinary, Louisiana, ALS (Amyotrophic Lateral Sclerosis), as been declining for 2.5 years, has 2.5 years more to go

- Assisted suicide forbidden by the law

- Taboo in the community (daughter)

- Care provider: wife – considers the situation is worse than death: loosing her husband little by little

- Children still "struggling" within their belief system

- Jim's view on the situation: Jim would like to die when he cannot swallow by himself anymore. But he cannot get that.

"This is a very immature way to deal with the situation"

"I am going to have to do it before I want to do it"

Kitty – 56, Portland, Oregon, Cancer, a few months to go

- Voluntary Physician-Assisted Suicide authorized in Oregon – conditions: 6 months diagnosis, patient must be mentally capable to make the decision, and physically capable to commit suicide ...

Other places in the world where Voluntary Physician-Assisted Suicide is authorized: Belgium, Netherlands, Switzerland

- Care provider: nurse

- Daughters' support

- Kitty's view on the situation: wants to die at home, out of pain, with her family

"I want everyday I can get"

but:

"I don't want to be out of control"

Ricky – 44, liver failure, former minister

- Delirium, violence (cognitive abilities impaired)
- No medication will relief pain if kept conscious
- Neither food nor fluids
- Sedated to death
- Ricky's wife's view of the situation:

"He is not Ricky anymore"

"He would not want to be like this"

"We discussed this together before"

"He has a better place to go"

The doctors –

- The Oath: Conflict between:

  1. not kill
  2. relief patient and protect dignity

- The doctors' view of the situation

  1. Jim's doctor – problem of taboo, says he would help if the law would allow him to, denounce a form of hypocrisy: morphine vs. VAS
  2. Kitty's doctor, has seen 15100 patients die, helps people to commit suicide under the Oregon law – relies on what the patients see as the best for them.
  3. Her colleague: "I cannot directly participate". Not the oath, not religious beliefs, but something "visceral inside [him]" – that said, he is ok to increase morphine up to death
  4. Ricky's doctor: "the disease killed him" – denies any link between VAS and sedation to death

     With students: isn't it the case that removing hydration is simply killing (but slowly)?

     Answer: the disease, not us, killed him.

13.1.2 Questionnaire on the "A death of one's own"

The characters – Describe briefly the situation of each of the main characters of the movie

Questions of life, death, pain and dignity :

- What do you fear the most: death or constant pain?

- At what point would you deem life unbearable? Consider Jim and Kitty on their moving deadlines;

- Under what conditions would you like others to: withhold surgery? withhold medication? withhold fluids and nutrition? actively terminate your life? Consider Kitty's and Ricky's cases

Questions about the role of physicians and medicine :

- Is the job of physician to fight death no matter what it takes? When should a physician stop the fight and retreat? What does Jim's wife say about the last weeks of her mother?

- How can one argue that Voluntary Assisted Suicide is compatible with the doctor's oath? How can one argue that Voluntary Assisted Suicide is an "act of love"? Consider Kitty's doctor.

- What is the difference between voluntary assisted suicide and euthanasia? What are, if the are any, the morally relevant differences between the two? Consider Jim's and Kitty's cases.

Questions about definitions :

- What do you think of the distinction between "making the patient comfortable" ("terminally sedated"), and assisting suicide? What about providing neither food nor fluid?

- Which one is more compasionnate? Help die right away or let die from agonizing death?

- Which is morally preferable?

Questions about decision making :

- Who is to decide on what to do when the patient is mentally unable to make his decision on his or her own? Ricky's wife vs. Jim's wife (for her husband vs. her mother)

A duty to die? :

- Who takes care of the care taker? Jim's wife struggle

- What are the prospects for health care costs in our aging society? To what extent should this situation be taken into account when deciding on policies concerning Voluntary Assisted Suicide and Euthanasia?

13.2 Homework

Readings – RTD 17 (Rachels), 18 (Doerflinger), SLB 13 + Rachels, "Active and Passive Euthanasia"

Study questions :

- What is the difference between Voluntary Assisted Suicide (VAS) and Euthanasia?
- What is the distinction between active and passive euthanasia? Why is the distinction problematic when it comes to moral responsibility?
- (On Doerflinger) What is the argument from autonomy in favor of VAS?
- (On Doerflinger) How does Doerflinger reject the argument that VAS can be the ultimate expression of our autonomy?
- (On Rachels) What is the argument from mercy in favor of VAS?
- (On Rachels) What is the utilitarian argument in favor of VAS?
- (On Rachels) Why does Rachels reject the utilitarian argument? What refinement does he propose for it?
- (On Doerflinger) What are the abuses does Doerflinger see as possible consequences of having VAS authorized? What kind of argument is this?

Discussion Question : What are the main conflicting values in the debate concerning VAS and euthanasia? Which is the argument, on each side of the debate, that you find the most convincing?

13.3 Introduction

Why would suicide be wrong? Why would suicide be a fundamental right?

Why should we be concerned? : because of two simple facts:

(1) we are all going to die, and

(2) we are most probably going to die in a hospital/hospice.

If not us, someone close will most probably in this situation.

So, the matter concerns us all. Two questions you may want to consider:

- What do we consider is the best for us?

- What do we consider is the best for the (aging) society?

Aspects of the particular situations to consider :

- fundamental beliefs (sanctity of life vs. autonomy and freedom)

- severity of illness

- severity of pain

- support from family and friends

- dignity (and how much indignities one can cope with)

What this class is about – As usual:

- The class is not about telling you what is right and wrong

- The class is about making you aware of the arguments on both sides, which hopefully will get you to understand both your own view and the other side's view better.

13.4 Important Distinctions

Voluntary / Nonvoluntary / Involuntary :

- "Involuntary AS" is simply murder: someone does not want to die, and is terminated anyway

- Non-vountary is conceptually different: this is the case in which the person is not able to express his will at the moment (either for physical or mental weaknesses)

- Voluntary Assisted Suicide is when the person is fully able (mentally and physically) to speak his or her voice.

Assisted / not assisted :

To commit suicide is not a crime according to the law

What is forbidden by the law is for a physician (or any one else) to assist someone to commit suicide – this is considered as a form of murder by all states except Oregon, Washington, and maybe Montana.

Legal vs. Moral – as in the case of abortion: it is one thing to ask whether VAS is moral, and it is another thing to ask whether it should be made legal. Moral and Legal, Immoral and Illegal don't have to go together:

??? $Moral \longleftrightarrow Legal$???

Some moral actions are illegal. Segregation laws: it is morally right to ask for equity between black and white people. It has been illegal though. Granted, we tend to think that these laws should be changed, but the point is: some acts are moral but illegal. This undermines the implication from the right to the left.

Many "immoral" actions (or arguably so) are not forbidden by the law: cheating on your boyfriend / girlfriend, telling lies about your opponent during a political campaign, smoking and drinking while carrying a baby. So, some acts are legal but immoral. This undermines the implication from the left to the right.

$\longrightarrow$ *In sum: to be moral is neither necessary nor sufficient for being legal.*

13.5 A controversial distinction: Active vs. Passive Euthanasia

Many physicians and law makers ground their view against VAS in the distinction between active and passive euthanasia.

Here is the statement adopted by the House of Delegates of the American Medical Association on December 4, 1973:

> The intentional termination of the life of one human being by another -mercy killing - is contrary to that for which the medical profession stands and is contrary to the policy of the American Medical Association.
>
> 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. The advice and judgment of the physician should be freely available to the patient and/or his immediate family.

Does this distinction between killing and letting die stand? Is it morally relevant?

The idea is that :

- if you give a poison to someone, you're committing an active euthanasia, you've "killed" the patient – that's bad

- but if you are either withholding surgery, or food and fluids, or if, in order to make the patient "comfortable", you need to administrate a dose of pain reliever that you know is lethal – has for consequence that the heart stops, then you are not being active, you "let die" the patient instead – that's accepted

A moral question : If we accept the distinction, which one is morally preferable?

What if active euthanasia was less cruel? Would not it make it morally preferable?

Example from Rachels: Some of the kids affected by Down Syndrome take days to die from infection and dehydration.

Rachels:

> I can understand why some people are opposed to all euthanasia, and insist that such infants must be allowed to live. I think I can also understand why other people favor destroying these babies quickly and painlessly. But why should anyone favor letting "dehydration and infection wither a tiny being over hours and days?" The doctrine that says that a baby may be allowed to dehydrate and wither, but may not for given lethal injection that would end its life without suffering, seems so patently cruel as to require no further refutation. The strong language is not in. tended to offend, but only to put the point in the clearest possible way.

$\longrightarrow$ *It seems that, if we agree that we morally ought to avoid unnecessary suffering, then in many casees passive euthanasia is morally worse than active euthanasia.*

Passive euthanasia and arbitrariness :

- Passive euthanasia amounts to accept that we can let die someone if that will end unnecessary suffering. But passive euthanasia can only take place if the patient suffers from an health problem which most often has nothing to do with his or her initial suffering but "allows" for a quicker death

Examples: Jim, infection, no medication / Down syndrome babies with intestinal tract blocked

Rachels argues that:

- Either it is a good thing that the patient's life ends or not

- If it is, then the possibility to end his or her life should not depend on the contingent occurrence of a supplementary health problem

- If it is not, then the supplementary health problem does not make it good, and should be treated.

$\longrightarrow$ *It seems arbitrary to make our decision to let a life go upon the contingent and irrelevant occurrence of a supplementary health problem.*

This distinction is controversial : There are at least two reasons to doubt that there is a true difference between the two:

- How "passive" is passive euthanasia? no surgery / no food and liquid / sedate to death ?

Examples: Jones and Smith and their cousin in the bathtub – Both intend to kill their cousin in order to inherit some money.

Jones comes into the bathroom, drowns his cousin

Smith comes into the bathroom, sees his cousin accidentally slipping, hitting his head, falling face down in the water, and drowning

- Is Jones less responsible than Smith of its cousin's death?

- Is Jones a better man than Smith?

If I can clearly foresee the consequences of my non-action, and if I proceed not to do it anyway, it seems pretty clear that I am responsible for these consequences !

$\longrightarrow$ *It seems that there is no moral difference between actively killing and letting die, when all other parameters are the same.*

Conclusion : In sum:

- The distinction is morally irrelevant

- Even if they were cases in which the distinction was morally relevant, it is not clear that passive euthanasia would turned out to be morally preferable

⟶ *The moral distinction between active and passive euthanasia is spurious. We need a better way to settle the matter.*

13.6 The argument from autonomy and its critics

Doerflinger "Assisted Suicide: Pro-Choice or Anti-Life?"

Doerflinger is Deputy Director of the Secretariat for Pro-Life Activities, United States Conference of Catholic Bishops

So, Doerflinger speaks from a Christian point of view: Life, as a gift of God, is sacred. That said, Doerflinger recognizes that one needs to argue from a secular point of view if one wants to be convincing to all.

Doerflinger has a compelling argument against the so-called argument from autonomy in favor of euthanasia.

The argument from autonomy :

P1. Autonomy (an individuals freedom to make decisions, especially important life-decisions, for herself) is of supreme moral importance and should always be respected.

P2. Denying a person the right to assisted suicide would disrespect her autonomy.

CC. Therefore, a person should not be denied the right to assisted suicide.

⟶ *The decision of how and when to die would be the ultimate expression of autonomy. This echoes both Jim's and Kitty's claim to "be in control".*

Doerflinger againts premise 2 :

1. Life is more fundamental than autonomy because life is a necessary condition for autonomy: "Life, a human beings very earthly existence, is the most fundamental right because it is the necessary condition for all other worldly goods including freedom" (158)

2. Hence suicide under the name of autonomy is self-contradictory: "suicide is not the ultimate exercise of freedom but its ultimate self-contradiction: A free act that by destroying life, destroys all the individuals future earthly freedom."

⟶ *So: denying someone the right to VAS is not acting against his or her autonomy, but protecting this autonomy instead, in protecting a necessary condition for the exercise of autonomy: to be alive.*

A possible answer to Doerflinger – What about the cases in which the person "can no longer meaningfully exercise other freedoms due to increased suffering and reduced capabilities and lifespan"? (159)

Doerflinger's answer: "even these hardships do not constitute a total loss of freedom of choice."

That is to say, none of this pain and reduced capabilities cut off completely the freedom of the person – Only death does.

⟶ *So, in the end, it seems that the argument from autonomy is difficult to maintain. Doerflinger has a pretty good point here. It seems contradictory to appeal to autonomy in order to destroy the crucial condition under which one's has autonomy.*

As Doerflinger suggests, it is more likely that the advocates of VAS really rely on the argument from mercy (decrease suffering). If this is true, then advocates of VAS must admit that they don't value life in itself as much as the pursuit of happiness and avoidance of suffering (thus a form of utilitarianism).

13.7 The Utilitarian argument and its possible refinement

From Rachels, "The morality of euthanasia"

The argument from mercy Rachels (RTD p.151):

> "The single most powerful argument in support of euthanasia is the argument from mercy. It is also an exceptionally simple argument, at least in its main idea, which makes one uncomplicated point. Terminally ill patients sometimes suffer pain so horrible that it is beyond comprehension of those who have not actually experienced it. Their suffering can be so terrible that we do not like even to read about it or think about it; we recoil even from the description of such agony. The argument from mercy says euthanasia is justified because it provides an end to *that*."

This argument seems simple, but in fact needs elaboration:

The utilitarian argument – Rachels shows how the argument from mercy can be formulated in utilitarian terms:

P1. Any action or social policy is morally right if it serves to increase the amount of happiness in the world or to decrease the amount of misery. Conversely, action or social policy is morally wrong if it serves to decrease happiness or to increase misery.

P2. The policy of killing, at their own request, hopelessly ill patients who are suffering great pain would decrease the amount of misery in the world.

CC. Therefore, such a policy would be morally right.

Rachels' criticism against the utilitarian argument

Rachels levels the usual objections against utilitarianism :

The principle of utility (the idea that the ultimate criterion for assessing moral actions is how much happiness this action brings about) is highly controversial. In particular, it conflicts with our notion of rights, and of integrity.

If we push to the extreme, it seems that the argument above could make involuntary euthanasia right: if the amount of happiness is increased enough by terminating a patient, even if this patient does not want to die!

This is clearly unacceptable

Rachels' refinement : Taking into account the criticism above, Rachels proposes the following refinement of the argument:

P1. If an action promotes the best interests of everyone concerned *and violates no one's rights*, then that action is morally acceptable.

P2. In at least some cases, active euthanasia promotes the best interests of everyone concerned and violates no one's rights.

CC. Therefore, in at least some cases, active euthanasia is morally acceptable.

This argument keeps the spirit of the argument of mercy, and avoid the drawbacks of the utilitarian rationale.

$\longrightarrow$ *Rachels' argument, a refinement of the classic utilitarian argument, seems to be a good argument in favor of euthanasia.*

13.8 Slippery Slopes and / or the Pandora Box

Doerflinger "Assisted Suicide: Pro-Choice or Anti-Life?"

13.8.1 Doerflinger's slippery fears

Slippery slope argument :

We have encountered slippery slope argument several times now.

The idea of a slippery slope argument is the following:

- given a continuum of cases

- within which it is difficult or impossible to a clear line of distinction

- it is concluded that no distinction exists at all

Examples:

- definition of baldness and the number of hair

- right and wrong cases of abortion

- cloning and eugenics

As we have said several times, slippery slope arguments are most often to be distrusted.

What euthanasia could lead to – According to Doerflinger, there are real worries that allowing VAS will lead to unacceptable consequences.

1. Elderly and dying patients are vulnerable to subtle coercion. Once VAS is accepted, patient's choices will be seen as irrational if they don't use it.
2. In the US, there are economic incentives for patients to end their lives. If health care is seen as elective, and not obligatory there will be no incentive to pay for it.
3. Substituted judgment. If VAS were legalized, substituted judgment would basically allow non-voluntary euthanasia (and even involuntary euthanasia).
4. Expanded definitions of terminal illness. Hence more people would get VAS than would be entitled.
5. Prejudice against citizens with disabilities.
6. Changing the character of the medical profession. You may create a body of physicians who advocate expanding the practice?
7. The human will to power. Killing is very attractive, and once someone does it, they will want to do more of it.

In order to assess whether these are real concerns, it seems reasonable to have a look at the facts, for example in Oregon. Is it the case that any of the above happens in Oregon?

13.8.2 Fears and Reality: the facts about Oregon's Death with Dignity Act

Conditions and Safeguards :

- *First, in order to be eligible* to request a prescription for lethal medication from a licensed Oregon Physician, patients must be:

1. An adult (18 or more)
2. A resident of Oregon
3. Capable intellectually (defined as able to communicate health care decisions)
4. Diagnosed with a terminal illness that will lead to death within six months.

- *Second, in order to receive the prescription*, the following requirements have to be fulfilled:

1. The patient must make two oral requests to his / her physician, separated by at least 15 days.
2. The patient must provide a written request to his or her physician, signed in the presence of two witnesses.
3. The prescribing physician and a consulting physician must conthe firm the diagnosis and prognosis.
4. The prescribing physician and a consulting physician must determine whether the patient is capable.
5. If either physician believes the patient's judgment is impaired by a psychiatric or psychological disorder, the patient must be referred for a psychological examination.
6. The prescribing physician must inform the patient of feasible alternatives to assisted suicide, including comfort care, hospice care, and pain control.
7. The prescribing physician must request, but may not require, the patient to notify his or her next-of-kin of the prescription request.

The results : see Figure 1 at the end of the chapter – the number of people with qualifying diseases: around 75,000. The table is clear: out of these 75,000 people, less than 70 people get the prescription, and less than 40 people actually commit suicide.

$\longrightarrow$ *This suggests that the slippery slope argument are not grounded in the evidence available. It is simply not the case that people are wanting to abuse the right to die !*

13.9 Conclusion

Concerning the question of the morality of VAS, we can conclude that:

- The distinction between active and passive euthanasia is not morally relevant
- The argument from autonomy is difficult to maintain (seeming self-contradiction)
- The argument from mercy, especially reformulated in Rachels' way, is tenable
- The slippery slopes argument are not grounded in the evidence available

$\longrightarrow$ *At the end of the day, it seems that your decision upon the morality of euthanasia crucially depends on whether you think that morality is about absolute rules or the general welfare in the world. If you choose the side of absolute rules, them presumably you are going to take the rule that to kill an innocent person is wrong, whatever the circumstances, and in this case, you'll see euthanasia, whether active or passive, as an instance of wrong killing. If you land on the side of morality being about making the world a better place, then presumably, you'll recognize that in some particular circumstances, euthanasia, whether active or passive, is the right thing to do.*

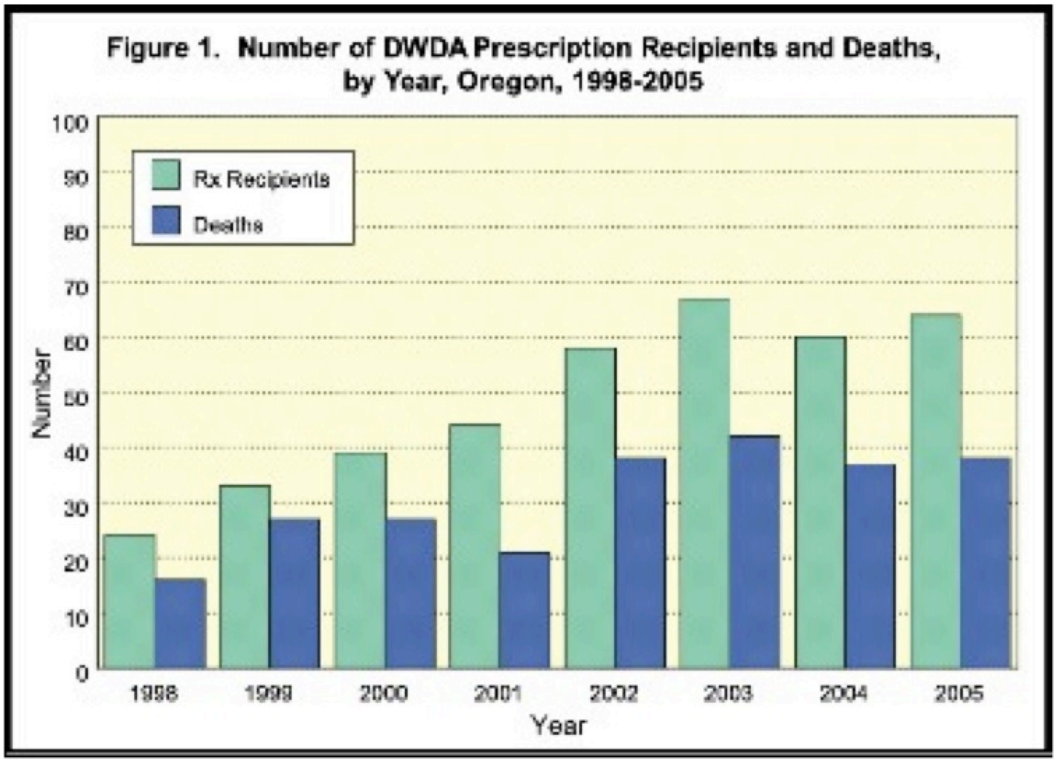
Figure 1. Number of DWDA Prescription Recipients and Deaths, by Year, Oregon, 1998-2005
Rx Recipients
Deaths
Number
100
90
80
70
60
50
40
30
20
10
0
1998
1999
2000
2001
2002
2003
2004
2005
Year