

Reply to John Keown

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Professor Keown's critique of the "Marty Report"¹ is incisive and useful. This response offers only one criticism of his article, i.e., that Professor Keown should go even further in defending the Council of Europe's opposition to euthanasia. In discussing the Council of Europe's opposition to euthanasia, Professor Keown notes that the Parliamentary Assembly of the Council of Europe urged the protection of terminally ill persons by three means:

- recognizing and protecting a terminally ill or dying person's right to comprehensive palliative care...;
- protecting the terminally ill or dying person's right to self-determination...;
- upholding the prohibition against intentionally taking the life of terminally ill or dying persons.²

Professor Keown then notes, "In relation to this third means it added: 'recognizing that the right to life,' especially with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with Article 2 of the European Convention on Human Rights which states that 'no one shall be deprived of his life intentionally'."³

Although Professor Keown takes on the defense of the Parliamen-

¹ "Euthanasia Report of the Social, Health and Family Affairs Committee of the Council of Europe." 10th September 2003, Doc. 9898, hereafter "Marty." <http://assembly.coe.int/Documents/WorkingDocs/Doc03/EDOC9898.htm>.

² Ibid.

³ Ibid.

tary Assembly along a broad front, this article focuses only on the last issue, the need to uphold “the prohibition against intentionally taking the life of terminally ill or dying persons.”

The reason for this limited approach is that Professor Keown does a devastating job of showing that the Marty Report is flawed not only in its logic but in its facts. However, a key issue needs to be addressed: why is intentionally taking the life of a terminally ill or dying person wrong? It seems that one of the answers lies in Professor Keown’s paper and one does not.

Professor Keown’s paper shows that the experience with euthanasia in various countries is not simply a happy one. It seems instead that the practice of euthanasia is to allow doctors as well as patients to determine which lives are worth living and which are not. And the practice has been one of cover-ups and a lack of control. This is a good reason—practically speaking—why we should not allow the intentional taking of innocent lives. The question that Professor Keown does not answer is whether or not this situation is intrinsic to the taking of innocent human life. Is it not going to be the case—by the nature of the decision-making and the subject matter involved—that doctors and/or patients will want the taking of life to be secret? Is it inherently the case that such taking of life will corrupt those who participate in it in various ways? Is it certainly the case that those who take innocent life when a majority might agree that such can be done will be tempted to take innocent life when the majority might not agree?

Obviously, many who might choose to have themselves killed would not want to be known and few doctors would want to be known as the leading prescribers of death potions. Like abortion enthusiasts, who take life at its beginning stage, euthanasia “doctors” will live in shadows and a lack of control. It may be that the very nature of taking innocent human life will necessarily involve insurmountable practical problems.⁴ Multiply the problems that occur due to the imposition of the death penalty in America and one has a reasonable idea of the practical problems that will arise. Indeed, it seems reasonable that a truly

⁴ The report of the New York “Task Force on Life & the Law” provides a compelling and lengthy review of these matters. <http://www.health.state.ny.us/nysdoh/provider/death.htm>.

transparent process that sought adequate controls would require a trial not much different than those employed in other legal processes. Is society willing to have a comprehensive and clear process before someone is killed? Would the cost of such processes, like death penalty trials, involve hundreds of thousands of dollars?

Assuming that euthanasia could be administered in a fair, open, and controlled way, a second problem arises. Could euthanasia be a good for society to embrace? This is the issue that Professor Keown only briefly touches upon but that lies at the heart of the euthanasia debate. Professor Keown notes that a law allowing euthanasia “would, for the first time, allow certain private citizens to kill other private citizens on the basis of the arbitrary judgment, historically denied in Western law and medical ethics, that they would be better off dead.”⁵ Let us assume for our consideration that it was not arbitrary—assume that we had good pain-calibration machines and that we could determine the length of life that a person had remaining and the pain that such a person would suffer during that time. In short, even if one makes the best argument possible for euthanasia, should the position of the Council of Europe in 1999 be changed—namely, its position that it should uphold the prohibition against intentionally taking the life of terminally ill or dying persons?

To put the Martyr argument in its best form, assume that we will have some people for whom palliative care will not work; further, assume that those people are at the end of life and will not participate in living in the way that most people would understand, i.e., they are comatose or near comatose with no likelihood of recovery, that they are in insufferable pain, and that they would like to die. It seems that unless we have an answer to that best- (or worst-) case scenario, then we are not adequately responding to the Martyr Report and those that will surely follow.

It is indeed the case that in those situations we should consider why

⁵ Ibid.

a person does not have a right to kill themselves or have anyone kill them. We should carefully consider why, even in the state of pain and suffering that seems unbearable, patients may have to suffer. In short, what is it about the taking of human life that prevents euthanasia? It may be that a fuller understanding of this argument may even provide a better insight into many of the other arguments that Professor Keown so ably makes. How this argument is made is open to discussion, and there are a variety of ways in which it will be made—some of these are made by Professor Keown in his paper. But it seems clear that in order to win this argument we need to show that intense suffering with perfect understanding of benefits and detriments does not allow the taking of innocent human life. The allowance of suffering has a variety of purposes—for believers and non-believers alike.

The allowance of suffering—at least in the way that persons suffer at the end of life—can be beneficial in a variety of ways. Suffering is not an inherent evil for the individual. For believers, it can be a time of purgation wherein the suffering persons can offer up their suffering for their own failings and those of others. For virtually all believers in God, it is a time when the sufferers can purify themselves. For the virtuous non-believer, the suffering that a person undergoes can help that person to order his or her affairs and can allow those around him or her to do so also. Thus, even non-believers may be asked to endure suffering in these extraordinary cases. Moreover, because one endures suffering, others may find a way to make their own lesser suffering fruitful. In all of this, it is important to realize that “unbearable” suffering is not some clear line that can readily be drawn. Even if we were to assume that society no longer had a coherent view of the virtue of suffering, the notion of the “common good” would still suffice to prevent euthanasia.

Society has the duty to protect innocent human life. Consequently, certain presumptions must exist about every human life: namely, that it should continue and that it may only be taken in those rare instances when society determines for the common good that it would be just for a life to be taken. Because the value of a human life is so high, and because innocent human beings in a state of suffering need society’s protection, the procedural costs of ensuring that only truly good cases exist is too high. Even when pain is high (and this would need to be

proven), even when a unanimous group of competent doctors claims that no recovery is possible—with the attendant costs and a thorough review of the evidence—and even when the person subject to euthanasia has apparently given consent, there will be protracted struggles over the legal state of affairs, including appeals to ensure that all of this is so. A society that is truly concerned about making euthanasia as safe as the imposition of the death penalty will recognize that the cost is too high. It is better to continue to treat the person until natural death. And because of that situation, society may legitimately choose to prohibit euthanasia entirely. Just as the death penalty has been eliminated in much of Western society because of line-drawing problems and other concerns, all the more so Western society would do well to prohibit euthanasia. The common good may best be served by prohibition.

When we review the euthanasia debate in the death penalty context, we can more clearly see that the proponents of euthanasia think that the life of those subject to “euthanasia” requires less procedural and substantive protection than is given to those whom society has chosen to punish for murder or other grievous crimes. This belief, new to modern society, shows that the logic of euthanasia is built upon the notion that some lives are truly less worthy of protection than others. This is the premise of the Marty Report and it serves, along with Professor Keown’s thorough remarks to give us reason to reject it, and to reject it completely.