# Libertarian Euthanasia

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The current controversy over active euthanasia is an odd one. We have long since abandoned the earlier dispute over the distinction between ordinary and extraordinary means of medical treatment, a distinction crucial for exploring the moral merits of artificial nutrition and hydration. We have also abandoned the millennial practice of applying the Hippocratic Oath to the technological quandaries of our time, since the Hippocratic Oath's explicit condemnation of euthanasia ("I will neither give a deadly drug to anyone if asked for it, nor will I make a suggestion to that effect"[1]) is no longer convenient for our purposes. Having jettisoned a centuries-old tradition of medical deontology and casuistry, we have not surprisingly borrowed the slogans of the earlier movement to legalize abortion. The tenors of the movement to legalize active euthanasia, especially in the fashionable form of physician-assisted suicide, repeatedly insist that individual freedom is the heart of the issue. Appeals to "autonomy," "self-determination" and "the right to control one's body" pepper the political brief in favor of active euthanasia.

The rhetoric of prominent proponents of active euthanasia indicates the libertarian framework of their case. Dr. Jack Kevorkian, the nation's most energetic practitioner of physician-assisted suicide, argues: "In my view the highest principle in medical ethics — in any kind of ethics — is personal autonomy, self-determination. What counts is what the patient wants and judges to be a benefit or a value in his or her own life. That's primary."[2] In her landmark ruling that Washington State's ban on assisted suicide violates the Fourteenth Amendment's guarantee of individual liberty, Judge Barbara Rothstein of United States District Court in Seattle argues on the basis of a similar libertarian logic. "Like the abortion decision, the decision of a terminally ill person to end his or her life 'involves the most intimate and personal

choices a person can make in a lifetime,' and constitutes a 'choice central to personal dignity and autonomy'"[3]

More theoretical observers of the euthanasia dispute have arrived at a similar pro-euthanasia stance, based on appeals to personal freedom. Legal scholar Melvin I. Urofsky argues: "Any society which claims to value individual liberty must grant to the individual the right to decide if and when life is no longer worth living. The state does have certain interests that cannot and should not be ignored, but in the hard cases, the law ought, insofar as it is able, to value personal autonomy as the most important consideration."[4] Supporting the Rothstein decision, philosopher Ronald Dworkin employs a similar appeal to individual autonomy as the criterion for endorsing euthanasia. "Our Constitution takes no sides in these ancient disputes about life's meaning. But it does protect people's right to die as well as live, so far as possible, in the light of their own intensely personal convictions about 'the mystery of human life.' It insists that these values are too central to personality, too much at the core of liberty, to allow a majority to decide what everyone must believe."[5] In other words, the decision of a patient to be killed or sustained might be right or wrong. But this rightness or wrongness is purely subjective, dependent upon the mysterious metaphysical convictions of each individual. And the only universalizable value in this situation is legal, and presumably social, respect for the sovereign freedom of the individual to choose life or death.

To refute the theoretical and political case in favor of active euthanasia, it is necessary to critique the libertarian anthropology which undergirds it. It is essential to unmask the moral disvalues hidden by the libertarian dismissal of euthanasia as a simple case of personal privacy. Not only does the libertarian case for euthanasia occlude the foundational value of life itself. It offers an implausible assessment of human freedom itself, especially in the context of vulnerable citizens who are seriously ill.

First, rather than exalting individual freedom, the libertarian defense of euthanasia tends to exclude an entire class of citizens, namely the disabled and chronically ill, from legal protection. The Rothstein decision offers a fine example of how a surface appeal to individual freedom masks a *de facto* exclusion of the terminally ill from political defense of their lives. Despite her panegyric to freedom, Rothstein carefully limits the freedom to kill oneself to only one class of citizen. "The suffering of a terminally ill person cannot be deemed any less intimate or personal, or any less deserving of protection from unwarranted governmental interference than that of a pregnant woman."[6] The freedom of the individual to kill oneself is not an equal freedom granted to all citizens to determine whether to live or die. In fact, Rothstein explicitly upholds the interest of the state in discouraging suicide for the healthy citizens of the republic. "Obviously, the state has a strong, legitimate interest in deterring suicide by young people and others with a significant natural life span ahead of them. But this case is not about people for whom suicide would abruptly cut short life."[7]

But why should the Constitution's guarantee of life, legitimately enforced by the state in face of a distraught teenager, suddenly disappear in the case of a patient confronting serious illness? This selective endorsement of personal autonomy indicates that the driving value behind the campaign for euthanasia is other than a categorical respect of freedom. Rather, our society's growing tendency to confer the "right to die" on one particular group in our society, the chronically ill, indicates our desire to be freed of a group we frankly consider an intolerable burden.

Rothstein's distinction between the "terminally ill" and "those with a significant natural life span ahead of them" is in no way a neutral boundary to fix the constitutional markers of the right to life and the right to liberty. As Philippe Aries argues in his magisterial study of the history of death,[8] different societies have ascribed various meanings to death and its

proper moment. Societies tend to legitimate suicide for those groups which they consider marginal and expendable. In certain Asian societies, the loss of personal honor can constitute reasonable grounds for suicide. In imperial Rome, the loss of political favor often led to self-destruction. In many societies, romantic disgrace and economic ruin have constituted routine causes of suicide. Madame Bovary did not die from cancer. Our society's selective, indeed discriminatory, endorsement of the chronically ill person's right to suicide does not manifest a global enthusiasm for liberty. Rather, it indicates our desire to exclude those we conceive primarily as an economic and emotional burden. It is hardly surprising that a society which so prizes productivity and self-consciousness would consider the chronically ill as pariahs and would secretly applaud their exercise of a "choice" we would never claim for profitable adults. The slogans of freedom only mask one of society's most ancient practices: engineering the exit of the other who threatens and burdens us.

Second, the libertarian plea for euthanasia rests upon a highly individualistic anthropology. Proponents of euthanasia repeatedly demand that society respect the wishes of a seriously ill patient, yet they devote little attention to the genesis of that desire.

A chronically ill person's desire for suicide or maintenance does not emerge in a social vacuum. On the contrary, the contours of the individual desire reflect the specific social mediations which have shaped the individual. The posture toward suicide naturally fluctuates according to the beliefs of the network of family or friends who surround the individual. A patient's desire to choose death naturally increases when enclosed by a family indifferent or even hostile to the patient's survival. Conversely, a patient's desire for suicide logically diminishes when surrounded by a community of relatives and acquaintances for whom the killing of the sick is literally unthinkable. The libertarian apology for the

freedom of the individual patient occludes the social determinants of freedom. The crucial influence of one's affective community, especially the beliefs concerning the value of life touched by illness, in shaping one's posture toward suicide is simply dismissed by the libertarian fable of the atemporal, asocial individual.

The libertarian is especially blind toward the pedagogy of the law in developing social forces opposed to the killing of the vulnerable. In the libertarian perspective, the law should remain neutral before the decision of the chronically ill to choose suicide or survival. The sovereign desire of the patient is the paramount value which merits respect. In fact, however, the law plays a central role in shaping the patient's dominant desires. The law's designation of euthanasia as illegal can clearly deter a chronically ill person from even considering suicide. Even when such a law is rarely or loosely enforced — and this has long been the case with our euthanasia and suicide statutes — the law's principles clearly enunciate the *polis*'s esteem for the life of the disabled and corporate disdain for its destruction by self or other. Not only can such laws deter a patient from the desire of suicide. They can strengthen the cultural setting wherein the patient faces the ebbing of life with personal courage and with unstinting support from other members of society, equally influenced by the architecture of the law. This pedagogy of the law in shaping the desires of the vulnerable patient and the ambient society of the patient is decidedly absent from the libertarian perspective with its implausible tenet of state neutrality.

A 1986 study of euthanasia in the Netherlands by the Royal Dutch Medical Association indicates the social variables involved in the rise of the individual's desire for suicide.[9] The report notes the curious fact that the requests for euthanasia in Dutch society are strongest among adults in their early sixties. This is medically odd, since for most Dutch citizens, the need for prolonged medical treatment arrives later in their lives. This anomalous clustering of the desire for suicide is

explained by the social context of the patients desiring death. When serious illness strikes a patient in his or her early sixties, the patient is often undergoing a series of social traumas: retirement from work and the exit of children from the familial nest. These transitions pose serious problems of identity and worth for a citizen tied to a society which prizes productivity and generativity. The entry of illness into this crisis can easily trigger the desire for death, since chronic illness, like retirement, can only be perceived as a disvalue by a culture which bases worth upon aggressive achievement. Rather than constituting a strict function of one's medical history, the desire for euthanasia emerges as a cry of despair by an individual who no longer conforms to a culture's distinctive measure of self-value.

Further arguments against the case for euthanasia are obvious. In the practical order, the tolerance of voluntary euthanasia will inevitably lead to involuntary euthanasia. The Dutch experience is sobering. From 20% to 50% of the cases of physician-directed euthanasia involve patients who clearly lacked the competence or the opportunity to make an informed request for euthanasia.[10] Current American proponents of euthanasia, such as Ronald Dworkin, insist upon the need to provide safeguards in order to limit the practice to the voluntary variety. He argues that "states plainly have the power to guard against requests influenced by guilt, depression, poor care or financial worries."[11] But how can one test for such an elusive trait as guilt? And has any request for euthanasia ever emerged free from depression or worry? The implausibility of these safeguards against abuse indicates the actual nature of the campaign for euthanasia: to place an entire population, the chronically ill and disabled, at a lethal risk which our culture would never venture for those deemed healthy.

The practice of euthanasia involves other grave moral tares. It brutally distorts the teleology of the medical profession by transforming the healer into the executioner.

Not surprisingly, such a corruption of medical practice violates the explicit stipulations of medical codes stretching back over two millennia to the foundational text of Hippocrates. It also radically distorts familial relationships. Our most basic obligation to our parents, to respect their lives and their material and spiritual welfare, evaporates in a society where the aged or sickly parent simply becomes a burden to be dispatched. Just as abortion on demand has eroded the respect for our children at the dawn of life, euthanasia threatens to erode our responsibility toward our parents at its dusk. It is difficult to imagine any moral change in a society as ominous as one which abolishes our solidarity with those who have given us life. Indeed, the greatest disvalue in the current euthanasia campaign is its blindness toward the foundational value of life itself through its idolatry of an implausible version of personal freedom. One can only gaze with astonishment at court philosophers and jurists as they rhapsodize over the Fourteenth Amendment's guarantee of "liberty," yet blithely ignore the explicit guarantee of "life" which precedes it.

In developing various philosophical arguments against euthanasia, it remains crucial to develop a critique of the libertarian anthropology which functions as the foundation of the current campaign. Our warnings against the dangers of abuse and our references to the foundational value of life will remain unconvincing unless they are complemented by a critique of the "island self" designed by the architects of the euthanasia campaign. Such a critique of distorted freedom can help to unmask the *telos* of the movement in favor of euthanasia. This is not the advancement of the freedom of the patient. Rather, it is a social-legal project to encourage the destruction of those we deem non-persons under the implausible colors of autonomy, liberty and choice.

## Notes

1. Oath of Hippocrates in *Encyclopedia of Bioethics*, ed.

Reich (New York: Macmillan 1978) 1731.

2. Jack Kevorkian and Paul Kurz, "Medicide: The Goodness of Planned Death" in *Free Inquiry* (Fall 1991) 14.

3. Timothy Egan, "Federal Judge Says Ban on Suicide Aid Is Unconstitutional" in *The New York Times* (5 May 1994) p. A24.

4. Melvin I. Urofsky, *Letting Go: Death, Dying and the Law* (New York: Scribner's Sons 1993) xv.

5. Ronald Dworkin, "When Is It Right to Die?" in *The New York Times* (17 May 1994) p. A19.

6. Egan, p. Al. 7. Egan, p. A24.

8. Cf. Philippe Aries, *Western Attitudes Toward Death*, trans. Raum (Baltimore: Hopkins 1974). For survey of cultural attitudes concerning suicide, cf. David Smith and Seymour Perlin, "Suicide" in *Encyclopedia of Bioethics* 1618-1627.

9. Cf. The Central Committee of the Royal Dutch Medical Association, *Vision on Euthanasia* (Utrecht: KNMG, 1986); Commission on Euthanasia, "An English Summary" in *Bioethics* 1 (1987) 163-74.

10. Cf. Richard Fenigsen, "A Case against Dutch Euthanasia" in *Hastings Center Report* 19/1 (Jan.-Feb. 1991) 22-30.

11. Dworkin, p. A19.