VOLUNTARY EUTHANASIA

M. CHEANG

**Faculty of Law,
University of Singapore.**

M. Cheang, LL.B (S'pore). LL.M (Yale),
D. Jur., York University, Canada.
Associate Professor

To most people death is a grim topic and that is why death is so little considered.[1] But death remains important, not only because each of us must confront it, but because death, today, has more clearly become a matter of timing. When is a person dead? Traditionally the moment of death has been determined by the moment when spontaneous heartbeat and breathing cease. These age-old criteria have become known as the signs of "clinical" death. Throughout history there have been reports of rare individuals who returned to life after such clinical death. And in recent decades emergency measures have been discovered to restore breathing and heartbeat that can bring back to life many people who in the past would have been dead permanently. Indeed, because modern medicine has found ways of delaying death and prolonging life, death has become a mere matter of timing. But this does not mean that modern medicine necessarily prolongs our living a full and robust life because in some cases it serves only to prolong mere biological existence during the act of dying.[2] Under these tragic circumstances a prolonged life can mean the prolongation of a heartbeat that activates the husk of a mindless, degenerating body that sustains an unknowing and pitiable life—one without vitality, health or any opportunity for normal existence—an inevitable stage in the process of dying.[3]

Today, death and the process of dying are being invested with new dimensions.[4] They are being forced upon us by increasing medical capacities and by increasing human sensitivity and concern about voluntary euthanasia. That there has been an advancing public concern and sympathy for voluntary euthanasia is well-illustrated by the recent Quinlan case in the United States.[5] As this case illustrates, the time has come for man to rethink his traditional attitudes toward death. One cannot continue to view death in every

circumstance as necessarily bad, something to be avoided, or something for which punishment must necessarily follow when it is inflicted upon another. Nor can one persists in believing that any kind of life is so sanctified as to be preferred absolutely over death—rather, neurotic attitudes toward death must be replaced with a more realistic view of death as a biological function.[6] A concern for public attitudes toward death was expressed by Dr. Edmund Leach:[7]

> Our ordinary morality says that we must kill our neighbour if the state orders us to do so—that is to say, as a soldier in war or as an executioner in the course of his duty—but in every other case we must try to save life. But what do we mean by that? Would a headless human trunk that was still breathing be alive? And if you think that is just a fanciful question, what about a body that has sustained irreparable brain damage but still can be kept functioning by the ingenuity of modern science? It isn't so easy.

For many people their fear is not so much of death but of the tragic figure one might become before death. Moreover, there are many persons who refuse to outlive their usefulness and become burdens to themselves and others. Suicide is an option open only to those persons possessing the necessary means and the physical strength and ability to use them. It is hollow to hold that a man may, in certain circumstances, be justified in ending his life to avoid great pain and terminal suffering, but to deny justification to his call upon a willing expert for assistance in that task.[8] If we are to honour human dignity, we must not only change our attitudes toward death—we must also cease to leave the process of dying to chance and to the progressive disintegration of the body. The purpose of this article is to contribute to our necessary rethinking of death through a consideration of voluntary euthanasia.

The Principle of Voluntary Euthanasia

To avoid the possibility of confusion, it is necessary to distinguish voluntary euthanasia from other similiar but not necessarily related situations. By voluntary euthanasia reference is made to one specific situation and to no other. Any definition of the principle of voluntary euthanasia must lay emphasis on the word "voluntary" as it specifically applies to the right of an adult person who is in command of his faculties to have his life ended by a physician, pursuant to his own intelligent request, under specific conditions prescribed by law and by painless means. Voluntary euthanasia involves at least two willing persons—a doctor and a patient. Considered solely from the perspective of its recipient, apart from its medical assistance, voluntary euthanasia is most akin to suicide. Hence, with medical assistance rendered in accordance with law, the term simply refers to legally-assisted suicide.[9] But voluntary euthanasia should not be subject to whim, nor indulged whenever a person may decide he would like it; rather, it should be carefully controlled by statute and allowed only under rigorously legally-defined circumstances. Equally, euthanasia must be "voluntary" on the part of the doctor as well as the patient. There is no requirement that a doctor must administer euthanasia to a patient. Instead, voluntary euthanasia provides a way for legalising free choice—a liberty.

Voluntary euthanasia also involves an identifiable act of commission by the attending doctor. Thus, it is to be distinguished from somewhat similar forms of meroy-killing which involve only an omission. While a fully generalised principle of voluntary euthanasia probably includes acts of omission as well as acts of commission, it is not intended to deal here with the problem of omissions. Although the problem of omissions weighs heavily on the conscience of every sensitive doctor and certainly deserves the attention of legal scholars,[10] its passive nature places it outside the present discussion which is restricted to the affirmative act of voluntary euthanasia.

The subject matter must also be considered with reference to those who may be its intended recipients. Sharp distinctions must be drawn among the several groups who may be thought to be potential candidates for euthanasia. Discussion is restricted only to those two categories of willing recipients. First among these are the incurably ill; this class is defined as including those adults who have a serious physical illness which is both incurable and terminal, and which is expected either to cause severe distress to the patient or to render him incapable of leading a rational existence. The second category includes the so-called "human vegetables"—this class is defined as those adults who suffer a condition of irreversible brain damage or deterioration such that their normal mental faculties are so severely impaired that they are incapable of leading a rational existence. For example, a massive stroke may destroy a man's ability to move, see and hear and to reason or to organise his life. Other examples of permissible candidates for voluntary euthanasia may have been rendered permanently unconscious by accident or disease; and in many cases, their biological lives may have been prolonged by artificial means.

Under the above definition, by limiting the permissible candidates for voluntary euthanasia, there is no room for authorization of eugenics, murder, genocide, or arbitrary destruction of the sick, the deformed, the senile or the mentally deficient. The end to be achieved is not human disposal, but, on the contrary, the enhancement of human dignity by permitting each

man's last act to be an exercise of his free choice between a tortured, hideous death and a painless, dignified one. This choice is not available under present law. Today, if a physician, motivated solely by mercy, consciously and deliberately kills his suffering patient in a painless manner at the request of the patient, his act is murder. The motive for which a killing has been committed is irrelevant, except insofar as it might affect the sentence received upon conviction. Neither good motives, nor a request or demand by the victim can exculpate a person charged with murder. Present law forces the person who is incurably ill, or the so-called "human vegetable" to endure the physical and mental misery often accompanying the process of dying. Similarly, many doctors in such circumstances consider themselves professionally obliged to keep the patient alive; thus, ironically prolonging the agony of death and the misery of the patient.

The Justification of Voluntary Euthanasia

One of the great tragedies that confuses almost every discussion about voluntary euthanasia is the entanglement of social considerations with morals.[11] Many still fail to perceive that there is a big difference between illegality and immorality. No question concerning abridgment of morals arises with respect to the principle of voluntary euthanasia. No one suggests that euthanasia should be mandatory or that a doctor should be punished or otherwise officially sanctioned for not administering euthanasia. Rather, the principle of euthanasia envisions a liberty and a legally sanctioned exercise of free choice respecting the dignity of death. In other words, voluntary euthanasia legislation must stand or fall on its secular merits, not its moral acceptability or repugnance.

What then, is the secular case for voluntary euthanasia? The case is profound, yet its structure can be stated simply.[12] Voluntary euthanasia can be justified by reference to three basic values of civilization viz. prevention of cruelty; principle of liberty and the enhancement of human dignity, an ultimate goal which is achieved by adhering to the first two values.

All civilized man will agree that cruelty is an evil to be avoided. But few people acknowledge the cruelty of our present laws which require a man be kept alive against his will while denying his pleas for merciful release after all the dignity and meaning of life have vanished, and he can only linger for weeks or months in the last stages of agony, weakness and decay. In addition, the fact that many people, as they die, are fully conscious of their tragic state of deterioration greatly magnifies the cruelty inherent in forcing them to endure this loss of dignity against their will. Moreover, it seems exceedingly cruel to compel the spouse and children of a dying man to witness the ever-worsening stages of his disease. At least in this context the current legal system lacks compassion. This fact constitutes one basic cornerstone of the case for legalizing euthanasia. Of course, legalization of voluntary euthanasia will not totally eliminate all the human pain and suffering which accompanies a long terminal illness. But it will tend to eliminate the law's current indifference to human misery and will reduce pain and suffering significantly by placing the power to terminate misery under the victim's own control. Our legal system can ill-afford to ignore this humane opportunity for reducing cruelty.

The second social value which supports the case for voluntary euthanasia is that of liberty. In this regard, our law has got the shoe on the wrong foot right from the very beginning. Why does our law provide that when a person participates in voluntary euthanasia it constitutes murder? From the point of view of the liberty argument the question should be reversed. We should start from the assumption that *all* voluntary acts are permissible, and, in the absence of some legitimate reason to deny it, we should presume that a doctor and a patient are free to act as they wish. The question should not be: Why should people have a legal right to voluntary euthanasia? but rather, the appropriate question should be: Why should our criminal law restrain the liberty of the doctor and the patient, denying them from doing what they want? In a free society it is the restraint of liberty that must be justified, not the possession of liberty. The criminal law should not be called upon to repress an individual's conduct unless such repression is demonstrably necessary on social grounds. It is also entirely unclear what interest justifies the application of criminal deterrents to a voluntary euthanasia case.

At this point, it may be appropriate to consider the arguments which have been advanced in opposition to voluntary euthanasia. The major objection relates to the issue of voluntary consent. The argument is that the afflicted patient may be so crazed by pain or stupefied by drugs that he is incapable of giving truly voluntary consent to euthanasia. This argument can be countered. Consent to euthanasia must be voluntary. The way to insure that a person consent is legally "voluntary" is to require that it be given while he is rational and sane. Thus, a statute legalizing voluntary euthanasia should require that a patient execute a formal document declaring his desire for euthanasia; this document should be attested by two disinterested witnesses, a "cooling-off" period may be required before a patient becomes eligible for euthanasia and so on. The finer points of the procedure could be easily

formulated once the principle is agreed upon. That a truly voluntary consent can be satisfactorily guaranteed by a properly drafted statute is not too difficult a task for legislators.

Another objection against legalization of voluntary euthanasia concerns the risk of mistaken medical diagnosis. This objection relies for its plausibility on the assumption that euthanasia will be administered well before the patient has reached the final stages of an incurable and terminal illness—that is, before the nature of his illness becomes patently clear and death inevitable. There is no reason to indulge this assumption. Euthanasia is, by principle, to be administered by physician only as a last resort, after the final progression of the disease has become obvious. Naturally, doctors, being human, do make honest mistakes and the possibility of mistaken diagnosis is present in nearly every medical case, not just those involving voluntary euthanasia. The risk of such mistakes can be substantially reduced if the enabling statute allows euthanasia only after two physicians (one a consultant) have certified in writing that the patient is suffering from an incurable terminal condition. Any intentional falsification of a disgnosis or written certification should be subject to criminal penalties.

A closely related objection to the second one is the possibility of future, miraculous medical discoveries.[13] The objection is that, in some future case, there will be a patient to whom euthanasia has been administered and who might have been "saved" by a subsequent medical discovery. If accepted, the theory of this objection would require that we leave to their demise all patients who are now in pain and dying from various diseases, relying on the mere chance that sometime in the future there may be some medical discovery or innovation which makes possible the cure of some fatal disease (although we do not know which one it will be). But, in the first place, it seems obvious that, whatever force there is in this objection, it has no application to the class of so-called "human vegetables"—there can be no medical discovery that will restore or "cure" a physically destroyed or deteriorated brain. And, on examination, this objection can also be seen to have no force in its application to those persons diagnosed as incurably and terminally ill. If a new medical discovery is made, of course, it will stop administration of euthanasia in all cases to which the discovery applies.

The final objection to legalizing voluntary euthanasia relies on the pain-controlling capacities of modern drugs. It asserts that these drugs can satisfy all the objectives sought to be achieved by voluntary euthanasia and, hence, the latter is irrelevant. Indeed, can modern drugs in fact achieve all that a voluntary euthanasia statute can achieve? First of all, we must again exclude from our consideration those persons—the so-called "human vegetables"—whose primary desire is not to be relieved of pain, but rather to discontinue their necessarily irrational existence, a purpose which cannot be served by the use of any of our modern drugs. In the remaining category of cases involving patients who are incurably and terminally ill, it is true that significant amounts of physical pain can sometimes (though not always) be controlled by drugs. As Glanville Williams has pointed out, drugs do save some few people from extreme physical pain, but they often fail "to save them from an artificial, twilight existence, with nausea, giddiness, and extreme restlessness as well as long hours of consciousness of a hopeless condition."[14] Drugs are inadequate for this purpose, and as Williams observes, we must decide "whether the unintelligent brutality of such an existence is to be imposed on one who wishes to end it. . ."

This facet of drug therapy also puts the doctors in a difficult situation, because ultimately a point is reached where the needed dose of drug is so large that it may either considerably speed up the death of the patient or induce it immediately.

Moreover, insofar as physical misery alone is concerned, there are diseases for which modern drugs fail to offer complete relief. For example, a person afflicted with cancer of the throat may be able to swallow or breathe only if he is willing to endure great pain (which is present well before he reaches the final stages of the disease). Furthermore, persons dying, both at home and in the hospital, do not always receive the massive doses of drugs necessary to relieve their extreme pain. These drugs also lose their effectiveness with continuous use, necessitating constantly increasing dosages.[15]

In summary, while it is conceded that modern drugs are useful in controlling pain, it is impossible to conclude that they achieve all that a voluntary euthanasia statute can achieve. Drugs should be looked upon as a complement to voluntary euthanasia, not as a substitute. Drugs are not equally useful in all cases—the need for voluntary euthanasia still persists. Increasing concern over the ugliness and human degradations of incurable suffering can no longer be dealt with solely by an unthinking reference to the "absolute sanctity" of life requiring the prolongation of a suffering existence as long as medically possible. The agonizing aspect of some deaths requires that the sanctity of life be weighed against the competing values of compassion, liberty and human dignity. On balance, these considerations dictate that the only legally just solution is to afford people the opportunity of choosing a quick and merciful death. Legalizing voluntary euthanasia is the appropriate way to make a friend of death.

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