

Suicide, Assisted Suicide, and Euthanasia:
Issues of Consent

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It seems to me that many current discussions of assisted suicide and euthanasia neglect to do two important things. The first is to mention that unassisted suicide is already legal. Thus separation of Church and State has been maintained and arguments of the 'only God gives life so only God can take it away' nature are legally irrelevant. This keeps humanists happy, as their world view does not include the supernatural. However, as suicide is not mandatory, theists, whose world view does include the supernatural, and who value the forementioned argument, should also be happy--they don't have to commit suicide.

That unassisted suicide is already legal renders irrelevant several other arguments as well. Since we have already decided that a person has the legal right to decide whether or not to end her/his life, arguments involving the sad consequences of a 'bad' or 'wrong' decision are irrelevant. One may say that if assisted suicide becomes legal, people will die, tragically, acting on a decision made in a despairing moment--but this is surely true of unassisted suicide as well, and yet we allow it, we allow people the right to make 'bad' decisions, the right to be wrong.

Arguments involving preferable alternatives are also irrelevant. One may say that the solution is not to allow assisted suicide but to provide better care for the terminally ill, disabled, etc. so that they won't want to choose death--but again, the same argument can be made for unassisted suicide, surely it is better to provide economic and psychological assistance so people won't decide it's better to quit living, but, again, we allow it nevertheless.

Lastly, arguments involving personal autonomy versus social utility are irrelevant. One may say that no one should have the right to make a decision unilaterally that will affect others, what about the spouse and children life behind?--true, but once again, we already allow such a decision for unassisted suicide, so why not allow it for assisted suicide, what's the difference? Good question: what is the difference between unassisted suicide and assisted suicide? In both cases, an individual chooses to die. However with unassisted suicide, the individual can and does actualize that choice, whereas with assisted suicide, the individual cannot and requires physical assistance from another to actualize her/his choice. So in both cases the mind is willing, but in one case the body is and in the other case the body is not, able.

Legalizing unassisted suicide but not assisted suicide seems therefore to give a sort of supremacy to the body over the mind: it doesn't matter what the mind wills--if the body can, it's legal, but if the body can't, it's illegal. This seems to be inconsistent with current social attitudes: we seem to value the mind more than the body ('it doesn't matter what you look like, it's what's inside that counts' to 'if one is forced to do X against one's will, it doesn't count'); life/death itself is determined by the state of the brain rather than the state of the heart or lungs (one is pronounced

dead when one is 'brain dead'--until that time, one is kept alive with pacemakers and respirators). It seems to me then, that unless we intend to re-examine the legality of unassisted suicide, and unless we intend to relinquish our prioritizing of the mind over the body, assisted suicide should be made as legal as unassisted suicide [1].

So why then do we hesitate? I think it's because we have a harder time determining the will of the mind than the act of the body (which is simply observable): with assisted suicide we're not as sure that the mind is willing; we think that coercion is more possible, more likely, with assisted suicide; we therefore put assisted suicide closer to homicide than unassisted suicide. This may, in fact, be correct: all that separates assisted suicide from homicide is consent.

So the next important question is what constitutes valid consent? A survey of the medical ethics literature suggests that valid consent is capable (referring to the capacity to understand and so form a judgement), informed (regarding ones's condition, the proposed action, its risks, consequences, and alternatives), and voluntary (that is, freely willed by the self).

It seems to me that the first two requirements can be rather easily met. We have tests of mental competence that we apply in other situations (to be sure of justifiable guilt/innocence, for example, or to determine the need for guardianship). Surely we could use these tests to establish the mental competence or capability of the individual requesting assistance with suicide. As for being informed, we could simply provide the information required to meet that criterion before accepting the consent, the request for assistance. (Though I imagine most have already become quite informed--that's why they're making the request.)

I think it is the third requirement of valid consent, that of voluntariness, that presents the difficulty and most makes us hesitate. We assume that if you do it yourself, it is, without a doubt, what you want--whereas if someone else does it for you, to you, it can easily be against your will. We assume that all acts of the body are willed.

Our assumption is mistaken, however, because it does not take into account forms of coercion that may be influencing the action such that it's not voluntary--or at least no more voluntary than the assisted suicide. That's why a suicide note is important: it may 'guarantee' that the act was voluntary, that it was suicide and not homicide.

Assisted suicide may in fact be more certainly consented to than unassisted suicide: since we don't require the unassisted suicide to be competent or informed at all, any proof that these two requirements have been met make the assisted suicide more consenting than the unassisted suicide; and with respect to the third requirement, great precautions can be taken to ensure voluntariness--not only can there be a superior suicide note (a signed declaration carefully worded) but it can be witnessed by disinterested parties.

Even so, we are left with the question of which forms of coercion invalidate consent by negating voluntariness? External only (for example, 'if you don't kill yourself, I'll kill your kids') or internal as well (for example, 'this depression is driving me to do it')? Explicit only (for example, a spoken threat) or implicit as well (for example, an inferred consequence)?

Can we ever be sure the individual really consented--capably, informedly, and voluntarily? One answer is that insofar as consent is, essentially, a state of mind and one's state of mind is, essentially, unknowable to others, no, we can't be sure. So instead we focus on the expression of consent. But it is precisely the expression, the physical event, more than the mental event, that can be coerced. Perhaps what's needed then is a clear analysis of coercion. In the meantime, let's recognize that this is not a new problem: consent is what separates the legal from the illegal in other instances as well--loan and theft, 'having sex' and rape; and in spite of the slipperiness of the concepts of consent and coercion, we do not disallow loans and having sex.

The second neglected point in many current discussions of assisted suicide and euthanasia is the distinction between the two: assisted suicide differs from euthanasia in one very important way--with assisted suicide there is consent, with euthanasia there is not. I consider Nancy B., Sue Rodriguez, and Kevorkian's clients (to name some of the more publicized cases) to be instances of assisted suicide; I consider Karen Quinlan and Tracey Latimer (again, to name the more publicized cases) to be cases of euthanasia.

To clarify, consent by the individual concerned is the distinction. In cases of euthanasia, there is, instead, consent by another person on the individual's behalf--proxy consent. As you might guess, proxy consent is even more slippery than consent. But again, that has not been, in our legal past, sufficient reason to disallow actions based on proxy consent: parent guardians give consent on behalf of their young children all the time; significant others give consent on behalf of unconscious adults.

The first important question is when is proxy consent sufficient? That is, in which cases do we say consent by the individual concerned is inadmissible and/or impossible. I think we can simply apply the criteria of valid consent discussed earlier: if the person is capable, informed, and voluntary, then proxy consent is unnecessary. At the extremes, application of this test will be easy: an unconscious or comatose person is clearly incapable of giving/withholding consent; we're also pretty sure about infants and severely retarded people; the line gets fuzzy with older children and less retarded people. Perhaps the test of mental competence mentioned earlier would keep the line clear--but it had better be a very good test.

The second important question has to be what constitutes valid proxy consent? Certainly it must have the attributes of direct consent, it must be capable, informed, and voluntary. Additionally, well, there are a few possibilities. One is to apply the 'reasonable standard' criterion and say that the decision must be what any reasonable person would make. But what is 'reasonable' and who decides? For theists, any euthanasia may be unreasonable because 'miracles happen'; for humanists, the belief that some god will suddenly suspend the laws of cause and effect is what's unreasonable and so for them, euthanasia may be reasonable indeed.

Another is to say that the decision must be in the best interests of the individual concerned. But this has problems similar to the reasonable standard solution--what is 'best' and who decides? A third answer to the question what constitutes valid proxy consent is to say that the decision must be what that individual would make if s/he were able (if s/he were capable, informed, and voluntary). This depends on guesswork, unless a living will exists--though a living will essentially changes euthanasia to assisted suicide.

A fourth answer might be that since personal autonomy is clearly impossible, a decision should be made on the basis of social utility: why should at least three people sacrifice their lives to save one person? Is that one person worth three? [2]

Lastly, we could decide on the basis of actual and/or potential quality of life--not its value to others, but its value to the individual. This may translate into specific criteria such as the presence of continual (?) severe (?) pain and/or (?) chance of recovery. In this case, it would again be important to maintain a separation of Church and State--the possibility of a miracle or some such divine intervention, because irrational, should not be considered a chance of recovery. With this distinction between assisted suicide and euthanasia, it can be seen that arguments involving cost ('if we make it legal, hospitals and hospices will just start killing off terminally ill and disabled people because it's cheaper') apply only to euthanasia--in the case of assisted suicide, the decision is not up to the hospitals or hospices. Because of this cost-effective possibility however, perhaps the decision should not be up to the hospital or hospice in the case of euthanasia either.

As for the distinction, often made, between passive and active euthanasia, it seems to me to rest on a premise that the way things are, the 'natural' course of things, (the divine plan?), has some sort of priority; to be passive, to omit, is to give due precedence to the way things are but to be active, to commit, is to affect, to change, the way things are--any human agency, then, is 'interference'. I don't subscribe to this view; I think 'interaction' is a more accurate description of human agency.

Furthermore, all human behaviour can be described as active: yes, I can either shake your hand (active) or not shake your hand (passive); but likewise I can shake your hand (active) or hold my hand by my side (active). Such arbitrary differences in description should not matter in decisions about life and death--surely intent and consequence are what's important.

To summarize, our decisions about unassisted suicide, assisted suicide, and euthanasia seem to depend on our decisions about consent--its definitions, determinations, and justifications. And it is to these issues we should turn our attention.

NOTES:

[1] I have accepted a mind-body dualism for this paper; I have also loosely equated the mind with one's character, one's will, and one's brain. Both moves are arguable (see Daniel Dennett's work, for example), but such argument falls outside the scope of this paper.

[2] Round the clock care equals three eight-hour shifts, hence three people. Though since that just accounts for labour and not for food, shelter, and the specialized technology usually required, the people equivalent figure would probably be greater than that.