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Moral Dominion Over Dying: The Case for Mercy Death

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Whether or not we have a right to intervene and encourage death when someone is in a dying way has been argued pro and con. The view that we do have a moral right to hasten the dying process by direct action is no longer on the fringes of ethical thought or practice, but that view has become part of the mainstream. Reasons for this shift are explored in this essay.

Some twenty-five years ago, my Uncle Dan came to our house for what were to be his final days. His condition was described by his doctor as "coronary deficiency." Even I, as a layman, observed that his heart was limping, his pulse irregular and weak. He had no strength except at terrible moments when sudden pain would strike parts of his body. When the pain struck, this old sick man would cry out with the strength of a young boy. The doctor opined that, with the weakness of his circulatory system, arteries or organs were collapsing and causing this appalling pain.

One evening, I gave him two pills prescribed for sleeping. He fell asleep, but in 45 minutes he awoke screaming. The pains had returned. I rushed to the phone and called his doctor. The doctor could hear the cries of pain and knew immediately what was the problem. He asked if I had given him the two sleeping pills. I said I had, but only 45 minutes before. There was a long delay, filled with more agonizing laments, and then the doctor said very deliberately and slowly: "Give him two more." I asked, "Could he tolerate two more?" Again the deliberate response: "Give him two more." I did. The pain eased. He fell asleep and never awakened. The next morning when the doctor came to pronounce death, there was a wordless conversation between the doctor who had made an anguished ethical choice the night before and the ethicist who had never worked or written on the topic.

The problem the doctor faced was our moral dominion over the dying process. In some areas, the human family feels morally free to impose death. Massive death is imposed with patriotic pride in the slaughter called war. The killing of unarmed, lower economic class prisoners in capital punishment is still popular and defended by conservative savants. These two crude forms of killing, which appear rational only because they are so long tenured in custom and culture—the familiar comes to seem good—are finally receiving serious challenge in ethics.

Simultaneously, our right to intervene and encourage death when someone is already in a dying way, is being rethought. The subject is not new to the human race, but the breadth of acceptance of the right to mercy death is a novelty in our modernity. As my opening story illustrates, the subject has been acted upon under the pressures of crisis situations. Now practice and theory are being wed, and western culture is newly open to this serious expression of moral freedom.

Mercy Death Today

When I published the first edition of my book Death By Choice in 1973, I defended the moral right to accelerate the dying process by direct intervention in certain circumstances.1 In the multiple reviews and serializations of the book and in conferences that flowed from it, I learned that there was a strong movement in thought and practice regarding mercy death. Since 1973, that movement has accelerated.

Three to five percent of the deaths in the Netherlands are attributed to some form of mercy death.2 The Netherlands is particularly interesting since, as is usually noted, it involves not so much a legalization of mercy death as a privatization of it. Even when the law says that such actions are to be reported, fewer than 2 percent are actually recorded.3 So the complicated legal regulations that have attended this moral revolution in Holland have func-

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tioned as a pacifying backdrop for the blessing of
individual and private choices by patients and doc­
tors.

In an Australian poll, 76 percent of the general
public supported physician-assisted mercy death. In
a poll of Australian nurses, 66 percent said they had
been asked by patients to accelerate the dying proc­
ess and 85 percent of this group had complied.4

In the United States, Washington state came close
to legalizing mercy death, with 46 percent of the
vote in favor of it. A majority of Americans in vari­
ous polls consistently judge mercy death to be
moral and acceptable in certain circumstances. Phi­
losopher Margaret Battin says, "I think that the
United States will come to accept assisted suicide
in the relatively near future, officially as well as
tactily..."5

The view that we have a moral right to hasten
the dying process by direct action is no longer on
the fringes of ethical thought or practice. My posi­
tion on mercy death now seems considerably less
lonely than it did in 1973.

Reasons For This Shift

(1) Many years ago, the British historian Arnold
Toynbee said that Americans treated death as
though it were an un-American activity. Still, a cou­
gle of million Americans got away with it every
year anyhow. What has happened since Toynbee’s
chiding is a cultural rite of passage. We have wit­
nnessed a near-obsession with death and dying.
Courses and lectures and books on the subject have
multiplied during this transitional period. We have
begun to look death in the face. Ethical reassess­
ment of death-related questions naturally flowed
from this cultural mutation.

(2) Medical advances also prodded this movement.
For the ancients, death was not something to be
sought. Life was short and often brutish. General
longevity is a modern achievement. Now death can
be desirable before it is medically allowed. Now too
we know more about how to bring on death when
terminal illness is marked by undefeatable pain.
These technical advances have pushed the ethics of
mercy death.

(3) We have begun to face up to fraud. Mercy death
has been going on, even here in the United States.
Twenty-five years ago a study on the dying patient
stated matter-of-factly, "There is considerable evi­
dence that doctors do terminate lives in certain situa­
tions."6 Our law did not cope with this. In Ur­
uguay a law promulgated in 1933 says, "The judges
are authorized to forego punishment of persons
whose previous life has been honorable where they
commit a homicide motivated by compassion, in­
duced by repeated requests of the victim."7 When I
was writing Death By Choice I called the Uruguay­
an embassy to see how that law had been faring. I was
told it was working well. The embassy official
added, with some delicate hesitancy, that this law
spared them "the embarrassments" of our system.
His reference was to a celebrated case at the time
where a mercy death had been "justified" by de­
clarin the person doing it to be insane—although
he clearly was not. In effect, we were playing cha­
rades to get the same results the Uruguayans got
legally and candidly. Distaste for these charades is
pressing the new ethics of mercy death.

(4) Religious arguments are also arising in favor of
mercy death. In 1985, a commission of the Re­
formed Churches of the Netherlands issued a re­
port in which it said that taking a life, in a mercy
death situation, "is not necessarily without justifica­
tion in the light of faith."8 This is quite arguable. In
my recent book, The Moral Core of Judaism and Chris­
tianity, I discuss a number of symbols and themes
in Judaism and Christianity which could be used to
argue for the morality of mercy death.9

Jewish and Christian biblical religion was not fa­
tastic. It did not present persons as corks bobbing
hopelessly in the currents of fate. Rather it pictured
us as actors who could redirect the tides. When
asked what we are like, it replied, "like God!" We
were crafted in the image and likeness of God. We
are take-charge "stewards" of the earth, not passive
witnesses. Theology went on to call us co-creators,
co-providers, and even participants in divine provi­
dence. These symbols functioned historically to give
an enormous push to technology in areas influ­
cenced by biblical symbolism. If something needs
doing, those made in the image of God, who are
vocationally partnered with God in the fashioning
of creation, ought to get out and do it. In so doing,
we are not "playing God," but simply being our
God-like selves.

From this base, it can easily be argued that
death, which is always thought to be the enemy,
may at last become the best remaining friend. Death
might be the only feasible relief for unbearable suf-
ferring in a terminal illness. When that is the case, God-like people who are made to go for the good when they find it, might reach out for death.

The alternative would be to say that when we enter the dying process, our God-like minds and wills are no longer supreme; we may not discern the good and choose it as we have done all our lives. Biology is now our destiny. God’s will could be manifested only in the symptoms and timetable of our disease. This form of biological determinism is losing its grip today.

**Historically, mercy death has been acted upon under the pressures of crisis situations.**

(5) The classical objection to mercy death, with or without a physician’s help, has had many names: the domino objection, the parade of horrors, the finger out of the dike, the camel’s nose under the tent, the slippery slope, etc. It is the argument from effects which implies that since there are dangers associated with this exercise of freedom, we must place it under taboo. Usually, this argument falls back on the Nazi analogy. We will replicate the Nazi euthanasia experience if we allow any exceptions at all. This objection is still proffered by writers such as Daniel Callahan and Alexander Capron.10

The argument is losing its force due to the experience of mercy death taking place with no ensuing parade of horrors. The Nazi experience of state-imposed death is not entertained seriously anywhere, making the analogy strained at best. The ancients had the best answer when they said *abusus non tollit usum*, meaning abuse does not rule out use. The fact that something can be abused does not mean that it cannot be intelligently used. Medical experimentation has been abused here and everywhere else. We do not taboo it, but rather intelligently and sensitively and alertly work against the abuses.

Mercy death must, however, be approached with reverent awe. As I wrote twenty years ago: “Life is the good thing and the precondition of all good things. Any decision to end it in any context, for self or for another, must be slow, deliberate, and reverential. But the life that is good, also bears the mark of the tragic. There are more times when the ending of life is the best that life offers. Moral persons will see this, and then, more than ever, they will know the full price of freedom.”11

**References**


7. Maguire, 35.

8. de Wachter, 27.

9. Daniel C. Maguire, *The Moral Core of Judaism and Christianity* (Minneapolis: Augsburg-Fortress, 1993). This book does not discuss mercy death but it does give the basis on which the defense of mercy death could be mounted.
