6-1997

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SLJT, June, 1977, Volume XX, Number 3

DEATH AND THE MORAL DOMAIN

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Death consciousness in our time is caught amid the forces of powerful cross currents. On the one hand, especially on the American scene, death, in the words of Robert Veatch, is treated like "an immoral power to be driven from the community like the Salem witch."[1] The enduring tragedy of Karen Quinlan has been from the beginning a macabre symbolization of our society's discomfort with death and our inabilty to comprehend the ancient appreciation of "the good death" (*bene mori*). The places where death is allowed to happen testify further to our inability to accept death as a fact of life. In 1937, 37 percent of Americans died in institutions; in 1949 the figure was 49.5 percent, and by 1958, the figure had risen to 61 percent.[2] In a study on New York City it was shown that in 1967, 73 percent of deaths occurred in hospitals and other institutions.[3] We are, then, culturally in flight from death, even though two million Americans indulge in it every year. And we also clearly deserving of British historian Arnold Toynbee's taunt that, for us Americans, death is something of an un-American activity, an effront to our exuberant commitment to life, liberty and the pursuit of happiness.

There is, however, a counter-force present in the culture. An almost obsessive interest in death has emerged in recent years with all the

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[1]Robert M. Veatch, *Death, Dying and the Biological Revolution* (New Haven and London: Yale University Press, 1976), p. 5.

[2]U. S. Department of Health, Education, and Welfare, Public Health Service, Episodes and Duration of Hospitalization in the Last Year of Life United States–1961 Vital and Health Statistics, series 22, no. 2 (Wash. D. C.: U. S. Government Printing Office, 1966), p. 3. This study only goes up to 1958. No similar figures of a later date are available.

[3]Monroe Lerner, "When, Why and Where People Die," in *The Dying Patient*, ed. Orville G. Brim, Jr. *et al.* (New York: Russell Sage Foundation, 1970), p. 23.

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seriousness of a critical rite of passage. The denials and disguises of death have not suddenly evanesced, but alongside of them and in contradiction of them is a many-sided and newly obsessive concern with the phenomenon of death. Professor Edwin Schneidman even goes so far as to dub ours "the age of death." "In the Western world," he writes, "we are probably more death-oriented today than we have been since the days of the Black Plague in the 14th century."[4]

The cultural shift involved in all of this is highly significant for ethics. As we free, moral beings confront our mortality, we are forced to consider the question of how our mortality relates to our freedom. We alone among the animals know death to be our destiny. We alone are animals endowed with the power of deliberation and choice. The inevitable question, then, is how may our faculty of deliberate choice enter into the dying process? Can the animal of deliberate choice have death by choice? How much moral dominion do we have over death? The answers to this cover a broad range: on the one hand there is the view that we must do all that is in our power to forestall death, resisting it until we are overwhelmed by its claims. Others feel that we may refuse to start death-preventing treatments or desist from those treatments once started when it becomes clear that we are no longer serving life so much as prolonging the tortures of death. Others feel, beyond this, (and I am among them) that there may even be extreme situations in which we may reasonably and morally enter into the dying process as positive agents for death, chemically or otherwise intervening to hasten the dying process. Whatever position is assumed in this matter brings us into contact with the foundations of moral experience. The relationship of our moral freedom to death evokes more foundational questions than any other issue in ethics.

Professors Harmon Smith and James Rachels and all other participants in this symposium will bring distinctive approaches, preoccupations, and answers to this subject. The unifying force of the common endeavor, however, will be found in the fact that as we treat of death we are of necessity touching at the deepest wellsprings of the mystery of moral existence. One's view of death will reflect one's view of life. Moral responsibility in the face of death presses us to show how we evaluate our freedom, our social nature, our worth as persons, and our God. The current ethical concern with death is not to be presumed a superficial fad. It is an opportunity for ethics to

[4]Edwin Schneidman, "The Enemy," *Psychology Today* 4, no. 3 (August 1970), p. 37.

probe its depths and to discover its own presuppositions. Even though our debate will unfold here through the arguments of normative ethics, it would be shallow of us not to be aware of the implications of what we are about for foundational ethics.

In a study published in 1974, I defended the proposition that in certain extreme cases it would be moral and should be legal to take direct, positive action to induce death..[5] I would like to comment on the changes in the ethical treatment of the issue that have appeared in the literature since that time.

In addressing myself to this awesome thesis, I am not trying to say that this is the most practically pressing discussion in the area of death studies today. The times when direct acceleration of the dying process would be indicated are likely to be few. From a practical viewpoint, the most important developments in death studies today are in the area of care for the dying and the bereaved, in the hospice concept, and in the more effective methods for the management of physical pain and depression. This is what can transform the approach to death in our society and this is where the principal energies of those engaged in the study of death should be directed.

The thesis that I am addressing, however, is the most fundamental moral question in this area and the position one takes on it will be reflected in the other theoretically less taxing questions surrounding human death. When we form a judgment on whether or not we are ever free to accelerate the dying process, we have thereby taken a stance on the definition of what death is *for persons*. All discussions and all the literature on death and dying take place under the mantle of certain assumptions on what death implies for persons. When a person says that we are never morally free to end our lives directly, he or she has assumed a specific conception of personhood and personal death that will have to be influential in other death-related issues. The question of mercy death, then, is not an exciting but optional side-show. Clarity here is essential for clarity on the meaning of death itself.

The state of the question in contemporary ethics . . .

The subject of mercy death is getting treated more often, and more ethicists are beginning to defend its licitness in certain circumstances. Philosopher Marvin Kohl uses the term "beneficent euthanasia" to

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[5]Daniel C. Maguire, *Death By Choice* (Garden City, New York: Doubleday, 1974; paperback edition, New York: Shocken Books, 1975).

describe a form of moral mercy death that is justified as a mode of kindness. In his words, "the term *active beneficent euthanasia* is synonymous with the term *mercy killing*—that is, both refer to the inducement of a relatively painless and quick death, the intention and actual consequences of which are the *kindest possible treatment* of an unfortunate individual in the actual circumstances."[6] It is Kohl's view that "in situations where there are no overriding rights or similar considerations voluntary active beneficent euthanasia . . . is a moral obligation."[7] Kohl argues that there is a case for beneficent euthanasia also from grounds of justice since we have a right to live, a right to die, and a right to die with dignity.[8]

Philosopher Richard Brandt has engaged this topic also. He looks at the principle *thou shalt not kill* and wonders whether this is a basic and *prima facie* principle and obligation. Brandt decides that what is more basic is the obligation not to injure. He then goes on to suggest that not all killing is injurious. "If I come upon a cat that has been mangled but not quite killed by several dogs and is writhing in pain, and I pull myself together and put it out of its misery, I have killed the cat but surely not *injured* it. I do not injure something by relieving its pain. . . . If someone is being tortured and roasted to death and I know he wishes nothing more than a merciful termination of life, I have not injured him if I shoot him. . . ."[9] He thinks there can be cases where this can be applied to mercy death. ". . . in a situation in which it is rational for a person to choose termination of his life, his expressed wish is morally definitive and removes both the obligation to sustain life and the obligation not to terminate."[10]

University of Victoria philosopher, Eike-Henner W. Kluge in his book, *The Practice of Death*, argues "that euthanasia is permissible in several cases."[11] For example, Kluge says "euthanasia is permissible in all those cases where an individual, in full awareness of what he is about, asks to be killed or to be allowed to die because he finds life

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[6]Marvin Kohl, "Voluntary Beneficent Euthanasia," in *Beneficent Euthanasia*, ed. Marvin Kohl (Buffalo, New York: Prometheus Books, 1975), p. 134.

[7]*Ibid.*, p. 135.

[8]*Ibid.* For Kohl's full argument, see Marvin Kohl, *The Morality of Killing* (New York: Humanities Press, and London: Peter Owen, 1974).

[9]Richard Brandt, "A Moral Principle About Killing," in Marvin Kohl ed., *op. cit.*, p. 109.

[10]*Ibid.*, p. 111.

[11]Eike-Henner W. Kluge, *The Practice of Death* (New Haven and London: Yale University Press, 1975), p. 178.

physically and/or psychologically unbearable, and where no other act would bring about an experiential alleviation of that state of affairs. It would be a mistake to argue that acquiescence in such a request would be giving in to a request for murder. The act would simply not be one of murder."[12] Murder, argues Kluge, minimally involves an infringement of rights. In the kind of euthanasia just described, he alleges that such is not the case. A right can be given up; a gift can be renounced. "Therefore, in cases where the quality of life has reached a certain subjective minimum, the individual has a right to give up that life: to request euthanasia. Consequently, in such cases euthanasia would be morally acceptable."[13]

A helpful though uneven study was produced by a Working Party of the Church of England: *On Dying Well: An Anglican Contribution to the Debate on Euthanasia.*[14] Two things should be noted about this study. As a work of multiple authors, not all the authors agree with all that is said, though all agreed to the conclusions in Chapter 7. The Report does have the authority of the Board for Social Responsibility of the Church of England and the chairman of that board, Ronald Leicester, notes in the foreword that "many will find in it a fair reflection of informed Church of England opinion as it stands at the present time."

Secondly, the study is dominated by the concern for the moral problem involved in permitting euthanasia "by law." It begins with reference to the two Voluntary Euthanasia Bills presented to Parliament in 1936 and 1969 and its central concern throughout is whether voluntary euthanasia legislation is morally desirable. The conclusion of the Report is negative on this.

> The 'good and simple principle' that innocent human life is sacred has influenced profoundly our conviction that the old and the dying should be cared for and consoled, no matter what their condition. It has been accepted by the law and by the profession of medicine. For our society to recognize any departure from it, involving consequences that we cannot predict and may not desire, would require clear, cogent and

[12] *Ibid.*, p. 179.

[13] *Ibid.*

[14] Printed in England by Lightbowns, Ltd., Ryde, I. W.; available at Church Information Office, Church House, Dean's Yard, SW1P 3NZ. Authors of the study were P. R. Baelz, R. M. Hare, M. A. H. Melinsky (Chairman), B. Mitchell, E. Garth Moore, C. Saunders.

conclusive justification. For ourselves we do not think that such exists.[15]

It is important to note, however, that the Report is not saying that a moral case for euthanasia may never be made. It says, rather, that "It is often expedient to forbid by law acts which are thought morally blameless. Such acts might include some cases of euthanasia, if although they were held to be morally permissible, the making of them legal were likely to result in practice in the legalizing of other acts as well which the law should be seeking to prevent."[16] The Report, therefore, is not properly understood unless one attends to its distinction between the moral question of legalizing euthanasia and the moral question of whether euthanasia is morally licit in certain exceptional cases. As to the latter question, the Report allows in its unanimous conclusion that where the "best" care of the dying is not available, "exceptional cases could conceivably arise in which deliberate killing would be morally justified as being in the best interest of the person concerned."[17] Ethically speaking, this is no minor concession, and we shall note further examples of this openness elsewhere in the Report. Notice here, though, that the Report is positing a very large conditional assumption. If the *best* of standards prevailed, "better alternative means of alleviating distress [i.e. better than euthanasia] would *almost always* be available. . . ."[18] Even then, better means than euthanasia for alleviating distress would not always be available! The point is that the Report does not assume a position of absolutism with regard to euthanasia. Indeed it discourages such absolutism. Given the caution that always marks approved Church pronouncements and studies, this is no slight development, and I see it as a significant harbinger of a more liberal direction in the ethics of mercy death.

To get the full flavor of this report, some further aspects of it deserve comment. The Report argues that even if there are "hard cases" where euthanasia might be arguably moral, "it would be better to allow hard cases to be taken care of by the various expedients that are at present available."[19] This is again a large and not adequately ar-

[15] *Ibid.*, p. 24. See also p. 12.
[16] *Ibid.*
[17] *Ibid.*, p. 61.
[18] *Ibid.* (emphasis added) See also p. 18.
[19] *Ibid.*, p. 10. See also p. 12.

gued contention. It imports that if there are morally justifiable cases of mercy death, it would be better to let them be handled outside the law. However, given the fact that care for the dying and medical resources are not kept at ideal levels in England or anywhere else, there is no way of saying that "hard cases" would be necessarily few in number. *This leaves an indefinite number of cases unregulated and open to abuse.*

The analogy to killing in self-defense seems telling here. It would be a "hard case" indeed when a private citizen would have no alternative but to kill in self-defense. Would anyone suggest, however, that these cases be handled by various expedients outside the law on the grounds that sanctioning any killing would lead to a domino effect of undesirable consequences? I doubt it.[20]

The Report allows further that "the prohibition against killing the innocent does not hold entirely without exception."[21] Outside the medical field, there are desperate situations where men have killed others to avoid their hopeless and severe suffering. Thus soldiers trapped in blazing gun-turrets and the wounded who face death by torture if left on the battlefield have been shot by their comrades. The Report says: "We have not found it possible to say that in these desperate situations those who killed acted wrongly. . . ."[22] From this, the Report moves on to the curious conclusion: "Yet to declare that 'it is not always wrong to kill the innocent; it is only generally wrong' would be to deprive the principle of the sanctity which we feel it to possess."[23] Without establishing parity (an impossible task, I submit) the Report lumps *any* effort to end innocent life in a category with activities such as torture, falsifying evidence, or discriminating on the basis of race.[24] No matter how strong your case may appear, it is better, in a view expressed in the Report, not to admit any "violations" of such principles in the form of an exception.

There are, of course, kinds of actions such as rape and torture which may be treated as virtually exception-free. One would be forced to

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[20] I concede that killing the guilty aggressor and killing the innocent are very distinguishable and that the latter has been banned with special care. However it is not acceptable to imply that the justifiable killing of the innocent and the unjustifiable killing of the innocent relate in the same fashion to the respect for innocent life and would precipitate the same effects.

[21] *Ibid.*, p. 11.

[22] *Ibid.*, p. 10. See also p. 18.

[23] *Ibid.*, p. 11.

[24] *Ibid.*

bizarre exercises of the imagination to conjure up instances where they would be morally indicated in the absence of all possible alternatives. Mercy death, however, may not be gratuitously placed in this class, as other statements even in this very Report should lead one to perceive. Furthermore, it is an error in ethical theory to speak of *violating* one's principles when one meets exceptions to them. Both the principle and the legitimate exception to it are dictates of right reason and discerning love, and thus have equally sound credentials.

In its explicitly theological section, the Report argues that "there are strong grounds from the Christian point of view for hesitating long before admitting any exception to the principle forbidding killing human beings."[8] This is a good point with which I am in full accord. There should be no passion for euthanasia. Indeed we should work for the conditions which make it less and less indicated. To say this, however, does not close the door to moral mercy killing any more than favoring the conditions of peace makes one into an absolute pacifist. The Report recognizes this, observing that it is difficult "to maintain either the moral position that euthanasia is always and absolutely forbidden, or the position that it is always permissible."[9] No one known to me argues that euthanasia is "always permissible," but the report does well to stress the difficulty of maintaining that euthanasia is always and absolutely forbidden. On the ethical impact of the exceptional cases where euthanasia might be licit, the Report says:

> Perhaps all that the unusual cases teach us is that it would be unwise to make one's conclusions about the more common cases depend on an absolute, not-to-be-questioned, moral prohibition of euthanasia. Such a position would be open to the following rebuttal: since the case for euthanasia is at least extremely plausible in these unusual cases, a case against euthanasia which rested on an absolute prohibition would be seriously weakened by what perhaps the majority of considerate people who took the words of Jesus in their natural sense would say about the unusual cases."

While granting that there are unusual cases where killing the innocent appears justifiable, the Report says in this same section that "a

[8] *Ibid.*, p. 22.
[9] *Ibid.*, p. 23.
[10] *Ibid.*, p. 24.

direct application of the teaching of Jesus to these cases would legitimize at least some instances of euthanasia."[28]

The Report is well-advised here to avoid the temptation of absolutism. It is less well-advised in trying to draw Jesus into the fine points of this debate. While allowing as I do that there are specifying themes to Christian moral existence which may often have influence at the practical level of decision-making[29], I believe we must all resist the exegetically naive attempt to make "direct application of the teaching Jesus" to intricate debates such as that on mercy death.

Before leaving this Report which I think deserves broad attention in spite of the problems I find in it, I will cite two of its strongest contributions.

The Report states that "It is entirely misleading to call decisions to cease curative treatment 'negative euthanasia'; they are part of good medicine and always have been."[30] The terms negative and passive euthanasia are not helpful. (Indeed I find any use of the term euthanasia unfelicitous in view of its indefiniteness and linguistic variability.) The idea that a doctor who stops useless medications has entered the torrid zone of the euthanasia debate is a misconception. He is not stopping treatment; he is moving to treatment that is more suitable, which may be simply palliative care. There is no death-dealing here; there is only medicine in the form of appropriate care.

A second major strength of the Report is its concern with pain-management and its signaling of the high degree of success that is achievable today. It discusses the pain problems of 349 patients and reports that all but seven of these patients obtained good relief from their pain. Even of those seven, none had pain which was impossible to suppress under all circumstances. (Most required diamorphine to control their pain.)

A caution should be entered here, however. Pain is not the totality of what may be unbearable suffering. Someone dying of Huntington's disease may not have pain, but he has a unique suffering that many victims cannot bear and so are driven to death by choice. The disease involves continuous, involuntary and uncoördinated movements of the limbs and face along with a loss of articulation, and

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[28] *Ibid.*, p. 23.

[29] See Daniel C. Maguire, "Credal Conscience: A Question of Moral Orthodoxy," *Anglican Theological Review* Supplementary Series June, 1976, no. 6, pp. 37-54.

[30] *Ibid.*, p. 40.

marked tendencies to moodiness, irascibility, and disorientation. The final phase of this disease merits the term macabre. This illustrates emphatically that pain-management and suffering-management are not necessarily the same thing. There is also the subjective variable in suffering. Some people may be said accurately, if somewhat cynically, to "enjoy poor health." Some find the attention and care which illness brings to them rewarding. Others, because of different personality factors, may find even lesser indignities and discomforts unbearable. There is more here than diamorphine alone can address, and much of the discussion about mercy death takes no note of this.

I have lingered on the Anglican study because it is a revealing piece of evidence which shows the kinds of change that are occurring in the ethics of mercy. It also provides an entrée into the thought of some other ethicists who are mixed in their reactions to mercy death but who all reveal somewhat enigmatic approaches to this slowly opening question.

Richard McCormick's reaction to the Anglican study is somewhat special. He sees it as "a splendid piece of work." However, his treatment of it does imperfect justice to the tortured struggles of this work.

First of all, Richard McCormick's reaction to this study seems to illustrate that McCormick has not yet finished his thinking in this area, and that this may be the way with many ethicists. He is enthusiastic about the Report, sparing it any criticism at all. In view of the problems of the Report (and my listing was not exhaustive), I find this surprising. There are things there which I would think would, in other contexts, have tempted his able pen.

He does note with apparent approval that the Report allows for killing the innocent life of the soldier in the blazing gun-turret. He then says, however, that "the authors are reluctant to admit such exceptions in the medical field" because "it is doubtful that there are any such cases" and, even if there were, "it would be impossible to specify them precisely enough to prevent continuous and abusive expansion. . . ."[7] There are two problems with this: first, McCormick does not sufficiently take note of the Report's preoccupation with the moral problem of legalization *as distinguished from* the moral problem of whether individual cases of mercy death might be moral. He does acknowledge that the authors do not want to foreclose the moral debate on mercy death, but by saying that the authors are reluctant to admit exceptions

[7] Richard McCormick, "Notes on Moral Theology," *Theological Studies* 37 (1976), p. 98.

in the medical field, he does not signal the openings allowed by the study, and he does not comment at all on the authors' remarkable willingness to let exceptional cases be handled outside the law by various expedients. This approach to preter-legal expedients may be defensible, but it is certainly not a minor or self-evident assumption. I, in fact, submit that it is wrong and ill-considered. There are other ways of handling mercy death in society. There is, for example, the Uruguayan approach which is ignored in the Report. Uruguayan law, as promulgated in 1933 reads: "The judges are authorized to forego punishment of a person whose previous life has been honorable where he commits a homicide motivated by compassion, induced by repeated requests of the victim."[32] This approach, which I would see as preferable, does not attempt to read into law a voluntary euthanasia bill. Instead it subjects each alleged instance of mercy death to judicial review, as would be true in any case of homicide. The alleged mercy death might in fact be murder. There are copious reasons why persons would be basely impelled to kill the sick. On the other hand, it might be a case where mercy death was present and justifiable. The judges can then forego punishment if it is clear that no crime has been committed. This by-passes the problems of providing a law that will foresee all circumstances and commends the facts of each case to "the living intellect" (in John Henry Newman's phrase) of the judges. In my contact with the Uruguayan embassy, I was assured that the law has worked well and has not ushered in a "parade of horrors" such as the absolutists in the mercy death debate dolefully foretell.[33]

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[32]Penal Code of Uruguay, art. 37 (Law No. 9155).

[33]McCormick's treatment of "A Plea for Beneficent Euthanasia" in the same issue of the "Notes on Moral Theology" is inadequate. He limits himself to commenting on a brief article by Paul Valadier, S.J. in *Cahiers*, July 1975. Valadier is concerned because the authors of the plea present their position "*comme seule humaine et éclairée.*" He does not argue a moral case for or against euthanasia. There are problems with this. The "Plea" is, as Valadier calls it, a *Manifeste*. It is not customary in this genre to give full or nuanced argumentation. Valadier wants to know "*au nom de quelle éthique les auteurs parlent-ils?*" McCormick could have served this interest by noting that the authors were philosophers Marvin Kohl and Paul Kurtz. He could also have noted that the "Plea" did not appear without a scholarly context. Marvin Kohl edited *Beneficent Euthanasia*, a book to which I have referred above. This volume includes articles by some of the signatories (and others) to discuss both sides of the debate. Articles of signatories and others were also published in the issue of *The Humanist* which presented the "Plea." Kohl's own book, *The Morality of Killing*, reveals a great deal about the *éthique* of the plea. Focusing on the wording of the "Plea" does not do justice to a serious effort to explore this issue.

Other interesting things are appearing in what might be called the literature of uneasy transition regarding mercy death. We find some unusual twistings and turnings and methodological anomalies as writers confront this awesome issue. In one article, for example, we read: "If we have entered the dying process there are times that we can actively intervene to help ourselves die."[66] The authors of this article are furthermore unimpressed with the principal argument brought against the moral allowance of any mercy death. I refer to the domino or wedge objection. ". . . indeed, we suspect that euthanasia could be pragmatically controlled if we wished to do so."[67] One might fairly conclude from this that these authors, Stanley Hauerwas and Richard Bondi, are engaged in an ethical defense of mercy death. The central thesis of the article, however, is "that the notions of suicide and euthanasia are incompatible with and subversive of some fundamental elements of the Christian story."[68] Among other things in this article we find: "As with suicide, we think that euthanasia should be morally prohibited." "Suicide and euthanasia contribute to the erosion of community." "Suicide and euthanasia also undermine our notions of what it is to live bravely in the face of suffering; they tempt us to take on a story that will pervert not only our manner of dying but of living." It is stated that living requires bravery. "It is not, however, the bravery of ending life but of continuing it."[69]

The stated method of the article is to focus primary concern not on "what should we do" but on the question "what should we be." The notions of suicide and euthanasia "form intentionality to have one kind of character rather than another."[70] The key question is to find the story that forms the Christian community and relate the notions of suicide and euthanasia to this story. ". . . our job is to help the communities we serve to keep their language pure—in other words the ethicist is more like a poet than anything else."[71]

When it comes to saying why it is that euthanasia should be "morally prohibited," Hauerwas and Bondi note that there are purely prag-

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[66]Stanley Hauerwas and Richard Bondi, "Memory, Community and the Reasons for Living: Theological and Ethical Reflections on Suicide and Euthanasia," *Journal of the American Academy of Religion* 44, no. 3 (September 1976) pp. 451-452.

[67]*Ibid.*, p. 449.

[68]*Ibid.*, p. 440.

[69]*Ibid.*, pp. 449-451.

[70]*Ibid.*, p. 440.

[71]*Ibid.*, p. 442.

matic reasons for prohibiting it such as the weakness of prognosis, the possibility of new cures, problems of consent, the legal problem of distinguishing euthanasia from murder, and the effects of euthanasia on the practice and ethos of medicine. They then state: "These pragmatic reasons are important from the perspective of public policy, but they are not morally why euthanasia is rightly thought to be problematic. . . ." They feel that these problems could be "pragmatically controlled." The essential moral problem of euthanasia is stated thus:

> Rather it is a matter of not killing ourselves, even if we are in pain, as a way of affirming our continued contribution and affirmation of the goodness and care of the community in which we exist. In other words, our unwillingness to kill ourselves even under pain is an affirmation that the trust that has sustained us in health is also the trust that sustains us in illness and distress; that our existence is a gift ultimately bounded by a hope that gives us a way to go on; that the full, present memory of our Christian story is a source of strength and consolation for ourselves and our community."

Several difficulties present themselves here. First, the pragmatic problems cited above are dismissed too facilely and are too blithely commended to "the perspective of public policy." These problems are serious and complex and should not be dismissed on the assumption that public policy can pragmatically control them. What is the evidence for this? Also, that which is a problem for public policy is also a problem for ethics. The pragmatic is not preter-ethical for it is within the realm of pragma that moral value is realized.

Furthermore, it is not clear here whether we are dealing with either a kind of essentialism or a species of consequentialism. Is euthanasia *ex essentia* subversive of the Christian community-forming story? At times, this seems to be what Hauerwas and Bondi are saying. When they do grant that there are times in the dying process when we might morally intervene in an active way "to help ourselves die," they make this allowance in a context where they have just said that there are actions "that look very much like euthanasia." Clearly, this kind of active intervention would "look very much like euthanasia" to any passerby. Yet apparently, it would not be euthanasia within the character and form of the Christian community as per-

"*Ibid.*, p. 449.

ceived and conceptualized by Hauerwas and Bondi. What would one call it? And if euthanasia—the real euthanasia—contradicts the Christian story, is this perceived intuitively? If not, the reasons must be consequential; the effects of euthanasia (as a practice or as an act?) are such as to undo the community and its story. This presents further difficulties. Is this contention based on a prediction or on historical evidence? If on a prediction, it is liable to David Ben Gurion's observation that no one is an expert on the future. If it is based on history, where would we go to find the evidence?

The article also contends that "Humans never kill more readily than when we kill in the name of mercy."[41] Again, one's hunger for evidence is stimulated. There is impressive evidence that humans kill much more readily in religious and ideological wars, and as I have argued elsewhere, the motivation in mercy death does not enjoy the intentional unicity found in other killing situations.[42]

A final difficulty is found in the contention of the authors that they are "examining the formal notions of suicide and euthanasia in relation to the stories which shape our communities."[43] Is there but one Christian story? And if so, does it (or do all of the Christian stories) yield a very specific precipitate such as the negation of a Christian acceptance of some acts of euthanasia?

A similar approach is taken by Gilbert Meilaender who says that within the world that the Christian story depicts "the action which hastens death by means of an injection cannot be called 'care.' Not because the physician is presumed to have any subjectively evil motive, but simply because in the world so understood this cannot be part of the meaning of commitment to the well-being of the neighbor. As an action in the world, it cannot reflect the shape of God's action."[44] Again, this conclusion represents a very precise yield from the purported nature of the Christian story. One must know a great deal with great certitude about "the shape of God's action" to be in a position to say that a specific "action in the world" could not ever reflect God's purposes. If the Christian story were squeezed a bit more, could it, perhaps, yield a whole code of ethics? The exegetical problems here are not slight, and the presuppositions are enormous.

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[41] *Ibid.*, p. 449.

[42] See my *Death By Choice*.

[43] *Op. cit.*, p. 441.

[44] Gilbert Meilaender, "The Distinction Between Killing and Allowing to Die," *Theological Studies* 37 no. 3 (September 1976), p. 470.

In his opposition to mercy death, Arthur Dyck tries to get remarkably specific substance out of the Good Samaritan parable. The Good Samaritan ideal, he says, "understands mercy in two ways: as a pledge not to kill one's neighbor, and as a pledge to be the kind of person who provides care for those who need it. There is nothing in the story that suggests that there is anyone who is beyond our care or that one can claim that someone in need does not qualify for it. And certainly there is nothing in the story that suggests that killing is a form of mercy."[8]

Among the many things that might be said to that, let us settle for the fact that there is also nothing in the story of the Good Samaritan that says that it might be merciful to kill the soldier inextricably caught in the burning turret and begging the release of death. It is at least perilous to try to get a detailed notion of mercy out of one or many texts in scripture which will warrant the specific ethical dictates of the sort that Dyck is defending.

Dyck also overloads and misuses the idea that "every life has some worth," in opposing mercy death. Again, the soldier in the turret is not being killed because his life is judged worthless. Neither is this the case if someone in the final stages of Huntington's *chorea* were eased into death at his own request. The question is whether *death* might assume significant worth in certain contexts. This does not mean that life has become worthless in those cases. The worth of that life is on the contrary a motivating factor in the decision to bring on death. Life is deemed to be worth too much to be forced to go through such hopeless agony.

Finally, Dyck continues to argue that killing is a wrong-making characteristic of human action. This does not mean that all killing is wrong. One might expect Dyck to reach this conclusion since he says that "no human being or human community can presume to know who deserves to live or to die. From a religious perspective, some would leave that kind of decision to God."[9] But no. Dyck says that there is good killing. "For example, a person's effort to prevent someone's death may lead to the death of the attacker. However, we can morally justify that act of intervention because it is an act of saving a life, but not because it is an act of taking a life. If it were simply an act of taking a life, it would be wrong."[10]

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[8]Arthur J. Dyck, "The Good Samaritan Ideal and Beneficent Euthanasia: Conflicting Views of Mercy," *Linacre Quarterly* 42 (1975), p. 184.

[9]*Ibid.*, p. 187.

[10]*Ibid.*, p. 188, note 9.

This is a curious argument. For one thing, physical life is not a supreme value, especially in a Christian perspective. There may be many reasons to lay down one's life for the brother and the sister. Furthermore, most wars are not justified by the claim that they save lives in a physical sense but because other values are thought to be more important than continued living in an unfree or degrading condition, etc. Again, Dyck would be of little help to the man burning to death in the gun turret. Helping him to die would not be life-saving in Dyck's physical sense. Therefore it would be wrong. He would also be of little help in discussing extreme cases that might justify mercy death. He is logically boxed in by his life-saving rubric.

Kenneth L. Vaux has written an interesting short piece on how socially acceptable mercy death is likely to become. Since the domino or wedge argument is the one most often brought against mercy death, Vaux's position is noteworthy. Vaux argues that "widespread social acceptance of euthanasia will not occur because man is constitutionally unable to acquiesce in the face of death."[48] Vaux points to two causes of this. The first is biological and is rooted in our phylogenetic resistence to death. "Although concerted agreement is lacking, anthropologists from Levi-Strauss to Margaret Mead say that if any human trait is universal, it is the fear of death and repulsion against killing the fellow man. This impulse in man seems to intensify in his evolutionary development and technological progress."[49] The spiritual root Vaux sees as even more telling. This root is found in the long tradition of seeing death as an enemy and an offense. "By man came death into the creation. Death has a sting because it is a payoff for his sin."[50] Both of these factors are manifested in biomedicine's unwillingness to accept death. Witnesses to this are found in Western culture in "the medical commitment to preserve life and the social prohibition of euthanasia."[51] The current willingness to discuss and even to practice euthanasia seem to Vaux to be "a valid corrective against the force of life-prolonging technological development."[52] He even predicts: "What will emerge from the present crisis is a wholesome practice of elective death as a necessary corrective to the ex-

[48] Kenneth L. Vaux, "The Social Acceptance of Euthanasia: Prospects and Problems," in *A Symposium on Euthanasia*, published by The Catholic Hospital Association of Canada, 312 Daly Avenue, Ottawa, Canada KIN 6 G7, p. 13.

[49] *Ibid.*

[50] *Ibid.*, p. 14.

[51] *Ibid.*, p. 15.

[52] *Ibid.*, p. 16.

cessive intrusion of life-prolonging technology which prohibits death from having its appropriate place in our life."[32]

Vaux, however, is no naive optimist who would ply the thesis that things are going to work out fine willy-nilly. A pendulum swing could unsettle our faith in God and our understanding of life as trust. Public policy could become embroiled where it should not be. The unique worth of the individual and the role of the physician could in certain eventualities be adversely affected.[33] All of these, of course, are dangers to be pondered not only in recognizing our greater moral freedom in the area of mercy death but in other uses of moral freedom in biomedicine. With this said, however, Vaux's position on the socially imbedded counterforce which is likely to resist an overly facile acceptance and spread of mercy death is a specific antidote to the unsubstantiated woe-saying of many who appeal simplistically to the domino or wedge objection to support a negative moral absolute against mercy death.

James Rachels caused a stir by challenging the traditional distinction between so-called active and passive euthanasia. Writing in *The New England Journal of Medicine*, he argues that in many cases active euthanasia may be more humane than letting die. If it is morally right not to operate on a Downs child with intestinal obstruction, it would be better to allocate death directly rather than allowing a slow final agony. As he puts it: "It is the Down's syndrome, and not the intestines, that is the issue."[34]

Rachels criticizes the idea that killing someone is necessarily morally worse than letting die by setting up the cases of Smith and Jones. Smith will get a large inheritance if his six-year old cousin deceases. Smith goes into the bathroom while the child is bathing and drowns him. Jones is in the same situation vis-à-vis his six-year old cousin. He too plans to drown the child but as he enters the room he sees the child slip, hit his head and fall face down in the water. Jones happily stands by while the child drowns. Says Rachels: "If the difference between killing and letting die were in itself a morally important matter, one should say that Jones' behavior was less reprehensible than Smith's. But does one really want to say that? I think not."[35] Rachels concludes that the bare difference between killing and letting

[32] *Ibid.*

[33] *Ibid.*, pp. 16-18.

[34] James Rachels, "Active and Passive Euthanasia," *The New England Journal of Medicine* 292, no. 2 (January 9, 1975), p. 79.

[35] *Ibid.*, p. 13.

die does not, in itself, make a moral difference. Thus active euthanasia is no worse than passive euthanasia.

Rachels is correct in pointing out that letting die is uncritically thought of as *per se* morally less questionable. Part of this is due to the simple illusion that one is not responsible if one has done nothing. Omissions, however may be an intensely deliberate and terribly effective form of behavior. The woman who does not give the heart pills to her gasping husband because she would just as well be rid of him is guilty of lethal behavior. Behavior may be active or passive. Letting die may be called passive behavior over against a positive act of killing, but it is still potentially quite influential behavior of the sort for which we are responsible. It does not have any built-in moral immunity, and indeed it has its own built-in intentional activity and concrete effectiveness.

Relative to the distinction between omission and commission which is Rachels' concern, I believe that the distinction is not a distinction without a difference. Rachels is not directly arguing for euthanasia. His main target is the false freighting of a distinction. Others like Joseph Fletcher do make an explicit moral inference of the if-passive-therefore-active sort. Fletcher, for example, has said: "What, morally, is the difference between doing nothing to keep the patient alive and giving a fatal dose of a painkilling or other lethal drug? The intention is the same, either way. A decision *not* to keep a patient alive is as morally deliberate as a decision to *end* a life."[7]

There is, of course, more to the reality of human acts than intention and deliberateness. Four ways may be cited by which omission and commission really and morally may differ. First, they may differ in their effects. Psychologically the effects of having given a fatal dose of pain-killer may be more disturbing to the bereaved than not treating pneumonia and letting the pneumonia bring on death. On the other hand, it is also possible that the memory of a prolonged and terrible final agony might make the survivors feel regretful that they did not take some positive action to shorten the final torture.

In answering his critics, James Rachels speaks to those doctors who allege that terminal illness need never be painful. He recalls Stewart Alsop's account of the suffering of one of his fellow patients in the solid-tumor ward at the National Institutes of Health . . . the most up-to-date of medical contexts one would judge. The man was given an injection to relieve pain every four hours, but the effects began to wear

[7] Joseph Fletcher, "The Patent's Right to Die," in *Euthanasia and the Right to Death: The Case for Voluntary Euthanasia*, ed. A. Downing (London: Peter Owen, 1969), p. 68.

off in half that time. He would then begin to moan and whimper softly as though he were trying not to disturb his fellow patient. So the pain would become too much and, in Alsop's phrase, he began to howl like a dog. This cycle was repeated every four hours." A family who went through such a thing and later came to see how unnecessary this cycle of torture was could be subject to the painful effects of regret and remorse. There is no compelling and definitive reason why the relief could only be given every four hours even if more frequent doses accelerated the dying process.

There are other differences between omission and commission. They differ also at the societal level. Death by commission gives more control to the one who dispenses death and this makes the actions more abusable. This could be a social problem. This does not mean, however, that commissions are thereby uncontrollable, but it does show that, for better or for worse, omission and commission may be realistically distinguishable. In the name of clear thought and good ethics, distinctions must be made where there are differences.

Omission and commission may also differ in their deliberateness and in the amount of volitional commitment. Omission may result from a kind of paralysis and immobilization of the will as a result of getting caught in the crunch of conflicting motives. Though both omission and commission may involve intense deliberateness, the volitional structure is not the same. Jones, in Rachels' example, may have found that he could not bring himself to drown his cousin if fate had not intervened and made this action unnecessary.

Thirdly, in omission, agency may be more diffuse.. There may be many who did not do what might have been done. This will also affect the psychological structure of the behavioral choice, which will, in turn, be relevant to one's moral appraisal.

Finally, omission and commission differ because each admits of a rich variety of forms. In a true sense, no two omissions and no two commissions are identical. Consider, for example the following different omissions: not steering your rolling car away from a child in its path, not stopping to tackle an armed robber, not telephoning for help when one witnesses an ongoing attack as in the case of Kitty Genovese, not giving insulin to an otherwise healthy diabetic, not giving insulin to a diabetic who is dying of cancer, etc. Similarly commission admits of infinite variation, and sensitive ethics will be alert to these differences. Sensitive ethics also will not attempt to say that

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"James Rachels reply. *The New England Journal of Medicine* 292, no. 16 (April 17, 1975), p. 867. He is quoting Stewart Alsop, "The right to die with dignity." *Good Housekeeping*, (August, 1974), p. 130.

if one admits to stopping ineffective treatments that one is thereby logically compelled to approve of actively terminating life. There is more to ethics than logic. There is also the assessment of morally meaningful empirical data. Among the other things we will note in the empirical order is the real distinction between omission and commission.

Conclusion . . .

The discussion of mercy death is having its belated due. More and more authors are reaching the conclusion that mercy death in certain circumstances is justifiable. This is not surprising since a taboo is crumbling and ethics has begun. An absolutist position on this subject no longer commends itself although some are struggling earnestly to shore up the old taboo. The literature has more than its share of contradictoriness and strained exegesis. Also many ethicists are attempting to approach the subject through the use of some single category such as trust, injury, kindness, rights, gift, justice, story, or through a fixation on the distinction between imposing death and letting it happen. The literature therefore offers a methodological tour. My own view is that such single-rubric approaches, whether philosophically or theologically motivated, are ethically ill-fated. One's treatment of any moral issue, but certainly of a humanly momentous issue like mercy death, cannot be tidily handled under the aegis of any single category. What is needed, and what I attempted to do, for example, in *Death By Choice*, is to set one's argument in the broad context of one's complete ethical theory. One's faith posture should also be visible if not always explicitated in the ethical treatment of this issue. It should be discernible, for example, whether one ultimately opts for a kind of theistic fatalism which would constrain further expansion of our moral dominion over dying in the name of God, or whether one is more attuned, in Thomas Aquinas' choice phrase, to the idea that we are nothing less than participators in divine providence who have the prerogative and responsibility to discover the good and choose it—even when the good in question is death.

The discussion of mercy death is to be welcomed for many good reasons. First, it should enhance the contemporary renaissance in death consciousness and help us define somewhat the radical meaning of our mortality. Further, it should bring us to new insights into the actual nature of freedom and responsibility. Finally, the discussion should also be religiously invigorating, bringing us as it does into intimate and urgent converse with our meaning and destiny, and thus also with our God.