

MEDICAL LAW COMPETITION

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Assess the law on active Euthanasia and the benefits or implications of

legalising it in the UK.

Euthanasia: a legal, moral, ethical, and religious dilemma. The contemporary debate over Euthanasia is complex and dynamic in many aspects. This debate must be transformed into a ‘visible subject,’ and the people’s personal views into debatable opinions tabled by the UK Parliament before any final decision. These opinions should be the compass of the UK legislature before deciding whether, how, and under what conditions may legalise the practice of Euthanasia. Surprisingly, in the last bicentennial period, we are mostly recipients of arguments that bolster the case of Euthanasia¹. Most of the arguments in favour of Euthanasia are mainly legally-oriented towards the person’s right to autonomy, liberty, and self-determination².

Although, as a legal researcher, I am expected to adopt a more legal-based argument in favour or against Euthanasia, I beg to differ from the crowd. First, by taking a stance grounded on the moral and ethical implications of Euthanasia, and second, ending up to an argument against its legalisation. In

¹ Joel Feinberg, “Voluntary Euthanasia and the Inalienable Right to Life” [1978] 7(2) *Philos Public Aff* 94 https://www.jstor.org/stable/2264987?seq=1&cid=pdf-reference#references_tab_contents Accessed 21 October 2021.

² Scott Y.H.Kim “Ways of Debating Assisted Suicide and Euthanasia: Implications for Psychiatry” [2021] 64(1) *Perspect. Biol. Med* 32 <https://muse.jhu.edu/article/785090> Accessed 20 October 2021.

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this “modern” era characterised by more liberal views, I opt to deviate from the “norm” and adopt a more conservative, paternalistic approach disapproving its legitimisation in the UK.

The debate surrounding Euthanasia oscillates between two poles: the right to life vs. the right to die. Notwithstanding its seemingly straight-cut approach, many complications and dilemmas do exist that inevitably divide us into quarrels due to our different religious beliefs, cultural and social values. This becomes evident from the differentiation of stances among the states; while the consensus is the unconditional prohibition of Euthanasia³, a handful of jurisdictions, amongst them, Belgium, the Netherlands, and Canada, opted for the legalisation of Voluntary Euthanasia⁴. The UK should now be called to take a stance based on well-justified arguments and a thoroughly comprehensive approach, balancing the benefits and implications of Euthanasia legalisation.

The most fundamental benefit of legalising Euthanasia is the respect of a person’s autonomy⁵. On this argument, most jurisdictions ground their arguments for the legalisation of Euthanasia. For instance, in the US, this right

³ *ibid* 31.

⁴ *ibid*.

⁵ Y.H.Kim (n 2) 32

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is pictured as one's liberty interest; in Germany, as a "right to free development of [one's] personality," and in the Canadian legal system "a right to life, liberty, and security of the person"⁶. As Beyleveld and Brownsword explain, the right to autonomy is sometimes reinforced by human dignity, which constitutes, in some cases, the source of human rights⁷. A death according to an individual's wishes based on his values and beliefs about the meaning of life is considered more dignified than one inconsistent with the individual's autonomous preferences⁸. Dworkin outline with the most succinct way the above premise: "making someone die in a way that others approve, but he believes a horrifying contradiction of his life, is a devastating, odious form of tyranny"⁹. This may suggest that by ignoring someone's personal wishes on how to die, we may refuse to grant him the right to die, which is perhaps a vital part of the right to life. In other words, this may lead to the oxymoron infringing on a person's right to life in our attempt to keep him alive.

This stance, in some kind, represents the "Founding Fathers" school of thought. Their position is that the right to die is the other side of the coin of

⁶ *ibid.*

⁷ Elizabeth Wicks, "The Meaning of 'Life': Dignity and the Right to Life in International Human Rights Treaties" [2012] 12(2) Hum. Rights Law Rev. 212 <https://academic.oup.com/hrlr/article/12/2/199/722093?login=true> Accessed 14 October 2021

⁸ *ibid* 214.

⁹ *ibid.*

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the right to live. Identical with the right to live, which imposes a duty on others of not killing me, the right to die entails the correspondingly opposite duty on others not to prevent me from implementing my voluntary and genuine choice of death¹⁰. Whenever the person cannot practically terminate his own life, he waives his right to life, exercising the [diametrically opposite] right to die and “releasing” one other person from his duty not to kill him¹¹. Put it simply, this may imply that the legalisation of Euthanasia, provides is consistent with a person’s personal preferences, is rather from a denial of the right of life; quite the opposite, it is a way of acceptance and respect of the other person’s freedom to enjoy his right to life in any way he wants.

Pretending the ‘devil advocate’ now, I am turning to examine the implications of legalising Euthanasia in the UK. Preparatory note: I propose a narrow interpretation of ‘the right to life’, including ‘the right not to be killed’ and the right ‘to be rescued from impending death’, excluding, nevertheless, the right to ‘live decently’ or ‘allowed to die’¹². The right to live decently is broader than the right to life, but in no case, my stance implies that to ‘live decently’ is substituted by the right ‘to live’ at all, under any quality-of-life conditions. The quality of life, even though excluded by the Right to Life, should be included

¹⁰ Feinberg (n 1) 121.

¹¹ *ibid*

¹² *ibid* 94.

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in other fundamental umbrella-rights, such as the right of private life (Article 8 ECHR). The protection of one does not preclude the other's protection, neither is the one prioritised over the other. My aim is not to find a strike equilibrium between those rights; instead, my purpose is to provide evidence of 'Why' the implications of legalising Euthanasia in the UK are far more significant than its benefits. To build a fertile ground for this argument, I am firstly presenting the religious perspective.

The religious argument stems from Jefferson's quote: '[all men] are endowed by their Creator with certain unalienable rights, that among these are Life...'¹³. As Feinberg underlined, killing a person even with his consent or by his request might be considered infringing his inalienable right to life¹⁴. It presumably *alienates* the person's right to continue living¹⁵, a right gifted by God, with inherently sacred value, which is undermined for the sake of autonomy and self-determination. It would be quite egotistical for us to underestimate the sanctity of life, entirely ignoring the religious significance of life.

¹³ *ibid* 93.

¹⁴ *ibid*.

¹⁵ *ibid*.

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Second, the right to life is a claim-right, contrary to a right of mere liberty or the absence of a duty to refrain¹⁶. A claim-right probably has a more valuable benefit in terms of protecting a person's liberty, which is associated with another person's obligation not to interfere with that right¹⁷. As the very term suggests, it is a right that can be claimed from those against whom they are charged with the duty not to interfere. In the case of the right to life, those people, the so-called "rights-barriers", who are perhaps all the rest of us, have an obligation not to kill the right-holder or let him die if other less risky actions to save him are available. Conversely, if the right to life were equivalent to mere liberty, the others' duty would not be expanded not to kill or save himself. By logical sequence, this could lead to the paradox of the right-barriers not being prohibited from killing others, implying the legalisation of assisted suicide and/or Euthanasia. This potential paradoxical situation is demonstrable of the moral implications of permitting Voluntary Euthanasia in the UK.

This point leads me to a further implication on legalising Euthanasia: proving its "voluntariness". Two plausible questions: "Is Euthanasia always voluntary? Can be this evidenced in any case? The response is given by the UK House of

¹⁶ *ibid* 95.

¹⁷ *ibid*.

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Lords Select Committee in Bland's Case¹⁸: "It would be...impossible to ensure that all acts of euthanasia were truly voluntary and that any liberalisation of the law did not bring forth any abuse." This compelling argument mirrors the practical barrier of securing and/or ensuring the voluntariness of Euthanasia, which is (or must be) viewed as a 'jus cogens norm' from which no deviation is accepted, as an International Lawyer could argue. A contradictory answer was given by Dworkin¹⁹, who claimed that doctors know the moral difference between helping people "who beg to die" and "killing those who want to live", implying that voluntariness is an element that doctors can clearly and easily acknowledge if it does exist or not. Or in other words, doctors should be responsible for deciding when to permit or not Euthanasia. I maintain my objections to this argument.

From my point of view, this argument does not consider incidents where the person is in such bad medical conditions and subsequently cannot express their wishes, preferences, or consent to any treatment. Furthermore, it would be morally unfair for doctors to place this responsibility on their profession. Doctors are bound by the Hippocratic Oath to benefit their patients, protecting their vulnerabilities according to the principle of beneficence and

¹⁸ *Airedale N.H.S. Trust v Bland* [1993] A.C. 789 House of Lords

¹⁹ Wicks (n 7) 214.

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non-maleficence²⁰. The former requires them to prevent harm, striking a balance between benefits and risks, while the latter obliges them not to cause harm either intentionally or negligently to their patients. Both principles' purpose is to protect the people's lives and their health values. Is it not unfair to force them to execute such a practice, especially if they deplore such legislation? Is it not an oxymoron to 'force' them to take a patient's life when their duty is expanded, not to harm their lives? All these rhetorical but significant legal and moral value questions may necessitate reconsidering the legitimacy of UK legislation, potentially interfering with the professional relationship between doctor-patient.

It is of paramount importance to briefly touch how the right to life was interpreted in "Pretty v. UK²¹" by ECHR for its reconsideration. Paraphrasing the Court's decision: "*Article 2 could not, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die*". Notwithstanding my personal opinion against Euthanasia, I firmly believe this argument should be challenged. Provided that the right to life does not protect

²⁰ Emanuele Valenti and Others, 'Which values are important for patients during involuntary treatment? A qualitative study with psychiatric inpatients' [2013] 40(1) J.Med.Ethics 835, https://www.researchgate.net/publication/257838835_Which_values_are_important_for_patients_during_involuntary_treatment_A_qualitative_study_with_psychiatric_inpatients, Accessed 28 September 2021.

²¹ *Pretty v. UK* (Application No.2346/02) [2002] 29 EHRR 245

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the right to die, prohibiting it in some way, the Court ends up acknowledging not a right to live but an obligation to live. The Court, by this way, rejects one paradox and accepts another: precludes the possibility of the right's non-enjoyment, admitting that the right constitutes an obligation of its enjoyment. Under its argument, the content and the borders of Article 2 legal protection are confused, and to some extent, contradictory.

However, by flagging out the 'weak' points of the Court's argumentation, I do not aim to disagree with its general stance against Euthanasia. Instead, I aim to reveal how a European Instrument may face insurmountable difficulties in interpreting the right to life conceptually and ruling whether the right to life ought to be interpreted as protecting the right to die, thereby making the legalisation of Euthanasia legally feasible and acceptable.

Taken altogether, the above arguments are demonstrable of the heated debate over Euthanasia. Given its legal, moral, and religious implications, who is to say that the UK Parliament will not end up toing and froing over the persistent dilemma of legalising or not Euthanasia in the UK? The proper solution: a thoroughly considered and finely balanced decision.