Natural Law and Its Implications for Medical Assistance-In-Dying

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ABSTRACT

Social and political pressures in several nations have led to the legalization of assistance-in-dying, a term which includes assisted suicide as well as euthanasia. While legislatures and national courts have ruled to permit the practices, natural law theory would arguably prohibit the practices in all jurisdictions. Professional counseling and personal reflection should be made available to patients requesting assistance-in-dying.

Hospital administrators and clinical staff confront death regularly. Modern medicine and technological advances have prolonged life expectancy in much of the world, but ultimately every human must die.

Many people will die outside of a hospital setting, choosing instead to die at home, or perhaps in a hospice or palliative care facility. However, many will die in a hospital where physicians and nurses will manage the process by making a series of decisions, often directed by the patient or significant others, family members or friends. But in certain nations and territories, the range of alternatives for managing end-of-life care now includes medical assistance-in-dying by allowing for the personal intervention of other persons to facilitate the process of dying.

What is now referred to as medical assistance-in-dying in Canada incorporates the concepts of assisted suicide and euthanasia (Government of Canada, 2018). Euthanasia has been legally permitted in the Netherlands, Belgium and Luxembourg for several years. Those three countries and Switzerland also permit assisted suicide as do several states in the United States (Washington, Oregon, California, Colorado, Vermont and Montana). Increasing social and political pressures will most likely lead to legalization efforts in other nations, states and territories in the near future.

Legislatively enacted statutes and national court rulings have served to legally permit assistance-in-dying. The eligibility criteria vary widely from terminal illness in an adult (Oregon) to a request by a child of any age (Belgium). Future efforts to permit the practices in other jurisdictions may reasonably be expected to reflect the same variability.

NATURAL LAW

Proponents of assisted suicide and euthanasia quite frequently argue from the perspective of personal autonomy. Perhaps believing that human autonomy should have no limits, they argue that an individual should have the right to request assistance in ending his or her own life, or the freedom to authorize another person to end the requestor’s life. Unfortunately, this line of argument would appear to neglect consideration of the principle of non-malfeasance which might appear to inveigh against the practices of assisted suicide and euthanasia.

Euthanasia advocates sought to take advantage of this changing cultural climate and began to argue their position less in terms of social or biological progression, as they have done previously, and more in terms of individual autonomy and privacy (p. 38)

One limitation on individual autonomy would seem to be natural law theory, an ethic whose roots date back to the work of Plato and Aristotle. One of the most prolific scholars of natural law theory was the Catholic theologian Thomas Aquinas, but natural law has been, and continues to be, recognized as moral theory outside of religious contexts.

In defining natural law, the *Cambridge Dictionary of Philosophy* (Second Edition, 1999) elaborates by stating:

Natural law theories are opposed to legal positivism, the view that the only binding laws are those imposed by human sovereigns who can not be subject to higher legal constraints. Legal theorists arguing that there are rational objective limits to the legislative power or rulers often think of these limits in terms of natural law, even when their theories do not invoke or imply any of the religious aspects of earlier natural law positions (pps. 599-600)

An early proponent of natural law theory was the Roman orator and philosopher Cicero who adapted early Greek philosophy into Latin (Wikipedia). In his work *De Re Publica*, published in 51 BCE, Cicero described natural law:

There is indeed a law, right reason, which is in accordance with nature; existing in all, unchangeable, eternal. Commanding us to do what is right, forbidding us to do what is wrong. It has dominion over good men, but possesses no influence over bad ones. No other law can be substituted for it, no part of it can be taken away, nor can it be abrogated altogether…..It is not one thing at Rome, and another thing at Athens; one thing today, and another thing tomorrow; but it is eternal and immutable for all nations and for all time (p3 of 16)

Natural law is concerned with issues of life. Throughout history, proponents of natural law have addressed life from birth to death, arguing that nature governs both. The noted British philosopher and author John Finnis writes:

What are the basic aspects of my well-being? Here each one of us, however extensive one’s knowledge of other people
and other cultures, is alone with one’s own intelligent grasp of the indemonstrable (because self-evident) first principles of one’s own practical reasoning. (p. 85)

Arguing that practical reasonableness leads to knowledge of the basic forms of good, Finnis writes: “A first basic value, corresponding to the drive for self-preservation, is the value of life.” (p 86)

Finnis goes on to claim of Thomas Aquinas:

…in his formal discussion of the basic forms of good and self-evident primary principles of practical reasoning - which he calls the first principles and most general precepts of natural law – sets a questionable example …. (1) human life is a good to be sustained, and what threatens it is to be prevented….p94

Legal enactments which seek to authorize assisted suicide and euthanasia are of a more recent vintage. Certain US states, an Australian territory and four European nations enacted laws permitting assisted suicide in the last quarter of the 20th century. Three of the European nations approved euthanasia in approximately the same time frame.

However the precepts of natural law theory, including its immutability, would view these more recent enactments as contrary to natural law. These positivist expressions of national and state law would seem to be precluded by any recognition and understanding of natural law dating from its earliest Greek and Roman traditions.

ACCESS TO AID-IN-DYING

An argument advanced by certain advocates of assistance-in-dying is that while they do not wish to avail themselves of assisted suicide or euthanasia at the time they expressed their support, they want the options to be legally available for others to pursue, or available to themselves at some point in the future, should they decide to take advantage of the options (Aviv, 2015, p. 8). Indeed, some advocates have used legally established mechanisms to obtain medication for assisted suicide, but yet have never followed through in ending their lives.

Persons requesting assistance-in-dying may be found to be suffering from a mental illness (Baillie, Costello and West, 2003). Such impairments could be expected to cloud their judgement and may cause them to pursue assistance-in-dying. Other cited medical conditions for requesting assistance-in-dying have included autism, anorexia, borderline personality disorder, chronic fatigue syndrome, partial paralysis blindness coupled with deafness, and manic depression (Aviv, p. 10).

One quite possible reason for seeking assistance-in-dying is that the individual may have lost a sense of meaning in his or her own life. The importance of meaning is the basis of logotherapy as developed by the noted Viennese psychiatrist Victor Frankl. While imprisoned in German concentration camps during the Second World War, Frankl informally attended to many fellow prisoners with whom he shared deplorable living and working conditions, as well as the spectre of death in the gas chambers.

In his highly acclaimed book, Man’s Search for Meaning (1946), Frankl recounts his experiences in attempting to predict which prisoners would survive their time in the camp and which ones would expire.
before going to the gas chamber. His conclusion was that those who had a sense of meaning in their lives would be better able to survive the concentration camp ordeal. Frankl quotes Nietzsche in stating “He who has a **why** to live for can bear almost any **how** (p. 104).

Frankl writes of meaning in life as being more variable than general in nature:

I doubt whether a doctor can answer this question in general terms. For the meaning of life differs from man to man, from day to day, from hour to hour. What matters therefore, is not the meaning of life in general but rather the specific meaning of a person’s life at a given moment (p. 108)

He goes on to write:

….According to logotherapy, we can discover this meaning of life in three different ways: (1) by creating a work or doing a deed; (2) by experiencing something or encountering someone; and (3) by the attitude we take toward unavoidable suffering (p. 111)

Meaning in life encompasses value according to Iddo Landau, an Israeli philosophy professor who has written on these issues.

Discussions I have had with people who think that their lives are meaningless or who are searching for what would make them more meaningful also confirm that they are preoccupied with issues of worth and value in their lives (p. 9)

Recounting a classroom exchange he had experienced led him to reflect on Hamlet’s soliloquy “To be or not to be……” He writes “….that I always found it odd that Hamlet presents only these two options, failing to discuss the third alternative, that of improving the way things are” (p. 2)

The Greek philosopher Aristotle is also cited by Landau in his discussion of value:

Many important implications can be drawn from the relationship between the meaning of life and value…..One is that as with other values, so with the meaning of life, we should not expect to reach conclusions that are as precise as those in the exact sciences. Aristotle claims in his *Nicomachean Ethics* that it is a mistake, in discussions of matters of value, to expect to reach the degree of precision typical of discussions in, for example, mathematics (p. 17)
MIT philosophy professor Kieran Setiya writes of the need to look outside oneself. He describes the “paradox of egoism” in which the exclusive pursuit of one’s happiness would “logically preclude its own achievement” (p 33-34)

….you have to care about something other than yourself. If nothing matters to you but your own well-being, if you are utterly self-obsessed, not much will make you happy. In the basement of the U Curve, when satisfaction is hard to get, this fact is worth pondering. It is natural to respond by craving happiness more profoundly, setting it as your goal. The irony is that you need to do the opposite: you need to care about other things (p. 34)

Frankl, Landau and Setiya would appear to agree that meaning and purpose rarely come to an individual by chance. Rather, the recognition of meaning and purpose is the result of effort on the part of the individual, obligatory personal effort aimed at determining value.

Frankl emphasizes this concept of personal responsibility in writing:

By declaring that man is responsible and must actualize the potential meaning of his life, I wish to stress that the true meaning of life is to be discovered in the world rather than within man or his own psyche, as though it were a closed system. I have termed this constitutive characteristic ‘the self-transcendence of human existence’. It denotes the fact that being human always points, and is directed, to something or someone other than oneself – be it a meaning to fulfill or another human being to encounter (p. 110)

Landau observes:

But his means that in this sphere too, we cannot just rely on immediate feelings for sensations and then just ‘know’ whether life is meaningless or not. Here too we can gain much from learning and thinking about the issue, evaluating arguments, uncovering our implicit pressing positions and reconsidering them, comparing and talking with others about the issue (p. 18).

In writing on the importance of purpose, Setiya draws a distinction between telic and atelic activities. The former are aimed at “terminal states, at which they are finished and thus exhausted (p. 134)” The examples he cites are getting married or writing a book. He contrasts these with activities that are not aimed at termination or a final state of achievement (atelic). He emphasize the importance of atelic activity as follows:
If your sources of meaning are overwhelmingly telic then whatever their value – final, existential, ameliorative – they are schemes for which success can only mean cessation. It is as if you are striving to eradicate meaning from your life, saved only by the fact that there is too much of it or that you keep on finding more (p. 134-135)

Thus, for Setiya, meaning and purpose come ultimately from activities not intended for final completion.

CONCLUSION

The natural law prohibition against assisted suicide and euthanasia long pre-dates the statutes and court cases that have allowed for assistance-in-dying in more recent times. Given that natural law has provided the foundation for the legal systems of most of the world’s more advanced nations, it can not now be ignored in favor of patients seeking legal authority to use health care systems in their efforts to end their lives.

REFERENCES