Assisted Suicide and Unassisted Suicide: What's the Difference?

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Introduction

Discussions about whether or not to legalize assisted suicide often fail to take into account the fact that *un*assisted suicide [1] is already legal.[2] Failure to consider this fact means that unless there is a significant difference between assisted suicide and unassisted suicide that justifies prohibiting the former while permitting the latter, one must either accept inconsistency or reconsider.[3]

There are six reasons typically given for prohibiting assisted suicide: the tragic death; preferred alternatives; the social good; upstaging God; the slippery slope; the possibility of abuse. I argue that these reasons are equally applicable to unassisted suicide; therefore, again, one must either accept inconsistency or argue on the same grounds for prohibiting unassisted suicide.

(1) The Tragic Death

Some argue against legalizing assisted suicide on the grounds that people will die tragically, acting on a decision made in a despairing moment. But this is as true for unassisted suicide. The consequent death may also be tragic – premature, avoidable, and/or perhaps even the regrettable result of a bad decision.

(2) Preferred Alternatives

Others argue against legalizing assisted suicide on the grounds that the better solution is to improve the standard of care for the terminally ill and the severely disabled so they won't want to choose death; counselling is another often-mentioned preferred alternative to assisted suicide. But again, this is as true for unassisted suicide: there are alternatives, such as psychological or philosophical counselling, or even, if applicable, employment, that may be preferable to suicide.

(3) The Social Good

There are many variants of this argument, but all conclude that assisted suicide is not to be legalized on the grounds that some social good transcends personal autonomy. Some claim that no one should have the right to unilaterally make a decision that will affect others: "We are individuals living in a society, a community, and the community has rights when it comes to an individual member's behaviour. Our whole society is based on this, and one person's actions can set off emotions or consequences for his family and his immediate neighbours in the community" (Senate of Canada, Dionne, p.56). Making a slightly different case, some claim that legalizing assisted suicide contradicts the social value of respect for life and on that basis argue for prohibiting assisted suicide: "Euthanasia and assisted suicide are contrary to the basic respect for human life which is at the core of societal values" (Senate of Canada, McGregor, p.55). Again, advocates of some social good seem to have forgotten that by allowing unassisted suicide, we already allow personal autonomy to override the social good, however it may be defined.

(4) Upstaging God

Arguments to prohibit assisted suicide on the grounds that only God gives life, so only God can take it away (see, for example, J. V. Sullivan) are equally relevant to unassisted suicide: whether the suicide is assisted or not, death occurs by a human hand, not by a god's hand. Therefore, proponents of such arguments must go on to argue for the prohibition of unassisted suicide (which, admittedly, they often do) or accept inconsistency.

(5) The Slippery Slope

Assisted suicide is often argued against because of the fear that allowing unassisted suicide will lead to the acceptability, or at least the (increasing) occurrence, of involuntary euthanasia. However, there are relatively clear lines on the slope that can prevent us from slipping, notably, the presence of consent. And, in any case, allowing unassisted suicide already puts on that slope.

(6) The Possibility of Abuse

Not withstanding the forementioned relatively clear lines, it is possible that allowing assisted suicide will lead to abuses. But this is true of most activities subject to legislation; consider, for example, diving while intoxicated.

There are, however, two distinctions between assisted suicide and unassisted suicide that may justify illegalizing the one while legalizing the other: assistance and voluntariness. However, in both cases, I find the difference too weak, too problematic, or simply too questionable, to support legal differentiation.

(1) Assistance

At first glance, it seems that assisted suicide requires the assistance of another person while unassisted suicide does not, and perhaps it is this difference that justifies prohibiting the one while permitting the other.

However, depending on the method used for the unassisted suicide, *the difference of assistance is often merely a matter of degree*. For example, the person who uses an overdose of sleeping pills or morphine needs someone to provide those sleeping pills or that morphine. The same applies to the gun, the razor blade, and so on. Perhaps the only *true* unassisted suicide would be something like jumping off a cliff or swimming out to sea.[4]

This matter of degree can be present in three respects.

(a) Immediacy

In the case of assisted suicide, the means are usually provided at the moment, whereas in the case of unassisted suicide, the means are perhaps more typically provided somewhat before the moment. But, in the case of unassisted suicide, they may also be provided within minutes of the moment: the drugstore salesperson who sells me the sleeping pills may be a five-minute walk from my apartment, and I may make the purchase, come home, and suicide right away.

While this difference in immediacy *is* a difference, it is an unclear difference, a fuzzy line difference, and therefore not, I think, strong enough to support a legal distinction between assisted suicide and unassisted suicide. Would we say that provision of the means for suicide within twenty-four hours of the death counts as an assisted suicide, but provision of the means within twenty-five hours does not?

(b) Directness

Perhaps it is the directness of the assistance that makes the significant difference: after all, feeding the pills to a person until s/he dies is a lot different than simply putting them on a store shelf.

Yes, but again, this difference can reduce to a very small and surely insignificant difference: putting them on the shelf, putting them on the counter, putting them in a person's mailbox, putting them in a person's hand, putting them on a person's tongue – where one draws a line is not that clear. Certainly it is not clear enough to support the weight of criminal difference.[5]

(c) Awareness

Perhaps a stronger difference between the assistance provided for assisted suicide and that provided for unassisted suicide concerns the awareness of the provider: for example, in the case of assisted suicide, the person who provides the pills *knows* they are for the purpose of suicide, but in the case of unassisted suicide, the drugstore salesperson reasonably assumes they're for the purpose of a good night's sleep.

But how can this difference be significant? Why should it matter whether or not the pill provider is aware of the purpose for which the pills are to be used? Knowingly assisting is a greater degree of assistance, yes, but typically, such foreknowledge is a problem only when the intended purpose is illegal; in such cases, the provider is guilty of conspiring to commit whatever it is that is about to be committed. But committing suicide is as legal as getting a good night's sleep. Conspiring to commit suicide, then, should be as unproblematic as 'conspiring' to 'commit' such a good night's sleep. *Assisting* a suicide should be as legal as a suicide.

(2) Voluntariness

A second distinction between assisted suicide and unassisted suicide that may justify the legal difference is voluntariness. However, this distinction gives 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.[6] 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'). It also contradicts legal principles that excuse actions of the body when the mind wasn't willing: if one is forced to *do* something against one's *will*, it doesn't 'count'. Even 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 can be kept alive with pacemakers and respirators. Furthermore, as the dissenting opinions in the Rodriguez case pointed out, this supremacy of the body is also inconsistent with Section 15 of the Charter which guarantees that people with physical limitations are not discriminated against; it is also inconsistent with Section

7 which guarantees the right to life, liberty, and security of the person, 'security' understood to include self-determination.[7]

Not only is the *supremacy* of the body over the mind questionable, the very *dualism* of the mind and body has become suspect. One of the main difficulties with the dualist view is accounting for the interaction of distinctly different 'stuffs' – namely the mental stuff of the mind and the physical stuff of the brain – and yet clearly, they do interact. Materialism, the view that there is only one stuff, physical stuff (and hence the mind *is* the brain), seems to have 'won out' over dualism.[8] It is odd, therefore, for assisted suicide to be illegal while unassisted suicide is legal because of a distinction that is no longer accepted.

However, illegalizing assisted suicide (and not unassisted suicide) because of the physical assistance may not so much be a nod to the supremacy of the physical, but a nod to the possibility of coercion. Because of the *assistance*, assisted suicide may be understood to be less voluntary than unassisted suicide. After all, although one can choose to swallow or not, one has no voluntary control over one's veins – one can't choose to accept or not the morphine that is injected into one's arm.

However, to assume that physical assistance increases the likelihood of coercion or, conversely, that lack of physical assistance decreases the likelihood of coercion is to assume a very shallow definition of coercion and consent. (I am substituting 'consent' for 'voluntariness' at this point because in some cases there is no physical action possible that can be described as voluntary – and yet, the person may be consenting.)

For one thing, coercion need not be immediate or direct: suppose someone said to you a day, a week, or a month earlier, that if you didn't kill yourself, he would kill your children; surely your consequent unassisted suicide could not be considered fully voluntary. It is more difficult to determine the will of the mind than the act of the body (the latter is subject to simple observation), and we are naïve to assume that what we see is all there is to it, that the body is indeed acting according to the mind's will, that the mind has not been somehow coerced.

It is not unsurprising, therefore, that there are many analyses of consent and coercion that indicate not only that assisted suicide should be as legal as unassisted suicide, but that it should, perhaps, be *more* legal: with assisted suicide, we can be *more*, not *less*, certain that consent is present and coercion absent. For example, 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 one's condition, the proposed action, its risks, consequences, and alternatives), and voluntary (that is, freely willed by the self).[9] The presence of a third party, as is the case with assisted suicide and not unassisted suicide, can come closer to guaranteeing that all three conditions are met.

First, a third party can subject the person to a test of mental competence to be sure that the capability condition is met.[10]

Second, the third party can provide the person with information, in writing and orally, once or on several occasions, to be sure that she or he understands not only the proposed course of action (the suicide), but also the alternatives, as well as the consequences (to others). The presence of a third party can also help ensure that the decision is not a tragic, 'bad' decision, but rather one in which respect for life and even sanctity of life is preserved.

The third condition, voluntariness, is difficult to determine, depending as it does on free

will. I will assume that we do indeed have free will. I will further propose that, barring coercion, the condition of voluntariness is dependent on the forementioned conditions of capability and informedness. That is, if the person *is* capable *and* informed, and coercion is not present, we can assume that his or her action, whether it is the commission of suicide or the expression of the request for assistance to suicide, is indeed voluntary.

As for coercion, *external* coercion, usually thought to refer to physical force applied by one person to another causing the other to do something, is relatively easy to establish. *Internal* coercion, on the other hand, usually referring to one's mental states – fears, desires, beliefs, attitudes – is harder to determine. Indeed, when do our internal states merely *cause* our behaviour and when do they *coerce* it?

Johnson notes that in a sense all of our actions are more or less coerced by the reasons for them (Johnson 174), but this is not a useful definition of 'coercion' as it would render *all* consent invalid.

Katz presents as broad a perspective: when he specifies voluntariness as a condition of consent, he goes on to say that "any informed consent doctrine, to be realistic, must take into account the biological, psychological, intellectual, and social constraints imposed upon thought and action" (Katz 102).[11] Of course, one's neurochemicals can affect one's clarity of thought which in turn affects one's beliefs which in turn affect one's attitudes – which are also affected by the society in which one lives. The lines demarcating regions of control of self by self become fuzzy indeed. One can wonder therefore if anyone is ever "... so situated as to be able to experience free power of choice..." (United States F.D.A.).

One solution is to adopt Cohen's distinction between (i) narrow or tight coercion, in which case there is a deliberate effort by someone to pressure another to do something, which makes consent invalid by making it involuntary, and (ii) general or loose coercion, in which case one is pressured by the general conditions one finds oneself in or by the desires and needs one has, which does *not* invalidate consent (Turkington 194). Such a distinction would invalidate the request for assistance made by the disabled person who is being encouraged by next of kin who cannot afford to care for him/her anymore, but it would not invalidate the request made by that same person simply because of the circumstance of disability he/she finds him/herself in. Establishing 'deliberateness' and 'pressure' would not be easy, however; the troubling distinction between 'explicit' and 'implicit' would surely arise.

Another solution is to consider consent and coercion to be a matter of degree. Elster defines an action as "the outcome of a choice within constraints" (Elster vii), and perhaps that is the best we can do. Indeed, that is sufficient for my argument: even though we may not be able to establish with certainty whether or not the desire for suicide was voluntary, surely we can establish this with *greater* certainty when there are other people involved to validate or confirm the desire.

Turning back now to consider consent with all of its conditions, 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 in the case of assisted suicide make the assisted suicide more consenting than the unassisted suicide. And with respect to the third requirement, not only can there be a superior suicide note (a signed declaration carefully worded, in the case of assisted suicide), it can be witnessed by

disinterested parties.[12]

To summarize, not one of the six standard arguments, nor the distinction of assistance, nor the distinction of volutariness, is sufficient to support a difference between assisted suicide and unassisted suicide with regard to their legal status. (Or, I might add, with regard to their moral status.)

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[1] I consider *unassisted suicide* to be the regular kind of suicide involving one person, the person who ends his/her life, by actions solely performed by him/herself. I consider *assisted suicide* to describe a situation in which a person wants to commit suicide, but is physically unable to carry out his/her own wishes and so must ask another to perform the necessary actions; in much of the literature, this is referred to as *voluntary euthanasia*.

However, *voluntary euthanasia* is often used to further include situations in which a person wants to commit suicide, *is* physically able to do so, but nevertheless asks for the assistance of another – whether out of ignorance, cowardice, a desire to ensure that the action is successful, or a desire to ensure a certain kind of suicide (for example, non-messy or quick). I do not consider this situation, but note the importance of accessibility to effective and painless methods that are user-friendly, for even the feeble.

Non-voluntary euthanasia is often used to describe situations in which the wishes of the person are not known for sure, but the 'proxy consent' of another is considered satisfactory justification for a third party to end the life of that person.

Lastly, *involuntary euthanasia* is often used to describe situations in which it is known that the person does *not* wish his/her life to end, and yet another acts to achieve that result. Like many others, I consider this to be indistinguishable from *murder* and do not consider it at all in this article.

[2] This is the case in Canada, many of the United States, and the United Kingdom.

[3] There is a third possibility: one could argue that there is no point in prohibiting unassisted suicide since the guilty person, being dead, would not be available for punishment. Thus prohibiting one and not the other is not inconsistent, but merely pragmatic. Failing to prohibit unassisted suicide, one would argue, does not necessarily mean it is condoned.

There are two problems with this. One, it assumes that the only value of legal prohibition is punishment; perhaps prohibiting unassisted suicide would have deterrence value. Two, *attempted* suicide is not prohibited either: this increases the inconsistency, since a failed attempt *would* leave someone to be punished, or mistakenly assumes that all suicides are successful.

[4] It should be noted that the Canadian Senate Committee, in its report on euthanasia and assisted suicide, defines assisted suicide as "the act of intentionally killing oneself with the assistance of another who provides the knowledge, means, or both" (14). Accordingly, one could be told years

prior to suicide that a certain quantity of a certain drug would be an overdose, and the source of that information would be guilty of assisting a suicide.

[5] The distinction between passive and active might be considered here, the idea being that withholding food, for example, is different than providing an injection, the former being passive, *not* considered an instance of assisted suicide. However, first, the passive, an act of omission, can still assist – it's just a very indirect form of assistance. Second, the distinction is merely semantic, a matter of description: for example, when I don't shake your hand (passive, an act of omission), I am holding my hand at my side (active, an act of commission). Third, the distinction presumes a supremacy, a priority, a sort of 'right-of-way' to 'the course of nature' (fate, God, whatever) such that an act that 'interferes' is the one considered active; this supremacy is indefensible.

[6] At this point, it might be valuable to review my definitions and compare them with those of the Senate Committee. The Senate Committee's definitions hinge on the physical element of agency – what's crucial is who actually performs the action; my definitions hinge on the mental element of desire – what's crucial is whether or not the person wants to die.

It is the physical distinction that is important to the Senate Committee members who objected to legalizing voluntary euthanasia: whether oneself or another is the principal agent of death is crucial because, according to them, when another is involved, adequate safeguards could not be established to ensure that consent was given freely and voluntarily. I argue that while this may be so, it is *more*, not less, difficult to know that the usual *unassisted* suicide has been committed freely and voluntarily – and yet it is legal.

[7] See Daryl-Lynn Carlson, "Murder or Mercy" in *Canadian Lawyer* (May 1994), p.23 and the Senate Report, pp. A-70-72. Both refer to Sue Rodriguez's application to the Supreme Court of British Columbia for an order to declare s.241(b) of the *Criminal Code* invalid (Rodriguez v. British Columbia 3SCR (1993) 519).

[8] See Ryle, Searle, and many others.

[9] See, for example, the statement of the Royal College of Physicians and Surgeons of Canada, Katz, Kieffer, and Kluge.

[10] A reminder may be in order at this point that I define assisted suicide to exclude what many refer to as non-voluntary euthanasia, cases in which the person is unconscious, comatose, infantile, or otherwise unable to actually request assistance.

I believe it is possible, however, to argue for proxy consent; indeed, I suggest that valid proxy consent is what distinguishes euthanasia from homicide.

As one might guess, proxy consent is even more slippery than consent. But 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 required?' 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 under discussion: 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 moderately retarded people. Perhaps a test of mental competence 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 valid 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?

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 possibility 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 possibility 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? (Round the clock care equals three eight-hour shifts, hence three people. However, 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.)

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.

[11] Vandervort suggest that economic coercion also be considered.

[12] We would, of course, need to eliminate Section 14 of the *Criminal Code* which states that "No person is entitled to consent to have death inflicted on him [sic]." I believe this section was intended to disallow the defence of consent in murder charges. If we eliminate it, and allow such a defence, will we be able to separate murder from assisted suicide? I think so.

First, the dead person needed to have been so disabled s/he could not have committed unassisted suicide (as I explained earlier, if one is physically able to suicide, one should not be allowed the assistance of another – but one should, then, have access to effective methods). Surely that decreases considerably the number of those accused of murder who could even consider using the defence of consent.

Second, the consent requirements could be, should be, too rigorous for a murderer to meet. For example, we could require that (i) on three separate occasions, (ii) in the presence of three completely separate and disinterested sets of people – to include medical, police, legal, and governmental representatives, as well as next of kin, (iii) the person freely and fully expressed consent, (iv) documented with audiotape, videotape, and signed transcript. Could even a corrupt physician, let alone the murderer, meet these conditions? It's unlikely.

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