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EUTHANASIA AND THE RIGHT TO LIFE

I

Despite the frequent assertion that ours is one of the most benevolent of all free societies, we are currently witnessing a remarkably declining interest in helping others, especially in helping the more unfortunate. There are several reasons for this. Sober experience has taught us that we have been careless, that more often than we care to admit, our spending of great sums of public money has not significantly helped the needy, but has enriched the greedy. Part of the disillusionment is the result of our growing awareness of the problem of future shock. Our increasing belief, nay fear, is that we may be changing our society too fast and in a direction few of us wish to go. But probably the most pressing reason is the economic–ethical one. Most of us are willing to help others, when this does not require too great a sacrifice. But sobering economic experience has taught us, not only that the costs of welfare-like programs are high, but that their fiscal appetites are insatiable. Economists warn us of the dangers. Professed philosophers – the high priests of the good life – concur by telling us that morality can neither command that we help others nor require acts of great or unreasonable sacrifice.

Is it too far-fetched to correlate the decline of an avowed faith in a benevolent society (and the consequent revival of all sorts of appeals to fear) with the growing bigotry, intolerance, and remarkable insensitivity to the possibility of euthanasia[1] being morally justified under certain circumstances?

Euthanasia is certainly no new phenomenon in human affairs. But the opposition to it has seldom before raised its head so high among the masses, or led them to organize movements like that of The Right to Life, and to such readiness to reject out-of-hand the limited practice of voluntary beneficent euthanasia. Much of this attitude is due, of course, to the anti-benevolent, anti-welfare state backlash which I just spoke of. Some of it may be the result of what is going on in the abortion movement. Here it is sufficient to note that the unwarranted claim made by many pro-abortionists

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that the killing of *any* unwanted fetus is kindly killing, or the use of abortion as a birth control method, can only open the doors to an indiscriminate rejection of the more benevolent forms of abortion and euthanasia.

In thus calling attention to the connection between the anti-benevolent sentiment which seems to be growing in certain segments of our society, I would not want to suggest that this accounts for all the opposition to the practice of voluntary beneficent euthanasia. Nor do I think that all the worries about euthanasia can be justly dismissed even if its rejection is a decision in which the lower passions ultimately rule over both reason and sympathy. I wish merely to call attention to the fact that the issues of euthanasia arise out of a variety of fundamental premises, probably the most important being the extent of our commitment to having a benevolent and rational society.

Let us, however, pass from speculation about the causes of opposition and consider a major worry about the practice of voluntary beneficent euthanasia. Notice that the concern here is with *voluntary beneficent euthanasia* and not with worries about or arguments against *involuntary* or the *non-beneficent* varieties. One cannot emphasize this distinction too strongly, for there are powerful and morally sound arguments against the general practice of the latter. Most of these arguments, however, are inapplicable (or ineffective) against voluntary beneficent euthanasia, especially when one further limits this class to terminally ill patients and also offers the option of an assisted suicide. Indeed, it is the failure to make this distinction adequately that gives the arguments of more dogmatic opponents of euthanasia an air of plausibility they would otherwise not have.

This brings us to the question of what acts of voluntary beneficent euthanasia ought to be made legal. Suffice it here to say that I see no compelling reason to oppose the scheme summarily laid out below.[2] In other words, given conceptual and procedural safeguards (the establishment of which cannot be ruled out *a priori* without moral obliquity), there is no telling reason why a kindly and rational person should object to the following policy concerning those afflicted with an incurable disease (or injury) in its terminal state.

1. Within the limits established by the similar rights of others, there must be relief of pain, relief of suffering, respect for the patient's right to refuse treatment, and provision of adequate health care.

2. When a terminally ill or injured individual has signed a 'living will' or expressed, as a result of reflective judgment, the wish to die, he (or she) has the moral right – and ought to have the legal right – to refuse or discontinue medical treatment, especially the use of extraordinary means of life support.

3. When such an afflicted individual is in a state of acute or chronic irreversible coma or is an infant, consent may be obtained indirectly from an authorized representative acting in the patient's behalf, provided that that consent is not contrary to the known preferences of the individual.

4. When such an individual requests and gives free and fully informed consent that his life be terminated, a physician ought to be legally permitted to place at the patient's disposal medication which would end life swiftly and painlessly; and where the patient is not physically able to administer to these needs, a physician should be allowed to induce death, or permit it to occur.

There is a popular tendency nowadays for those who find this proposal offensive to point out that, since the notions of a voluntary request, a kindly act, being terminally ill, and even the term 'euthanasia' itself are in some situations highly problematic, one can never be certain when all these conditions hold and should therefore always refrain from the practice of euthanasia. Few would be more sympathetic than I to such charges when they are properly made. But unless we are to fly in the face of all human experience we must admit that while there are twilight zones, some acts are clearly kind and freely consented to, and some people are clearly terminally ill. In fact, it seems an unpardonable oversight, an extreme form of epistemological skepticism, or a want of intelligence to deny this. For this is like denying that there is a genuine difference between day and night simply because there is no sharp line, but rather a twilight zone, between them.

One other word of caution. Those of us who advocate the legalization of voluntary euthanasia for the terminally ill on the grounds of kindness and rationality are not doing so because we abhor the dying or because we merely wish to empty hospital beds and thereby save money. Nor are we advocating legalization because we favor agism[3] or some clandestine form of population control. *Euthanasia is recommended only as a last resort.* It is not the only kindness that can be shown; but to someone in dire need, it often is the greatest kindness.

My principal purpose in this paper, to which I now turn, is to begin an explication of the notion of rights, in particular the notion of the right to life, in order to see if we can more clearly determine whether or not this right is violated by the limited form of euthanasia here being advocated.

II

The philosophy of rights is certainly one of the most perplexing provinces of moral philosophy. Advocates, especially natural rights theorists, often

maintain that men have knowledge of the existence or nature of rights in a way not drastically different from the way we know all sorts of common things, and they generally hold that rights (or something essentially similar) are necessary in order to protect the moral autonomy of the individual against the tyranny of society. On the other hand, bolder opponents argue that there are no such things as rights anterior to the establishment of government or law, that rights-talk is a perpetual vein of nonsense, and that this manner of approaching moral problems is at best not very helpful. In short, we are told that the firmly held American belief in the rights to life, liberty, and the pursuit of happiness is so insecure – both at its foundation and in terms of utility – that cultivated people must hold their breath in their neighborhood for fear of blowing it away.

It is easy enough to show that there is some truth on both sides. Rights, especially when conceived of solely as natural entitlement, are phantomlike. Yet these same 'phantoms,' at least since the eighteenth century, have been bulwarks against government tyranny and continue to play an important role in the ideology of political and legal reform. That they function in this capacity is not surprising when we consider that rights often are viewed, not as ideals, but as moral thresholds which when violated, demand restitution or remedy – sometimes radical or revolutionary change.

Of course, critics would probably be quick to remind us that the utility of rights would not need to be asserted until arguments for their truth had been seriously, if not irreparably, flawed. But this charge, though generally cogent, appears to me to press one part of the argument too hard. For it seems to assume that 'positive' truth (in the sense of correspondence to the facts) and utility are possible in all areas of human inquiry. However, the former is a dubious assumption – clearly so in the area of ethics. If, aside from desiderata such as clarity, definiteness, consistency and scope, only preferability vindications[4] be warranted (as the best of evidence seems to indicate), then the so-called 'paucity of truth vs. utility' argument is less convincing than it initially appears.[5]

In the long list of charges that have been leveled against the utility of rights talk, one of the most convincing is the charge made by R. M. Hare [3]. Because discussions of rights by and large lack clarity and definiteness, because the discussions seem to be incapable of resolving the conflict between competing claims, and because they gain in relative clarity and effectiveness only when they are translated into more basic moral principles, Hare concludes that at the present time such discussions are not very helpful. The charge, taken in this general way, has substance, and I do not wish to quarrel with it.

But when this has been said, we still need to guard against hasty inferences. It is true that rights talk is not very helpful in understanding and resolving conflict at the present time. But it does not follow that this approach has little utility in effecting social or political change. This is shown by the political history of England, France, and the United States at different times. Moreover, at least in this country, there is evidence that one of the dominant reforming ideological currents of our time is essentially grounded in rights-talk. To the extent that this is true, it becomes important for the philosopher interested in the viability or effectiveness of his theory to give careful and critical treatment to the notion of rights. Philosophers who are passing over the subject of rights may also be missing a unique opportunity to improve the human situation. Of course, this is a limited point. For we can draw more than one true picture of the moral world, provided we do not claim that our picture is the only true one. But if championing human rights proves to be the major, or only viable, way of effecting social or political change, then a theory of rights takes on increased significance to the extent that one purports to be doing normative ethics and is interested in improving the human situation.

III

The phrase 'the right to life' continues to be used to cover an almost endless list of desiderata, ranging from having respect for all living creatures to having whatever one needs to live minimally well. Because of this ambiguity, as well as the difficulties alluded to earlier, critical judgment is needed as a corrective. We do not, I suggest, need to specify the precise content underlying all claims to the right to life. That is a seemingly impossible task or one likely to result in the (hardly illuminating) conclusion that a right is some form of entitlement. We need to know, within the context of a given theory or argument, what more precisely is the content of the right to life and on what evidence its disputed claims are based.

Militating against this approach is a tenacious belief that the right to life is a natural right so self-evident in the light of natural reason that its content cannot be satisfactorily explicated. It is hardly possible to find a view in greater accord with this belief than those who claim that rights are simply natural entitlements and who are content to add that the right to life means that each person ought to be entitled to live without others' intervention or that each ought to be left free to live his life. Admittedly, this is a definition of sorts. Speakers of the language, as well as rights theorists, often character-

ize a right as being 'something to which a human is naturally entitled,' or more narrowly as 'an entitlement to do, have, enjoy or have done.' Moreover, such rough definitions have the advantage of avoiding the brunt of criticism directed against the characterization of rights in terms of claims or powers.

There is nothing strange in entertaining this formulation; it is held by perhaps a majority of natural rights theorists and many intuitivists. But two things *are* surprising: first, that advocates of this doctrine do not see that the purported right to life has, in effect, become synonymous with the right to liberty and therefore that the great trinity has, so to speak, lost its Father; second, it is one thing to say that rights are known by the light of natural reason and another that they are knowable in a way not drastically different from the way we know all sorts of other things. One is tempted to ask, if rights are so knowable then what, even in theory, would not be knowable? But I shall forego this temptation and be content to raise the more modest question, namely, if rights are to be understood merely as natural entitlements, then *what* do we know when we know that a given species possesses them?

Unless I have overlooked an important part of the doctrine, what we purportedly know is this: If there are human rights, then (a) they are possessed by human beings, and (b) it is because of this fact alone [presumably the truth of (a)] that every human being has certain moral entitlements. Is it necessary to add that (a) is true but trivial and that (b) is something of an enigma? For how does it follow that if human rights are the rights of humans we therefore actually have or possess them? I hope it is not too brash to conclude therefore that, aside from the dubious logic, if rights are of this limited nature, then what we know is that we indeed know very little about them, or vastly less than what is being claimed.

It may generally be observed that there are ways out of this charge. Obscurantism or proximate vacuity may be avoided by enriching the notion of a right, or by letting a specific right, such as that of life, liberty, or happiness, carry the great part of the semantic burden, or (and this does not exhaust all possibilities) by doing a little of both. But to define a human right as a human entitlement and then be content only to say that the right to life means that each ought to be entitled to live without other's intervention (or the like) is not the maneuver that allows escape from this charge.

The second of the three approaches I here wish to consider is the claim that the right to life is somehow synonymous with the principle that one ought never to kill an innocent human being. This, when properly examined, is another way of saying that the right to life is inalienable. Since I have

treated this question in some depth elsewhere [5], I shall be content to touch only upon some of the more important matters and then add a consideration that heretofore may have been overlooked. I shall not discuss this matter further, since I want to consider other ways of dealing with the right to life.

To say that one ought never kill an innocent human being is, in part, to say that such killings are always morally wrong. Unless we are to regress to 'light of natural reason' talk or ascribe a supernatural origin to the claim (thereby consecrating and perhaps placing it beyond discussion or criticism), I take this to mean that wrongful killing is an unjustifiable intrinsic or extrinsic injury. Now if the latter be the sole ground, it is difficult to understand how the prohibition could be arrived at without considering probable consequences, and even more difficult to understand why, given conceptual and procedural safeguards, a limited practice of euthanasia should be ruled out *a priori*. On the other hand, if it is a combination of both modes, or if the prohibition rests solely upon the notion of an unjustifiable intrinsic injury, then the question is whether such injury necessarily will, or is reasonably likely, to occur given the provisos outlined earlier. If not, then why the prohibition?

I use the phrase 'reasonably likely,' because it should be recognized that, even with the establishment of the most careful safeguards, there is some possibility, however remote, of accident, negligence, or intentional malevolence. There is simply no way to eliminate these factors completely. Of course, advocates of euthanasia can say that, since this is true of every social policy, it is therefore not telling against any particular program. But since this is a question of helping to terminate the lives of fellow human beings, we should, I believe, be extremely cautious. There is perhaps no easy answer. Yet for those who consider this 'remote risk objection' telling, I should like to ask: Under what circumstances would the practice or legalization of voluntary euthanasia be morally conceivable? What are the consequences of a public policy that denies, because of remote consequences, help to those generally in dire need? And is it not better that men and women, being fully informed, should be free to decide whether or not they wish to run that risk?

Before leaving this line of thought, I should like to bring the issue into sharper focus by moving from the level of theory to a concrete example.

Few cases have received more publicity and stirred the interest of the general public more then that of Karen Ann Quinlan. The case is unusually complex. Yet several things seem clear: first, Joseph Quinlan asked that the respirator be removed and that his daughter be allowed to die; second, Karen was quoted as saying, on three different occasions, that she never wanted to

be kept alive by extraordinary means (so that there has been no evidence that the removal of Karen from the machine would be contrary to her known preferences); third, none of her doctors claimed that Karen was in any technical sense dead; fourth, because there has been evidence that she is comatose with irreversible damage to at least one part of her brain, there has been neither any immediacy in terms of relieving pain nor a way of having her directly express her own preferences; and, finally, Judge Muir denied the plaintiff's request, indicating that 'such an authorization would be homicide,' and that it would be a violation of the right to life, presumably Karen's constitutional right [7].

The question of a constitutional right to life is even more problematical than the one we have raised, and it is best, I think, to leave it aside. But the question of why the removal of Karen Quinlan from the life-support machine should be viewed as an act of murder may profitably be raised from the present moral perspective.

With regard to this question, I would say that if it is reasonable to regard wrongful killing as an unjustifiable intrinsic or extrinsic injury and if the removal of Karen Quinlan from the machine is not, in the strict sense of the term, an injury to anyone, then it is reasonable to conclude that it is not an act of wrongful killing. Admittedly, to harm others is to violate their interests. So, even if there is the interest in being alive only if one's life could be radically different, some harm has been done. But to say this is to admit neither that the act in question is predominantly harmful nor that it is an injury.

We injure a man when we deny or deprive him of some important or vital need he rationally prefers to have. In this sense, a man who removes a minor part of a toenail without permission, while someone is asleep, may or may not be harming him, but it is difficult to see how this could constitute injury. On the other hand, to remove the entire limb would normally constitute an injury unless, of course, it was gangrenous. Similarly, killing a man is generally considered an injury, because it generally violates the conditions mentioned. But to say that it must always be an injury is to assume that life is always preferable to death, which begs the question.

In saying this, I am not suggesting that this notion of injury is unproblematic, which indeed it is not. I am only urging that given the circumstances of the Quinlan case, the removal of Karen from the machine is not an injury, and to that extent is not an act of wrongful killing.

IV

A more helpful discussion of the question of what a holder of the right to life is entitled to is presented by Judith Jarvis Thomson in her now almost classic paper on abortion [8]. Thomson explains briefly why there is so much trouble concerning this right[6] and then characterizes three possible positions. The right of life according to this analysis

(a) includes having a right to be given at least the bare minimum one needs for continued life;

(b) does not include the right to be given anything, but amounts to and only to, the right not to be killed by anybody;

(c) consists not in the right not to be killed, but rather in the right not to be killed unjustly.

Thomson then contends that views (a) and (b) are implausible by advancing some ingenious counter-examples.

It is obvious from what has been said that I share Professor Thomson's views concerning (b). But I do not find her rejection of (a) entirely convincing, although it does raise important questions.

Consider, for instance, her claim that the right to life cannot include the entitlement that one be given at least the bare minimum one needs for continued life. She writes:

> . . . Suppose that what in fact *is* the bare minimum a man needs for continued life is something he has no right at all to be given? If I am sick unto death, and the only thing that will save my life is the touch of Henry Fonda's cool hand on my fevered brow, then all the same, I have no right to be given the touch of Henry Fonda's cool hand on my fevered brow ([9], p. 55).

Thomson correctly reminds us that all general rights have their just limits. So the right to do X, where X is a general entitlement, is never the right to do or obtain whatever is required to do X. To be more specific, if someone argues that having a right to life includes having a right to be given at least the bare minimum one needs for continued life *whatever* that might require, then they are mistaken.

Weighty as Thomson's arguments are, they carry little or no weight against those who agree with the principle that all rights have their just limits but also maintain that the right to life seems to require that, in the distribution of goods, some regard for necessities of life on the part of all citizens should be attended to. Without adequate provision for physical sustenance and basic

health care, the right to life seems at best to be incomplete and, at worse, a sorrowful misdescription.

For example, suppose that what, in fact, is the bare minimum a man needs for continuing life is not the touch of Henry Fonda's cool hand, but some food. Is not the holder of the right to life, subject to provisos I will shortly describe, entitled to that food? And suppose a man needs a blood transfusion, is he not similarly entitled?

Now there are some formidable problems. But, quite apart from the familiar difficulties of how we would deal with enemies or persons who, although capable, refused or knowingly neglected to contribute their fair share, we would, I think, want to say that a man is entitled to that food or blood provided this does not deprive another of an essentially similar right. That is to say, the right to life provides some positive entitlements and, although it may override other rights or claims, when sensibly interpreted cannot be understood to override another person's right to life.

It must be admitted, by way of conclusion, that the business of mapping out the proper domain to be covered by the term 'right to life' is largely an unfinished activity. But I do think it fruitful to start by holding that a moral right is in itself a moral principle, and/or an entitlement called for by moral principles (or their like); it is permissible for its possessor; it entails *prima facie* obligations on the part of society, or at least a *prima facie* obligation on the part of another individual; and it is a moral threshold such that when it is seriously violated, remedy or restitution is required. A right, in this sense, is a double entitlement: The holder is entitled to some type of treatment or opportunity and also entitled to redress if that is not provided. So, to the extent neither is justly accorded, civil disobedience or a more extreme method of redress is warranted.

On this view, when a society capable of providing minimal subsistence and health care does not do so because of essentially ideological or purported moral reasons, it violates the rights of its members so affected. This is based – but not solely – upon the general recognition that knowingly to allow people to suffer or die from lack of proper diet, basic and vital health treatment, or their like, when this could have been reasonably avoided (and to say that this is fully consistent with even the *prima facie* right to life), is to make a hollow mockery of that right.

In short, the right to life is imperfectly but perhaps best conceived of as the right (1) to have the bare minimum one needs for continued life whatever that may require, provided this does not violate anyone else's similar right, that available resources do not make this an impossible task, and that

reasonable provision is made for the indolent, misanthropic, or enemies; (2) to have protection against unjust assault or interference with these vital interests; and, (3) subject to the proviso that no more force be used than the occasion necessitates, to seek redress if that prove necessary.

If we assume that the right to life can be so defined, then I see no likely conflict between it and the practice of voluntary beneficent euthanasia. This limited form of euthanasia has its share of difficulties. But these difficulties arise because we do not know how to attain that without also having something which we do not want, and not because we have violated a basic human right.

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NOTES

[1] In this paper I shall use the term 'euthanasia' only to refer to active euthanasia, that is, the deliberate inducement of a relatively painless quick death. By 'beneficent euthanasia' is in part meant 'the inducement of a relatively painless quick death, the intention and actual consequences of which are the kindest possible treatment of an unfortunate individual.'

[2] For a full discussion of my treatment of this question, see Kohl ([5], part 3; 6).

[3] 'Agism' is 'the discrimination against people on the basis of their chronological age.'

[4] '... by a preferability vindication we understand an argument which establishes the justificandum as the preferable means for achieving the end.' Katz [4]. Cf. Feigl [1,2].

[5] It would also be foolishness to contend that even with a more adequate conception of a right, the problem of existence becomes significantly less intractable. But what I fail to see is, why, if there is a chasm between the *ought* and the *is*, the gulf is any greater concerning rights than with other kinds of moral principles.

[6] A source of much of the trouble, she tells us, is that the right to life is treated as if it were unproblematic, which it is not ([8], p. 55). In a more recent paper she adds that this characteristic is true of all rights and 'that all rights are problematic presumably in that we cannot say (without much difficulty) what the bearer of that right is minimally positively entitled to.' [9]

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