

BENEFACTANT EUTHANASIA

Marvin Kohl

As long as we respect human dignity and regard kindly acts as being at least virtuous, beneficent euthanasia, or mercy killing, will be practiced and remain a moral activity. For, as Cicero correctly observed, other things being equal, our first duty is to help most where help is most needed.

I shall present my case in three parts. Questions as to the morality of indirect euthanasia will be considered in Part I. A characterization and brief defense of direct noninvoluntary beneficent euthanasia will be presented in Part II. In Part III, I will consider the most formidable objection: that, no matter the intrinsic rightness of euthanasia, the ultimate consequences would be too costly—that is, that the moral or legal approval of any form of direct euthanasia would in fact lead to a state of unrestrained killing and, that even where an act of killing is not intrinsically wrong and has good particular consequences, the general prohibition should be kept, because not to do so has the consequence of weakening the general prohibition against killing, which we feel necessary to maintain.

Euthanasia is usually defined in one of several ways. Narrowly, it refers to the *inducement* of painless quick death. In one of its broader senses, however, the term refers also to the *allowance* of a painless quick death. I shall follow here the broader usage and roughly distinguish between direct (or active) and indirect (or passive) euthanasia. The former designates acts in which one does something directly to end life when it would otherwise go on; the latter designates acts in which one refrains from doing something so that death will come more quickly.

There are two questions: the morality of direct and the morality of indirect euthanasia. Let us consider the latter one first.

Aside from the problem of undesirable consequences, the question of whether or not an act of indirect euthanasia is sinful or immoral is not apt to arise unless it is already believed that the continuance of mere physical life is an absolute and/or intrinsic good. I suggest that this position, a position held by most vitalists and some inalienable-right theorists, is open to formidable objections.

It should be noticed, first, that saying life is intrinsically good means that the existence of life would be a good, even if it existed quite alone, without any accompaniments, goals, or meaning—that is, that the mere physical process, in and of itself, is always a good. I am inclined to believe that the motivation behind this position is well intended. For it often does seem that the best way to protect something is to make protection exceptionless. But surely we do not want a principle that seeks to preserve life at the price of

protecting suffering, when that suffering can be shown to be needless.

To say that all human life is intrinsically good is to say that each and every life, whether or not the individual is suffering acutely from incurable conditions or disease, is intrinsically good. It is to say that the life of a child like David Patrick Houle—a child who among other things was born with improperly formed vertebrae, a malformed left side and hand, no left eye or ear, and who if he survived would be partly deaf, palsied, blind, and mentally retarded—is intrinsically good. It is to say that when lives are irretrievably blasted by accident or blighted by some ghastly illness, or that even when all dignity, beauty, and meaning have vanished, these lives are intrinsically good. The flaw in this philosophy lies not in its intention but in its entailments. For unless this position is abridged or more carefully qualified, it entails the acceptance of pointless suffering.

Still another difficulty is that the vitalist position runs counter to common moral intuitions or beliefs about killing. For example, it is widely held that killing in self-defense and the defense of others, especially when necessary to save life, is morally justifiable. In addition, the vitalist's high regard for life *qua* life runs counter to the moral approval of the hero or the martyr who lays down his life for the sake of other values, such as honor or conscience. John Huss, the Bohemian religious reformer, was burned at the stake and his ashes thrown into the Rhine River because he refused to stop attacking the worldliness of the clergy and the interference of the Catholic Church in political matters. I do not think we would be prepared to say that Huss' belief that honor and conscience come before one's own personal safety was mistaken, though we might in practice often lack the courage of that conviction.

The main point is this: there is a difference between saying "X is good" and saying "X is an intrinsic and/or an absolute good." Almost all men hold life to be a good, but few would perceive or hold it either to be good in itself or the highest good. To make a case for these claims, it must be shown: (a) that mere physical life is always a good thing; and (b) that it is the highest good. And this has not been done, and I do not believe it can be done.

My only excuse for insisting on the inadequacy of the vitalist position is that it is not consistently recognized by opponents of euthanasia. There is some sort of odd bifurcation. For many seem to maintain that what I have said is right when applied to problems of indirect (passive) euthanasia but wrong when applied to problems of direct (or active) euthanasia. Plainly, they cannot have it both ways. If these beliefs are inadequate grounds for opposing indirect euthanasia, then they are inadequate for opposing direct euthanasia.

Let us now turn to, and consider, the more difficult problem: When is an act of direct euthanasia right or morally justified? Correctly conceived, for an act to be one of beneficent (active) euthanasia, the dominant motive must be the desire to help the intended recipient, the act must involve the inducement of a painless quick death,* and it must result in beneficial treatment for that recipient. In other words, the term beneficent euthanasia is synonymous with the term mercy killing, that is, the inducement of a painless and quick death, the intention and actual consequences of

*"Painless quick death" is an abbreviated way of saying "as quick and painless as possible." I am indebted to Stephen Nathanson for a similar point.



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which are the kindest possible treatment in the actual circumstances of an unfortunate individual. An act is noninvoluntary only if it is either the result of the fully informed consent of the intended recipient or, when the recipient is not mentally or physically free to choose (as in the case of permanent coma), the proper legal guardian (or when this is inappropriate, society or its representative), acting on the individual's behalf, gives consent. I advocate the legalization and practice in certain situations of noninvoluntary direct beneficent euthanasia (hereafter referred to simply as beneficent euthanasia).

I have described the nature of kindly acts and argued for the morality of beneficent euthanasia at length in *The Morality of Killing* (Humanities Press, New York, 1974). Here I shall summarize some of the basic points.

The argument on behalf of beneficent euthanasia is twofold. First of all, since it is kind treatment, and since society and its members each have a prima facie (though not an equal) obligation to treat members kindly, it follows that beneficent euthanasia is a prima facie obligation. This means that in certain circumstances we actually have a moral obligation to induce death. It is not only virtuous to help most where help is most needed, but often it is a duty to do so.

In addition to the argument from kindness, there is an argument from justice. It has two prongs. The first is that, where an individual is not constrained but physically and mentally free to choose, his consent is necessary. This is an essential safeguard, for one of the best defenses against injustice is that of informed consent. The second is that justice further requires that where possible we give to each according to basic needs; and, since human beings have a basic need to live and die with dignity, it is just that we treat them accordingly. This entails the right to live, the right to die, and the right to death with dignity.

Many people would say that when an action is a kindly one it is to some extent desirable and that when it is both kindly and just it is a prima facie moral act, if not obligatory. But some would be quick to add that even a kindly and intrinsically just act is not necessarily moral, whatever the consequences. For, like the utilitarians, they hold that the rule not to kill the innocent must be regarded as universally binding for two reasons: first, because the wisdom of past generations has discovered that the consequences of killing the innocent in permissible circumstances is in fact conducive to the killing of the innocent in nonpermissible circumstances; second, because, even in the case of an apparent exception, (beneficent euthanasia) where the killing has good consequences, still the rule should be kept, because in general it is right, and one breach of it would weaken the authority of the rule, which we wish to see generally observed.

Of the two reasons, the first (the so-called wedge or slippery-slope argument) may be ruled out. There is simply no evidence that killing per se is contagious, but there is overwhelming evidence to show that it is not. It is true that people who believe that it is right to kill Gypsies, Jews, or anyone else, provided their death may profit the state, will probably continue to kill if they have the power to do so. But this is not evidence of the seductiveness of killing. Rather, it is evidence that, when men have almost unlimited power, their actions will be consistent with their beliefs and, if their beliefs entail needless cruelty, so will their actions.

No doubt much of the resistance to euthanasia is due to fear, the almost abject fear of the Nazi experience. I think Joseph Fletcher is right in holding that the Nazis never engaged in mercy killing; "what they did was merciless killing, either genocidal or for ruthless experimental purposes." ("Ethics and Euthanasia," *To Live and To Die*, Robert H. Williams, ed., Springer-Verlag, New York, 1973) The motivation behind and the nature and consequences of acts of beneficent euthanasia are radically different. In the Nazi example, the motivation (aside perhaps from sadism) was solely that of maximizing "benefit" for the state. In

cases of beneficent euthanasia the motivation is essentially and predominantly that of maximizing benefit for the recipient, that of helping most where and when the individual needs it most. The Nazi form was involuntary, while the form advocated here is non-involuntary.

There still remains the difficult task of being able to distinguish free, informed consent from that of subtly, or otherwise, coerced acts. Yet this problem should not be blown out of proportion. The obsessive fear of abuse should not prevent us from acting kindly. Nor should it blind us to the fact that some acts are not only freely chosen but easily recognized to be so, and that in cases of beneficent euthanasia the individual has the right and power to reject or terminate that action.

Similarly, there are cases where the proposed act of inducing death constitutes a borderline case of kindness. Here, even if it is freely requested by the patient, one should refrain from acting. *If there is reasonable doubt that the purported act is not kind or not the kindest possible actual alternative, one should refrain from acting.* This is not to say that one does not have a right to self-determination and thereby suicide. Nor is it to say that one should refrain from acting in cases that easily and clearly meet the conditions outlined earlier. It is only to suggest that there is an important difference between suicide and proxy suicide and that the consent of a potential recipient does not in itself necessarily incur the obligation upon someone else to assist in the act.

This procedural rule, especially when added to our understanding that an act is only beneficent euthanasia if both the intention and actual consequences of the act is the kindest possible treatment for the recipient, radically separates beneficent from the nonbeneficent varieties of euthanasia.

The second major theoretical consequentialist concern seems to be that the so-called inviolate rule prohibiting the killing of the innocent should be kept, and therefore that beneficent euthanasia should be prohibited. In other words, we are being told that we ought to weigh the maximizing of benefit against the maximizing of harm, and that if we did so, we would find that the consequences of breaking the inviolate rule prohibiting the killing of the innocent are in fact conducive to misery rather than happiness or some other ideal. This charge is, indeed, a serious one. For, not only do utilitarians maintain that the rightness of a rule or action is to be judged solely by consequences, but mixed-deontologists maintain that a necessary, though not sufficient, condition for a morally right act is that it promote the greatest balance of good over evil. If, therefore, the consequences of beneficent euthanasia are in fact more conducive to misery than happiness or its like, then utilitarians and mixed-deontologists should have to reject the practice.

But why should we advocate a rule when we know that it will not in cases of merciful treatment be most beneficial to abide by it? As Professor J. J. C. Smart correctly observes, "to refuse to break a generally beneficial rule in those cases in which it is not most beneficial to obey it seems irrational and to be a case of rule worship." ("An Outline of a System of Utilitarian Ethics," *Utilitarianism: For and Against*, J. J. C. Smart and Bernard Williams, Cambridge University Press, London, 1973) Therefore why dogmatically adhere to a principle that protects innocent life and needless suffering? Why not simply formulate a better rule?

In *The Morality of Killing* I suggested that the principle prohibiting killing be reformulated so that it would not apply to cases of beneficent euthanasia. If this strategy is workable we obtain a new prohibition, "Do not do K except in circumstances of the sort C," where K stands for the killing of innocent people, and C stands for the noninvoluntary inducement of a painless and quick death, the intention and actual consequences of which are the kindest possible treatment in actual circumstances of the recipient of that act. The merit of this rule is that it both protects the innocent and allows us to help those in dire need. And this is what morality is largely, if not all, about.