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Moral Dominion Over Dying: The Case for Mercy Death

by Daniel C. Maguire

Whether or not we have a right to intervene and encourage death when someone is in a dying way has been argued pro and con. The view that we do have a moral right to hasten the dying process by direct action is no longer on the fringes of ethical thought or practice, but that view has become part of the mainstream. Reasons for this shift are explored in this essay.

Some twenty-five years ago, my Uncle Dan came to our house for what were to be his final days. His condition was described by his doctor as "coronary deficiency." Even I, as a layman, observed that his heart was limping, his pulse irregular and weak. He had no strength except at terrible moments when sudden pain would strike parts of his body. When the pain struck, this old sick man would cry out with the strength of a young boy. The doctor opined that, with the weakness of his circulatory system, arteries or organs were collapsing and causing this appalling pain.

One evening, I gave him two pills prescribed for sleeping. He fell asleep, but in 45 minutes he awoke screaming. The pains had returned. I rushed to the phone and called his doctor. The doctor could hear the cries of pain and knew immediately what was the problem. He asked if I had given him the two sleeping pills. I said I had, but only 45 minutes before. There was a long delay, filled with more agonizing laments, and then the doctor said very deliberately and slowly: "Give him two more." I asked, "Could he tolerate two more?" Again the deliberate response: "Give him two more." I did. The pain eased. He fell asleep and never awakened. The next morning when the doctor came to pronounce death, there was a wordless conversation between the doctor who had made an anguished ethical choice the night before and the ethicist who had never worked or written on the topic.

The problem the doctor faced was our moral dominion over the dying process. In some areas, the human family feels morally free to impose death. Massive death is imposed with patriotic pride in the slaughter called war. The killing of unarmed, lower economic class prisoners in capital punishment is still popular and defended by conservative savants. These two crude forms of killing, which appear rational only because they are so long ten-

ured in custom and culture—the familiar comes to seem good—are finally receiving serious challenge in ethics.

Simultaneously, our right to intervene and encourage death when someone is already in a dying way, is being rethought. The subject is not new to the human race, but the breadth of acceptance of the right to mercy death is a novelty in our modernity. As my opening story illustrates, the subject has been acted upon under the pressures of crisis situations. Now practice and theory are being wed, and western culture is newly open to this serious expression of moral freedom.

Mercy Death Today

When I published the first edition of my book *Death By Choice* in 1973, I defended the moral right to accelerate the dying process by direct intervention in certain circumstances.¹ In the multiple reviews and serializations of the book and in conferences that flowed from it, I learned that there was a strong movement in thought and practice regarding mercy death. Since 1973, that movement has accelerated.

Three to five percent of the deaths in the Netherlands are attributed to some form of mercy death.² The Netherlands is particularly interesting since, as is usually noted, it involves not so much a legalization of mercy death as a privatization of it. Even when the law says that such actions are to be reported, fewer than 2 percent are actually recorded.³ So the complicated legal regulations that have attended this moral revolution in Holland have func-

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tioned as a pacifying backdrop for the blessing of individual and private choices by patients and doctors.

In an Australian poll, 76 percent of the general public supported physician-assisted mercy death. In a poll of Australian nurses, 66 percent said they had been asked by patients to accelerate the dying process and 85 percent of this group had complied.⁴

In the United States, Washington state came close to legalizing mercy death, with 46 percent of the

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vote in favor of it. A majority of Americans in various polls consistently judge mercy death to be moral and acceptable in certain circumstances. Philosopher Margaret Battin says, "I think that the United States will come to accept assisted suicide in the relatively near future, officially as well as tacitly..."⁵

The view that we have a moral right to hasten the dying process by direct action is no longer on the fringes of ethical thought or practice. My position on mercy death now seems considerably less lonely than it did in 1973.

Reasons For This Shift

(1) Many years ago, the British historian Arnold Toynbee said that Americans treated death as though it were an un-American activity. Still, a couple of million Americans got away with it every year anyhow. What has happened since Toynbee's chiding is a cultural rite of passage. We have witnessed a near-obsession with death and dying. Courses and lectures and books on the subject have multiplied during this transitional period. We have begun to look death in the face. Ethical reassessment of death-related questions naturally flowed from this cultural mutation.

(2) Medical advances also prodded this movement. For the ancients, death was not something to be sought. Life was short and often brutish. General longevity is a modern achievement. Now death can be desirable before it is medically allowed. Now too we know more about how to bring on death when terminal illness is marked by undefeatable pain. These technical advances have pushed the ethics of mercy death.

(3) We have begun to face up to fraud. Mercy death has been going on, even here in the United States. Twenty-five years ago a study on the dying patient stated matter-of-factly, "There is considerable evidence that doctors do terminate lives in certain situations."⁶ Our law did not cope with this. In Uruguay a law promulgated in 1933 says, "The judges are authorized to forego punishment of persons whose previous life has been honorable where they commit a homicide motivated by compassion, induced by repeated requests of the victim."⁷ When I was writing *Death By Choice* I called the Uruguayan embassy to see how that law had been faring. I was told it was working well. The embassy official added, with some delicate hesitancy, that this law spared them "the embarrassments" of our system. His reference was to a celebrated case at the time where a mercy death had been "justified" by declaring the person doing it to be insane—although he clearly was not. In effect, we were playing charades to get the same results the Uruguayans got legally and candidly. Distaste for these charades is pressing the new ethics of mercy death.

(4) Religious arguments are also arising in favor of mercy death. In 1985, a commission of the Reformed Churches of the Netherlands issued a report in which it said that taking a life, in a mercy death situation, "is not necessarily without justification in the light of faith."⁸ This is quite arguable. In my recent book, *The Moral Core of Judaism and Christianity*, I discuss a number of symbols and themes in Judaism and Christianity which could be used to argue for the morality of mercy death.⁹

Jewish and Christian biblical religion was not fatalistic. It did not present persons as corks bobbing hopelessly in the currents of fate. Rather it pictured us as actors who could redirect the tides. When asked what we are like, it replied, "like God!" We were crafted in the image and likeness of God. We are take-charge "stewards" of the earth, not passive witnesses. Theology went on to call us co-creators, co-providers, and even participants in divine providence. These symbols functioned historically to give an enormous push to technology in areas influenced by biblical symbolism. If something needs doing, those made in the image of God, who are vocationally partnered with God in the fashioning of creation, ought to get out and do it. In so doing, we are not "playing God," but simply being our God-like selves.

From this base, it can easily be argued that death, which is always thought to be the enemy, may at last become the best remaining friend. Death might be the only feasible relief for unbearable suf-

fering in a terminal illness. When that is the case, God-like people who are made to go for the good when they find it, might reach out for death.

The alternative would be to say that when we enter the dying process, our God-like minds and wills are no longer supreme; we may not discern the good and choose it as we have done all our lives. Biology is now our destiny. God's will could be manifested only in the symptoms and timetable of our disease. This form of biological determinism is losing its grip today.

Historically, mercy death has been acted upon under the pressures of crisis situations.

(5) The classical objection to mercy death, with or without a physician's help, has had many names: the domino objection, the parade of horrors, the finger out of the dike, the camel's nose under the tent, the slippery slope, etc. It is the argument from effects which implies that since there are dangers associated with this exercise of freedom, we must place it under taboo. Usually, this argument falls back on the Nazi analogy. We will replicate the Nazi euthanasia experience if we allow any exceptions at all. This objection is still proffered by writers such as Daniel Callahan and Alexander Capron.¹⁰

The argument is losing its force due to the experience of mercy death taking place with no ensuing parade of horrors. The Nazi experience of state-imposed death is not entertained seriously anywhere, making the analogy strained at best. The ancients had the best answer when they said *abusus non tollit usum*, meaning abuse does not rule out use. The

fact that something can be abused does not mean that it cannot be intelligently used. Medical experimentation has been abused here and everywhere else. We do not taboo it, but rather intelligently and sensitively and alertly work against the abuses.

Mercy death must, however, be approached with reverent awe. As I wrote twenty years ago: "Life is the good thing and the precondition of all good things. Any decision to end it in any context, for self or for another, must be slow, deliberate, and reverential. But the life that is good, also bears the mark of the tragic. There are more times when the ending of life is the best that life offers. Moral persons will see this, and then, more than ever, they will know the full price of freedom."¹¹

References

1. Daniel C. Maguire, *Death By Choice* (Garden City, NY: Doubleday, 1984).
2. Maurice A.M. de Wachter, "Euthanasia in the Netherlands," *Hastings Center Report* 22 (March/April 1992): 23-30.
3. John Keown, "On Regulating Death," *Hastings Center Report* 22 (March/April 1992): 39.
4. "In Brief: Euthanasia Down Under," in *Hastings Center Report* 22 (November/December 1992): 3.
5. Margaret P. Battin, "Assisted Suicide: Can We Learn from Germany?" *Hastings Center Report* 22 (March/April 1992): 44.
6. O. Brim, H. Freeman, S. Levine and N. Scotch, *The Dying Patient* (New York: Russell Sage Foundation, 1970): xxiv.
7. Maguire, 35.
8. de Wachter, 27.
9. Daniel C. Maguire, *The Moral Core of Judaism and Christianity* (Minneapolis: Augsburg-Fortress, 1993). This book does not discuss mercy death but it does give the basis on which the defense of mercy death could be mounted.
10. Daniel Callahan, "When Self-Determination Runs Amok," *Hastings Center Report* 22 (March/April 1992): 52-55. Alexander Morgan Capron, "Euthanasia in the Netherlands: American Observations," *Hastings Center Report* 22 (March/April 1992): 30-33.
11. Maguire, *Death By Choice*, 186.