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Brief 461011

Title: Would a change in the law on assisted dying be ethically permissible?

Introduction

As with most ethical debates, the question posed above creates a divide between two distinct schools of thought: those authors who are in favour of proposed change and those who are not. Nevertheless, each of these groups can be divided into subgroups, each presenting their own individual reasoning. It should also be noted that since the status quo of the law involves the effective outlawing of assisted dying, the 'change' mentioned above is implicitly the legalisation of at least some substantial form of assisted dying. For the purpose of clarity, 'assisted dying' refers to active voluntary euthanasia. Whilst the issue of assisted dying is by no means new, particular attention has been paid to relatively modern resources, on the basis that any change to the law would by definition be made in a modern context. Furthermore, recent attempts to change the law can be regarded as having placed a useful energy into the debate. Indeed, there even exists a subsection of the topic dedicated to examining why change might be more likely than ever, as demonstrated by the work of Saunders on the media's role in the debate.

Arguments in Favour of Changing the Law on Assisted Dying

Autonomy in General

Unsurprisingly, the concept of autonomy (as described by Beachamp and Childress) holds a central position in the debate at hand. Authors such as Young and Gray note that there should not be a distinction between the plethora of actions which any given individual might take in their day to day life in the name of autonomy and the act of arranging and following through with an assisted death, at least as far as the right to self-determination is concerned. In this manner, the question of assisted suicide can be located within wider debates of the limits of bodily integrity and self-determination. This means that even if autonomy does not form the central theme of a given text arguing for alterations to the law, it forms an essential part of the background to that text. Nevertheless, as noted by Schermer just because a particular action can be described in terms of self-determination, this does not make it a given that that action is permissible. Instead, the limits of autonomy are poorly defined and amorphous. Thus whilst there appears to be consensus that assisted dying it a matter of autonomy, this does not make it a given that it should be legalised. Indeed, it can be countered that without access to philosophically watertight defences of the concept of autonomy, that all arguments that flow form the idea that autonomy is a universal good can be considered at least somewhat flawed. Keown notes that as appealing as autonomy arguments are, that they lack substance as a result of the fact that there are many restrictions placed upon autonomy by any given society, and therefore that the law on assisted dying can simply be regarded as being part of a continuity of restricted self-determination.

Rights Based Arguments

Since the acceptable limits of autonomy are by no means hard, a series of authors have attempted to deduce whether assisted dying might be considered to be within or without the boundaries of legitimate behaviour. Manson and O'Neill note that the right of an individual to guide themselves towards a desired end can in fact already be found in the autonomous right to refuse treatment (even if this might result in death) and thus that there is nothing patently wrong with an individual

making active (as opposed to passive) decisions to hasten the end of life, especially since such decisions are by definition confined to situations in which terminal illness is largely present. Dahl and Levy build on this argument, noting that autonomy is having an increasingly large presence within end-of-life decision making in recent years, as demonstrated by phenomena like advance directives. Such arguments can be considered meritorious, if only because they are based on objective evidence: the law and use of advance directives has indeed developed substantially in recent years, as has the debate on the matter of a right to die (as demonstrated by the number of assisted dying bills which have emerged in recent years.)

The rights-based arguments can also be seen in a number of high profile cases regarding assisted dying. In particular, Pretty v UK (2002), R (on the application of Nicklinson and another) (Appellants) v Ministry of Justice (Respondent), R (on the application of AM)(AP)(Respondent) v The Director of Public Prosecutions (Appellant) and R (on the Application of Debbie Purdy) v Director of Public Prosecutions have all been based heavily around the idea that there is a significant incompatibility between the rights provided to an individual under the Human Rights Act 1998 and the status quo of the law on assisted suicide. Even within this small group of cases, it should be noted that there exists another divide, between those cases which challenge the law itself, and those which challenge the way in which the law is applied. In the former category fall Pretty, Nicklinson and AM, whilst Purdy falls into the latter category. Regardless of the theoretical merit of the arguments in these cases, the repeated lack of success of these lines of argument suggests that as of yet the use of human rights law does not provide a practical avenue by which the law might be changed.

The Unequal Application of the Lw

Others seek to examine the legal status quo as a means of establishing acceptable uses of autonomy. One particularly notable line of reasoning involves examining the differences in the law on suicide and those on assisted suicide. Jackson notes that the current law does not seem to have any sweeping or absolute effect on the ability of an individual to hasten the end of their own life – instead, it simply creates a split between three different groups: those who do not require assistance to take their own lives, those who possess the means or support to leave the country to jurisdictions in which assisted dying is accessible, and those who do not fit into either of the two previous categories. Jackson argues that this means that the law has no substantial quarrel with the idea of suicide, but instead merely disproportionally affects a small minority of patients. Again, the merit of this particular argument can be seen in its relatively objective nature: the law indeed entirely makes suicide accessible to the vast majority.

There also exist arguments which revolve around the idea that rather than a loose right to self-determination, that patients in fact have a distinct right to control their own mortality, even if this right is used in a way which brings about the end of life. Friedman in particular advances this view heavily, arguing that individuals have a level of property rights in their own body, and that this therefore extends to the right to affect that body as the individual might see fit (including, by implication, the right to consent and have another take their life.) This argument can (again) be seen as fitting into wider discussions of autonomy, with authors like Narveson noting that without a right to suicide (even if assisted), no individual can be regarded as having properly realised bodily integrity. Whether such arguments hold water can be regarded as being based on whether the concept of body as property is accepted or not. If not, such arguments lack weight (and vice versa.)

Arguments on Changing the Law on Assisted Dying

Coercion of the Vulnerable

The main argument which can be seen to be tabled against altering the law is that to change the law would be to open the floodgates to a series of abuses of the system, in which vulnerable members of society are coerced or bullied into making use of assisted suicide. Gabriel notes that as well as the most obvious argument (that allowing assisted suicide might result in coerced deaths) that it can also be argued that in providing an alternative to palliative care that the quality of palliative care will diminish on the basis that it is resource intensive and can often involve painful procedures being performed on patients.

Interestingly, Gabriel also notes the lack of evidence to support the slippery slope argument. This can be regarded as not particularly sound reasoning – before a change in the law can be seen to have a negative effect, it stands that a change in the law must first be made. Nonetheless, it might be argued that there is evidence to suggest that the slippery slope will not emerge. Quill notes since assisted suicide remains de facto available overseas, and no cases have emerged in which this phenomenon has occurred, that this demonstrates that at least contemporaneously, the risks feared by anti-change parties have not been realised. Furthermore, as with any slippery slope argument, it can be countered that any change in the law would merely need to be tempered with appropriate safeguards and oversight in order to prevent the end result of the slope from ever occurring.

Further nuance can be seen to be added to the slippery slope arguments by examining those writers who consider which parties might be disproportionately disadvantaged by a change in the law. First and foremost are arguments that disabled individuals will be overly affected by a change in the law. Indeed, Gill notes that this is why there is a significant tendency for disability rights groups to oppose any changes in the law, out of fears of abuse. Even if a patient is not explicitly disabled, Wolf notes that proper consent will be difficult to ascertain, since those suffering from terminal diseases will very often be in significant amounts of pain and distress, with far higher rates of depression in terminal patients than in the general population. Nevertheless, such an argument should arguably be taken cautiously, since its logical conclusion would be that no patient suffering from an illness should be regarded as making an autonomous decision. Biggs puts forward an argument that any change in the law might disproportionally affect female patients as a result of the marginalised position of older women within society (i.e. a misplaced perception that a woman's advancing age correlates with her reduced utility.) These specific arguments are arguably more secure in their reasoning than generalist slippery slope arguments, since it is sensible to suggest that traditionally marginalised groups will be more vulnerable to abuse than majority groups.

Corruption of the Position of Physicians

It is also sometimes argued that a change in the law will cause an irreversible negative change in the patient-doctor relationship. The reasoning for this change varies. Simpson, for example, argues that there is a direct dichotomy between the traditional role and goals of a doctor and the act of assisting in another's suicide. Indeed, this is a theoretically solid argument: it is largely expected that a doctor will act to preserve life, rather than take it. In contrast, however, Hall, Trachtenberg

and Dugan state that their own research demonstrates that, at least as far as can be garnered from an opinion poll, that patients would not have their trust in their physicians harmed in any significant way.

Summary

In summary, as can be seen above, the binary yes/no nature of the discussion hides significant nuances with the discussion. Whilst it is of little surprise that autonomy finds itself at the centre of a discussion about letting people do something previously outlawed, of particular interest are the ways in which the current body of work seeks to establish the acceptable limits of autonomy (lest they fall foul of Keown's criticisms.) Any further work would need to both establish these limits, then balance this autonomy against the concerns of critics. Finally, it is of note that particular attention needs be paid to establishing the set of ethical standards that might be applied to a change in the law. Without first establishing this, any following discussion would be largely moot.

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