IS THERE A RIGHT TO DIE? A STUDY OF THE LAW OF EUTHANASIA

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> "I do not believe in mercy deaths, but I recognize that it is a personal thing between man and his God." Anonymous

His brother was permanently paralyzed from the neck down in a motorcycle accident, and Lester Zygmanlak, 23, had reached an agonizing decision. "I am here today to end your pain, George. Is that alright with you?" Lester asked. George nodded yes from his hospital bed, and Lester pulled a sawed-off shotgun from under his coat. "The next thing I knew, I had shot him," Lester told jurors in Freehold, New Jersey, U.S.A. as they considered murder charges against him for euthanasia or mercy killing.[1]

I. INTRODUCTION

Euthanasia is in origin a Greek word, meaning happy death. (*eu*-well; *thanatos*-death).[2] It first appeared in the English language in the early seventeenth century in its original meaning — a gentle, easy death. The term then came to mean the doctrine or theory that in certain circumstances a person should be painlessly killed, and more recently has come to mean an act or practice of bringing about a gentle and easy death.[3] Currently, the popular meaning of the term is the painless death "releasing" the patient from severe physical suffering.

Euthanasia or mercy killing, as it is also known, has been a topic of controversy since Biblical times and it is most severely condemned today in Christian countries due perhaps to the shocking effect of Hitler's euthanasia order of 275,000 old aged, insane and incurably ill persons

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1 "The Law," Time Magazine, August 1973, p. 79.

2 WEBSTER, NEW TWENTIETH CENTURY DICTIONARY 637 (1961 ed.); MALLOY, MEDICAL DICTIONARY FOR LAWYERS 223 (1951 ed.).

3 5 ENCYCLOPEDIA OF RELIGION AND ETHICS 598-601 (1960).

during the Second World War.[4] Yet euthanasia is widely, if illegally, practiced everywhere. Merely by delaying or failing to start respiration in a monstrous baby at birth or by removing the oxygen mask from a dying and pain-racked adult or by intravenous injection of a barbiturate, many a doctor has compassionately ended a life. Last year, the Danes were in uproar as Dr. Bjoern Ibsen, 59, admitted that he carried out the mercy killings of hopelessly ill patients at a Copenhagen hospital's intensive care unit by shutting off respirators.[5] At a meeting in Minnesota, U.S.A., doctors were asked to raise their hands if they had never practiced euthanasia. Not a hand was raised.[6]

During the 1960's, mercy killing caused a furor all over the world as a result of the birth of armless, legless babies caused by thalidomide, a tranquilizer blamed for the birth of hundreds of deformed babies in Europe and other parts of the world. This controversy was made more complex by the case of a Belgian mother who, with other persons, was acquitted by a jury (composed of 12 males because the prosecution would not trust a woman's emotion) in Liege, Belgium of the charge of murder in the mercy killing of her week old "thalidomide baby."[7]

This year, the debate on euthanasia spread even more with the research ban by the United States Congress on pregnant women and infants in their womb. What members of Congress had in mind were experiments on living fetuses in mothers about to have abortions, or on the small number of middle pregnancies which are aborted intact and alive for a few minutes to try to diagnose defects and for taking minute blood samples from the placenta or fetus.[8] It is believed that a doctor commits homicide when he permits the death of a fetus that might have survived, however briefly.

As a result of this world-wide controversy, many doctors and lawyers of late favor legalized euthanasia while the majority of theologians and clergymen predictably denounce it as a sin and a crime. Public opinion which has generally been against mercy killing seems to have shifted dramatically as shown by the threatened demonstrations in favor of the defendants in the Liege trial.[9] In Britain, a nationwide public opinion poll produced a startling answer — more than two-thirds (2/3) favored legalized euthanasia.[10]

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[4] N. ST. JOHN-STEVAS, LIFE, DEATH AND THE LAW 265 (1961).
[5] The Inquirer, January 1974.
[6] *Is Merciful Release Wrong?* READER'S DIGEST, June 1948, p. 106.
[7] The Manila Times, November 12, 1962.
[8] "Mercy Killing!" Bulletin Today, January 23, 1975, p. 7.
[9] The Philippines Herald, November 13, 1962.
[10] LIFE INTERNATIONAL, August 27, 1962.

II. KINDS OF EUTHANASIA

Euthanasia is of two kinds, voluntary and involuntary. Voluntary euthanasia is mercy killing administered upon request or at least with the consent of the deceased. This is usually applied to those persons who are in their right minds like the incurably diseased patients.[11] Involuntary euthanasia or "destruction of life not worth living" is used to describe not the patient's own attitude towards life but his objective uselessness to the community. This is the destraction of idiots, the old aged, the insane, the monstrosities and the defective, in the early stages of life.[12]

Involuntary euthanasia on eugenic or utilitarian grounds was advocated in the ancient world. Abandonment of the aged was common in primitive societies, but does not seem to have been practiced in Rome and Greece.[13] Disposal of defective children, on the other hand, did take place, and was advocated by Plato and also by Aristotle. "As to exposing or rearing of children born," wrote Aristotle, "let there be a law that no deformed child shall be reared but on the ground of the number of children, if the regular customs hinder any of those exposed, there must be a limit fixed to the procreation of offspring."[14]

Nazi Germany has the most appalling experience of euthanasia. The Nazi policy of compulsory euthanasia for the incurably diseased resulted in the mass destruction of thousands of people in different euthanasia centres. Most of them were foreign slave laborers alleged to be suffering from incurable tuberculosis whose relatives were later informed that they died of natural causes.[15]

III. THE PRESENT STATE OF THE LAW IN VARIOUS JURISDICTIONS

Generally, it can be said that euthanasia, whether voluntary or involuntary, and whether by affirmative act or by omission, is a violation of existing criminal laws. In instances of voluntary euthanasia, where the subject causes or helps to bring about his own death, the law of suicide, as well as the law of homicide is applicable.

It should be noted, however, that the emerging right of privacy[16] and the concept of control over one's own body may provide a basis for arguing that a person has a right to bring about his own death. In fact, it was

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[11] H. Silving, *A Comparative Study in Criminal Law*, U.PA.L. REV. 352 (1954).
[12] *Ibid.*, p. 352.
[13] L. SIMMONS, THE ROLE OF THE AGED IN PRIMITIVE SOCIETY 225 (1945).
[14] 7 ARISTOTLE, POLITICS, 15 (1946).
[15] M. Koessler, *Euthanasia in the Hadamar Sanatorium and International Law*, 43 J. CRIM. L. 735-755 (1953).
[16] Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed. 2d 510 (1965).

decided in the 1972 case of *Eisentadt v. Baird* that "if the right to privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." The age of the fetus, 20 to 24 weeks, was the line drawn by the U.S. Supreme Court, when the Justices said an abortion before viability was a mother's privacy right.[17]

A careful examination of Philippine law on the subject will reveal that mercy killing is murder,[18] homicide,[19] parricide[20] or assistance to suicide.[21] Mercy as a motive is not even a mitigating circumstances.[22]

As a common rule in various states of the United States, the voluntary killing of an incurably ill when performed with premeditation and deliberation, is murder.[23] One case involving what can be described as euthanasia is the Michigan case of *People v. Roberts*.[24] There a husband mixed poison and placed it within the reach of his incurably ill wife at her request. On appeal, the Court rejected the argument that because suicide was not an offense, the husband could not be an accessory to the offense. The Court then found that the husband was not an accessory but that he was guilty of murder under a statute making it an offense to commit murder by means of poison.

It is clear that one who not only encourages a suicide but also commits an overt act, such as giving an injection of a lethal substance, has committed a crime. Furthermore, while there are few reported cases involving one person killing another at the latter's request, the principles of criminal law governing such conduct are not in doubt. Neither the imminence of death, nor the victim's suffering, nor his consent is a recognized defense.[25]

It is also a principle in criminal law that if the victim was living at the time the defendant acted, it is irrelevant that the victim was dying. Although the defendant may have only accelerated the victim's death, he is still guilty of homicide.[26] The often quoted language is ". . . . that if any life at all is left in a human body, even the least spark, the extinguishment of it is as much homicide as the killing of the most vital being."[27]

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17 405 U.S. 438, 453, 92 S.Ct. 1029, 31 L.Ed. 2d 349 (1972). *Cf.* "The Right to Live" Bulletin Today, April 18, 1975, p. 36.
18 REV. PEN. CODE, art. 248.
19 REV. PEN. CODE, art. 249.
20 REV. PEN. CODE, art. 246.
21 REV. PEN. CODE, art. 253.
22 FERIA & GREGORIO, REVISED PENAL CODE, 300-301 (1959).
23 *Supra*, note 11.
24 211 Mich. 187, 178 N.W. 690 (1920).
25 *Ibid.*
26 WHARTON, CRIMINAL LAW AND PROCEDURE 435 (Anderson ed., 1957)
27 State v. Francis, 152 S.C. 17, 147 S.E. 348 (1929).

In the United States too, motive, defined as the reason for acting is to be distinguished from intent and is not an essential element of murder or any other crime, except where it has been made so by statute.[28] Thus, killing another to relieve suffering or for any other humanitarian reason is not a recognized defense.[29] Moreover, Chief Justice Traymer of the California Supreme Court in the case of *People v. Conley*[30] observed that ". . . . one who commits euthanasia bears no ill will towards his victim and believes his act is morally justified, but he nonetheless acts with malice if he is able to comprehend that society prohibits his act regardless of his belief."

Thus, while there have been a very limited number of reported incidents involving euthanasia in countries throughout the world, it can not be doubted that under existing criminal law principles it is unlawful to mercifully kill another, with or without consent. There may, however, be two situations in which the existing law allows life to be shortened. One involves administering of drugs to relieve pain, even though the drugs may shorten the patient's life. The other involves the refusal to administer extraordinary treatment or the discontinuing of such treatment.

In administering pain relieving drugs, it may sometimes be necessary to increase the dosage continually until it eventually becomes certain that the drugs will bring about the patient's death, either directly or indirectly. An example is morphine, which in sufficient doses may cause a patient's death or may cause him to develop a fatal respiratory ailment. The case in point is the 1957 prosecution of Dr. John Bodkins Adams in England.[31] After noting that the shortening of a life is murder and that the law does not recognize as a special defense acting to prevent severe pain, Mr. Justice Devlin of the Central Criminal Court instructed the jury that a doctor need not calculate in any precise manner the effects of medicines upon a patient's life and that if it is no longer possible to restore the patient to health, the doctor may do all that is necessary to relieve suffering even though the measure he takes incidentally may shorten the patient's life. The reason, said Mr. Justice Devlin, is that there is no act of murder unless the act in question causes death and the word "cause" is to be understood in its common sense usage. Thus, if a person is being treated of an illness and his treatment has the incidental effect of determining the exact moment of death, it can not be said that the doctor "caused" the patient's death.

The second situation in which it may be lawful to shorten life is the omission of certain kinds of medical care. Generally, where there

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[28] *Supra*, note 26 at 442.
[29] State v. Ehlers, 98 N.J.L. 236, 119 A. 15, 25 A.L.R. 999 (1922).
[30] 49 Cal. Rptr. 815, 411 P. 2d 911 (1966).
[31] D. MEYERS, THE HUMAN BODY AND THE LAW 147 (1970).

is a duty to provide medical care or any other necessity such as food and shelter, the failure to do which results in death, constitutes homicide. However, there may be circumstances where not providing medical care by one who is ordinarily under an obligation to do so is not unlawful. In *Palm Springs General Hospital Inc. v. Martinez,*[32] Mrs. Martinez, a 72 year-old woman, was critically ill from an anemic condition. According to her doctor, she could be kept alive only by periodic blood transfusions. Because of the collapsed condition of her veins, a minor surgical operation was required to make the transfusions possible. Mrs. Martinez refused to undergo the surgery and expressed a wish to die. The hospital petitioned the Court for an emergency declaratory relief. The Court in part said: "Based upon the debilitated physical condition of the defendant and the fact that performance of surgery upon her and administration of further blood transfusions would only result in the painful extension of her life for a short period of time, it is not in the interest of justice for this Court of Equity to order that she be kept alive against her will. A conscious adult patient who is mentally competent has the right to refuse medical treatment, even when the best medical opinion deems it essential to save her life."

Be that as it may, there are penal systems that explicitly take into consideration the humanitarian motives of mercy killers in meting out penalties. In Switzerland and Germany, a compassionate motive or killing upon request operates to reduce the penalty to as low as six months. Their penal codes specifically mention mercy motive and the patient's condition which might give rise to such motive. In short, it is removed from the realm of murder and simply considered a milder type of homicide.[33] The Norwegian Penal Code, on the other hand states: "If somebody is killed or seriously injured in body or health with his own consent, or if anybody kills a hopelessly sick person out of mercy, or is an accessory thereto, the punishment may be reduced below the minimum provided, and to a milder form of punishment."[34] The Italian system reduces the penalty on homicide by mercy killing on the ground of the lesser intrinsic gravity of the act and the lesser social dangerousness of the actor[35] while the Chinese Penal Code punishes by imprisonment for not less than one year nor more than seven years whoever kills another at the latter's request or with his consent.[36] The Netherlands, Spain, Poland and Japan all allow a lesser penalty when a homicide is committed at the request of the victim.[37] Finally, in Uruguay, a court may choose to impose no penalty in cases

[32] Case No. 71-12678, Cir. Ct. of Dade Co., Fla., July 2, 1971.
[33] *Supra,* note 11.
[34] *Ibid.,* p. 368.
[35] *Ibid.,* p. 384.
[36] *Ibid.,* p. 386.
[37] *Supra,* note 31 at 154.

where the defendant is of good character and has acted for humanitarian motives at the request of the victim. This provision has been interpreted as authorizing a judicial pardon.[38] However, in no country does it appear that euthanasia is affirmatively sanctioned.

All the instances above-mentioned presuppose an urgent request repeated expressly and consent or request can not be deemed relevant unless the person who expresses it is in possession of his mental capacity.

IV. THE LAW AS APPLIED

Although the law governing euthanasia is well settled, its application has not led to uniform results. Its administration is more lenient. Very often, juries mitigate the harshness of the law by bringing in verdicts of acquittal or conviction of a lesser offense than that charged. Defendants rarely get more than a light sentence and often not even that. In the case of *Repouille v. U.S.*[39] for instance, Repouille chloroformed his thirteen-year-old son. His reason was that he had suffered since birth from a "brain injury which destined him to be an idiot and physical monstrosity malformed in all four limbs. The child was blind, mute and his entire life was spent in a small crib." Repouille had four other children at the time towards whom he had been a dutiful parent. It could thus be assumed that the act was to help him in their nurture which was being compromised by the burden imposed by the fifth. He was indicted for manslaughter in the first degree, but the verdict of the jury was manslaughter in the second degree with a recommendation for utmost clemency. The judge imposed a sentence of five to ten years imprisonment and placed him on probation.

Sometimes, juries return verdicts of temporary insanity and sometimes on the ground of lack of causation. In one case, a woman, Virginia Braunsdorf, a spastic crippled twenty-nine year old who could not hold her head upright and who talked in gobbling sounds which only her father could understand, was shot dead by her father who was worried about her should he die first. He then attempted to kill himself. Because of this later act, he was not found guilty by reason of temporary insanity.[40] In another case, Dr. Herman Sander, a physician, was accused of murder of his cancer ridden patient, who was nothing more than a vegetating extension of heart, lungs and kidney machines, by the injection of 40 cc. of air into the vein of the patient's arm shortly before her death. Since the prosecution was not able to prove beyond reasonable doubt that the patient was still alive when the defendant injected air into her vein, the

[38] *Ibid.*, pp. 152-155.
[39] 165 F. 2d 152 (1947).
[40] Time Magazine, June 5, 1950, p. 20.

doctor was acquitted.[41] In the 1973 Lester Zygmanlak case mentioned at the beginning of this article, the accused was not found guilty of murder by reason of temporary insanity. The jury also found that he was sane at the time of trial and sentence and he left the court a free man.[42]

Very recently a classic case of mercy killing with a special twist happened in Cape Town, South Africa. An old man was dying in agony. Riddled with cancer, little more than a skeleton, unable to speak or even swallow, he merely nodded when the doctor asked him if he wanted to sleep. The doctor then added a lethal overdose of sodium pethathol anaesthethic to the patient's dripfeed. Moments later, 87 year old Frederick Hartman entered his eternal sleep. The patient was the doctor's own father. At the end of the four-day euthanasia trial, South Africa's first, the presiding judge said Dr. Hartman, who had pleaded not guilty to murder, had clearly acted out of compassion. He found him guilty of murder and imposed a suspended sentence of one year's imprisonment which meant that the doctor left the court a free man too.[43]

In England, long before the English Homicide Act of 1957 distinguishing capital from other types of murder, it was customary to reprieve those held guilty of murder by mercy killing.[44] A typical English case is the trial of Mrs. Mary Brownhill. She had undergone a very serious operation and was worried about the future of her thirty-one year old imbecile son whom she killed by gassing and administering one hundred aspirins. She was sentenced to death with a strong recommendation for mercy. Two days later, she was reprieved, and after three months, pardoned.[45] So, even though there may be a conviction, executive clemency is common.[46]

V. Legislative Proposals

No country in the world today has as yet legalized euthanasia. The issue is whether and how the law should be adjusted to accommodate it.

Two questions need be answered: (1) Out of compassion for the suffering patient, must we legalize euthanasia altogether? (2) Out of compassion for the actor, must we mitigate the harshness of formal law under which euthanasia is treated as deliberate killing?

Proponents of legislation to legalize euthanasia argue that there is no certainty that a doctor or anyone else who may practice euthanasia

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[41] New York Times, March 10, 1950.
[42] *Supra*, note 1.
[43] "Have Mercy, Kill Me!" Bulletin Today, April 3, 1975, p. 7.
[44] *Supra*, note 4 at 264.
[45] The Times, October 2, December 4, 1934 and March 4, 1935.
[46] G. Williams, The Sanctity of Life 327 (1956).

can expect a verdict based on sentiment.[47] Those who oppose any change in the present law argue that the law is flexible enough to deal with slayers who act from humanitarian or merciful motives, leaving the criminal law to preserve life, regardless of its value to the individual concerned or to society.[48]

Glanville Williams in his book *The Sanctity of Life* suggested an approach that would leave the doctor immune from criminal prosecution and with wide discretion. He described his proposal as follows:

> "It would provide that no medical practitioner should be guilty of an offense in respect of an act done intentionally to accelerate the death of a patient who is seriously ill, unless it is proved that the act was not done in good faith with the consent of the patient and for the purpose of saving him from severe pain in an illness believed to be of an incurable and fatal character. Under this formula, it would be for the physician, if charged, to show that the patient was seriously ill, but for the prosecution to prove that the physician acted from some motive other than the humanitarian one allowed him by law."[49]

A compromise program seeking to avoid the death bed formalities while retaining the safeguards against abuse and mistake was embodied in the Voluntary Euthanasia Act of 1969 which was considered by the English House of Lords in March of that year. The bill permitted a person to sign a prescribed declaration requesting that euthanasia be performed if the person should ". . . at any time suffer from a serious physical illness or impairment reasonably thought in any case to be incurable and expected to cause one severe distress or render one incapable of rational existence." The bill was rejected on second reading.[50]

A law recognizing the right of individuals to determine their own fate is admirable and necessary. But the idea of using a declaration, a "living will" as it came to be regarded, has been criticized on the grounds that while it may represent the person's intent when signed, it may not represent that person's intent in later years, particularly during a serious illness when there could be great anxiety about the declaration's cancellation."[51]

What is perhaps a model legislation should provide three things: (1) A sane person, over 21 years old, suffering from an incurably painful and fatal disease. He must petition the court for euthanasia in a signed and attested document with an affidavit from the attending physician that in his opinion the disease is incurable. (2) The court shall appoint a com-

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[47] *Ibid.*, p. 293.
[48] *Supra.*, note 31 at 151.
[49] *Supra.*, note 46 at 340.
[50] 300 H.L. Parl. Deb. (5th ses.), 1143-1252 (1969).
[51] J. GOULD & LORD CRAIGMYLE, YOUR DEATH WARRANT? 34 C 19 1971.

mission of three, of whom at least two shall be physicians to investigate all aspects of the case and to report back to the court whether the patient understands the purpose of his petition and comes under the provision of the act. (3) Upon a favorable report of the commission, the court shall grant the petition and if it is still wanted by the patient, euthanasia may be administered by a physician or any other person chosen by the patient or by the commission.[52]

This model legislation, however, applies only to ill patients. It does not go far enough. It ignores patients who are not in a position to make decisions — the hopelessly comatose person, the accident victim with serious and irreparable brain damage and the child who is unable to understand either his pain or the decision required to end it. Is it humane to insist that they, and their families, endure their suffering until "natural" death overtakes them, no matter how long that takes, no matter what the financial and emotional costs to their families, because they can not speak for themselves? Furthermore, there are also questions that may come out as for instance, the fallibility of doctors and the patient's condition which prevents him from giving a rational decision.

There ought to be some recourse in cases such as these. Of course, there is no simple way to judge when one person should decide whether or not another should continue to live. But just as a person should have the right to end his own life when he foresees only more pain and sorrow than he can bear, so there should be some criteria that decent and reasonable people can agree on if they would allow a family to decide for a patient who is unable to express his wishes that life should be ended and pull all the plugs on all the machines and allow him to die with dignity.

A "middle way" has been suggested for those who are not content to rely on the current flexible application of the law, yet do not wish to change the law to sanction euthanasia affirmatively. In this regard, the laws of those foreign countries which do accord mercy killing a special status either because of the motive involved, the request of the victim, or both have been cited as possible models. These European countries have statutory schemes to affect a particular situation. Thus, under the law of Germany, mercy killing is not murder, because mercy is not one of the enumerated motives, in manner of performance, which bring a killer within the category of a murderer. In Switzerland, the same result follows from the fact that judges will hardly classify a mercy killing within the general description of showing a "particularly reprehensible attitude of the actor," constituting murder. In addition, there are in many countries like Norway, France and China, special statutory forms of homicide punishable less severely than ordinary homicide.

[52] 31 N.Y.U.L. REV. 1157 (1956).

Decisions on reported cases of euthanasia show variance of court penalties and sentence despite the existence of a law on the matter. These differences in the treatment of euthanasia cases may be due to the failure to consider the ethical relevance of motive in criminal law resulting in circumvention of legal provisions, lack of uniformity of adjudication and public dissatisfaction.

A. *Mercy Motive in Criminal Law*

Motive is neither an element of a crime nor a defense to its existence no matter how humanitarian the motives may be. The state deems the lives of its citizens too dear to be taken for self-ascribed humanitarian motives or even for purposes which might likely be beneficial to the community.

As shown above, the present system resorts to various maneuvers to afford mercy killers a more lenient treatment under statutory law. Should the law be reformed in such a way that motive will be considered as an element of the crime or a defense to its existence?

Modern European reform movements center around the personality of the criminal. It directs the judge's attention to the fact that he must consider the total personality of the actor as evidenced by his deed. The actor's character, his dangerousness or harmlessness, and the probability of his repeating the crime become important in judging the crime. These elements are believed to be reflected in psychological guilt rather than in the consequences of the act.

The most significant test of guilt may be found not in the rational attitude of the actor toward the crime but rather in the ethical evaluation of the actor's motivation and in the manner of performance. Thus, motive becomes relevant, whereas premeditation and deliberation test decreases in importance. A man may act with deliberation while in a state of despair while a crime of passion can originate in a depraved mind or be committed in a highly reprehensible manner. It is believed that one who kills for profit may be expected to do so again, whereas a mercy killer is hardly likely to turn into a habitual criminal. On the other hand, premeditation is not deemed to indicate in itself probability that the actor will repeat the crime.[53]

This overhauling of the entire system to provide gradations of homicide keyed more to motive than intent would afford the mercy killers a more lenient treatment, without it being necessary to resort to various maneuvers as it is being done, to achieve that result. Moreover, since special treatment is afforded by statute, there is greater assurance of uniformity in the adjudication of euthanasia cases.

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[53] *Supra*, note 11.

Judge Learned Hand in the case of *Repouille v. U.S.* cited above, suggested that while euthanasia is objectionable to the majority of virtuous persons, as long as it remains in private hands, the current moral feeling as to legally administered euthanasia might be different. Different, not because virtuous persons generally adhere to the Socratic tenet that absolute obedience to the law is a requirement of morality, but because they generally believe that the law alone can furnish anything like adequate safeguards against abuse. On the other hand, however, the method of reducing penalty for homicide in the case of mercy killing has the advantage of not being objectionable from a religious point of view. For religions do not deny that there are degrees of sin or guilt depending on the underlying motive and that punishment ought to be differentiated in accordance with this. Such method of reduction presupposes the assumption that such act is less reprehensible than ordinary acts of homicide, and in the meantime seems to be the most appropriate solution.

VI. Arguments: Pro and Con

A. *Religious Views*

The Roman Catholic Church condemns euthanasia. In his encyclical, *Mystici Corporis,* the late Pope Pius XII unequivocably condemned euthanasia.[54] Their strongest arguments against the same are: (1) The disposal of life is in God's hands. Man has no control over life, but holds it in trust. He has the use of it and therefore, may prolong it, but he may not destroy it at will; (2) That no man has the right to take an innocent life. "The innocent and just man thou shalt not put to death."[55] "The innocent and just thou shalt not kill."[56] (3) The Wedge argument which means that an act which if raised to a general line of conduct would injure humanity, is wrong even in an individual case. In other words, once a concession about the disposability of innocent life is made in one sphere, it will inevitably spread to others. The recognition of voluntary euthanasia by the law would at once be followed by pressure to extend its scope to deformed persons and imbeciles and eventually to the old and anyone who could be shown to be burdens to society. Killing insane adults would greatly increase the sense of insecurity felt by the borderline insane and by the large number of insane persons who have sufficient understanding on this particular matter. It offers somewhat a shaky basis on which to build respect for the sanctity of life.[57]

The Reverend Canon Peter Chase, an Episcopal minister in New York said: "Life is desperately sacred to the Christian, and to interfere with it

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[54] 35 A.A.S., 239 (1943).
[55] Exodus, 23:7.
[56] Daniel, 13:53.
[57] J. V. Sullivan, Catholic Teaching on the Morality of Euthanasia 54 (1949).

in its unborn stage raises intense moral questions apart from the legal ones."[58]

The ethics of the Jews, a people who can boast of many martyrs, prohibits mercy killing. "For the law to relieve man of all crucial moral decisions is to deny them that spiritual anatomy which is of the essence of their moral and religious experience. Confronted by a suffering fellowman, the doctor must make the decision or members of the family must make it. And they must choose between two antinomies — the inviolability of the right to life and the command to mitigate the suffering. Whatever the decision, there will be no punishment by human tribunals — according to Judaism. Mercy killing will not be murder. The freedom to act morally is, therefore, absolute. One acts only under God and with one's conscience as one's guide. And one will have to live with that decision forever after. The law, however, plays no part."[59]

B. *Non-Religious views*

Pain is an absolute evil, utilitarians advocating euthanasia say. "It would be cruel to allow a human being to linger for months in the last stages of agony, weakness and decay and refuse him his demand for merciful release. What social interest is there in preventing the sufferer from choosing to accelerate his death by a few months?"[60] So, provision for euthanasia in the law is not only morally permissible but mandatory. Euthanasiasts lay much stress on the horror of physical suffering and the pain to relatives awaiting the end. A philosopher thus explains:

> Safeguarding a person's right to die when and as he chooses, so long as the exercise of his right works no violence on the rights of others, seems to me a proper function for the laws of a free and educated man. The fantasy that existence as such, regardless of its how and wherefore, is better than non-existence is a quirk of metaphysical verbalization and not an inference from the actual existence of actual people. On the record, it is an empty abstraction argued by dialecticians who in all likelihood have never themselves experienced the agonies of an incurable pain filling the consciousness to the exclusion of all else that qualifies it as human, contracting it to an animal body that reflexly acts on like a beheaded fowl. Human existence is consciousness . . . . The human person ceases when awareness goes out and unconsciousness comes in and awareness goes out when it becomes intolerable to itself. Death is only the lasting, as sleep, anesthesia and narcosis are the intermittent extinctions of consciousness. That a human being whose consciousness is all hurt beyond endurance should appraise its extinction as better and more desirable than its existence, that he should aim at and seek to effect

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[58] *Supra*, note 10.

[59] P. Ramsey, *Freedom and Responsibility in Medical and Sex Ethics: A Protestant View*, 31 N.Y.U.L. REV. 1200 (1956).

[60] G. Williams, *Mercy Killing — A Rejoinder*, 43 MINN. L. REV. 1-12 (1958).

> its lasting termination, is one of the prime attributes of his humanity; that he should turn to those he most trusts and cherishes for help toward this ultimate release is the uttermost expression for his faith in their moral responsibility and concern for his well-being. The principles and practice of euthanasia here are neither justifiable homicide nor murder. They seem to me among the consummations of the humanity of man, the ultimate step of his differentiation from the organic animalhood in which it roots.[61]

Doctors are far from being united in their support of euthanasia. An American physician, Dr. Philipps Frohman has this to say: "I have never considered the possibility of euthanasia in dealing with patients. The medication available today makes the relief of almost any severe pain possible. No physician can predict with certainty how long any individual will live. Occasionally, there are recoveries that seem miraculous, but they do happen. Shall we preclude the possibility of such occurrences by deliberately terminating life? And even if we are urged to do so by a grief stricken family, are we to be influenced by a decision made at a time of emotional upset which later may become a burden of guilt too great to be borne? Someone at such time must remain a rock of strength and sober judgment. If not the physician, then who?[62]

In Vancouver, Canada, Dr. Brock Chisholm retired head of the World Health Organization, is however positive on the subject of voluntary and involuntary mercy killing. He explained: "We should have faced this issue long ago, of whether the grossly crippled should be encouraged to live or not. The institutions are full of idiots with no brain at all. They were never of any use to themselves or anyone else. I do think there is no good in keeping humans alive who can never be human beings." In his book *Morals and Medicine,* Dr. Joseph Fletcher, an Episcopal minister, educator and a Director of the Euthanasia Society of America, made the conclusion that death under stringent and limited circumstances, may be more humane and merciful and consonant with respect for human dignity than continued life.[63]

C. *Medical Views*

Advances in science have stretched the span of our lives, and, as a consequence, there is an increase in degenerative diseases like cancer. Science has, however, not yet produced a complete relief except transient ones to which the body gradually builds up immunity. There will always be a time when even a heavy dosage of narcotics will no longer deaden pain. Some patients maddened by pain commit suicide. In other instances,

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[61] H. Kallen, *An Ethics of Freedom: A Philosopher's View,* 31 N.Y.U.L. REV. 1168 (1956).

[62] *Supra,* note 10.

[63] J. FLETCHER, MORALS AND MEDICINE (Princeton, 1954).

a devoted relative himself may administer the *coup de grace.* But the relative himself may be horrified by his deed and attempt suicide. In Brooklyn, New York, U.S.A., a chemist whose son lay writhing in agony gave the young man, a few sips of corrosive acid not enough to kill him. Panic stricken, the father himself consumed the rest, and died, leaving his son lingering for months.[64] Because of these facts, euthanasia has turned its direction towards the role of doctors and physicians.

The Hippocratic oath requires physicians to relieve pain and save life. If the doctor honestly and sincerely believes that the best service he can perform for his suffering patient who has developed a resistance to narcotics to relieve pain, is to accede to his request for euthanasia, must the law forbid him to do so? The physician's dilemma is further complicated where the patient's immediate illness is not incurable but where a cure will leave him a permanent sufferer. For example, a patient suffering from a brain disease which when cured, will leave a mental defect. Although death in such instance may be preferred to great pain, it probably may not under the existing laws be preferred to existence in a state of drugged torpor. Anyone can see the great strength of the case for saving a patient from intolerable pain. An existence which is characterized by terrible weakness, nausea, giddiness, extreme restlessness as well as long hours of consciousness of a hopeless condition should not be imposed on a person who wishes to end it.[65]

This may be justified by the doctrine of necessity which under common law refers to a choice between competing values, where the ordinary rule has to be departed from in order to avert some great evil. It purports to excuse an admitted attack upon a person when the act was done to avoid an evil both serious and irreparable and there was no adequate means of escape.[66] The choice in the instant case would be between leaving the patient without relief or mercifully extinguishing his life.

In fact, the law has permitted actions involving 100% incidence of death as in the necessity cases illustrated by the overcrowded lifeboat,[67] and the starving survivors of a shipwreck.[68] In these situations death for some may well be excused, if not justified, yet the prospect that some deaths will be unnecessary, is a real one. The same is true in self defense, where the killer may have misjudged the facts and those who throw passengers overboard to lighten the load may no sooner do so than "see masts and

[64] *Supra,* note 6.
[65] *Supra,* note 46.
[66] *Ibid.*
[67] U.S. v. Holmes, 26 Fed. Cases No. 15183, 1 Cliff. 98 (1958).
[68] Regina v. Dudley and Stephens, 14 Q.B D. 273 (1884).

sails of rescue merge out of the fog." This is so, because modern legal systems do not require divine knowledge of human beings.[69]

D. *Death with Dignity*

For advocates of mercy killing, there is a somber new slogan: "Death With Dignity." Meaning: the way of death has become too technological, often condemning a patient to a lingering and painful end in which he is kept artificially alive by a maze of tubes and life support machines. To prevent such dehumanizing procedures, the advocates of death with dignity recommend that doctors be allowed to cease extra-ordinary life-saving efforts when it is clear that the patient is beyond further help. The living are counseled to ease the dying person's final agony by keeping him company during his last hours.[70] This approach to terminal illness has won wide support, including the approval of Protestant, Roman Catholic and Jewish moralists.

Another call for death with dignity which is certain to provoke a sharp ethical debate appeared in the new issue of the bimonthly journal *The Humanist.* Entitled "A Plea for Beneficent Euthanasia," it bears such divers signatures as those of French Biologist Jacques Monod, Situation Ethicist Joseph Fletcher and CORE Founder James Farmer. The document recommends not only the "passive" euthanasia now widely advocated, but "active" euthanasia as well: direct action to speed the death of a dying patient — an act that is technically murder. To be sure, only patients who freely request either form of euthanasia would be so treated. The definition of active euthanasia in the plea is also narrowly specific: "The administration of drugs to relieve suffering until the dosage reaches the lethal stage." One of the 40 signers is Catholic theologian Daniel C. Maguire of Marquette University, author of the recent book *Death By Choice.* In an accompanying essay, Maguire points out that in spite of the widespread notion that Catholics are totally opposed to active euthanasia, he is not the only Catholic theologian who believes it may be justified in some cases. Ethicist Paul Ramsey, on the other hand, argues that the idea of death with dignity is now being too readily promoted and death itself too easily accepted.[71]

VII. Conclusion

It will be noted, in conclusion, that euthanasia is a practice which has gone on, both sanctioned and unsanctioned, since man first discovered his emotions and since man first learned pity for his suffering fellowman.

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[69] Y. Kamisar, *Some None-Religious Views Against Proposed Mercy Killing Legislation,* 42 Minn. L. Rev. 969 (1938).

[70] Time Essay, July 16, 1973.

[71] Time, July 1, 1974, p. 58.

The arguments for and against euthanasia are thoughtful, rational and compelling. It has been this author's purpose to present both sides of the issue.

Authorities are not wanting that in spite of material variance in form and substance of law, euthanasia has found varying degrees of acceptance in the legal domains of Germany, Switzerland, the United States, Italy, Norway and Uruguay. The marvelous advances in science, more particularly, in drugs and medicine, have so taken the whole humanity by leaps and bounds that a wonder drug like thalidomide has become the common property of mankind. In the gigantic contest for the conquest of the outer space, the disastrous effects on persons of the fall-out of the bomb explosions are no secret. Their victims are living-dead. Shall they be allowed to live to suffer more? States are fast beginning to realize that a sudden death is a million times better than a 50-megaton bomb to a person whose agonizing death is prolonged by a barage of suffering and unbearable pains. The *modus operandi* is no other than euthanasia.

> **"For the man of moral integrity and spiritual purpose, the mere fact of being alive is not as important as the terms of living. As every hero and martyr knows, there are some conditions with which a man refuses to continue living. Surely among these conditions, along with loyalty to justice and brotherhood, we can include self-possession that disintegrates personality, as any wide acquaintance with sickbeds will teach us."[72]**

Ours, however, is an individualistic legal system. We believe that man is endowed with an innate personal dignity and that he is an end in himself and not a mere means serving extraneous social ends such as those of his fellow human beings. What gives this greater significance is the fact that the fundamental law of the land, the new Philippine Constitution aside from the Universal Declaration of Human Rights and the Preamble of the Charter of the United Nations, has recognized these rights. Section I, Article III of the Bill of Rights of the new Constitution provides:

> **"No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."**

This guarantee to the right to life and liberty may be interpreted such that euthanasia will not run counter to it, but this would be erroneous. As Dr. Vicente Sinco, noted constitutionalist, remarked: "In a democracy, the Bill of Rights is premised on the belief of the dignity of man and the intrinsic worth of human life." He goes further to say

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[72] Newsweek, November 12, 1962, p. 44.

that our Constitution has given reality to this value by giving due recognition to the existence of certain inherent and inalienable rights of the individual.[73] In the light of the purposes and spirit behind our Bill of Rights, we find that the principle of self preservation not only implies protection from physical destruction and injury but that it necessarily points to a more positive aspect — the right to be respected as having worth and dignity. That some persons are in the throes of pain and disease does not detract from their worth as human beings. In this connection, the Virginia Supreme Court of Appeals has stated, "The right to life and to personal security is not only sacred in the estimation of common law but is inalienable."[74]

"Liberty" may never be distorted or exaggerated to imply that man has the right to choose to die. But if a man chooses death like one on a hunger strike which could lead to certain death and claim it to be the exercise of his liberty, are we not duty bound to restrain him from exercising his so called "liberty" wrongly? This is the intent of our lawmakers in penalizing those who assist in killing another even with the victim's consent or even if the victim should ask for it.[75]

It is in this atmosphere that our system draws life and vitality. The right to life and liberty must not be construed in favor of euthanasia for the reason that the action involves a contradiction of the general principles governing civilized society and the premise on which the Bill of Rights rests. Not only is this contrary to the avowed purpose of society and the spirit of our Constitution but it also violates explicitly our Constitution by not adhering to the "due process of law" guarantee. In the cases of *Hurtado v. California,*[76] *Davidson v. New Orleans,*[77] and *U.S. v. Ocampo,*[78] the Court ruled that due process does not merely refer to procedural rights but to substantive rights as well. As Dr. Sinco explained, "It is clear . . . : that due process does not mean any procedure laid down by a statute. The meaning is that every citizen shall hold his life, liberty and property and immunities under the protection of the general rules which govern society."[79]

Despite mounting population problems, our stand, therefore, against euthanasia must be considered as a rule of conscience which every Filipino must follow, so that he may be at peace not only with himself, but also with his God.

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[73] V. G. SINCO, PHILIPPINE POLITICAL LAW 72 (11th ed., 1962).
[74] 184 Va. 1009, 37 S.E. 2d. 43, 47 (1946).
[75] REV. PEN. CODE, art. 253.
[76] 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed. 232 (1884).
[77] 96 U.S. 97, 24 L.Ed. 616 (1878).
[78] 18 Phil. 1, 4 Phil. Dec. 639 (1910).
[79] *Supra,* note 73 at 562-563.