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Published in:
Suffering and dignity in the twilight of life

Publication date:
2004

Document Version
Publisher's PDF, also known as Version of record

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Introduction

In order to justify their position from a political point of view once and for all, supporters of the legalization of euthanasia often cite two irreconcilable opinions. Their reasoning could be expressed by the following syllogism: according to them, (the major term) certain people believe, they say, that human life does not belong to the individual, but to God, and it is therefore not theirs to dispose of; on the other hand, for others, each individual has supreme autonomy, is his 'own master'.[a] and can, therefore dispose of his life, whose meaning and value he evaluates according to his own criteria, as he wishes. And, (the minor term) in a pluralistic democracy, it is intolerable for a legislator to favor the philosophical or religious opinions of only one portion of the population. Therefore (conclusion), legalization of euthanasia is the only solution that respects the convictions of all individuals (with the understanding that no one is obliged to ask for euthanasia).

[a] According to a favorite expression by Senator Roger Lallemand, father of the Belgian law on the legalization of euthanasia.

In other words, a compromise must be found which, in a practical sense, means that euthanasia must be legalized; in other words, by so doing, the thesis of free choice will be sanctioned by leaving it up to each individual person's conscience.[b]

A statement by Bernard Kouchner, former French Minister of Health, that attracted much attention is typical of this: "Religious convictions require certain individuals to accept that death will occur at a date that is not of their choosing. On the other hand, others think that choosing one's moment of demise is the final act of a free man. Why not respect these differences and let each person decide whether he or she wishes to leave it up to fate, God, or physicians?"[c]

To us, presenting the terms of the debate in this way seems to distort the issue. It is based on the debatable postulation that euthanasia is a purely private choice. And therefore, it chooses to ignore the profound impact that the legalization of this practice will have on the social fabric and, consequently, on the politico-legal stakes of euthanasia.

In the following text, it is our aim to go beyond the philosophical and ideological divisions into which some have tried to lock this debate, and to base our reflection on the rationality of the legal and political point of view. This dimension of the problem cannot be ignored or neglected since the legalization of euthanasia is, for all intents and purposes, a legal and political act.

In fact, there are enough powerful, social, legal, political and, finally, simple commonsense reasons to challenge euthanasia. This will be our line of reasoning. As we shall see, it is not absolutely necessary to base the argument on religious reasoning – which does not, of course, detract from its essential character. Before getting to the heart of the matter, it is important to clarify certain misunderstandings, which could cloud the real issues of the debate.

By euthanasia we mean, "An act practiced by a third party who intentionally ends the life of a person upon the request of that person". The various participants in the debate generally agree with this definition, which was proposed by the Comité Consultatif de Bioéthique de Belgique.[d] The intention to end someone's life is an essential concept, which differs from other perfectly legitimate medical acts, such as the appropriate administration of analgesics to relieve pain and the decision to stop administering useless or disproportionate treatments. These details are fundamental, since a lack of awareness of these distinctions completely biases the debate on the possibility of legalizing euthanasia. We must therefore insist that:

- The physician has an obligation, not only to restore health, but also to relieve pain. At times, these two obligations can appear contradictory. Nevertheless, we must stress the difference – admittedly subtle, but no less real and indisputable from a moral and legal point of view – between the taking of life to end suffering and fighting suffering at the (careful and in proportion) risk of shortening life. Unless the patient refuses, the physician can (and should) administer analgesics, powerful ones, if necessary, to relieve pain, even if they have the indirect and, as such, unwanted effect of hastening death.[e] With medicine as it exists today, all physical suffering can be

[b] The right to autonomy or self-determination as the basis for the right to euthanasia has been used constantly, in all debates and, in particular, on the days of reflection on euthanasia organized at the Belgian Senate on December 9th and 10th, 1997. See, for example, Compte rendu analytique des séances du Sénat, 9 et 10 décembre 1997, 2176-2213. Also read G. Hottois, Y a-t-il un fondement du droit à l'euthanasie?, Bulletin de l'ADMD (Belgique) 64:11, 1997.

[c] Press review, January, 28th, 2000, www.genethique.org

[d] See: Comité Consultatif de Bioéthique de Belgique, Opinion N° 1 "Concernant l'opportunité d'un règlement légal de l'euthanasie", May, 12th, 1997, Bioethica Belgica 2:2-6, 1998; Review Dr Santé, 1997-1998, pp 22-26. This opinion is also available on the Committee's website (www.health.fgov.be/BIOETH).

[e] For more information: X. Dijon, Le sujet de droit en son corps: une mise à l'épreuve du droit subjectif, Brussels, Larcier 749:524, 1982; H. Nys, La médecine et le droit, Kluwer, 706:275, 1995. From a moral point of view, we should mention that, in 1957, Pope Pius XII took a position on analgesics by recommending their use, if there was no other effective means, despite the very negative image of 'narcotics'. See: Pie XII, Problèmes réligieux et moraux de l'analgésie, La Documentation catholique, 1247:337-340, 1957. This teaching has since been confirmed.

adequately relieved (in extreme cases by the use of controlled sedation). Nevertheless, we have to admit that the problem of the judicious treatment of pain has mainly been studied in the context of 'palliative care', which is generally not well developed, particularly in Belgium. Generally speaking, the medical sector is not well prepared with regard to the control of symptoms and pain. As a result, most requests for euthanasia originate from the inadequate treatment of pain. Evidence and references abound on this point.[f] Therefore, it is of the greatest urgency to provide all medical personnel with better training in the control of symptoms and pain.

In the art of healing, many practitioners do not hesitate to attest that existing legitimate medical options are enough to deal with all forms of suffering. Everything else is a matter of the holistic approach to a person, in other words, of taking into account all the psychological, social, and spiritual needs of the patient; not forgetting the attention and support to the family and those close to incurable patients (indeed, 70% of requests for euthanasia originate from those close to the patient, who are also under enormous stress). These issues are at the heart of so-called 'palliative care' and merit the closest attention from the authorities.

- 'Life-extending medical treatment' is not required by either law or medical ethics, or morally.[g] The physician is obliged to fight pain and provide ordinary, useful and adequate care, no more, no less. Under no circumstances is he obliged to undertake or continue, contrary to the wishes of the patient, a useless treatment or one that is out of proportion to the condition of the patient, if the benefit of the treatment appears to be minimal compared to its inconveniences, constraints, or costs to the patient.

  To present the legalization of euthanasia as the remedy for life-extending medical treatment and the prolonged suffering that this entails, arises from a regrettable confusion. It is already legal, from all points of view, not to start, or to interrupt, any treatment that artificially prolongs the end of life. This type of decision is part of the general mission of medicine and must not be confused with euthanasia. What is under debate here is, in fact, accepting the human condition, mortality, and allowing the natural process of death.

Various arguments are generally used to justify the legalization of euthanasia.[h] We will only be looking at five of these here, since they are particularly pertinent to the domain of legal and political philosophy. They are the following:

1. Sometimes, euthanasia is the only way to guarantee a dignified death.
2. Each individual has the right to dispose of his life as he chooses.
3. Euthanasia should at least be allowed in exceptional cases.
4. In a pluralistic and lay society, no-one should impose his moral or religious convictions on others.
5. Euthanasia is already being practiced, so therefore legalization would simply be an adaptation of the law to fit the facts.

[f] See in particular the enlightening intervention by Mrs Wouters at the Senate, Compte rendu analytique, Session of December 9th, 1997, 2185. Also see the interview with Professor Lucien Israël (emeritus professor of cancer and member of the Institut de France) during the declaration of the CCNE on January 27th, 2000: "Fin de vie – Arrêt de vie – Euthanasie ", on www.genethique.org

[g] For a legal demonstration, see: X. Dijon, Le sujet de droit en son corps: une mise à l'épreuve du droit subjectif, Brussels, Larcier 763:533, 1982. See also the very clear conclusion by H. Nys, La médecine et le droit, Kluwer 701:274, 1995; F. Van Neste, Euthanasie-rechtsethische beschouwingen, R.W., 1986-1987, spéc. 213, No 8. Very explicitly and in the same vein, regarding Dutch rights, H.D.C. Roscam Abbing (professor of medical law at the University of Utrecht), Euthanasie et assistance au suicide. Les développements juridiques et politiques aux Pays-Bas. Bulletin de l'ADMD (Belg) 64:13-14, 1997. In relation to the moral question, the Catholic Church, for example, has clearly, and for many years, refused 'over-intense treatment', see: Catéchisme de l'Eglise Catholique, Mame-Plon, 2277-2279, 1992; Congrégation pour la Doctrine de la Foi, Déclaration sur l'euthanasie, May 5th, 1980, La Documentation Catholique, 1790:698-699, 1980.

[h] See our study "Le droit à l'autonomie dans le débat sur la légalisation de l'euthanasie volontaire: un argument en trompe-l'œil?", Revue générale de droit médical (France), 3:69-88, 2000 (the present article takes some of the arguments developed in the study and presents them in another form).

Argument N° 1: Euthanasia is derived from the right to die with dignity

Without doubt, each individual has the right to (live and) die with dignity. This fundamental right has numerous consequences which have already been mentioned: the right to judicious treatment against pain; the right to refuse exceptional or disproportionate treatment in the terminal phases of an illness; the right to palliative care at a reasonable cost. To these, we can also add the right of the patient to an ongoing dialogue and a relationship of trust with the medical team and those close to him; the right to benefit from high-quality human support, as well as the right to receive correct, complete, and clear information on his state of health (except when there is a legitimate medical reason for not doing so, or if the patient refuses).

Recognizing a 'right' to euthanasia, meaning the right to require the medical profession to cause death intentionally, is another matter entirely. There is an undeniable difference between allowing a natural, irreversible process to occur that results in death, and providing death. 'Letting death come', means stopping life-extending medical treatment, fighting pain, and doing one's best to support the patient during his/her final days. But all of this is already legal, and even recommended. On the other hand, to deliberately provoke death amounts to killing, and just because a procedure has been followed and a form filled out does not change anything very much.

Legal permission for euthanasia comes down to setting out in the law that human dignity is relative. A text of this sort – whose purpose is to structure behavior – would be an expression of collective doubt about the dignity of certain lives. In support of the so-called right to euthanasia, certain people state that each individual is the judge of his own dignity. This is an eminently subjective and relative notion whose worth can only be measured in relation to diverse criteria. Thus, certain lives, damaged by illness, would become worthless to the point

that, in certain situations, the person would no longer be a person. In this case, the act of euthanasia, rather than being murder, would be seen as being a favor done for someone whose life has lost all dignity. Nevertheless, we should ask ourselves the question: Are not those close to the patient, and more than that, is not society in general, largely responsible for the image that each individual has of his own dignity? Is not the legalization of euthanasia going to help dull our sense of responsibility towards the patient, rather than result in the greater sense of dignity that he is seeking? In light of the experience of many physicians in all fields, we tend to think that medical teams who treat these patients competently and sensitively – in their gestures, their expressions, and their way of speaking, etc. – do not receive constant requests for euthanasia.

From a psychological point of view, it is undeniable that a patient who watches, powerlessly, his own deterioration, can have a feeling of loss of dignity. However, besides a dignity that is susceptible to fluctuations and that is built upon or torn down by intersubjective relationships, a person also possesses an ontological dignity, inherent to his proper being, which is founded on the simple and essential fact that he belongs to the human race. It is therefore intrinsic, intangible, and inviolable. Except for the ideas of very few authors, who remain the exception rather than the rule, dignity has always been seen as a quality that should not only be developed, but that must be respected unconditionally.[i] With the help of some discrete complicity, our philosophical and legal traditions have long been attached to this objective notion of human dignity. Modern philosophy on human rights and, more concretely, the Universal Declaration of 1948, are undoubtedly the heirs to this notion (see in particular the Foreword and Articles 1 and 2). Rather than condoning a notion that is multisecular and uni-

[i] For a profound analysis of human dignity: R. Spaemann, "Über den Begriff der Menschenwürde", Das Natürliche und das Vernünftige. Aufsätze Anthropologie, Piper, München, 77-106, 1987

versal, we would be renouncing the latter – which would not be without danger – if we legalize euthanasia.

We should consider the following: if there is no intrinsic dignity to human life, how can we hope, seriously and enduringly, to resist all forms of extended euthanasia which are becoming all the more probable as society is confronted with an aging population and a crisis in public health insurance? A move towards voluntary euthanasia is obviously the first step in a logical, unavoidable process. In order to have euthanasia accepted, we vow that it will only be applied if it is voluntary, or in extreme cases. However, once the restriction has been removed, the act of euthanasia will become commonplace, the feeling of transgression will disappear and what was once prohibited risks becoming, little by little, fairly normal.

The same speculations can be made about the Dutch precedent.[j] Think about it: euthanasia was legalized in The Netherlands in 1993. By 1995, legal decisions were being taken to sanction the "active cessation of life" of non-terminal patients in a state of purely psychic distress and of patients who were incapable of expressing themselves, such as handicapped newborns, not to mention numerous acts of euthanasia being practiced on adults without their consent. In 1998, a new reform bill was introduced which limited legal control over the practice of euthanasia, and finally, in the year 2000, the Dutch Parliament approved a bill to decriminalize the interruption of life and assistance in performing suicide.[k]

As we can see, the classic argument of being on a 'slippery slide' is applicable here, not only by force of logic, but also based on experience.

[j] See: Henk Jochemsen and John Keown: Voluntary euthanasia under control?, J Med Ethics 25:16-21, 1999.

[k] Wet van 12 april 2001 houdende toetsing levensbeëindiging op verzoek en hulp bij zelfdoding en wijziging van het Wetboek van Strafrecht en van de Wet op de Lijkbezorging, Staatsblad n° 194, 2001.

Argument N° 2: Each individual has the right to dispose of his life as he wishes (the right to autonomy)

Supporters of the legalization of voluntary euthanasia claim that euthanasia is a free act which, in and of itself, reaffirms the dignity of free will and autonomy over blind necessity. Is it really so very obvious that the decision to die is part of the autonomy of a terminally ill patient?

The approach suggested seems to be extremely theoretical, if not ideological. The claim to the right to euthanasia is all the more surprising since it comes at a time when medicine has never before possessed as many means to guarantee a patient's comfort. The persons concerned generally do not express the problem in these terms, they just want to escape from their distress. According to a Belgian law dated May 28th, 2002, concerning euthanasia, the patient must prove that there is "constant and unbearable physical or psychic suffering that cannot be relieved" in order to have the right to euthanasia.[l] Is there not something irresponsible about making such a case for the freedom of expression of a person, who is, presumably, completely in despair, and prey to indescribable suffering?

Does not the patient's condition render illusory a truly free choice on his part, in the same way as it is slightly indecent to insist on the free choice of a depressive person who is about to commit suicide? Many psychologists interpret 'attempted suicide' as a distress signal. To draw an analogy with this situation, by decriminalizing euthanasia, the person helping a candidate for euthanasia risks misinterpreting numerous 'cries for help'. This difficulty is emphasized by many physicians, and is most extreme in intensive care units. Do we wish to favor a fatal gesture, at the risk of providing the worst response to a request that was formulated in a state of confusion?

At the same time, we must be able correctly to decipher the request and desire for euthanasia, if such a desire really exists.

[l] Moniteur belge, 22 juin 2002.

The origin of this desire – which is so contrary to the powerful instinct for survival – is badly controlled pain (which, in fact, could be controlled) or distress due to a loss of concentration, affection, solicitude, and meaning. This is the heart of the problem: our society has mastered the technique but is, at times, incapable of accompanying a patient by providing him with comfort and human warmth. Could not the slightly moralistic affirmation of the patient's autonomy be a way to distance oneself from the tragic decision? In other words, by making the patient responsible, is this not a subtle way of freeing ourselves from our own responsibility to the patient?

The thesis of autonomy appears at best naive. An impression is gained of hospitals full of perfectly lucid patients, who cannot be manipulated by the medical team, or by any pressure – whether conscious or not – from those close to them, and that these patients are perfectly well informed of their physical condition and are impervious to the best anti-pain treatments. We can be excused for questioning the frequency of this simple case that is supposed to justify the legalization of voluntary euthanasia. The legislator would be giving a physician a blank check with no guarantee whatsoever that that same physician will always have, if not the will, at least the means to know the difference between requests that are truly autonomous and all the others.

When you think about it, it is difficult to believe that any physician would feel justified to practice euthanasia only because the party concerned makes the request.[m] In fact, if the physician gives in to a request of this sort, it is because he/she feels that the patient's life is not (no longer) worth living. The decision to practice euthanasia is never based solely on the patient's desire; it is always in relation to a judgment on the value of the quality of life. To give this power to the physician

[m] See: "Euthanasia and clinical practice: trends, principles and alternatives. A Working Party Report (1982)" In: Euthanasia, Clinical Practice and the Law, by L. Gormally (dir.), London, The Linacre Centre, 132, 1994, cited by R. Andorno, La bioéthique et la dignité de la personne, Paris, P.U.F., 116, 1997.

is to admit, by law, that certain lives are unworthy and worthless. We can imagine that respecting a patient's autonomy will never be sufficient motive to justify euthanasia. Just imagine the case of the person who slowly succumbs to Alzheimer's disease, but continues to smile at his children? If this person has made a living will early in his illness that a physician end his life if he becomes unconscious, should the physician act upon this living will? When? It is obvious that the physician will play the role of arbitrator. What is left of the scrupulous respect of the patient's autonomy then?

Argument N° 3: Euthanasia is permitted in exceptional cases

According to a widely-held opinion, which is also shared by those who oppose the decriminalization of euthanasia, euthanasia should at least be allowed in exceptional cases. In the face of certain cases of unrelievable distress, the physician has no other choice but to practice euthanasia, and his act is justified by "necessity". According to a popular phrase, these are "necessary transgressions".

This position is obviously very appealing. It has all the appearance of an acceptable compromise. It is in perfect harmony with a general feeling that tends to disprove any type of "total" ban, or "unconditional value". Any type of categorical rejection is supposedly the expression of an undemocratic, intolerant, "closed" attitude that does not correspond to the demands of "procedural ethics".

We must again repeat that essentially all distress can be dealt with and relieved by palliative care and adequate pain treatment. Therefore, I do not believe that a physician may be faced with the "necessity" of practicing euthanasia. Nevertheless, we still have the hypothetically lucid person, who is in full possession of his faculties, who has not undergone any external pressure, but who is in a state of unrelievable psychological suffering. The paradigmatic case often used is the tetraplegic

who has had enough and wishes to die. We cannot deny the existence of these tragic cases. Nevertheless, there can be no exception to the rule against murder (except for the very specific case of individual or collective self defense).

Once a physician is legally authorized to take life, a fundamental relationship of trust among citizens will be destroyed. By offering euthanasia to persons in distress, instead of providing them with a message of hope, we are telling them that their life is not worth living, or that they have become a burden to society. In addition to all the physical and moral suffering they must endure, they will now have to live with the anguish that their life is worthless and senseless. The paradox is obvious: a society that wishes to ignore or repress suffering tends to accentuate it by the negative signals it sends out. Worse still: a society that rejects death is a society that will find it more and more 'necessary' to take life.

The stakes of legalization are such that the will of the patient should not be the decisive criteria. What is at stake here is never an individual request – which is understandable and respectable – but the right that society must be granted to satisfy this request. In this respect, it is false to present the 'right to euthanasia' as a corollary to the right to dispose of oneself as one wishes. Indeed, euthanasia does not only involve a right that certain individuals claim to have over their own life, but also the right of the medical profession to take the life of other human beings. And a society cannot be granted this right without seriously undermining the social value of the individual. The basis of the legal system, which states that no man can take another man's life, would be completely shaken.[n]

Personal dignity cannot be submitted to the game of human conventions. We are talking about an assumed fact that is always already inherent to the personal being before the creation of a political community. The rules of the game of democracy are based on the prerequisite recognition of human dignity, and

[n] *Cf.* G. Cottier: Défis éthiques. Editions Saint-Augustin, 346, 1996.

these rules cannot justify this being undermined. It is essential that the absolute and unconditional 'forbidden kill' be and remain the basis of society, as a guarantee to understanding, openness, and tolerance, in particular for the weak and the abandoned.

The reader has already understood that the notion of 'necessity' does not, in any way, justify euthanasia. We must insist upon this point.

Necessity is a notion that is forged from the jurisprudence (based on Article 71 of the Penal Code under Belgian law). It provides justification for a person who breaks a criminal law – because he has no choice – to preserve a better good. This notion suggests that, between two wrongs, a person can choose the least harmful of the two, even if it is, in principle, an offence, as long as the act is in proportion with the good preserved or the harm that supposedly has been avoided.

The reasoning that leads us to this solution can be summarized as follows: a person can be excused when he finds himself in a situation where respecting the law would result in disastrous consequences, which are so above and beyond the inconvenience of the transgression that the legislator himself would advocate disobedience in the same situation. The typical example is a surgeon who amputates his patient's gangrenous leg and who is not condemned for grievous bodily harm. It should be remembered that all medical activity is justified by the necessity of curing. A detrimental medical act is justified because it is performed out of necessity, for the purpose of curing, as long as the intervention is in proportion with the harm being avoided.

Along the same lines, the physician who tries to fight pain can legitimately risk hastening the death of his patient, as long as he has adequately weighed the consequences of relieving pain against the possible shortening of life. If the physician is motivated solely by the intention to relieve his patient's suffering, the decision to administer, for example, strong doses of

morphine is not comparable to an act of euthanasia.[o]

On the contrary, in the strictest sense, necessity does not seem to be a relevant justification for the act of euthanasia. Indeed, in this case, the desire to relieve pain is weighed against homicide. How can necessity excuse the physician who takes a life to relieve pain, when what is being sacrificed is the ultimate of all values, and is the basis of all other values? We cannot even begin to comment on this, knowing that a patient could be relieved by palliative care. If the patient refuses this treatment and requests euthanasia, can the physician justify putting him to death out of necessity?

Finally, legislation is rarely based on 'extraordinary' cases (!) The good legislator is careful to avoid what is known as the 'Macedonian effect', the unfortunate tendency to think and make a general rule based on rare or marginal cases. A legitimate State – based on the separation and reciprocal control of power – prevents the legislator from making 'laws from particular cases' and taking the place of the judge, in the same way as it forbids the latter from rendering 'regulation rulings'. It would be incongruous to sacrifice the general rule for the exceptional case. In other words, the exception of euthanasia cannot be legally recognized. It is up to the Courts to evaluate complex situations where a physician could be prosecuted because he has performed an act that is on the borderline between legitimately stopping life-extending treatment and euthanasia.

Nevertheless, we intuitively sense that the act of euthanasia is generally not comparable with a passionate crime for an inheritance... In the case of so-called 'compassionate' euthanasia, the act and its underlying intention should be condemned, but the judge may, depending on the case, take into account the altruistic motive that is presented, without justifying it, and lighten the sentence.

[o] In this respect, X. Dijon, Le sujet de droit en son corps, *op. cit.*, 771:537. Compare: H. Nys, La médecine et le droit, *op. cit.*, 710:277.

Argument N° 4: No-one should impose his own moral or religious values on someone else

Certain people claim that the request for euthanasia is a private choice and that, in a lay and pluralistic democracy, it cannot be objected to in the name of one's moral or religious convictions. This argument is misleading. Far from being philosophically neutral, the legal permission to take the life of one's fellow man comes down to sanctioning a precise and biased vision of the individual. In this type of domain, the law is accompanied by current social, moral, and cultural values that necessarily influence us all.

According to Kant, "Man is responsible for humanity in the person of himself", thus rejecting the idea that one has a right over oneself. Although it is ethically questionable, suicide escapes legal control: each of us has, in fact, the power to take his own life. Moving from here to defending the existence of the right to dispose of one's own life, is a step that legal humanism forbids us to take. Suicide has never been recognized as a right, and is not found in the Universal Declaration of the Rights of Man. The right to dispose of someone else's life, or of one's own life with the help of another person, is even less justifiable. The social fabric is affected as soon as the medical profession is given this – totally unheard of – power to take life. Every person is obviously concerned by this substantial modification to the mission for the art of 'healing'.

Legislation for euthanasia is, therefore, not only an ethical question and a personal choice, but also a problem of sociopolitical ethics. Therefore, it is perfectly conceivable to forbid it – without affecting the pluralism that is characteristic of our modern democracies – for the purpose of saving a public interest that has been considered greater, and to protect all patients in society, the integrity of the medical profession, and the foundations of the legal system.

In fact, we could worry that the patient, rather than finding himself completely free and independent to make decisions,

will find himself weakened, and more easily inclined to give in to pressure from those around him. Will he not feel guilty because he is a burden to those close to him, a financial burden to society... because he insists on living and refuses to opt for his 'right (duty)' to euthanasia?[p] By believing that it must yield to all decisions about liberty, society risks placing enormous pressure on these liberties. By believing that it must accept requests for euthanasia, society may be provoking these requests because of various, more or less conscious, pressures.

Finally, the legalization of euthanasia could backfire on the medical profession by ruining the relationship of trust and dialogue between physicians and their patients.

Argument N° 5: The legalization of euthanasia is simply the legal adaptation of an existing situation

Is not the fact that euthanasia is regularly performed in secret and with impunity reason enough to decriminalize it? This argument is based on confusion between existing fact and the law. The law does not indicate what is, but what should be. If the law adopted every *fait accompli*, it would have no normative function and would lose its reason for being. Adapting the law to existing facts is a myth that dies hard.[q] The necessity of adapting the law to existing facts could, in certain cases, be legitimate to some extent, if it were possible rigorously to determine the facts upon which the rule of law was supposed to be subject to. However, in this case, there is nothing to base it upon.

First there is no way to be certain that euthanasia is practiced as frequently as certain people claim. There is no reliable study on the subject, especially since confusion and misunderstanding reign. Many people confuse true cases of

[p] B. Matray: "La mort euthanasiée n'est pas la mort humaine", Ethique. La vie en question, 6-7:79, 1992/4-1993/1.

[q] See the classic study on this subject: C. Atias et D. Linotte, "Le mythe de l'adaptation du droit au fait", D.S., chron. XXXIV, 251-258, 1977.

euthanasia with other legitimate interventions, such as stopping useless treatment, administering morphine, or even sedation for the sole purpose of fighting pain. For the same reasons, it is difficult to determine public feeling on this question.

Moreover, the reasons that a law is not enforced are often ambiguous. It may be because of a choice by political and legal authorities, inspired, no doubt, by the nebulous feeling that this is what the majority wants. What is more, criminal laws are all partially violated and ineffective, and this is never the only reason for abolishing them. On the contrary, in many cases, the law is reinforced to fight the existing situation more effectively. In fact, the only real problem is defining the threshold of ineffectiveness that would justify abolishing the law.

In any case, revealing the myth is never enough to clarify the heart of the debate. In no circumstances does it justify skipping an essential step in the legislative process: the choice of a legal politic which is based on values we wish to advocate.

We can add that, in The Netherlands, the legalization of euthanasia has not helped to bring it out in the open. Indeed, according to the well-known report by Professors Van der Wal and Van der Maas (The Hague, 1996), almost 1000 acts of euthanasia were performed in 1995 without patient consent, and more than 50% of physicians did not complete the form to be sent to the Public Prosecutor in cases of euthanasia.

Conclusions

There are fundamental social, legal, and political objections to the legalization of euthanasia. Everything is presented as if the law, by giving each individual the freedom to choose, does not take sides. A fallacious argument! Any legislation on euthanasia will result in setting down an anthropological vision in a legal text – a concept of human dignity – that is clearly described and imposed upon everyone. Affirmation of the unconditional value and ontological dignity of every human life is no

more a religious statement than the affirmation of its intrinsic worthlessness would be.

The legalization of voluntary euthanasia, far from leaving it purely, and a little too simply, up to free choice, affects the foundations of society and is, therefore, the concern of everyone. Who can deny that, by suggesting that the medical profession be entrusted with the power to practice euthanasia, all patients and all physicians are concerned by this new legal right? Should not the legislator maintain the restriction, and by so doing, refuse to condone certain individual aspirations, in the name of a legitimate and greater good: protection of the social fabric and of individuals weakened by sickness, the integrity of the medical profession, and conservation of the foundations of the legal system?

In fact, opening the door to euthanasia means that we are sanctioning the idea that human dignity is a relative and subjective value. We must choose: is dignity an ontological quality of human beings, or is it just a question of quality of life? To refuse the former and accept the latter is a fundamental social choice, whose consequences must not be underestimated.