

In the context of the theoretical proposition introduced in the lecture around the issue of law and morality, give consideration to euthanasia in the context of discussion in the lectures and readings about law and morality.

The law is created to reflect the society's norms and mores, thus it is a mistake to see law as a completely separate and self contained system. However there is no single moral view held by the community. Each individual's view varies depending on their social background, gender, race, income social class and education. Additionally not only do people have varies perspectives on the morality of a law but their level of conviction of how morally right or wrong the law maybe. One might say a law is wrong but are able to understand other people's perspective on how it could be right while believe another law is outrageously and scandalously wrong.¹ Thus issues such as euthanasia as many cases have shown conflict with what people morally believe the law should be.

House of Lords Select Committee on Medical Ethics defines euthanasia as “a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering”², Problems of euthanasia is ancient but has surfaced in recent years with renewed urgency and relevance and has increasingly debated in the era of growing medical sophistication combined with long life expectancies, the dying process has been elongated.³ For those who are suffering it has been harder and harder to die not only because of our technological advances in the medical field but also

¹ Chisolm, R. and Nettheim, G. *Understanding Law*, Sixth Edition, Butterworths, Sydney, Chapter 13.

² Lewis, Penny. *Assisted Dying and legal change*. New York: Oxford University Press, 2007.

³ Otlowski, Margaret. *Voluntary Euthanasia and the Common Law*. United States: Oxford University Press, 1997.

because of our long held belief in prolonging life, thus the call, from a number of people, for legalising assisted deaths and suicide and the anti euthanasia response from others. The pro euthanasia argument includes the individual right and choice of those who would like to die, dying with dignity, and the belief that they are only legalising what is considered a normal practise. While the anti euthanasia argument is concerned with the right to life, the deterioration of society's mores and beliefs on the concept of death and creating a path to other immoral activities.

Dying seems not so much a legal matter as a personal even intimate experience affected by bodily conditions, human relationships and social and medical practise.

⁴Hence taking this into consideration pro euthanasia groups believe in the individual right to die as well as the individual right to live so they believe the legal system should accommodate those who wish to be euthanized and for them to die with dignity. Euthanasia supporters believe that it is only legalising what is considered a normal practise and takes into account economic consideration of euthanizing.

Human rights argument as a demand for "keeping the state from prying into death chambers over dying people's bedside and proactively as a claim for the creation of structures that enable people to die as they choose."⁵ The right to die meant non interference by the state when mentally competent individual decides to bring about their own death then and there with the help from others. ⁶According to existing laws with the exception of a few states like Switzerland, the Netherlands and the US states of Oregon and Texas, euthanasia is outlawed and anyone assisting in the deaths will

⁴ Brooks- Gordon, Belinda et al. *Death Rites and Rights*. Portland: Hart Publishing, 2007.

⁵ Brooks- Gordon, Belinda et al. *Death Rites and Rights*. Portland: Hart Publishing, 2007.

⁶ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

be criminalised. Anybody that discovers an attempted suicide situation, by law, must intervene.⁷ The person committing suicide would not be criminalised jurisdiction recognising that those who opted to commit suicide were deserving of compassion rather than punishment.⁸ Jurisdiction in England believes that “individuals desperate enough to attempt suicide are unlikely to be deterred from so doing so by a legal prohibition.” Although suicide and euthanasia is outlaw precedents has shown that when the question arises the courts has accepted that competent adult patients have the right to refuse further life sustaining treatment even if the eventual outcome is death. In the United States this was seen in *Cruzan v Director, Missouri Department of health*, in England and Wales this was established in *B v An NHS Hospital Trust*,⁹ demonstrating that existing beliefs suggest that actively assisting someone’s death is morally wrong but indirectly allowing the person to die because of their refusal of treatment is acceptable contradictory to obligatory suicide interventions.

Compassion is used by euthanasists to appeal to society’s sense of morality.

Questioning the right for a dignified and painless death by those who wish to die, the key argument is that it is cruel to deny people who are in great pain and whose death is inevitable, a dignified death when appealed for it. In Rights of Terminally Ill Act 1995(NT), ads were portrayed to indicate euthanasia as a kind act to people who are suffering on the brink of death, creating widespread support.¹⁰

However the notion of patients suffering extreme pain is contrary to findings that illustrate that patients’ main reasons for ending their lives were not because of intolerable pain but rather, loss of dignity. In fact 95% of cases of terminally ill

⁷ Brooks- Gordon, Belinda et al. *Death Rites and Rights*. Portland: Hart Publishing, 2007.

⁸ Brooks- Gordon, Belinda et al. *Death Rites and Rights*. Portland: Hart Publishing, 2007.

⁹ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

¹⁰ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

patients pain can be overcome, while in the 5 % it can be to some extent, relieved.

¹¹The Remme link report in 1992 highlights less than 5% of patients claim intolerable pain as the reason for the request to be euthanized. ¹²Studies show that main loss of independence and loneliness are the main reason for ending life, this is seen in recent Oregon data where in the year 2000, 93% of those requesting to be euthanized claimed it as the chief reason.¹³ In the case of *Pretty v United Kingdom*, *Pretty* tries to overturn British euthanasia law using the Human Rights Act, Mrs *Pretty*'s QC alleged she was facing a humiliating and degrading death which would be "distressing and undignified". ¹⁴ She took her legal challenge all the way to the European Court of Human Rights with the desire to be remembered as "someone who respects the law and asked in turn that the law respects me". ¹⁵ Her case however was not successful in fulfilling her wish but was successful in showing an example of how one might perceive the law as a restriction and how one's moral ideas differ to the legal system, a representative of the majority. Euthanasia is not seen as being consistent with societal norms, so the issue of suffering is preferred to be treated with palliative care. In all areas of human activities causing death is not viewed as a satisfactory solution for dealing with individuals who for one reason or another find themselves in extreme or difficult situations. ¹⁶ Vast public resources are devoted towards tackling the underlying problem and all other avenues are exhausted before killing.

¹¹ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

¹² Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

¹³ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

¹⁴ Diane Pretty makes final 'death with dignity' plea. London: The Guardian, c2002.
<http://www.guardian.co.uk/society/2002/mar/20/health.uknews>

¹⁵ Diane Pretty makes final 'death with dignity' plea. London: The Guardian, c2002.
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¹⁶ Brooks- Gordon, Belinda et al. *Death Rites and Rights*. Portland: Hart Publishing, 2007.

Another argument supported by euthanasists is that although euthanasia is lawfully prohibited in Australia the reality is the practise does exist within the state and outside in the form of death tourism. While assisted suicide remains unlawful in Australia, other states have legislated to permit assisted suicide in carefully controlled circumstance. Vast majority of state restrict it to their own residents but Switzerland is a notable exception in that it permits outside nationals to visit and avail themselves of facilities offering assisted suicide.¹⁷ In the case *Re Z* (local authority: duty) created a precedent by allowing Mrs Z to travel to Switzerland to be euthanized different to the *Pretty v UK* in that the assisted death is within a controlled environment overseas in Switzerland instead of assisted death by her husband .¹⁸ After she was psychologically tested and shown to have the mental competence to decide for herself, she was able to travel to Switzerland to die.¹⁹ In a Postal survey by Khuse , Singer, Baume , Clark and Rickard of Australian doctors in July 1996 published in the Medical Journal of Australia in 1997. They compared results with the Netherland a country similar to Australia except that euthanasia was legal. The proportion of all Australian deaths that resulted from voluntary euthanasia was about 1.8% , 0.1% were from physician assisted suicide and the proportion of all deaths resulting from non voluntary euthanasia was 3.5%. A recent survey by Douglas et al. revealed even higher levels of voluntary and non voluntary euthanasia.²⁰ While in the Netherlands a survey by the government committee headed by PJ van der Maas reported that in 1990 approximately 1.7% of all deaths were the result of voluntary euthanasia and the 0.2% was the result of physician-assisted suicide.²¹ Additionally there were 1000 cases

¹⁷ Brooks- Gordon, Belinda et al. *Death Rites and Rights*. Portland: Hart Publishing, 2007.

¹⁸ Brooks- Gordon, Belinda et al. *Death Rites and Rights*. Portland: Hart Publishing, 2007.

¹⁹ Brooks- Gordon, Belinda et al. *Death Rites and Rights*. Portland: Hart Publishing, 2007.

²⁰ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

²¹ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

(which amounted to 0.8% of all deaths) of non-voluntary euthanasia-death were patients were intentionally killed without the patient's request.²²

Not only does the results show that Euthanasia still exists in Australia where euthanasia is illegal but a small percentage of patients are terminated without consent. Leading to anti euthanasia supporters to point out the consequence of legalising euthanasia, claiming euthanasia creates a path to other immoral practises.

There are two key of arguments against Euthanasia, one is that euthanasia is wrong because of its interference with basic human rights and euthanasia is wrong due to incidental bad consequences which flow from it.

The sanctuary of life argument sees life as precious and should be preserved. The fact that it is so important is the foundation for the argument of the right to life.²³ The right to life is the most fundamental and basic in all human rights. Right to life is enshrined in several international covenants. For example the international covenant on Civil and Political Rights (ICCPR), article 6 and the European Convention on Human rights(ECHR), article 2 (which was brought into force in the UK by the human rights act 1998) which provided that everyone's right shall be protected by law.²⁴

However it has been shown that this right of life can be waived in certain circumstances. There are established moral and religious exceptions in situation such as martyrdom, war and capital punishment where one's right to life can be given up. Martyrdom for a religious belief is acceptable in a case where one chooses their own life over blasphemy and obedience to a tyrant²⁵, reflecting the mores of society exist still in a religious influence society. It is more acceptable to give up one's life in this

²² Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

²³ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

²⁴ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

²⁵ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

form than in suicide as it illustrates one's sacrifice to uphold their faith and the faith of other believers rather than being the result of personal despair. The right of life also does not prevent the state from sending soldiers to probable death in war for the same reason.²⁶ It is acceptable to send people to death in war to kill other people including civilians as they are dying for a worthy cause and in an honourable manner representing their country. The right of life can also be taken away; when in some countries where capital punishment still exists, the right of life is forfeited on account of a crime. Even though the sentence is "only for the most serious crimes (which do not necessarily relate to homicide offences) is permitted under article 6(2) of the international Covenant on Civil and Political rights" it shows the right of life does not exist for everyone and some are able to have a choice in death because they're goal is different to those who wish to be euthanized.²⁷

A Key argument by anti euthanasists is that euthanasia leads to other immoral practises and devaluing death. With results from the Netherland study by PJ van der Maas where euthanasia was legal showing that practise of euthanasia has not resulted in greater patient autonomy but in doctors "acquiring even more power over the life and death of their patient."²⁸ However undermines the theory when the same result is shown in Australia. Indeed Euthanasia has led to involuntary euthanasia however legalising Euthanasia would not increase the amount of involuntary euthanasia. In fact Margaret Otlowski states that the practise of bringing about death without explicit request is much more widespread in Australia – a country where the practise of active

²⁶ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

²⁷ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

²⁸ Amarasekara, K. & Bagaric, M. (2002) *Euthanasia, morality and the law*, New York: Peter Lang.

voluntary euthanasia is prohibited that it is in the Netherlands where the practise has been legalised and regulated.²⁹

Euthanasia shows the different moral views of society. With pro euthanasists arguing the right to die, dying with dignity and legalising what is already a regular practise, while non supporters argue against euthanasia with the idea of the right to life, the devaluation of life and creating a path to other immoral practises. There will always be conflict between individual's moral view and the law thus the Government had to strike a balance between the interest of the community as a whole and the fundamental rights of the individual.

²⁹ Otlowski, Margaret. *Voluntary Euthanasia and the Common Law*. United States: Oxford University Press, 1997.

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