Cambridge Law Journal, **61(3)**, November 2002, pp. 545–550
Printed in Great Britain

SHORTER ARTICLES

VOLUNTARY EUTHANASIA AND THE LOGICAL SLIPPERY SLOPE ARGUMENT

HALLVARD LILLEHAMMER*

IN his book *Euthanasia, Ethics, and Public Policy*,[1] John Keown offers a sustained argument against the legalisation of voluntary euthanasia. Unlike some arguments in this debate, Keown's argument is informed by detailed knowledge of the philosophical, legal, and medical issues surrounding the euthanasia debate. Also unlike some writers on this topic, Keown is sensitive to the possibility that individual morality and public policy may come apart on this issue. While individual acts of voluntary euthanasia might be morally permissible, the necessarily less fine-grained nature of the law could make the legal protection of voluntary euthanasia morally impermissible.

According to Keown, the case for legalising voluntary euthanasia is undermined by two kinds of slippery slope arguments, which he calls *empirical* and *logical*, respectively. According to empirical slippery slope arguments, there is good evidence to believe that the legalisation of morally permissible acts of euthanasia would in fact lead to the performance of morally impermissible acts of euthanasia.[2] In particular, the practice of *voluntary* euthanasia would lead to the practice of *non-voluntary* or *involuntary* euthanasia, where at least involuntary euthanasia is morally impermissible.[3] Morally permissible acts of euthanasia should therefore not be legalised. Keown's case for the empirical slippery slope argument is formidable, if inconclusive. Given its reliance on

* Fellow of King's College Cambridge, and University Assistant Lecturer in Philosophy, University of Cambridge.

[1] J. Keown, *Euthanasia, Ethics, and Public Policy* (Cambridge: Cambridge University Press 2002).

[2] Where I say "permissible", Keown says "acceptable". Nothing below hinges on this change of terminology.

[3] By "non-voluntary euthanasia" I mean euthanasia without consent where the patient is incapable of consenting. By "involuntary euthanasia", I mean euthanasia without consent where the patient is capable of consenting, but where the patient's consent has either not been elicited, or the patient has explicitly refused to consent.

https://doi.org/10.1017/S000819730200171X Published online by Cambridge University Press

contestable empirical evidence beyond the scope of the present paper, it will not be discussed further in what follows.

According to the logical slippery slope argument, the permissibility of voluntary euthanasia *logically entails* at least one of two morally problematic conclusions. The first of these conclusions is that voluntary euthanasia is permissible *only if* non-voluntary euthanasia is permissible. The second problematic conclusion is that voluntary euthanasia for patients who suffer from painful terminal illnesses is permissible *only if* voluntary euthanasia is also permissible on request for any patient. Some defenders of the permissibility of voluntary euthanasia might be willing to accept one or both of these conclusions.[4] Others would be more sceptical. Either way, if the logical slippery slope argument is sound, Keown will have raised the stakes in the euthanasia debate. Yet Keown's argument is unsuccessful. The logical slippery slope argument rests either on a logical confusion or a misunderstanding of the value of autonomy, or both.

Keown's argument takes the form of a dilemma. Each horn of the dilemma is focused on one of two morally relevant factors the joint presence of which is taken by some defenders of voluntary euthanasia to render an act of voluntary euthanasia morally permissible. The factors in question are: i) the patient's autonomous request for euthanasia, and ii) a competent medical judgment on the part of some health care professional that "death would benefit the patient".[5]

On the first horn of the dilemma, it would be natural for the defender of voluntary euthanasia to argue that voluntary euthanasia is permissible just in case i) the patient autonomously requests it, and ii) the doctor competently judges that death would benefit the patient. According to this defence of voluntary euthanasia, the moral force of the patient's request is annulled if the doctor competently evaluates the request negatively. If the doctor competently evaluates the request positively, however, euthanasia is permissible. Based on this idea, Keown infers that the real moral work must be done by the doctor's judgment, from which it follows that the permissibility of euthanasia rests entirely on condition ii) being satisfied. Condition i) is therefore morally redundant. According to Keown, this entails the first morally problematic consequence cited above. If the permissibility of euthanasia is entirely a matter of the doctor's judgment that death

[4] J. Glover, *Causing Death and Saving Lives* (Harmondsworth: Penguin Books 1977); P. Singer and H. Kuhse, *Should the Baby Live? The Problem of the Handicapped Newborn* (Oxford: Oxford University Press 1985); J. Harris, *The Value of Life* (London: Routledge 1992).

[5] Keown, p. 77.

https://doi.org/10.1017/S000819730200171X Published online by Cambridge University Press

would benefit the patient, there is no significant moral difference between cases where doctors favour the death of patients *requesting* euthanasia and cases where doctors favour the death of patients *incapable of requesting* euthanasia. It follows that non-voluntary euthanasia is permissible if voluntary euthanasia is.[6] Keown gives the following example:

> Imagine two patients of Dr. A: X and his brother Y. They are identical twins, with an identically painful terminal illness and suffering to an identical degree. They lie, side by side, in hospital. X, who is competent, pleads with A for a lethal injection of potassium chloride because the "suffering is unbearable". Dr. A agrees that death would indeed be a benefit for X and agrees to administer the injection to give him a "merciful release". X requests the same for his brother Y, who is incompetent, on the grounds that he, too, must be experiencing "unbearable and useless" suffering. Is Dr. A to deny Y the same benefit he has agreed to confer on X? If so, what has become of the doctor's duty to act in the best interests of his patient?[7]

In response to the first horn of the dilemma, it could be argued that Keown has misconstrued the role of the doctor in evaluating the patient's request. Thus, one might think that all the doctor is morally entitled to decide is whether the agent's wish is genuinely autonomous, not whether death would be a benefit for the patient. If so, the presence of the patient's request is not morally redundant. This would undermine the analogy between voluntary and non-voluntary euthanasia. This response, however, runs straight into the second horn of Keown's dilemma. Keown argues that if the doctor's role is restricted to establishing whether autonomy obtains, then it is the question whether the patient has made an autonomous request that does the work in establishing whether euthanasia is permissible. No moral weight is assigned to the question whether death would be a benefit for the patient. If so, doctors are required to respect the wishes of any patient who requests euthanasia whether death would benefit them or not. It follows that the argument that voluntary euthanasia is permissible for patients suffering from painful terminal illnesses is equally an argument for voluntary euthanasia on request for any patient, regardless of their physical or mental health. This is the second morally problematic consequence cited above. According to Keown,

[6] Keown draws no parallel conclusion for involuntary euthanasia. Presumably this is because of the essentially coercive character of involuntary euthanasia. I shall ignore this issue in what follows.

[7] Keown, p. 78.

https://doi.org/10.1017/S000819730200171X Published online by Cambridge University Press

> If the core justification for VAE [voluntary active euthanasia] is thought to be respect for patient autonomy, this is surely logically inconsistent with the requirement that the patient be suffering unbearably, bearably, or at all.[8]

Keown's logical slippery slope argument fails. The dilemma can be avoided by the defender of voluntary euthanasia without conceding either that non-voluntary euthanasia is permissible or that euthanasia is permissible on request regardless of a patient's physical and mental condition. The defender of voluntary euthanasia should claim that moral weight attaches *both* to the patient's autonomous request (condition i) above) *and* to the doctor's competent judgment that death would be a benefit to the patient (condition ii) above). On this view, the presence of i) and ii) are *individually necessary*, and *jointly sufficient*, conditions for permissible voluntary euthanasia. From this, it obviously follows that *given the presence of i)*, the further presence of ii) is sufficient to make euthanasia permissible. Conversely, it equally follows that *given the presence of ii)*, the further presence of i) is sufficient to make euthanasia permissible. What does not follow, but what Keown's argument seems to imply, is that either i) or ii) is *individually* sufficient to make euthanasia permissible. Thus it does not follow that the doctor's judgment that death would benefit the patient renders the patient's consent morally redundant (first horn). Nor does it follow that the patient's medically certifiable autonomous request renders redundant the doctor's evaluation of whether death would be a benefit to the patient (second horn). The presence of both conditions is required for voluntary euthanasia to be permissible. Keown's logical slippery slope argument appears to rely on a conflation between the sufficiency of a necessary condition *given* the presence of all other necessary conditions on the one hand, and the *individual* sufficiency of that necessary condition on the other.

Keown might respond that the assignment of independent moral weight to the presence of autonomous patient request is inconsistent with the rationale that underlies the moral respect for autonomy. It might be argued that autonomous choice is only suited to act as a moral constraint on action if its exercise results in the endorsement of options genuinely worthy of choice. Thus, Keown claims:

> The capacity to choose brings with it the responsibility of making not just any old choice, but choices which do in fact promote, rather than undermine, human flourishing ... it is

[8] Keown, p. 79.

https://doi.org/10.1017/S000819730200171X Published online by Cambridge University Press

> difficult to see why patently immoral choices, choices clearly inconsistent with human well-being, merit any respect.[9]

On these grounds, Keown might argue that the doctor's assessment of whether death would really be a benefit for the patient is required as an independent check on whether the patient's exercise of autonomous choice is worthy of moral respect. If the patient's choice is "patently immoral" or "inconsistent with human well-being" it fails to be worthy of moral respect and therefore does not argue in favour of euthanasia. The defender of voluntary euthanasia is back on the first horn of the dilemma.

This response is unsuccessful. First, the necessity of the doctor's independent assessment of the patient's request is consistent with the claim that the presence of a genuinely autonomous patient request is also necessary for euthanasia to be permissible. According to the defender of voluntary euthanasia, it is only given the further presence of a favourable evaluation by the doctor that the fact of an autonomous request for euthanasia is sufficient to make euthanasia permissible. The mere fact of an autonomous request for euthanasia is compatible with euthanasia being "patently immoral" or "inconsistent with human well-being", and therefore impermissible.

Second, Keown's claim about autonomy fails to adequately capture the idea that autonomy is an *intrinsic value*. To regard autonomy as an intrinsic value is to regard it as valuable *in itself*, without regard for the consequences of its exercise. It is an essential part of respecting autonomy as an intrinsic value that agents are granted a moral space within which they are free to make decisions regarding their own life whether these decisions are beneficial or not. It is partly this thought which underlies the moral permission to engage in such activities as riding fast on a bicycle, climbing distant mountains, marrying the wrong person, and giving away all one's property to a total stranger. It does not follow that the value of autonomy is absolute. Thus, there could be moral restrictions on a patient's exercise of autonomy where other agents, such as her family, stand to be seriously harmed. Nor does it follow that by assigning intrinsic value to an agent's autonomy we are thereby committed to assigning any positive value to the options favoured in every act of its exercise. Thus, we might intrinsically value a patient's autonomy while judging that some individual choice they make by exercising it is "patently immoral" or "inconsistent with human well-being", and therefore wrong. The fact that autonomy may be poorly exercised does not show that it is without intrinsic

[9] Keown, p. 53.

https://doi.org/10.1017/S000819730200171X Published online by Cambridge University Press

value. It is an unfortunate but undeniable fact that good things can be put to bad uses.

Where does the defence of voluntary euthanasia against the logical slippery slope leave X, Y, and doctor A? Contrary to what Keown's argument suggests, the defender of voluntary euthanasia does not have to say that the cases of X and Y are morally equivalent. The absence of an autonomous request for euthanasia by Y entails that the doctor's judgment that death would benefit Y is not sufficient to justify euthanasia in his case. Nor is X's request on Y's behalf sufficient to justify euthanasia for Y, since the presence of an autonomous request by X does not entail the presence of an autonomous request by Y. It does not follow that non-voluntary euthanasia would be impermissible in Y's case. What does follow is that *if* non-voluntary euthanasia is permissible in Y's case, this will *not* be for *precisely the same reasons* for which voluntary euthanasia is permissible in X's case. It is the latter claim on which Keown's logical slippery slope argument depends. Keown's case against the legalisation of euthanasia therefore rests entirely on the cogency of his empirical slippery slope argument.

https://doi.org/10.1017/S000819730200171X Published online by Cambridge University Press