

Does euthanasia differ so much from letting someone die?

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A 48-year-old mother who killed her disabled son by putting barbiturates into his feeding tube has sparked an anguished debate in France on the law banning euthanasia (mercy-killing).

Vincent Humbert, 22, died on the third anniversary of an auto accident that left him blind, mute, and paralysed except for the use of his left thumb.

The day before his death his book, *I Ask the Right to Die*, went on sale in France. He dictated the book to his mother letter by letter; as she recited the alphabet, he would press the palm of her hand with his thumb when she reached the right letter.

His book is an impassioned plea for the legal right to end what he called his "vie de merde." Knowing that his mother was about to answer his plea for death, the book ends with a plea to readers to leave his mother in peace. "Don't judge her," he wrote. "What she has done for me is surely the most beautiful proof of love in the world."

Marie Humbert said that she acted to give her son the gift of death after having given him the gift of life. Although arrested and charged with murder, the public prosecutor indicated that there was no rush to bring her to trial, a comment no doubt prompted by nationwide expressions of support and sympathy for Mrs. Humbert.

What if this case had happened in Canada? As in France, Mrs. Humbert would have committed an act that the Canadian Criminal Code defines as murder. In fact, since the killing of her son was a planned and deliberated killing, it is first-degree murder, which has a mandatory penalty of life imprisonment with no parole eligibility for 25 years. Furthermore, the fact that she acted at her son's behest is legally irrelevant because Sec. 14 of the Criminal Code stipulates that "no one can consent to have death inflicted upon him." Euthanasia means mercy-killing, and in Canadian law the motive of the killer -- acting out of compassion -- is legally irrelevant. (Of course, whether a jury of 12 citizens could be persuaded to convict is another matter.)

In labelling euthanasia as murder, the law distinguishes between "killing" and "letting die" cases. If Humbert had been on artificial life-support (a ventilator), he would have had the legal right to insist that it be disconnected. This is in accord with the no-treatment-without-consent principle: that a mentally competent patient cannot be treated without his consent, even if his refusal of treatment will lead to certain death. When the treatment is omitted, the patient in effect dies a natural death from the disease process.

However, in the event of a so-called mercy-killing, the culprit (whether physician or layperson) deliberately interrupts the disease process by an act that directly kills the

patient. In such cases it is not the disease process that causes death. As illustrated by the Humbert case, her son did not die from his disability but rather from deliberate barbiturate overdose.

The Humbert case has led to calls in France for the legalization of euthanasia. Its proponents decry the legal distinction between a patient who cannot breathe on his own asking to die, and a patient such as Vincent Humbert who cannot legally secure release from an existence he deems intolerable because he can breathe on his own. Regrettably, the merits of this argument are beyond the scope of this article.

Suffice it to say that a case as compelling as that of Vincent Humbert cannot by itself justify legalization of euthanasia. I say that in light of the legal adage that hard cases make bad law. In other words, the concern is that a law inspired by the plight of Vincent Humbert is immensely difficult to frame such that it only covers the most extreme cases of unbearable suffering. This dilemma does not in itself preclude the legalization of euthanasia; it simply means that the issues are so complex that one case, no matter how tragic, offers an uncertain guide to the plight of our afflicted brethren who lobby for the right to euthanasia.

Finally, a word about aiding suicide is in order because of its kinship with euthanasia. If a patient were able to kill herself with help, then the helper would be guilty of aiding suicide under Sec. 241(b) of the Criminal Code. Unlike murder, however, there is no mandatory minimum sentence such that an offender could receive a suspended sentence. In essence, the law's message is clear: if you had to administer the lethal drugs yourself because the person was physically incapable of doing so, then the act is murder; if the person, however debilitated, could perform the direct act that causes death -- for example, by drinking with a straw the lethal contents of a glass -- then the act is aiding suicide.

I see no moral distinction between the two scenarios that warrants a 25-year minimum for euthanasia and the option of no jail for aiding suicide. And since they seem to me to be morally equivalent, I think that they should be treated together -- either both kept illegal or both legalized. At the end of the day, the question is whether they so differ from letting die cases that they should remain unlawful.

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