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Were legislators right to think they could avoid the 'slippery slope'?

John Keown

Recently, Victoria's law permitting physician-assisted suicide (PAS) and voluntary euthanasia (VE) came into force. Other states, particularly Western Australia, may soon follow suit.

All Australians, whether legislators or voters, would do well to reflect on the warning of former Prime Minister Paul Keating[i], when the bill was being debated in 2017, that VE is a threshold moment for Australia, and a threshold the country should not cross. He cautioned that, once termination of life is allowed, pressure will mount for further liberalisation on the ground that the law discriminates against those denied PAS and VE.

In this issue

John Keown, Senior Research Scholar at the Kennedy Centre for Ethics and Rose F. Kennedy Professor of Christian Ethics at Georgetown University, queries the assertion made by Victoria's legislators that, in passing the 'Voluntary Assisted Dying' law, they could avoid the slippery slope.

Bernadette Tobin sets out why she thinks the National Health and Medical Research Council is right to conduct a public consultation on 'mitochondrial donation'.

And we finish this shorter-than-usual edition of *Bioethics Outlook* (the previous one was 'longer-than-usual'!) by reprinting a classic piece by the great Catholic philosopher Elizabeth Anscombe.

"The experience of overseas jurisdictions," he added, "suggests the pressures for further liberalisation are irresistible."

His article provoked a critical response from ABC/RMIT "fact checkers"[ii], who concluded that in most jurisdictions where the law had been relaxed "little has changed regarding what practices are allowed or who can access assisted dying". They were mistaken. My book *Euthanasia, Ethics and Public Policy*[iii] provides extensive evidence from abroad confirming slippery slope concerns.

The slippery slope argument holds that PAS and VE should not be legalised because neither prescriptions for lethal drugs, nor lethal injections, can be effectively controlled by the law. This is for two, distinct reasons: practical and logical. Practically, it is not feasible either to craft legal criteria (such as "unbearable suffering" or "terminal illness") with sufficient precision or, even if it were, to police them. Logically, the moral arguments for lethal prescriptions for the "terminally ill" are also arguments for lethal injections, and lethal injections for patients who are chronically ill and have longer to suffer.

Moreover, the moral case for lethal injections for competent patients is also a case for lethal injections for incompetent patients such as infants: the patient's lack of autonomy does not cancel the doctor's duty of beneficence. If some competent patients would be "better off dead" because of their suffering, so would some incompetent patients. There is, then, a *logical link* between voluntary and non-voluntary euthanasia.

The disturbing experience overseas illustrates the force of both the practical argument and of the logical argument. Permissive laws have failed to ensure effective control, whether in the Netherlands or Belgium (and now Canada) that permit VE *and* PAS, or in those US jurisdictions like Oregon that permit *only* PAS. Five points will show that the "fact checkers"' conclusion that "little has changed" is wide of the mark.

First, VE and PAS became legal in the Netherlands in 1984 (not 2002 as the "fact checkers" state) through a ruling of the Dutch Supreme Court. In 1996, illustrating the logical slope, the Dutch courts declared infanticide lawful. (The "fact checkers" rightly regard this as a liberalisation of the law, though they wrongly assert that infanticide "remains illegal").

Second, the "fact checkers" interpret "further liberalisation" to mean that a government has taken steps to expand access or legally protected activities. But this ignores the reality that the *interpretation* of the law may become more permissive, whether by courts, review committees or doctors, even absent statutory amendment. And this is what has happened in the Netherlands and Belgium.

Professor Theo Boer, for example, a former member of a Dutch euthanasia review committee, has changed his mind about the law[iv]. He points to the dramatic increase in numbers and to significant bracket creep, extending to patients with mental illness, disorders of old age, and dementia. Supply has stimulated demand, euthanasia has become normalised and there has been a paradigm shift. Some slopes, he now cautions, truly are slippery. One may add that, since 1984, official Dutch surveys have shown that thousands of patients have been killed without an explicit request, and thousands of cases have not been reported by doctors to the review committees required to check each case. Why should we expect Victoria's 'review board' to be any more effective in ensuring that the legal criteria are met and that all cases are reported?

Boer's writing, and that of other leading scholars critical of the Dutch experience such as Dr (now Justice) Neil Gorsuch[v] are not mentioned by the "fact checkers". Also noteworthy is their failure to mention the Dutch government's proposal in 2016 to extend the law to allow elderly people who are simply "tired of life" to be given suicide pills by "death counsellors".

Third, they note that Belgium relaxed its law to allow children to access euthanasia and state that this was the only liberalisation. Not so. Although the Belgian legislation was deliberately limited to VE, the review commission has decided to approve cases of PAS. And, like the Dutch committees, the commission has permitted an increasingly elastic interpretation of the criteria.

Fourth, they write that the Canadian government, having legalised VE and PAS, commissioned studies in relation to access for mature minors, the mentally ill and by advance directive, but that these are only "potential legislative changes." True, but why commission such studies unless you are considering extending the law? And the existing criteria are already being challenged in court as too restrictive.

Fifth, they attach importance to the fact that the Oregon-style laws in the United States have not been extended to the chronically ill or to permit VE. However, they do not consider whether this may simply be political expediency until a critical mass of states has legalised PAS.

It makes tactical sense for anyone seeking to make a radical change in the law, and whose opponents will raise slippery slope concerns, to get their foot in the door through relatively conservative proposals before prizing the door open wider. The former governor of Washington State, Booth Gardner[vi], said he supported an Oregon-style law in his state as a first step that would weaken the nation's resistance and produce a cultural shift resulting in

laxer laws. Professor Yale Kamisar wrote in his classic utilitarian essay against legalisation 60 years ago[vii] that the arguments against further liberalisation are weaker than the arguments against legalisation, which is itself an argument against legalisation.

Keating's concerns are, then, amply supported by the experience overseas. Sadly, the "fact checkers" are not alone in misunderstanding that experience, as should be evident to anyone who reads the majority (though not the minority) reports of the parliamentary committees[viii] in Victoria or Western Australia. Quite frankly, any legislators who think they can avoid the slippery slope have learned little from other jurisdictions. [ix]

References

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[v] Gorsuch, N *The Future of Assisted Suicide and Euthanasia* Princeton University Press, 2009

[vi] https://www.firstthings.com/blogs/firstthoughts/2007/05/gov-booth-gardner-lets-the-cat-out-of-the-assisted-suicide-bag

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[ix] https://www.abc.net.au/religion/keown-victoria-voluntary-assisted-dying-law-and-the-slippery-sl/11234374: Accessed 4th November 2019

Mitochondrial Donation

Why the need for a public consultation?

Bernadette Tobin

What is the problem? Why is the National Health and Medical Research Council conducting a 'public consultation' about the ethical and social questions raised by a proposal to change the law to allow 'mitochondrial donation'? After all, mitochondrial donation offers the prospect of allowing couples to avoid passing on mitochondrial disease to their offspring. Mitochondrial disease is an inherited condition which can cause serious health problems and, in relatively rare cases, can radically reduce a young person's life expectancy. No wonder, then, that parents wish to avoid passing on the faulty mitochondria that can cause the condition. What, then, is the problem?

A little background. Though most of our genes (our 'nuclear' DNA) come from both our parents, a very small percentage of them (our 'mitochondrial' DNA) come only from our mother. Though few in number, these mitochondrial genes are critical to the normal functioning of all our cells. Thus the entirely-understandable desire of women with faulty mitochondrial genes to avoid passing them on. The difficulty arises when affected women want to have their 'own' children, children to whom they are genetically related.

Technologies which would replace the affected mother's faulty mitochondria with healthy mitochondria from another ('donor') woman might enable this. These technologies include 'maternal spindle transfer' (MST), 'pronuclear transfer' (PNT), 'polar body transfer' (PBT) and 'germinal vesical transfer' (GVT). One way or another, the technologies would all involve creating human embryos with DNA from three people, father, mother and donor. It's because the use of these technologies would not only require changes in the law but also pose serious ethical and social questions that the NHMRC wants to know what we Australians think.

First, the necessary changes to the law would be significant. Since 2002, when the Commonwealth abandoned its time-honoured prohibition on the creation of human embryos for purposes *other than* implantation in a woman, researchers have been able to apply for a licence to create human embryos for research purposes (so long as the embryos would subsequently be destroyed!): that would need to be changed. At the same time, the Commonwealth explicitly prohibited any form of germline modification (that is, any modification of an individual's genome which could be inherited by that individual's

descendants). Clearly, any change to the law regulating 'reproductive technologies' would be ethically controversial.

There is the question of the risks to the 'to-be-born child'. Almost everyone agrees that very little is currently known about the likely impact of mitochondrial changes on the rest of the child's genome, that is, on the remainder of the genetic instructions that influence the way the child grows and develops into an adult. We therefore need to consider whether mitochondrial donation would violate the duty of parents not to subject their children to *undue* risks.

But not only are there unknown risks to the to-be-born child. There are unknown risks to future generations, for the altered mitochondria may be passed on, with unknown effects, to an individual's *descendants*.

Then we face the ethical objection to 'fragmenting motherhood'. Some years ago, when some argued that cloning should be an available reproductive choice for those who desire it, others rejected reproductive cloning, arguing that every child is entitled to a natural (untampered-with) biological heritage, that is, to be conceived from a natural sperm from one, identified, living, adult man and a natural ovum from one, identified, living adult woman.

Mitochondrial donation would violate that entitlement. A child born after mitochondrial donation would have a biological relation not only to his or her father and mother, but also to the donor of the healthy mitochondria. Many of those born of anonymous sperm donation are now convinced that, in the circumstances of their being conceived, they were grievously wronged. We should learn from that experience and not assume that a child born from an embryo containing the DNA of three people would have consented to this arrangement. Remember: when the great American philosopher Alasdair MacIntyre was asked whether we should design our descendants, he argued that the paradox was that, when they grow up, they may not be grateful to us for our having done so.

The desire to have healthy children is as understandable as it is universal. But the question for the Australian community now is whether enabling couples to satisfy that desire by the method of mitochondrial donation would come at too great an ethical price for it to be worthy of the community's support.

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Twenty opinions common among modern Anglo-American philosophers

Elizabeth Anscombe

Analytical philosophy is more characterised by styles of argument and investigation than by doctrinal concern. It is thus possible for people of widely different beliefs to be practitioners of this sort of philosophy. It ought not surprise anyone that a seriously believing Catholic Christian should also be able to be an analytical philosopher.

However there are a number of opinions which are inimical to Christianity which are often found implicitly or explicitly among analytic philosophers. A seriously believing Christian ought not, in my opinion, hold to any of them. Some analytical philosophers who have no Christian or theistic belief do not hold to any of them or hold very few of them. But it is so frequent for at least some set of them to be found in the mind of an analytic philosopher, that it is worthwhile to give as complete a list as I can. This may be useful as suggesting warnings to some who have not always realised that certain views are inimical to the Christian religion. It may also be useful to have these opinions collected together so that they can remain surveyed together.

1. A dead man – a human corpse – is a man, not an ex-man
2. A human being comes to be a person through development of the characteristics which make something into a person. A human being in decay may also cease to be a person without ceasing to be a human being. In short: being a person is something that gets added to a human being who develops properly, and that may disappear in old age or imbecility.
3. We aren't (mere) members of a biological species, but *selves*. The nature of "the self" is an important philosophical topic.
4. There is no such thing as a natural kind with an essence which is human nature. This opinion is an effect partly of the philosophy of John Locke and partly of confused thoughts about evolution and a theory of natural selection which is accepted as explaining evolution.
5. Ethics is formally independent of the facts of human life, and for example, human physiology.
6. Ethics is "autonomous" and is to be derived, if from anything, from rationality. Ethical considerations will be the same for any rational being.

7. Imaginary cases, which are not physical possibilities for human beings, are of value in considering moral obligation. Thus it may be imagined that a woman gives birth to a puppy or that "people seeds" float about in the air and may settle and grow on our carpets; this will have a bearing on the rightness of abortion.
8. There are no absolute moral prohibitions which are always in force.
9. The study of virtues and vices is not part of ethics.
10. Calling something a virtue or vice is only indicating approval or disapproval of the behaviour that exemplifies it. The behaviour is a fact, the approval or disapproval is evaluation. Evaluations or "value judgements" are not as such true or false.
11. It is a mistake to think that "ought" has properly a personal subject, as in "X ought to visit Y". It properly governs whole statements, as in "It ought to be the case that X is visiting Y".
12. If there is practical reasoning of a moral kind, it must always end in a statement of the necessity of doing such-and-such.
13. It is necessary, if we are moral agents, always to act for the best consequences.
14. There is never any morally significant distinction between act and omission as such. This is shown by producing an example where that difference does not make any difference to the badness of an action.
15. Causation is necessitation, and is universal: so determinism is true.
16. Either there is no such thing as freedom of the human will, or it is compatible with determinism.
17. Past and future are symmetrical. There is no sense in which the past is determined and the future is not determined.
18. A theist believes that God must create the best of all possible worlds.
19. God, if there is any God, is mutable, subject to passions, sometimes disappointed, must be supposed to make the best decisions he can on the basis of the evidence on which he forms his opinions.
20. The laws of nature, if only they can be found out, afford complete explanations of everything that happens.

In saying these opinions are inimical to the Christian religion, I am not implying that they can only be judged false on that ground. Each of them is philosophical error and can be argued to be such on purely philosophical grounds.

Elizabeth Anscombe was Professor of Philosophy at the University of Cambridge, England. She died in 2001. This short paper was presented at a Congress in Rome, the papers of which are collected in *Persona, Verità e Morale: atti del Congresso Internationale di Teolgoia Morale,* Roma, 7-12 April 1986, Roma: Città Nuova Editrice, 1987. 49-50