

Consenting To Your Own Death

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Outline

- Context/ background
- The standard debate about whether a person can give informed consent to actions that intentionally bring about their own death
- An underlying issue
- Implications for policy

Context

- In most countries physician assisted suicide and voluntary euthanasia (like all forms of euthanasia) are illegal
- But, in countries like the UK there is regular pressure to change the law in relation to one or the other of them
- Any attempt to change the law faces vigorous opposition

Opponents of change have two main options (and usually use a combination of the two):

1. Argue that it is always morally wrong to act with the intention of ending, or helping to end, a person's life
2. Argue that any laws that allow PAS or voluntary euthanasia would be unsafe
 - a. E.g., that the law could not be framed in a way that provides adequate protection to those who are vulnerable
 - b. E.g. that change will inevitably lead to further undesirable changes (slippery slopes)

Those taking the first approach face a problem:

- They need to argue that it would be wrong for a healthcare professional to intentionally bring about the death of a patient in cases where this is what the patient wants
- But this seems to deny the patient the right to determine what happens to him
 - It looks like a failure to respect his autonomy
- However, it would only be a failure to respect autonomy if the patient has given informed consent to the actions that bring about his death

Given this, if opponents of a change in the law can argue that people cannot give properly informed consent to actions that aim at their own death, they can do two things:

1. Successfully respond to the argument that change is needed to respect autonomy
2. Defend their position that it is always morally wrong to intentionally end a person's life
 - To act in such a way would be to act without that person's consent and would hence be wrong

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Consent

In medical ethics three things are standardly needed for consent to make it permissible for a healthcare professional to act:

- Competence
- Voluntariness
- Understanding

This gives two main ways in which to argue that a person cannot consent to you bringing about their own death:

1. Argue that people cannot have sufficient understanding of death to give informed consent
 - In particular they cannot have sufficient understanding of the consequences of death
2. Argue that in practice no competent individual would voluntarily consent to an act that aimed at bringing about his death

Understanding

- There is considerable disagreement about what happens after (or at) death:
 - for some we simply cease to exist when we die,
 - for others we do not cease to exist but will be reborn in some way (though in what form we cannot know),
 - for yet others we will go either to heaven or hell (or maybe purgatory) and it may not be clear which it is.
- We have no scientific evidence about which, if any, of these is the right account. Because of this a person cannot be well informed, or really understand (on the basis of good evidence), what will happen to him if he chooses to die

A response (using a contrast case)

- When a person chooses an act that ends his life he takes one option (death) over another (his future life).
 - What happens in each may be unclear
- But, when a person chooses to have an operation that keeps him alive (where he will die very soon without it) he also chooses one option (his future life) over another (his death).
- To give informed consent to the operation the patient in this second case needs to understand what will happen if he does not have it, as well as what will happen if he does

- The options he faces in the second case are no more certain, and can be understood (at least the option of death can be understood) no better here than in the first case.
- As such, if we cannot understand our own death sufficiently well to consent in the one case we cannot understand our options well enough to consent in the other
- But of course we can consent to life prolonging treatment, so our understanding of death must be sufficient to allow us to consent

- It might be objected that the level of understanding needed for consent depends on the consequences (or risks involved) in the option chosen – see Buchanan and Brock
- Because these are higher when we are concerned with acts that aim at death, the level of understanding needs to be higher there too
- However, this objection seems to rest on the idea that death is particularly bad (or potentially bad) for the person who dies, and that idea has been challenged

Competence/ voluntariness

- The idea that a competent person would never voluntarily consent to their own death looks like an empirical claim
- But no evidence is produced that supports it
 - This is not to deny that many of those who might want help to end their lives may be suffering from depression or despair that significantly affects their decision
- There also appear to be some cases where this can, and does, happen

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- Opponents of legislative change are unlikely to be persuaded by these arguments that people can consent to their own death
- I think the reason for the impasse here is that debates in medical ethics frame discussions about consent in such a way that only three things (competence, voluntariness and understanding) are needed for consent
- But this is not in fact the case

Two other things that are needed for an act to change the normative landscape in the way consent does:

1. Intention

- Not only must the act be voluntary it must also be done with the right intention
- Illustration: the actress

2. Standing

- Not only must the person be competent, she must also have the required standing to make the required change in what is permissible
- Illustration: consenting for my sister

Standing and the ability to consent

- There are some things that no-one has standing to consent to (e.g. murder)
- There are others that only one person has standing to consent to (e.g. most medical treatments)
- There are yet others where more than one person has standing to consent to (e.g. jointly owned property)

- Whether a person has standing to consent to acts that are done with the intention of ending their life, depends on why it would be wrong to end their life
- Three options:
 - Killing is wrong because life is sacred and it is wrong to destroy things that are sacred
 - Killing is wrong because each person has a right to life and it is wrong to violate that right
 - Killing is wrong because it deprives the person of something good (i.e. their future life with its goals, plans and projects)

Life is sacred

- On this account no-one has standing to consent to anyone's death (including their own)
 - That is, no-one has the power or authority to bring it about that destroying something sacred is morally permissible
- We cannot affect whether life is sacred, and we cannot affect whether destroying something sacred is morally wrong

- If you accept this account of why killing is wrong, you will think that no-one can consent to their own death (in the sense of making it morally permissible to help them die)
 - That will be the case even if the person is competent, acting completely voluntarily and has complete understanding
- You will also think that suicide is morally wrong
 - Though you need not hold that suicide should be illegal because of this (in the way that it was in the past)

We each have a right to life

- If killing (or assisting killing) is wrong because we each have a right to life, whether a person can have standing to consent to their own death depends on whether or not that right can be waived
- If it can, then by waiving that right we would bring it about that it is no longer wrong to kill us
 - On some accounts consenting just is waiving a right

- It is generally agreed that most rights (e.g. property rights) can be waived
- But there is disagreement about whether the right to life can be waived
- Why might the right to life be different from other rights in this respect?
 - One option is that life is always valuable and so no-one would ever waive this right (it is not that it cannot be waived but that it never would be waived)
 - Another is that if the right to life could be waived this would mean other people might no longer have a duty not to kill you, but they always have such a duty

- If the right to life can be waived, then it seems that a person can consent to acts that are done with the intention of ending their life
- Waiving this right is likely to be unusual
- In order to be confident that it has been waived one would need to know that the person concerned was acting voluntarily, understood what they were doing, and acted with the intention of waiving that right

Killing deprives the person killed of something of value

This is a bit more complicated as there are two ways in which you might proceed:

1. Killing harms the individual by setting back their interests, but it is not wrong to harm someone if you act with their consent
 - The *volenti* principle in law
2. The person's agreement to being killed indicates that killing them does not deprive them of something that they value

- On the first of these accounts a person could consent to their own death.
 - Their voluntary agreement to the act that ends their life means that acting in that way does not wrong them (even if does harm them)
- On the second version a person's voluntary agreement to an act that would kill them would not constitute consent (it would not make it morally permissible to kill them), instead it would play an epistemic role
 - It tells you that killing them would not deprive them of something of value to them

- On this account killing is wrong because it deprives the person killed of something that is of value to them (it prevents them from completing their plans etc.)
 - As such, it relies on a subjective account of value
- So, if a person's continued life does not have any value to them, on this account it would not be wrong to kill them
 - A person's request for help ending their life provides some evidence that their life has no value to them, and so some evidence that it would not be wrong to kill them or help them die
 - How good it is as evidence will vary

Some of the features that would make a request to die good evidence that life is no longer of value to the individual concerned are:

- The request is voluntary
- The person understands what continuing to live would be like for them
 - Though there is no need to understand what death would be like
- It is consistent and repeated over a period of time

These turn out to be the features usually included in proposed legislation to allow assisted dying

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- So far I have argued that whether a person can consent to acts that are aimed at ending (or helping to end) their own life, depends on why killing people is wrong
- Disagreements on why killing people is wrong rest on deeply held and very different theological/ metaphysical positions
- There is little chance of reaching agreement on these underlying issues any time soon, and so little chance of reaching agreement on whether a person can consent to their own death

But ...

- This stalemate does not mean we have not made progress
- Remember our starting point was about what the law should allow
 - Should it allow things like physician assisted suicide
- The argument that a person cannot consent to their own death is an argument that the law should not change

- This context matters in broadly liberal societies
- In such societies it is argued that policies restricting people's choices should not be introduced where the reasons for introducing them are based on a specific set of underlying beliefs (ones not shared by everyone in that society)
- The exception to this is where public reasons – roughly, ones that do not depend on accepting that specific set of beliefs – are available to support the proposed policy

- We can interpret the attempt to argue that people cannot consent to their own death because they cannot sufficiently understand their options, or because a competent person could not voluntarily consent to this, as an attempt to provide public reasons in support of keeping the law as it is
 - Though people may not consciously be doing this
- However, I have argued that this attempt does not succeed

- If that is right, then we should not be surprised that opponents of the legalisation of physician assisted suicide/ voluntary euthanasia continue to argue that people cannot consent to their own death
 - They have good reasons to think this **given** their deep seated views on why killing is wrong
- But those reasons are not public reasons (in the technical sense of public reasons), and so should not be used to determine what policy should be in a plural liberal society

Conclusion

- The argument that people cannot consent to their own death provides no good reason to support the existing laws prohibiting physician assisted suicide or voluntary euthanasia
- However, as stated at the start there are other types of argument against changing these laws that I have not had the time to look at here, and which this argument will not affect

Thank you