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RIGHT TO DIE: THE CORNERSTONE OF A DIGNIFIED SOCIETY

TRACEY SPICER*

On 25 October 1999 I tried to kill my mother. It would have been a mercy killing. Like many Australian families, we had discussed the issue at length: "If I lose control of my faculties, put me down like a dog". But when Mum was in agony, dying from pancreatic cancer, the law was against us. Nurses and doctors refused to help for fear of litigation; palliation was ineffective. In this article, I explore the successful models of voluntary euthanasia around the world, and why Tasmania is Australia's best hope. I counter the assertion by legal scholar and philosopher Professor John Finnis that 'prohibition of intentional killing is the cornerstone of a civil, safe and functional society' and instead argue that our current legal framework will prove increasingly inadequate with our ageing population. Fundamentally, the right to die is our greatest human right. It must be respected.

It is inarguably the greatest human right: to choose whether to live or die. But those who think they know better rob us of this right. Experts in politics, philosophy, the law, or those who choose to impose their moral code on others, fail to see that none of that matters when you hear the soul-searing screams of someone you love.

It was 3am on 25 October 1999. My beloved mother, who had given me life, was desperate to end hers. It was seven months to the day since she had been diagnosed with pancreatic cancer (and given seven months to live). According to a well-meaning friend, that time was "a gift". If that is a gift, I want a refund. It is clearly faulty. The once brave, bold, and beautiful woman was reduced to the sum of her failing body parts. A refined lady, Marcia Spicer suffered the indignity of being carried to the toilet. She moaned in agony and fell in and out of consciousness, in a small, sterile room in the palliative care ward of our local hospital. I was reminded of the mantra my family would repeat whenever we saw a story on the television about terminal illness: "If I lose control of my faculties, put me down like a dog". The others nodded sagely in assent. Yet, in this country

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of plenty, when it comes to the right to die, our own choice is irrelevant and we are left with a pittance of compassion, kindness, and dignity.

In June of this year, Australian legal scholar and philosopher Professor John Finnis gave a public lecture at the University of Notre Dame, arguing that the complete prohibition of intentional killing is the cornerstone of a civil, safe, and functional society:

Benign as [euthanasia's] present authors and promoters doubtless generally are, such a classification would create in our society a new structure of radical inequality with much resulting injustice and a gravely damaging impact on the common good.¹

But this has not been the case in jurisdictions where euthanasia has been legalised. In the Netherlands, since the introduction of the *Termination of Life on Request and Assisted Suicide (Review Procedures) Act* (2001), there has been no increase in the number of people dying from euthanasia or assisted suicide.² Eight years after laws were enacted in Belgium, a 2010 survey found those who died from euthanasia, compared with other causes, were mostly younger, male, cancer patients. In almost all cases, they were experiencing unbearable physical suffering. Euthanasia for non-terminal patients was rare.³ In the American state of Oregon, which is one of the four American states that has legalised euthanasia,⁴ approximately one death in every 500 annually is the result of physician-assisted dying.⁵ An independent study in the *Journal of Medical Ethics* found there was

[N]o evidence of heightened risk for the elderly, women, the uninsured, people with low educational status, the poor, the physically disabled or chronically ill, minors, people with psychiatric illnesses including depression, or racial or ethnic minorities, compared with background populations.⁶

¹ John Finnis, 'Opposing Death with Dignity' (Speech delivered at the University of Notre Dame, Sydney, 6 June 2013) <<http://www.nd.edu.au/news/media-releases/2013/187>>.

² Agnes Van der Heide, Johannes JM Van Delden and Gerrit Van der Wal, 'Doctor-Assisted Dying: What Difference does Legalisation Make?' (2004) 364 *The Lancet* 24.

³ Tinne Smets, et al, 'Legal Euthanasia in Belgium: Characteristics of All Reported Euthanasia Cases' (2010) 48(2) *Medical Care* 187.

⁴ *Death With Dignity Act*, Or Rev Stat § 127 (1994).

⁵ Oregon Public Health Division, State of Oregon, 'Oregon's Death with Dignity Act — 2012' (Annual Report, Oregon Health Authority, 2012)

<<http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ar-index.aspx>>.

⁶ Margaret Battin et al, 'Legal Physician-Assisted Dying in Oregon and the Netherlands: Evidence Concerning the Impact on Patients in "Vulnerable" Groups' (2007) 33(10) *Journal of Medical Ethics* 591.

Unlike the perception, there is no disproportion between the requests for physician-assisted dying in jurisdictions like the Netherlands and Oregon based on socioeconomic factors such as age, race, gender, insurance status, or education. This does not support the idea that physician-assisted dying places those in 'vulnerable' groups at more risk.⁷

In each of these jurisdictions, the laws are civil, safe, functioning, and to the benefit of the common good. Professor Finnis's "prohibition" is as successful as society's other attempts with alcohol and smoking in the way that it forces otherwise law-abiding citizens to act outside the system. In desperation to help my mother, my sister Suzie and I talked about going to Brisbane's red light district and scoring heroin. I am not alone here. Shortly after I published my *Women of Letters* speech about voluntary euthanasia, I received a letter from a 25-year-old man whose grandfather was dying of bone cancer. "Ben" lived on a sheep property in country New South Wales with his grandfather after his parents had passed away. This is what he wrote me:

My granddad was in so much pain. He'd shrunk to barely a skeleton. And he kept saying, 'Just shoot me, boy. Just shoot me'. So I did. But the first bullet didn't kill him. So I had to shoot again. It was f*#king [sic] terrible. Inhumane.

Ben felt he had no other choice. How many other Bens are out there, living in anguish? How many failed attempts have left people maimed? How many times will this happen before we change the law?

There have been more than 30 attempts to change the law since the Howard Government overturned the Northern Territory's *Rights of the Terminally Ill Act* in 1997. Earlier this year, the Rights of the Terminally Ill Bill 2013 (NSW) was introduced to the New South Wales Upper House by former Greens MLC and current Senate candidate Cate Faehrmann. The Bill's hope was to allow the terminally ill to maintain the capacity to request an assisted death. The Bill was defeated on 23 May, with 23 votes to 13.⁸ A colleague of Faehrmann, Greens MP Jamie Parker, will continue the campaign in the Lower House.⁹

⁷ Ibid.

⁸ Rights of the Terminally Ill Bill 2013 (NSW).

⁹ Sarah Gerathy, 'Upper House Votes Down Voluntary Euthanasia Bill', *ABC News* (online), 23 May 2013 <<http://www.abc.net.au/news/2013-05-23/upper-house-votes-down-voluntary-euthanasia-bill/4709020>>.

A similar bid (Voluntary Euthanasia Bill 2010 (SA)) failed in the South Australian parliament on 24 November 2010 — the third since 2003 — when the Bill lacked enough support from members of the House, despite previous expressions to the contrary.¹⁰ Former Northern Territory Chief Minister Marshall Perron told me that “none [of the bids], however, have had the active public support of a Premier or been preceded by a public discussion document, as was the case in Tasmania”. He has said that Tasmania remains this country’s best hope for the legalisation of voluntary euthanasia.

Later this year, the Tasmanian Parliament will again consider legislation with even greater safeguards than those overseas.¹¹ These include a requirement that the person is terminally ill, the involvement of two or more doctors, and multiple checks to ensure the patient is making the decision voluntarily.¹² Such safeguards would protect against abuse of the law. Philip Nitschke, the founder of Exit International, has been criticised for publicising details of his euthanasia machine to groups of elderly people. Following a 2013 workshop, the Australian Medical Association’s WA branch president, Richard Choong, said he was strongly opposed to it, since ‘any machine that can help you kill yourself can be abused, misused and maliciously used’.¹³ This is why we need laws that include the medical profession, rather than exclude them. American activist Jack Kevorkian faced similar criticism, for allegedly administering lethal medication without a second opinion. Sixty per cent of the patients who committed suicide with his help were not terminally ill, and at least 13 had not complained of pain.¹⁴ The proposed Tasmanian law would extinguish these concerns.

Perhaps the most rigorous report into voluntary euthanasia was done in January 2013 by respected think tank, Australia 21. It took a multidisciplinary approach to the issue, convening a roundtable discussion based on a background paper produced by senior legal academics from the Queensland University of Technology, Ben White and Lindy

¹⁰ ‘Another Euthanasia Bill Rejected in SA’, *ABC News* (online), 26 November 2010

<<http://www.abc.net.au/news/2010-11-25/another-euthanasia-bill-rejected-in-sa/2350152>>.

¹¹ Ben White and Lindy Willmott, ‘Tasmania Could Lead the Way for Voluntary Euthanasia Laws’ on *The Conversation* (8 February 2013) <<http://theconversation.com/tasmania-could-lead-the-way-for-voluntary-euthanasia-laws-12020>>.

¹² *Ibid.*

¹³ ‘AMA outraged over Euthanasia device’, *ABC News* (online), 6 May 2013

<<http://www.abc.net.au/news/2013-05-05/ama-speaks-out-over-nitschke-claims/4670282>>.

¹⁴ Kirk Cheyfitz, ‘Suicide Machine, Part 1: Kevorkian rushes to fulfill his clients’ desire to die’, *Detroit Free Press* (online), 27 May 2007 <<http://www.freep.com/article/20070527/news05/70525061/suicide-machine-part-1-kevorkian-rushes-fulfill-his-clients-desire-die>>.

Willmott.¹⁵ The executive summary calls for the reform of the 'legal framework that operates at the end of life' in Australia:

Voluntary euthanasia and assisted suicide are currently unlawful ... Both activities nevertheless occur not infrequently in Australia, in part because palliative care cannot relieve physical and psychological pain and suffering in all cases. The law is also unfair because it doesn't treat people equally. Some people can be helped to die on their own terms as a result of their knowledge and/or connections while some are able to hasten their death by the refusal of life-sustaining treatment. But others do not have access to the means for their life to end. There is now a large body of experience in a number of jurisdictions following the legalisation of voluntary euthanasia and/or assisted suicide. This shows that appropriate safeguards can be implemented to protect vulnerable people and prevent the abuse that opponents of assisted dying have feared. ¹⁶

Those opponents often construct their arguments in terms of faith. But considering that Australia is an increasingly secular society, should the beliefs of the minority affect the choices of the majority? In 2012, the most comprehensive survey on this topic, by Newspoll and YourLastRight.com, found more than 80 per cent of people supported 'properly regulated assisted dying'.¹⁷ The question posed was: 'Thinking now about voluntary euthanasia, if a hopelessly ill patient, experiencing un-relievable suffering, with absolutely no chance of recovering asks for a lethal dose, should a doctor be allowed to provide a lethal dose?'¹⁸

When I first wrote about my mother's suffering in News Limited publications in 2008,¹⁹ the comments were 65 per cent for and 35 per cent against voluntary euthanasia. Later, after my Fairfax column, it was 90 per cent for and 10 per cent against.²⁰ Among the thousands of emails, tweets, and Facebook messages in response to my article, was one from Gideon Cordover, whose email to the Tasmanian Parliament moved many members

¹⁵ Ben White and Lindy Willmott, 'How Should Australia Regulate Voluntary Euthanasia and Assisted Suicide?' (Background Paper, Australia 21, November 2012) <<http://eprints.qut.edu.au/54757/>>.

¹⁶ Ibid.

¹⁷ Neil Francis, 'Australian Public Desire for Legalisation of Assisted Dying in Restricted Circumstances' (White Paper, YourLastRight.com, 2012) <<http://www.yourlastright.com/sites/default/files/POLL%20WHITE%20PAPER%202012.pdf>>.

¹⁸ Ibid.

¹⁹ Tracey Spicer, 'How Tracey Spicer Almost Killed Her Mother', *The Daily Telegraph* (Sydney), 30 June 2008, 1.

²⁰ Tracey Spicer, 'I'm sorry I didn't kill you, Mum', *Daily Life* (online), 12 June 2013 <<http://www.dailylife.com.au/life-and-love/real-life/im-sorry-i-didnt-kill-you-mum-20130611-2o1b6.html>>.

to vote for change:

My father, Robert Cordover, was suffering from Motor Neuron Disease, a terminal illness, when he took his own life on June 22, 2009. I was 19 years old. Robert did not want a lingering death and figured he had to act early whilst he still had the mobility to die alone, before the impending total paralysis. Had assisted dying been legal my father could have survived for weeks or months longer. I would have done anything to have had just a bit more time with him. That is why I write to you now. I feel upset that no one would listen or respect his rational request to die on his own terms.

Professor Finnis says it is important to use 'rational language' in the discourse of public debate:

If we are to keep our critical freedom, we can't accept ambiguous and euphemist slogans such as "death with dignity". Conscience judges not by wordplay, nor by the play of traditional or any other majoritarian or elite power, opinion, attitude or will, but by looking for reason.²¹

But what is more rational or reasonable than someone with a terminal illness choosing where and when they want to die? How dare anyone impinge on that right? Who has the authority to make others suffer?

In our tight-knit family, we had made a promise: "don't worry, I'll be the first to pull the plug out!" we'd laugh, splashing about in the pool enjoying those long, languid Queensland summers. But when the time came, there was no plug to pull, no method to boost the morphine, and no doctor to give a wink and a nod. Mercy went missing in action. Of course the nurses were kind, patting us on the back and saying: "there, there. It won't be much longer now". It made me wonder — how long is too long? Is there a mathematical equation for this? "I've heard three shrieks, five hollers, and one 'Please, kill me now', is that enough, nurse?" So, we decided to do it ourselves.

My sister stood there all night pressing that bloody red button to flood Mum's body with morphine. The next day she showed me the bruise on her thumb and declared, "I know I could go to jail but I don't care". But her bravery was for naught, because the button had a self-limiter. Mum kept breathing. And writhing. And screaming. And so, at 3am, I got up from the recliner chair, lifting the pillow I had wedged behind my back. I told her I loved

²¹ Finnis, above n1.

her. And I lowered the pillow over her face. It hovered there for what seemed like an eternity. But in the end, I couldn't do it. I was weak. A coward. Not my mother's daughter. Mum died hours later, of natural causes. But it wasn't "all's well that ends well". In the end it was wrong — because she had no rights. No control over her very existence.

This is why my family campaigns for voluntary euthanasia. With our changing demographics, stories like Ben's, Gideon's, and mine will become increasingly common. Our legal framework will prove to be inadequate, as more law-abiding citizens are faced with an invidious decision — a decision that should lie in the hands of the patients themselves.

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