Ethics and euthanasia: natural law philosophy and latent utilitarianism

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Abstract

This paper considers the ethical complexities of euthanasia, with particular emphasis on natural law theory. It argues that natural law theory is anti-democratic in the sense that it necessitates a fixed and absolute commitment to eternal and essentialist categories that emanate from above, whether their source is God or some other organising principle. The natural law position is also complicated, however, by the historical influence of Aristotelian conceptions of ontology and time, and also by the residue of Cartesianism.

Natural law theory is inherently hostile to utilitarian arguments, and this is seen to full effect in the assertion that there is a ‘slippery slope’ that must be avoided at all costs. In its concession to the doctrine of double effect, however, natural law theory is compromised by a latent concession to utilitarianism.

Introduction

Euthanasia is one of the great ethical issues of our times. There is nothing quite as personal as the physical and psychological suffering of an individual in the final moments of his or her life. Yet there is nothing quite as social and political as the legal intervention of the state. The issues involved are complex: what importance, for example, should be attached to the individual’s autonomy and the rights that seem to flow from that autonomy; and what ethical consequences flow from the assertion of the absolute and universal sanctity of all human life, regardless of the particular circumstances of a particular individual at a particular moment? The issue is rendered more complex by virtue of the fact that in any ethical public discourse individual pain is inevitably displaced into abstract philosophical concepts and legal reasoning. Even this observation, however, understates the dilemma, for philosophers and legal theorists are inevitably engaged in the act of constructing the meaning of the individual’s pain and suffering.

In the present, with the extension of human life expectancy and the rapid development of medical technology, these dilemmas have become particularly acute and complex. When the state intrudes into the extremely personal suffering of individuals, and lays down rules for the organisation of the most profound personal decisions that a human being can make, there is clearly a need to provide a moral justification for this intervention. On the other hand, the state cannot abrogate its responsibility. In the absence of state involvement, other interested parties will be involved in the death of individuals, and it is unthinkable that a kind of unregulated free market should be allowed to exist. Dying individuals often have property, and in such circumstances, as
well as in others, parties involved in the decision-making process might have a conflict of interest. In such instances, passivity on the part of the state may simply allow the will and self-interest of others to override the autonomy of the dying individual. The law, as a matter of necessity, must be involved in the decision-making process.

In order to be involved, however, the law must be grounded in morality. This, of course, raises the question: whose moral thought? The debate generally moves between natural law theory, utilitarianism and rights-based theory. I shall focus on the first two, which at first impression appear antithetical. I shall argue, however, that natural law theory is compromised by a contradictory, yet latent, engagement with utilitarianism.

**Natural law, Aristotelianism and Cartesianism**

Natural law theory has exerted the most enduring influence on the argument against euthanasia, but I shall argue that in doing so it has made an unwitting accommodation with utilitarian principles. This is ironic because utilitarianism is pragmatic, calculative and inherently concerned with the short term rather than with the eternal, whereas natural law is committed to a deep metaphysical engagement with the eternal. Such confusion of principles is difficult to avoid. Much depends, for example, on how we see the self. In this regard, the entire debate is conducted in the shadow of a Cartesian mind–body dualism, as well as a theological–secular dualism. It is also bedevilled by an implicitly Aristotelian conception of temporality. Aristotle, of course, saw time as the movement of an object through space. This might be adequate for dealing with inanimate objects, but not for dealing with human beings. Self-conscious humans are not inanimate objects moving through space: they project their consciousness backwards and forwards through time, and their existential state at any one moment is a complex outcome of this process. Their sense of being is undoubtedly related to their immediate bodily state, but it also transcends that state. The deficiencies of an Aristotelian conception are acutely evident when considering the predicament of the dying individual. At such a moment the past, the present and the future meet in the individual’s desire to move beyond the material present. As the Heidegger of *Being and time* appreciated, a human’s existence is an integrated construction of the past, the present and the imaginary future.

**The anti-democratic bias of natural law**

A problem with natural law is its anti-democratic bias. Natural law is created in a mono-directional manner, from top to bottom. Its principles descend either from God or from some other eternal abstraction. Within this intellectual framework human beings are essentially submissive: their only legitimate purpose is to discern these laws and then to adapt and modify their own lives so that the eternal principles are expressed in a material form.

These ideas have their antecedents in Plato’s theory of forms, where the fundamental reality is to be found in an eternal set of abstractions. Natural law, like the Platonic forms, is based on an idealistic metaphysics in which stasis is a defining feature. Plato, of course, rebelled against democracy, just as any adherent of an absolutist form of idealistic metaphysics must logically do. If natural laws are handed down from above,
then they cannot be contested, rejected or ignored. In other words, the people cannot be sovereign. They must be ruled by natural laws, and these, of course, are created in the transcendent, non-societal realm.

It is important to emphasise the element of stasis. Put simply, the intellectual abstractions handed down from above are not amenable to change. In this sense, too, they are inherently undemocratic. Natural law philosophy sat more easily in its original medieval setting, where the hierarchical concept of the Great Chain of Being provided its implied intellectual foundation.

Given these limitations, why has natural law theory continued to play a major role in the debate? The principal reason is the adaptive discursive strategies used by reconstructed natural law theorists. They have been remarkably flexible in their formulation and reformulation of the linguistic architecture of natural law, while retaining great fidelity to the deeper essentialism of its core assumptions.

In order to understand the discursive codes of such arguments, it is essential to see that in the discourse of conventional natural law God functions as a logocentric concept. All other concepts can only be understood as expressing this ultimate unified concept, free of any further contradictions. God, considered purely as a discursive signifier, therefore provides closure. It is possible, however, for natural law theorists to substitute another, apparently secular, concept for God. Provided that the concept is fixed, eternal and absolute, the result is much the same. Inevitably, however, such arguments will leave a deconstructive trace as they transgress their own logic.

Keown and Gormally: paradigmatic examples of modern natural law theory

An excellent example of this reconstructed form of natural law theory is an article by John Keown and Luke Gormally. Keown is a lecturer in Law and Ethics of Medicine at Cambridge University and Gormally is the Director of the Linacre Centre for Health Care Ethics. Each has edited a book on euthanasia.

Essentially, Keown and Gormally write from the unacknowledged perspective of neo-naturalism. The fundamental assertion of these authors is ‘the recognition that every human being, however … mentally impaired, possesses a fundamental worth and dignity which are not lost as long as he or she is alive’. For Keown and Gormally, this concept is absolute. It includes even those who ‘have suffered severe brain damage, resulting in permanent loss of consciousness or of cognitive abilities’. In other words, the authors will not countenance a discussion of individual circumstances. Although they have obfuscated the issue by talking merely of ‘severe’ brain damage, clearly for Keown and Gormally an individual may be brain-dead without his or her life losing any of its basic worth and dignity.

Such a proposition cannot be tested. It is remarkable however that, in asserting an absolute, a priori concept with such force, the authors have side-stepped the issue of what defines us as human beings. Can it really be our bodily form, independent of a brain with even minimal function? It is difficult to see how this could be so, but such an implicit assertion is crucial to the authors’ hypothesis.
Having put forward a fixed absolute category as the foundation of their argument, Keown and Gormally suggest that attaching any diminished worth to brain-dead individuals makes ‘the possession of human worth depend on an arbitrary discrimination between individuals’. It is important to scrutinise this use of language. The first point to note is that the word ‘individual’ is problematic when applied to a brain-dead human, and this is even more so when it is used to equate that human with another self-conscious human who possesses sufficient autonomy and uniqueness for the term ‘individual’ to have more than nominal or statistical significance. Furthermore, it might reasonably be queried whether or not the alleged discrimination is arbitrary. If it is not arbitrary, then the assertion that it is discriminatory loses force, for surely it is difficult to argue that there is ontological equality between a self-conscious individual and a brain-dead individual. At the very least, ontological equality between the two is not self-evident. If there is no ontological equality, however, then it is necessary to somehow distinguish between the two ontological states. This, of course, raises a whole new set of philosophical and moral questions. It is not helpful at this point for Keown and Gormally to use the emotionally and politically charged word ‘discrimination’ when the act of drawing of such an ontological distinction is all that is being done. It would be more helpful if Keown and Gormally put forward a sustained argument to show how a brain-dead human, who might reasonably be thought to occupy a position in extremis, actually is ontologically equivalent to other individuals who, although possessing different degrees of consciousness, do possess some consciousness. Keown and Gormally seem to think that, if any concession of difference is made at this point, then the same comparative principles would apply along the entire continuum of human abilities, so that arguments could be made about the relative worth of any individual in any number of unspecified circumstances. This, however, does not follow. It especially does not follow if the brain-dead human is distinguished from all other humans as a case in extremis, or in other words as existing in an ontological state fundamentally distinct from all other states. This raises the question that has already been inferred: is it truly discriminatory to suggest that brain-dead ‘humans’ have in some sense lost their humanity? Arguably, discrimination is only possible if all subjects are ontologically equal to begin with. In this regard, it needs to be emphasised that the concept of ontological equality allows for differences in abilities. It merely insists that to be regarded as human, and therefore a subject of justice, an individual must be self-aware.

In Spain, where the Catholic faith and natural law have exerted a strong influence on policy, an intervention with the direct intention of either accelerating death or killing the patient is considered morally wrong, but the heavy use of sedation ‘implies that unconsciousness, either disease-induced, or drug-induced, is generally perceived as the best way out’. Such an approach would appear to maintain the sanctity of human life as an abstract principle, but it might also be argued that to plunge an individual into an unconscious state from which he or she is most unlikely to emerge is merely to shift the effective outcome from death to a permanently unconscious state. The ethical basis for making this kind of decision does not seem to be grounded in strong ethical principles, but only in the more pragmatic consideration of the relative ease with which the outcome can be achieved. Paradoxically, this may make it less ethically sound than other alternatives, in which case the phrase ‘best way out’ becomes loaded and problematic. In any event, it is not at all clear what it means to terminate a person’s consciousness but not that person’s life. Certainly, the justification for such an act
seems to rest on merely technical and biologically defined criteria. Considered in this light, it is not evident that the act of placing a person in a permanently unconscious state is really preserving the sanctity of life. It is certainly difficult to argue that it maintains the dignity of human beings. Arguably, in acting upon an individual for the technical purpose of achieving apparent conformity with an arbitrary a priori principle, such an approach encourages an instrumental view of a human being rather than a genuine respect for his or her consciousness. It is difficult to see the logic of this position.25

Keown and Gormally have elevated universal abstractions above individual flesh and blood humans. Accordingly, they do not attempt to deal with the difficult issues of life as it is, and nor do they attempt to weigh competing principles. Arguably, the a priori application of a single concept actually negates further moral reasoning and discussion. The most powerful argument that may be raised against Keown and Gormally’s argument is one based on the value of human autonomy. In a free and democratic society, the concept of freedom of choice is invested with great moral power. Keown and Gormally’s response to this argument is to assert that ‘(a)utonomy itself is a capacity is to be valued precisely in so far as its exercise makes for the well-being and flourishing of the human beings who possess it’.26

It is difficult to see how such an argument places any value whatsoever on free choice per se. Following this logic, autonomy can be judged only by examining its practical consequences in each individual case. Presumably, such an assessment of consequences must be undertaken not by the individual, but by some kind of secular body. This implied utilitarian consequentialism might logically be endorsed by utilitarians or even rights theorists, but it seems to be an anomalous position for two natural law theorists to take. It is not at all clear what ‘well-being’ and ‘flourishing’ might mean, or by what criteria they might be evaluated. It is certainly not clear how they relate to the central value held by Keown and Gormally: the dignity and worth of human life, considered in the abstract and expressed through all individuals. In opposition to their position, it might equally be suggested that the dignity of life is contingent on certain practical criteria and individual consequences. Why is it that the individual circumstances of those in pain, both mental and physical, should not qualify the dignity of the individual’s life? It is not clear why Keown and Gormally qualify the concept of autonomy but not the concept of human dignity. They have failed to justify why, after marshalling two competing positions, they have then proceeded to regard their own preferred position as foundational and the opposing value as contingent. In effect, they seem to have argued for a secondary, and partial, utilitarianism but without establishing any ground for doing so. While they are highly critical of the alleged arbitrariness of other positions, the arbitrariness of their own position escapes their attention.

The natural law legacy and the slippery slope

Implicitly, proponents of ‘the slippery slope’ are contemptuous of the democratic process.27 They believe that, under the influence of politicians, physicians, bio-ethicists, courts, lawyers and the media – in other words, virtually every participatory organisation or institution in a pluralist democracy – pernicious outcomes are inevitable.28 Law, it seems, should remain a set of fixed abstractions that descend, or are
imposed, from above. An anti-democratic desire for stasis is revealed in the unconscious meaning of the term ‘slippery slope’ for if this term does not express a fear of democratic change, then what does it express?

This is evident from a close textual analysis of a book by Wesley J Smith. Smith is perhaps the most strident proponent of the slippery slope. With robust gusto, he castigates every participant and stakeholder in the field, imputing to them motives that are both devious and manipulative. Smith says that ‘dying naturally is increasingly promoted as a “bad death” if it involves discomfort or time, and hastened death is presented as empowering, courageous and somehow noble’. The language used here is extremely loaded. Does the term ‘discomfort’ not understate the agonising death that many endure? Does Smith’s use of the word ‘time’ alongside ‘discomfort’ trivialise the difficult decisions involved in a decision to terminate a human life? Surely decisions of this nature are not made merely in order to save a little time. Most importantly, what exactly does Smith mean by the phrase ‘dying naturally’? This is especially pertinent in the context of large hospitals, highly sophisticated drugs and advanced medical technology. Smith must know that the word ‘natural’ is generally imbued with positive connotations, but the meaning of the term as he uses it is extremely vague. It seems that Smith is a logocentric advocate of a neo-natural law perspective. In place of Aquinas’s God, or Finnis’s human nature, there is now merely some vague concept of nature as the overarching organising principle.

Smith’s argument might be disingenuous, but it has had greater currency than it should have had, principally because of the non-philosophical nature of the arguments put forward to counter it. This is not an argument that can be won by looking at Oregon, or even at the Dutch experience. The facts are in dispute, and in any event they are limited in both time and place. The slippery slope argument is based on a very shoddy, anti-democratic metaphor, and it is from this perspective that it must be criticised.

The slippery slope alludes to the laws of physics, where gravity and mass will generate an outcome that is both inevitable and measurable. The body sliding down the slope is entirely passive: it is subjugated completely to the laws of physics. Human reason, however, is not a passive entity subject to the laws of physics. It is the product of active agency. Conceived as such, it does not slide anywhere. Rational human beings can intervene at any stage on any issue, and a tolerant, liberal society will always be prepared to engage in vigorous debate. It is irrational to refuse discussion of one circumstance because the thought involved may lead somewhere else at some other time on some other issue in the context of some other circumstance. What exactly is to be feared: the moral absolutism of disingenuous neo-natural law theorists who seek to impose rigid and anti-democratic concepts and categories without further debate, or thought that is open and inclusive and willing to engage each issue as it arises in the ongoing flux of life?
The natural law legacy and the doctrine of double effect: natural law theory’s unwitting utilitarianism

The doctrine of double effect is accepted by the current Anglo-American-Australian law, and also by the Catholic Church. Arguably, however, the Church has lapsed unwittingly into utilitarianism. According to Catholic moral philosophers, it is permissible, under the doctrine of double effect, to administer heavy doses of drugs to a dying person who is experiencing excruciating pain, even though, as a direct and foreseen consequence, it will also cause the patient’s death. The issue is one of intent. The question, however, is this: what exactly is the intent? Surely, despite the doctrine’s acceptance by the Catholic Church, the doctrine of double effect is driven by an underlying, and even unstated, utilitarian impulse. The administration of heavy drug doses must be based on a perception that death is a lesser harm to the individual and the elimination of pain a greater good. J Boyle inverts the doctrine and suggests that if the drugs are not administered then the physician is responsible for causing pain as a foreseeable side effect of letting the patient live. This, of course, is especially true if it is medical assistance that has hitherto kept the patient alive. Alan Donagan pushes this argument further by arguing that it is wrong to conceptualise the issue in hierarchical terms. According to him, there is no primary–secondary distinction. Rather, there are two knowable, and competing, outcomes: death or pain. In its conception of a sliding scale of opportunity cost trade-offs, where each action and objective negates the other, Donagan’s position begins to look remarkably like a neo-classical economic formulation, with its attendant utilitarian implications. He argues that either death or pain is the intended pursuit of the other alternative. Anything else is obfuscation. FM Kamm, however, disagrees. Arguably, though, her argument does obfuscate the issue. Pain, she argues, would be the intention of keeping the patient alive only if causing a person pain was a necessary part of keeping that person from lapsing into a comatose state and then dying. On the other hand, dying would be intended to avoid pain only in the case where drugs were administered to terminate life processes when the drugs themselves had no pain-killing properties. It is difficult to see how Kamm’s argument can be right if it is accepted that the double effect assumes that the physician knows the likely consequences of each alternative course of action. Knowledge must involve choice. Surely Kamm can only be correct if the consequences are a potential, but essentially unknowable, outcome. On the other hand, even if the physician has knowledge of the likely consequences, the decision must contain a utilitarian undercurrent; and an attempt to disguise this by equating the primary objective with intent and the labelling the ‘secondary’ consequence as an acceptable by-product seems disingenuous. Surely, if there is knowledge, then there are really two distinct choices to be made. The fact that the two alternatives happen to be composites is irrelevant. Once this logic is accepted, then the choice really is between death and pain, and it is difficult to see how this can be based on anything other than a utilitarian calculation. If this is so, and especially if it is known in advance, then surely the patient should be the one who makes that utilitarian decision. After all, it is the patient’s death and the patient’s suffering, and surely the patient is more likely to be in a position to know his or her subjective state than any external observer or participant.
Conclusion

The principal argument against euthanasia, natural law theory, is inherently flawed. It is also compromised by its unwitting concession to some aspects of utilitarianism. When its anti-democratic bias is also considered, it is perhaps time to propel the debate in new directions. If absolute positions are abandoned, however, then the arguments put will have to conform to very high standards of rigour. Utilitarianism will undoubtedly play a role, but so, too, will other philosophical positions, such as those seeking a basis in various rights. There will be competing principles in play, and fine distinctions will have to be made at various points along different continuums. Inevitably, this will widen the focus from abstract philosophical issues to practical issues of institutional process, transparency and accountability.

1 I shall deal only with voluntary euthanasia, or physician-assisted suicide where the person involved is competent, or is presently incompetent but who made his or her intentions known when competent.

2 For a useful history of euthanasia, see W Bruce Fye, ‘Active euthanasia: an historical survey of its conceptual origins and introduction into medical thought’, Bulletin of the History of Medicine, 1968, pp 493–502; and Ezekiel J Emanuel, ‘The history of euthanasia: debates in the United States and Britain’, Annals of Internal Medicine, Vol 121, No 10, 15 November 1994, pp 793–802. Elsewhere Emanuel argues that medical innovations may have added to the complexity of the ethical issues associated with medical interference in the death of another, and even the frequency with which such issues arise, but the underlying ethical issues have a long history, and go to the heart of what it means to live a worthwhile life; Ezekiel J Emanuel, The ends of human life: medical ethics in a liberal polity, Cambridge, Massachusetts, Harvard University Press, 1991, pp 7–13.

3 Economic interests, of course, need not be the only relevant factor. The range of complex psychological considerations that might have an influence, on both the dying individual and those close to him or her, cannot be simply defined or identified. For an empirically based discussion of some of these factors, see Margaret A Drickamer, Melinda A Lee and Linda Ganzini, ‘Practical issues in physician-assisted suicide’, Annals of Internal Medicine, Vol 126, 15 January 1997, pp 146–152; and William Breitbart and Barry D Rosenfeld, ‘Physician-assisted suicide: the influence of psychosocial issues’, Cancer Control, Vol 6, No 2, 1999, pp 146–161.


5 Thus, in Physica, Aristotle defined time as follows: ‘It is clear, then, that time is “number of movement with respect of before and after”, and is continuous since it is an attribute of what is continuous’; Physica, Book iv, ii, in The works of Aristotle translated into English (trans RP Hardie and RK Gaye), Oxford University Press, 1970, p 220. For a more general discussion of Aristotle’s conception of time, see Stephen Clark, Aristotle’s Man, Oxford University Press, 1975, pp 114–129.

6 In Being and time Heidegger avoided using any conventional term such as ‘self’ or ‘human being’, because such terms carried the weight of a past in which essentialism dominated. He used the term ‘dasein’: Being and time (trans J Macquarie), Basil Blackwell, Oxford, 1962 (first published 1927). This perspective, as Ludwig Binswanger observes, avoids the Cartesian mind–
body split: Being in the world: selected papers of Ludwig Binswanger (trans with a critical introduction by Jacob Needleman), Souvenir, London, 1975, p 211. For a discussion of the difference between Aristotle’s and Heidegger’s conception of time, see C Blaisdell, ‘Heidegger’s structure of time and temporality: a new repudiation of the classical conception’, Dialogue, vol 18, no 2–3, April 1976, pp 44–53; and H Weiss, ‘The Greek conceptions of time and being in light of Heidegger’s philosophy’, Philosophy and Phenomenological Research, vol ii, no 2, December 1961, pp 173–187. Heidegger the man, of course, made a subsequent accommodation with Nazism. In my view there is nothing in Being and time that allows any philosophical accommodation with Nazism, although I concede that the issue is open after Heidegger’s ‘turn’, where his focus shifted from the being of dasein to the question of being.

7. This, of course, ‘is only a problem if one already accepts the supremacy of democracy’. As a perceptive anonymous reviewer of this paper put it: ‘[p]roponents of natural law can assert that democracy is problematic if it runs counter to natural law’. As he/she added, for my point to be valid a separate argument would have to be made for the supremacy of democracy.

8. Aquinas said that the natural law is ‘nothing else than the rational creature’s participation in the eternal law’, Summa Theologia, 1–11, Q xciv.

9. Paradoxically Aquinas can be seen as providing the intellectual foundations for the integration of Aristotelian rationality and Christian theology. He therefore set the scene for western scientific development, with all of the restless dynamism that this implies. The truths of natural law might be eternal for Aquinas, but human methods of apprehending them must be rational. It is really the hierarchical assumptions of Aquinas, as well as his underlying belief in essential stasis, that makes his historically progressive thought now so ill-suited to the demands of a modern pluralist democracy in which the people are sovereign.

10. The sense of hierarchy is deeply embedded in the thought of Aquinas, and this extends even to the internal hierarchy of the individual subject. According to Aquinas, actions are wrong if they unsettle the rational and harmonious subordination of lower impulses to higher reason. In this regard, Aquinas had an ontological sense of unity and closure. Contradictory impulses should be kept in check and displaced, or even sublimated, into higher and more abstract forms of being. Considered in this light, his thought shows similarities with the thought of two other great idealistic metaphysicians: Plato and Hegel.

11. For a discussion of the historical importance of logocentric thinking in western thought, see Jacques Derrida, Of grammatology, Johns Hopkins Press, Baltimore, 1967. By logocentric I mean a central organising principle to which all other concepts and signs ultimately refer.


14. They acknowledge that the article was read by JM Finnis. Certainly, they share the same general perspective.

15. Keown and Gormally, op cit, p 1. Although not addressing Keown and Gormally, Robert Dworkin has responded to this ‘secular value of sanctity’. He says that to say merely that it is wrong to kill people is ‘too crude: the idea of sanctity is meant to offer a special kind of reason why killing people is wrong … Theological accounts find the reason in God’s will … Secular accounts must find some other reason … This cannot be found … just in the idea that the existence of life is valuable in itself, because it would follow … that it is desirable to produce as much life as we can’: ‘Reply to Richard Smith, The right to death’, The New York Review of Books, Vol 38, No 6, 28 March 1991.


17. My emphasis.
This is because the authors are responding to a Consultation Paper, *Who decides*, produced by the Lord Chancellor’s Department. This document broadly endorsed the proposals put forward by the Law Commission in its *Report on mental capacity*. This report placed a high degree of emphasis on the value of human autonomy. The judgment of Lord Mustill in *Airedale NHS Trust v Bland* [1993] All ER 789, especially at 897, placed a similar emphasis. Bland, brain-dead, was a victim of the soccer disaster at Hillsborough. Keown and Gormally are concerned that the thrust of the report’s proposals would ‘permit the intentional termination of patients’ lives by planned omission of treatment and tube-feeding’ (p 1). For a discussion of *Bland*, and an elaboration of Keown’s position, see John Keown, ‘Restoring moral and intellectual shape to the law after *Bland*’, (1997) *Law Quarterly Review*, vol 113, p 481.

In any event, as I shall argue below, the assumption of ontological equality between a self-aware human and a brain-dead human can also be used by rights theorists in order to assert the enduring right to autonomy of choice, albeit a substituted choice. In other words, aspects of human essentialism can be borrowed from natural law and adopted by rights theory.

This view seems to depend on the idea of a ‘slippery slope’, which I shall discuss below.

The search for an appropriate language is part of the problem in discussing euthanasia. To use terms like ‘human’, ‘person’ and ‘individual’ when discussing brain-dead ‘beings’ is to assume answers to questions that need more rigorous exploration. Arguably, such a readily available linguistic inventory encourages lazy thinking and allows difficult issues to be submerged.

In putting forward such an argument, I owe a debt to Martin Heidegger’s *Being and time*, op cit. This is not to suggest that Heidegger the man would have remained true to my reading of his own philosophy, as his infamous engagement with Nazism testifies.


It should be noted here that the language used by Keown and Gormally shows a strong similarity to that used by Finnis. It should also be noted that by making the concept contingent, and to a degree that is implicitly quantifiable, the authors unintentionally and unknowingly raise the spectre of utilitarianism.

Such arguments are put with considerable stridency even by authors normally noted for the exercise of caution. See, for example, the article by ex-president of the American Association of Psychiatry and the Law, Dr Abraham Halpern and ex-president of the American psychiatric Association, Dr Alfred Freedman, who argue that Oregon’s *Death with Dignity Act* should be repealed because ‘[i]t greases the slippery slope and will surely result in undignified and merciless killings’: ‘Oregon’s suicide law creates a slippery slope, *New York Times*, 2 November 1997. The use of a powerful and very negative metaphor like ‘greases’ to another metaphor like ‘slippery slope’, together with the loaded term ‘killings’, should not be allowed to gloss over the question that the authors leave unanswered: by using these terms and attaching to them such negative connotations, do they not implicitly endorse their opposite? In other words, their use of language implicitly attaches positive connotations to *dignified* and *merciful* physician-assisted suicides, and so the question becomes under what conditions and according to what legal and ethical criteria could these positive terms be met? Furthermore, why is a legal step to define the issue carefully and then to put in place appropriate criteria, as well as clear procedural checks and balances, a less thoughtful, less rational and less empowering legal step than outright repeal of the Act?
28 As an example, see the anti-democratic view of Alan Keyes, ironically a former US Congressman: ‘We need to go back to the first principle to put the authority over life and death back into hands that are out of human reach. If God doesn’t have it, then it means that a human being will have it; and he will abuse that power’, Address by Alan Keyes on Euthanasia. http://www.euthanasia.com/keyes.html
31 Ibid, p 11 (my emphasis).
32 In ‘Brief of Amicus Curiae bioethicists supporting respondents’ before the US Supreme Court in Vacco v Quill in October 1996, No 95-1858 and No 96-110, the bioethicists cite research indicating that many of the claims made about the Dutch law ‘are empirically false and grossly distorted’. There is no evidence, they say, of ‘conscious, competent patients being euthanized against their will’: see http://wings.buffalo.edu/faculty/research/bioethics/brf-int.html
33 See the argument for protocols and guidelines to avoid the ‘slippery slope’ in the Amicus Curiae in Vacco v Quill, op cit.