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AUTONOMY, VOLUNTARINESS, AND ASSISTED DYING

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INTRODUCTION

Ethical arguments about assisted dying often focus on whether respecting someone's autonomy means offering them an assisted death if they want it. Some argue that it does, and that the reason is sufficient to justify legalization.[1-5] Others agree that it does, but that the reason is defeated by other considerations, and that we should therefore not legalize, all things considered.[6-8] Yet others deny that respect for an individual's autonomy gives reasons to legalize assisted dying,[9, 10] or indeed argue that it requires opposing that measure.[11-14]

All these positions focus on the person who competently and consensually seeks to die, and argue about what proper respect for their autonomy requires. By contrast, this paper argues for legalizing assisted dying by appealing to the autonomy of people who *don't* want to die. We should add that option because it can transform the nature of someone's choice set, enabling them to pursue other options voluntarily where that would otherwise be harder or impossible. This does not contradict the more familiar arguments for legalizing assisted dying based on the autonomy of those who seek to die. Nor do I take it to provide a decisive 'final say' in favour of legalization. But it does add an important new consideration to the debate. And it suggests that a wider constituency of support for that legislative change might be created by emphasising that one need not be in that position to be benefited by the change.

I begin in Section 1 by introducing the concept of autonomy and some of the main ways it has been understood by philosophers. In Section 2, I present my argument: exercising voluntary choice is an important part of the ideal of autonomy, no matter how it is understood, and adding the option of assisted dying to people's choice sets facilitates their making voluntary choices even if dying is not the option they (presently) want to pick. In Section 3, I consider a problem for this view, which is a version of the familiar concern that people might be 'forced' to take the option of assisted dying if it is made available. I show that while this problem doesn't give us good reasons to withhold the option of assisted dying, it does give us reason to think that we must do more besides legalizing it if we are truly to support autonomy in cases of vulnerability and proximity to death.

1. THEORIES OF AUTONOMY

'Autonomy' is a central term in medical ethics. It is also highly contested. In medical ethics, the most familiar view is Beauchamp and Childress's:

Personal autonomy is, at minimum, self-rule that is free from both controlling interference by others and from limitations, such as inadequate understanding, that prevent meaningful choice. The autonomous individual acts freely in accordance with a self-chosen plan, analogous to the way an independent government manages its territories and sets its policies. [15]

There are other ways of understanding autonomy. Harry Frankfurt and Gerald Dworkin think it consists in having preferences which one endorses under conditions of independence.[16,17] Joseph Raz understands autonomy as an 'ideal of self-authorship'. [18] I do the same, arguing

that autonomy requires both deciding for oneself what is valuable and also living in accordance with that decision by making decisions that make one responsible for the shape one's life takes.[19] Marina Oshana defends a view on which 'autonomy is a condition of persons constituted in large part by the social relations people find themselves in and by the absence of other social relations', which is to say that autonomy is upheld by social relations that sustain the individual's power and authority over her life, and undermined by relations of oppression or domination.[20]

For present purposes, we needn't adjudicate this debate. My aim is to argue that considerations of autonomy support legalizing assisted dying when we consider the effects of possessing that option even for those who don't want to die. As we will see, my argument can be accepted on any of these views, albeit perhaps for different reasons. That means it depends on no underpinning theory in particular, and should be compelling no matter how one thinks autonomy should be understood.

2. AUTONOMY FOR THOSE WHO WANT TO LIVE

In this section, I explain the relationship between autonomy and voluntariness, and show why that generates a novel argument for legalizing assisted dying.

I rely here on a theory of voluntariness introduced by Serena Olsaretti, and further refined in earlier work by me. On Olsaretti's view acts are non-voluntary when they are chosen because there is no acceptable alternative, and voluntary when this isn't the case.[21] As I point out, this involves both objective and subjective conditions.[22] The standard for acceptability is objective and non-comparative: an alternative is unacceptable if it involves falling below a certain absolute level in some measure. For Olsaretti that measure is well-being; I am less clear, save that it should 'not treat an individuals' judging an option to be unacceptable as either necessary or sufficient for the purposes of voluntariness'. (The requirement that acceptability is judged non-comparatively also rules out someone's action counting as non-voluntary on the trivial grounds that, if the option picked is the best of the choice set, the other options are in some sense rationally unacceptable; this comparative standard of acceptability isn't what is relevant to judgements of voluntariness.) Nevertheless, the individual's subjective perspective is also important: someone acts non-voluntarily when their motivating reason is to avoid unacceptable alternatives. That condition can be met even if the individual is mistaken about what options they face (that is, the size and composition of their choice set) and about what those options are like, so long as they are judged by an appropriate standard of acceptability.[22, 23]

Oftentimes, we use 'voluntariness' to refer to the property that underpins valid consent.[15] It is worth emphasising, therefore, that voluntariness in Olsaretti's sense does not necessarily play this role. My view implies that they are connected, in that we should not be held responsible for choices which are non-voluntary in Olsaretti's sense (and creating such responsibility is the definitive effect of valid consent).[19,22] But I rely on no such claim here. One might instead think that consent is grounded in something other than voluntariness; or indeed that the orthodox usage in medical ethics is correct and distinct from Olsaretti's (and hence that we have identified an unhelpful ambiguity in much contemporary literature in that field).

What matters for the present discussion is that voluntariness in Olsaretti's sense matters for individual autonomy on each of the views of autonomy surveyed above. On Beauchamp and Childress's view, non-voluntariness undermines autonomy because it represents the kind of

controlling influence or limitation which prevents meaningful choice.[15] On Frankfurt and Dworkin's view, it is problematic because it disrupts one's ability to act on preferences which one endorses.[16,17] For Raz, the self-authoring life is one which is shaped through successive *voluntary* decisions.[18] I argue that non-voluntary actions are problematic because their consequences are alienated from the actor, and this alienation precludes full responsibility of the sort required by his conception of autonomy.[19] And on Oshana's view, non-voluntariness signals the absence of the supportive social relations which partially constitute autonomy.[20]

So, on a wide range of views about autonomy, non-voluntariness is a problem. For that reason, we can bracket theoretical disagreements about exactly what role voluntariness plays in the autonomous life, and instead converge on the practical principle that considerations of autonomy give us reason to support voluntary choice, and to avoid (where possible) conditions which risk people being compelled to act non-voluntarily.

The most striking cases of non-voluntary action involve the deliberate action of other agents. That includes the intentional coercion of the highwayman who says 'Your money or your life!', which really means 'With this gun I make all alternatives to your handing over your wallet unacceptable, by guaranteeing that they will include a bullet to the head'. It also includes cases which are human-caused, but indirectly and without specific malicious intent. For example, adapting a case from G.A. Cohen, imagine someone living in a small town with no unemployment support and only one source of employment, a dangerous mine for a hazardous substance: they choose to undertake this hazardous employment to avoid the alternative of unacceptable destitution. As Cohen points out, choices like this are strictly speaking free, and need not be the result of targeted intentional coercion. Nevertheless their being free doesn't stop them being problematic, because – as Olsaretti later diagnosed – they are non-voluntary.[24, 21]

The key point for us is that, while human malice or negligence might matter for ascribing blame, they are not necessary for someone finding themselves unable to act voluntarily. The general course of life can have the same effect, and, if the testimony of people facing the ends of their lives is to be believed, frequently does. Illness, incapacity, fear, pain, isolation and disempowerment can make all our choices unacceptable. If they do, then our voluntariness – and therefore our autonomy – is violated just as though a highwayman is pointing a gun at our head.

If we think that people should have autonomous lives, then we should look for ways to avoid this situation. Since the problem arises from the nature of the options someone faces, the solution appears there too. Strictly speaking, as noted above, what matters is someone's *beliefs* about their choice set. But since there are other reasons – of candour and respect – not to premise a policy on either inculcating false beliefs or leaving them intact, we can for present purposes assume that our leverage has to do with the nature of the options themselves. We can either alter the nature of the existing options to make them acceptable, or we can add new acceptable options to the choice set.

So, for example, consider the mine-worker in Cohen's example. We might make the option of employment better: improving salary and safety standards, for example, so that the job ceases to be one which someone would pick only to avoid destitution. Or, we might offer alternatives, by providing a new source of employment, or by bringing in a social welfare system with unemployment support. Maybe our protagonist will choose one of those new options, but even if they make the same choice as before, they will do so voluntarily, because they know they have acceptable alternatives, and hence won't be choosing to undertake the hazardous work for the motivating reasons which make a choice non-voluntary.

Returning to the topic of assisted dying, we can now see a new reason why that option supports the autonomy of people who want to die. For such people, legalization adds an option which they want to take. (Of course, if they take that option to avoid their existing unacceptable alternatives, their choice will remain non-voluntary; I return to this problem in Section 3.) However, unlike with other autonomy-based reasons to favour legalization, the case is not limited to those people. Adding the option of assisted dying transforms end-of-life decisions even if the individual doesn't want to take that option, just as adding the option of unemployment support transforms employment decisions even if the individual doesn't want to be unemployed. If someone knows they have a (potentially) acceptable escape, it changes the character of the choice set as a whole, and hence changes the reasons on which someone might choose the other options they face.

The point is powerfully illustrated in a passage by the British journalist Melanie Reid. Reid is a columnist for *The Times*, who has been very substantially paralysed since a riding accident in 2010: below her neck, she has movement only in her hands, and there to a very limited extent.[25] In a 2012 column entitled 'I choose, fiercely, to live – but only for now', Reid writes:

I will be very blunt. Most mornings I contemplate suicide, briefly examining the concept in a detached, intellectual way. [...]

And every day I stare at my toes and say to myself: "Nope, got to keep going, got to keep fighting." Because I choose, fiercely, to live for the people who love me; and will continue to do so until such point as they understand I cannot carry on. I hope that moment, if or when it comes, is many years away.

[...] Knowing that I have a choice is a huge comfort to me; it sustains me on the days when I make the mistake of looking too far in the future. But the point is, I am blessed precisely because I have a choice.[26]

The choice Reid refers to is the option that she has, as a rich and well-educated person, to pursue assisted suicide in spite of its being illegal in the UK, by using the Dignitas clinic in Switzerland, and there to use the limited movement in her hands to trigger her death without implicating anyone else. Her argument, in the rest of the column, is that it is unjust that this option – so transformative for her – is withheld from people who are poorer, or even more incapacitated, than her.

Reid's point about comparative justice is an important one. If our commitment to promoting autonomy goes along with a commitment to providing equal access to that ideal, as I think it should,[19] then this inequity is a further powerful reason for changing the law. For now, let us leave the comparative point aside, and focus just on the effect on Reid of her having this option. If she lacked it, she would be compelled to endure the horrible experiences she described. She would be trapped. Her continuing would not contribute to her autonomy because it would not be voluntary. By contrast, as Reid describes it, having the option of assisted dying changes things: now she makes an active choice to live, in the knowledge that there is a way out if she needs it. The option of assisted dying comforts her, and also liberates her from the fear of being trapped, pained, and powerless. In my terms, it secures her ongoing voluntary control, by guaranteeing an acceptable alternative, and thereby upholds her autonomy.

This offers an important alternative autonomy-based reason for legalizing assisted dying, beyond the autonomy-based reasons to provide the option of dying to those who want to die. Knowing they have the option of assisted dying can promote autonomy even for those who don't want to die, by providing an alternative option which can support the voluntariness of our choices as a whole, even when we choose not to exercise it.

3. DEFUSING A PARADOX

In an article of 2013, I presented a challenge which faces someone who wants to advocate legalizing assisted dying on these grounds.[27] If the motivating reason for someone's seeking an assisted death is to avoid unacceptable alternatives, then their choice is not voluntary, and – contrary to the optimistic picture painted in Sections 1 and 2 – their decision to die undermines their autonomy. Empirical data suggests that this often is the reason people seek an assisted death, or wish they had that legal option: they want to die because they fear the prospect of physical pain without relief, or chronic dependency, or psychological trauma (for themselves, or their loved ones).[28-32] Putting it conservatively, it doesn't seem as though all such people will be using inappropriate standards of acceptability by judging those things to be unacceptable. So, many of these decisions to die are non-voluntary, and thereby undermine the individual's autonomy.[27]

Given the widespread view reported above that respect for autonomy counts in favour of permitting assisted dying, this is a startling conclusion. However, we can't avoid it except at substantial theoretical cost, given the practical convergence noted above: we would have to abandon all the (plausible and useful) theories of autonomy which imply that autonomy is undermined by non-voluntariness. It also looks like resisting it pushes us towards the view that there is 'nothing troubling about most contemporary decisions to die.' [27] The defender of legalization needn't adopt that view, and probably shouldn't, given that (as this paradox shows) there is some philosophical support behind the idea that the legal option of assisted dying could end up being an instrument of force (either intentionally or unintentionally) for vulnerable people facing difficult end of life choices, pushing people into dying who would otherwise prefer to live.[33-35]

I suggested two number of ways to respond to this argument, which I develop further here. The first is to observe that – contrary to the views of the opponents just mentioned – it doesn't give support to proposals that assisted dying should be illegal.[27] After all, non-voluntariness in this sense does not necessarily invalidate consent. And even if many end of life decisions are made for reasons which mean a loss of autonomy, this would be a reason to prevent assisted dying only if that policy didn't come at an even greater cost in terms of autonomy. The arguments above give good reason to think that that they do.

The second response returns to the point that we can transform the status of a choice set vis-à-vis autonomy by changing the character and composition of that choice set. In practical terms, that means combining legalization with reform to the institutional framework which forms the background of people's decisions to die, by trying to ensure that (at least some of) the alternatives to assisted dying are *also* acceptable, to minimize the danger of someone choosing to die to avoid unacceptable alternatives.[27] That is, in the same way that the option of assisted dying makes it more possible to choose voluntarily to live, it is likewise more possible to choose voluntarily to die if one has access to e.g. adequate pain management, support for independent life and decision-making, and adequate support for carers. Putting these things in place will also help mitigate – though not wholly eliminate – the worry alluded to above, that some people might find it worse to be given a decision in this domain. That might be because the choice itself is stressful, or they come to feel unwelcome pressure to decide one way or the other: maybe they think they are a burden to their families, or feel a moral or religious obligation to endure in spite of the option of assisted dying. As I said, we can't wholly eliminate these worries – and in any case I doubt they count much against legalizing assisted dying, since nobody advocates that on the basis that the choice is easy or pleasant – but reducing some of

the things people might have to fear *around* end of life will also empower people in respect of those additional pressures.

So, the paradoxical conclusion – that recognising the role of voluntariness in the autonomous life argues *against* legalizing assisted dying, rather than for it – can be defused, and defused by using the same intellectual resources as I deployed in Section 2 above. Voluntariness is central to the autonomous life, and our best way of supporting it – especially in highly vulnerable end of life choices – is to attend not just to the particular option someone eventually chooses, but also to the quality and extent of the alternatives they face in that choice.

CONCLUSION

Assisted dying is the subject of both philosophical and practical controversy. The arguments presented in this paper have the potential to be useful with regard to both these aspects. For one thing, the line of reasoning presented here shows that one need not want to die (or fear one day wanting to) for there to be reason to support legalizing euthanasia. Even those like Melanie Reid who ‘choose, fiercely, to live’ stand to be benefited by the presence of a legal option which can help secure the voluntariness with which they choose the other options open to them. This ability to speak to the interests of all citizens, including those who are certain that they don’t want to take the option of assisted dying, is an under-used resource for those seeking to build a wider constituency of support for legal reform.

Another point worth emphasising, to finish, is the lesson of Section 3, which is that there is a deep and principled connection between legalizing assisted dying and providing adequate palliative care and social support. Both philosophically and politically these are often treated as rival proposals: the presence of adequate palliative care is taken to undermine the justification for legalizing assisted dying, for example,[36-38] and there is strong reluctance from the palliative care movement to even comment on the question of assisted dying, let alone advocate its legalization.[39-40] The arguments above strongly suggest that this is a mistaken dichotomy. Once we realise that lack of voluntariness is one of the key threats to autonomy, we can see that both assisted dying and palliative medicine must be parts of our toolkit for providing everyone with a rich range of acceptable alternatives at end of life, and thereby the chance to continue being the authors of their lives right to the very end.

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