

EUTHANASIA: MURDER OR MERCY? BY FRANK MOSHER

From time to time a case of mercy killing attracts worldwide attention. Theologians and philosophers are divided on the morality of the action. Is it permissible to take life under any circumstances? Or is it a greater travesty to condemn an incurable or malformed being to a sub-human existence? Recently, the mercy killers won out in Belgium when a young mother was acquitted on a charge of murder after she killed her harmless baby girl. In this article, Frank Mosher, pre-law student, examines the implications of mercy killing, medical and legal.

"Suppose you were walking along the street and saw a helpless, dying dog lying in the gutter, his body torn by pain, after being run over by the wheel of an automobile — just a poor, yellow mongrel dog, lying there in agony?"

You would say "I wish a policeman would come along and put that poor thing out of its misery."

The above quotation is taken from the text of the address to the Grand Jury, by one of America's ablest and accomplished criminal defense trial attorneys, Samuel S. Leibowitz (later Judge) in defence of his client, one Louis Greenfield, charged with manslaughter, for carrying out euthanasia, or mercy killing, on his seventeen year-old son, Jerome. The facts of the case are as follows: The accused and his wife had parented one of nature's most grotesque mistakes, a hopeless, epileptic imbecile, who at the age of seventeen, was subject to convulsions in which he unknowingly smashed things, required his father's assistance in order to enable him to do things a father helps a year-old baby with, could only mumble unintelligently, had the mentality of a two-year old, and his right side was completely paralysed. Doctors warned the parents that nature had been cruel enough to fully develop the sex urge within him, and having no mind to control same, it was possible, and indeed highly probable, because of his strength, that he would be led to assault, rape or killing, and that it would be dangerous for his mother to live with him.

His parents had taken him from specialist to specialist with always the same result — no hope. They tried everything—ungraded classes in public schools (only to have normal children call him "Dopey" or "Looney"); corrective institutions where he was twice discharged as a hopeless case. On the suggestion that he be committed to an institution for the hopelessly insane, the parents visited same and were completely horrified at what they saw and refused to make such a commitment. They gave up all their social life. Louis, a milliner by trade, spent every cent he earned on treatments and medical advice. He financed a ten month rest in seclusion on a farm for Jerome and his mother.

Seventeen years of constant watching, guarding, and nursing, had left their mark on small, quiet Anna Greenfield, the mother. The doctor told Louis that he felt sure she would either go insane or commit suicide unless the boy was removed from the house. Louis became ill himself. He was informed that he had a serious gall bladder condition and that he would need an operation. Horrified at the prospects of leaving Anna alone with the boy, Louis chloroformed his son to death just after the latter had lapsed into deep sleep which followed a fit seizure during which his father had to hold him down on the bed in order to keep him from hurting himself.

The verdict — not guilty.

It is important to note at this point that the **Greenfield Case** is not a unique, extraordinary

or over exaggerated example of euthanasia, nor are the facts doctored or colored in any way, in an attempt to elicit sympathy from the reader. Of the six or seven prominent cases on euthanasia, notably the **Sanders, Repouille, Brownhill** and **Werner Cases**, one is left with the same impression, the same sympathetic feelings. They were acts of mercy, acts provoked and stimulated because of a human understanding of the pain and suffering of the incurably ill and deformed, the mongoloid idiots, those beyond the aid of any respite which may come along in their life expectancy, suffering intolerable, suffering unmitigable pain, those with a fixed and a rational desire to die.

In the Criminal Code of both England and America, **voluntary** euthanasia is murder for the person who administers, and suicide for the person who consents. The perpetrator of an **involuntary (without the consent of the patient, as in the Greenfield and Brownhill Cases mercy-killing)**, is also charged with murder as in most instances of **deliberate** non-feasance (neglect to perform an obligatory act) with intent to cause death, and in the case of **negligent** non-feasance. Although in theory, this is the Law, in practice there seems to be a movement which could definitely be classed as congenial with mercy-killing, depending of course on the characteristics of the individual case. Glanville Williams, highly noted and respected author of many legal manuscripts on varied topics, asserted in an article on mercy-killing (Minn. Law Rev. vol. 43, 58-9) in reference to the **Werner Case**; "The instant case is another in a steadily expanding galaxy of examples of apparent disrespect for the written law in euthanasia cases."

Helen Silving, in an article, **A Study in Comparative Criminal Law**, claims:

"Certain recent instances of euthanasia have evoked a considerable measure of public sympathy. The feeling prevails that the manner in which cases involving euthanasia are disposed of within our system of law is inadequate, and there is an increasing demand for a law reform which would take into consideration the distinctive aspects of euthanasia."

The American Advisory Council of the Euthanasian Society prepared a proposal to be submitted to the N. Y. State Assembly, known as "The Proposed Bill to Legalize Euthanasia." Senator Comstock in 1937 introduced into the Nebraska Assembly his own bill for legalizing voluntary euthanasia. Despite the vehement denunciation of euthanasia by a good percentage of the Medical Profession, in an article, **The Doctor Looks at Euthanasia**, (149 Medical Record 354 (1939), Dr. Volbarst describes the **Brownhill Case** as an "act of mercy, based on pure mother-love for which, thanks to the growth of the euthanasia movement in England, it is doubtful that this poor woman ever would be put on trial at the present day." It is also worthy of mention at this point, that despite the denunciation by the Medical Profession, a number of doctors do admit that euthanasia is practised at times by the Medical Profession. Article 37, Law No. 9155 of the Penal Code of Uruguay reads: "The judges are authorized to forego punishment of a person whose previous life has been honorable where he commits a homicide motivated by compassion, induced by repeated requests of the victim."

In legal practise there are certain devices employed to escape the harshness of the law with regard to euthanasia. Deciding cases not on the grounds of motive, but on other grounds such as temporary insanity and causation, in some instances, mercy-killers are not indicted. In many instances there are indictments and convictions of a lesser crime than that warranted under penal law, and those convicted are often paroled.

Just what are the main points of criticism directed against euthanasia? They may be enumerated as follows: 1. The difficulty of ascertaining consent. 2. The risk of an incorrect diagnosis. 3. The risk of administering euthanasia to a person who could later have been

cured by developments in medical science. 4. The "wedge" argument. 5. The quantitative need for euthanasia is not significantly large. 6. No need for euthanasia because of the advances made with pain-killing drugs. 7. Contrary to certain ecclesiastic creeds.

Glanville Williams has put forward an effective rebuttal to the first criticism when he asserted:

"If a patient, suffering from pain in a terminal illness, wishes for euthanasia partly because of this pain and partly because he sees his beloved ones breaking under the strain of caring for him, I do not see how this decision on his part, agonizing though it may be, is necessarily a matter of discredit either to the patient himself or to his relatives, the fact being that whether we are considering the patient or his relatives, there are limits to human endurance."

As for the risk of an incorrect diagnosis, let it suffice to say, that had medical science, or for that matter any science come to a halt because of the possibility of making a mistake, all sciences would have been in a stalemate long ago. Further, in such diagnosis there are as a rule, more than one concurring opinion with respect to the diagnosis of the patient, and who other than the medical doctor, can make a more accurate diagnosis. As for the third criticism, I think it worthy to note the fact, that even though a cure is discovered for certain cases, there is always a period of testing and manufacturing necessary before such a cure hits the market, and once the first news of such a cure reached the populace, undoubtedly all euthanasia in that particular type of case, would come to a halt. Then the old reliable "wedge" argument. What happens after euthanasia? Abortion? This argument has been classed as a ridiculous one, and rightly so. If the question of abortion next arises, let it be decided on its own merits. The wedge argument was used after Canadians received **Ald Age** pension benefits, but the ensuing issues dealing with **Unemployment Insurance, Hospitalization (free)** were all decided on the merits of each individual system, and the so-called "wedge" driven in by **Old Age** pension benefits, had no effect whatsoever. As for the insignificant number in need of euthanasia, it can easily be said that **any** number of people suffering in the horrible manner previously referred to, cannot and should not be denied the right. Pain-killing drugs do not provide an effective criticism. Not for one moment ignoring the great expense of such drugs, there are also the side effects to be considered, such as constant nausea and restlessness, and long hours of consciousness of a hopeless condition. As for the last criticism, that of being contrary to certain ecclesiastic creeds, Jeremy Bantham avidly claimed: "The success of social science depends on its ability to reduce questions of principle to questions of fact." Bertrand Russell stated: "I love things that are good and I hate things which are bad, but I do not hold that they are good because they partake of Divine goodness, or bad because they are excluded by Divine goodness."

It is beyond comprehension how one can claim it is morally right, and the just thing to do, to allow a human being to linger for months in the last stages of agony, weakness and decay, and to refuse him his demand for merciful release. Coupled with this is the agony of the relatives, and the great strain, mental, physical and financial, they are subject to, in caring for their loved one in his desperate plight.

"Are you sorry he's dead?" Leibowitz asked Louis Greenfield on the stand. The reply: "For myself, yes. I loved him. I loved his company. I still miss him. But for Jerome, no."