Reviewer's report

Title: What Passive Euthanasia Is

Version: 0 Date: 13 Feb 2020

Reviewer: Dieter Birnbacher

Reviewer's report:

The concept of passive euthanasia (PE) has been controversial for a long time, and even its legitimacy has been doubted. In Germany, where the present commentator is located, the concept has largely been abandoned, mainly due to a relevant suggestion by the Nationale Ethikrat. One problem is that the expression "PE" is misleading by suggesting that PE is by definition performed by inaction instead of action, whereas it also applies to cases of actively withdrawing treatment, for example by turning the switch of a life-support system. Another problem, on which this paper concentrates, is that the concept does not sufficiently differentiate between cases in which the death of the patient is intended and cases in which it is only accepted as (possible, probable or certain) side-effect of an act done with the, or the primary, intention to relieve or avoid suffering.

A problem I have with the arguments presented is that they do not seem, all of them, equally compelling. Some might even be thought to be irrelevant. Thus, the cases of withdrawing treatment for reasons of impossibility or futility of further treatment (Mukherjee) do not really seem cases anyone would wish to subsume under PE.

The question remains why the intention to relieve or avoid suffering by withdrawing treatment that might delay death is not sufficient for talking of PE. One central condition of euthanasia is that death is hastened, and this condition is fulfilled in cases in which death is not part of the intention. In addition, if intention of causing death is included in the definition of PE, are we free to maintain the concept of "indirect euthanasia" current in medicine and law, or would this not have to be named differently because in this case death is, by definition, not intended but only accepted as side-effect? Thus, one definitional stricture might have others in its wake. Another side-effect might be that the common usage is ill-advised according to which assisted suicide (under suitable conditions) is subsumed under "active euthanasia". This usage is common among opponents of the practice. Here, again, there is not necessarily an intention directed at a patient's death. Death is only made possible by the act of assistance.

Another query I have concerns cases of withholding/withdrawing treatment on a patient request in which these acts do not seem to be in the patient's best interest, but are nevertheless urgently requested by the patient. The autonomy of the severely ill patient is given priority over beneficence. These cases, if they result in death, are commonly categorized as cases of PE. It seems that the author's stipulation that acts of PE have to be in the patient's best interest make no allowance for these cases.
Two final comments:

1. It is highly interesting that the AMA seems to use a narrow definition of "euthanasia" restricting the concept to its active forms (page 12). This might deserve further comment, for pragmatic reasons: This usage is very often used in the political arena, obviously in order to allow for a schematic response. It should be resisted because it oversimplifies things.

2. It is improbable that definition 3* can be traced back to Rachels's work (page 33). The history of the wider use of "PE" seems to date further back, not only in English.

Are the methods appropriate and well described?
If not, please specify what is required in your comments to the authors.

Yes

Does the work include the necessary controls?
If not, please specify which controls are required in your comments to the authors.

Unable to assess

Are the conclusions drawn adequately supported by the data shown?
If not, please explain in your comments to the authors.

No

Are you able to assess any statistics in the manuscript or would you recommend an additional statistical review?
If an additional statistical review is recommended, please specify what aspects require further assessment in your comments to the editors.

Not relevant to this manuscript

Quality of written English
Please indicate the quality of language in the manuscript:

Acceptable

Declaration of competing interests
Please complete a declaration of competing interests, considering the following questions:

1. Have you in the past five years received reimbursements, fees, funding, or salary from an organisation that may in any way gain or lose financially from the publication of this manuscript, either now or in the future?

2. Do you hold any stocks or shares in an organisation that may in any way gain or lose financially from the publication of this manuscript, either now or in the future?

3. Do you hold or are you currently applying for any patents relating to the content of the manuscript?
4. Have you received reimbursements, fees, funding, or salary from an organization that holds or has applied for patents relating to the content of the manuscript?

5. Do you have any other financial competing interests?

6. Do you have any non-financial competing interests in relation to this paper?

If you can answer no to all of the above, write 'I declare that I have no competing interests' below. If your reply is yes to any, please give details below.

I declare that I have no competing interests.

I agree to the open peer review policy of the journal. I understand that my name will be included on my report to the authors and, if the manuscript is accepted for publication, my named report including any attachments I upload will be posted on the website along with the authors’ responses. I agree for my report to be made available under an Open Access Creative Commons CC-BY license (http://creativecommons.org/licenses/by/4.0/). I understand that any comments which I do not wish to be included in my named report can be included as confidential comments to the editors, which will not be published.

I agree to the open peer review policy of the journal