A legal right to die: responding to slippery slope and abuse arguments

D. Benatar PhD

To be forced to continue living a life that one deems intolerable when there are doctors who are willing either to end one's life or to assist one in ending one's own life, is an unspeakable violation of an individual's freedom to live—and to die—as he or she sees fit. Those who would deny patients a legal right to euthanasia or assisted suicide typically appeal to two arguments: a "slippery slope" argument, and an argument about the dangers of abuse. Both are scare tactics, the rhetorical force of which exceeds their logical strength.

Slippery slope arguments, which are regularly invoked in a variety of practical ethics contexts, make the claim that if some specific kind of action (such as euthanasia) is permitted, then society will be inexorably led ("down the slippery slope") to permitting other actions that are morally wrong.

It is, of course, easier to assert the existence of a slippery slope than to prove that it exists. Opponents of a legal right to die thus point to the Netherlands, for example, and note how the law permitting euthanasia and doctor-assisted suicide in that country has become steadily more permissive. At first, euthanasia was permitted only for the terminally ill who requested it, but then it was permitted for the chronically ill, for those whose suffering was psychological, and for incompetent patients, including children.

It is indisputable that the Dutch laws regarding euthanasia and doctor-assisted suicide have become more permissive, but those who invoke the slippery slope argument fail to realize that those changes are insufficient to demonstrate the existence of a (noxious) slippery slope. To understand why this is the case, imagine, for example, that you are an opponent of apartheid in South Africa in the 1950s. If you are seeking to bring about legal change, through legal channels, you might realize that you have little hope of convincing the white electorate of abandoning apartheid. Thus, you might decide to begin by chipping away at the edges of the apartheid structure. You might recommend, for example, abolishing separate entrances to the post office for blacks and whites. A defender of apartheid might resist that move by pointing to the possibility of a slippery slope: "If we abolish separate entrances," that defender might say, "we shall soon find that people of different races are permitted to marry one another, and before we know it, there will be no more apartheid." It should be readily apparent that, even if the defender of apartheid is correct that the stated trajectory is a likely consequence of abolishing the separate entrances, that consequence would not be a noxious slippery slope.

With that scenario in mind, we can see the hidden assumption in the slippery slope argument against legalizing euthanasia: It is the assumption that the instances of euthanasia that the Netherlands now permits are morally wrong. But the problem is that very many defenders of a legal right to die would deny that those instances of euthanasia are wrong. Some of us think that the suffering that a person endures need not be the product of a *terminal* disease in order for it to be intolerable. We also recognize that some mental suffering is intractable and as unbearable as physical suffering. And we recognize that it is not only competent patients, but also incompetent ones who can suffer from conditions that make their lives not worth living. Accordingly, we would like to see euthanasia and assisted suicide permitted in such a wider range of cases. If, however, we cannot effect that legal change in one step, we recommend, in the first instance, a more limited liberalization of the law. Once that change has been made, people might realize that the next step and then the next are also acceptable, even if they cannot see it now.

The second argument invoked by opponents of a legal right to die is the argument that such a right will be abused and that no legal safeguards can prevent that abuse. Thus, for example, it has been said that where written voluntary consent to euthanasia is a legal requirement, that consent has not always been obtained. Similarly, it has been said that euthanasia or assisted suicide are often not reported, even in jurisdictions in which reporting is obligatory.

The problem with that argument is that citing many examples of abuse of a legal right is not sufficient to justify withholding that right. If the likelihood of abuse were thought to be grounds for withholding a right, then

much more than euthanasia would have to be banned. Driving, for example, would have to be prohibited on the grounds that this right is abused and that none of the safeguards we have against such abuse are completely effective. People drive faster than they should. They drive through red traffic lights and weave through traffic, and they drive cars that are not roadworthy. Some even drive without a license or while under the influence of alcohol. Moreover, the abuse of a legal right to drive often has fatal consequences, and thus, it is not unlike euthanasia in the severity of the outcome of the abuse. (And unlike the case of euthanasia, fatalities from car accidents often involve people who were in excellent health, which makes abuse of driving worse than abuse of euthanasia.) Few opponents of a legal right to die are prepared to accept the implication that driving should be banned. Nor is it a conclusion that should be accepted. There is no reason to withhold from some people a legal right to reasonable activity merely because other people will abuse that right. The appropriate response is regulation, imperfect though that may be.

The opponents of euthanasia and assisted suicide who cite the dangers of abuse in support of their view also fail to notice that abuse is possible even when euthanasia and assisted suicide are legally prohibited. It is naïve to think that covert forms of euthanasia and assisted suicide are not occurring in places where those practices are illegal. At least some of those instances would constitute abuse if a legal right to die existed. It is hard to say how much abuse occurs in such jurisdictions, but that is partly because where euthanasia and assisted suicide are prohibited, doctors will be even less likely to admit to participating in such practices[a].

Banning alcohol consumption, prostitution, gambling, and so forth, does not result in the elimination of those practices, in either abusive or non-abusive forms. Similarly, the choice is not between euthanasia and no euthanasia, with abuse occurring only in the former. Instead the choice is between euthanasia with or without regulation. Abuse will occur in any event, and thus, on the assumption that there is nothing wrong with euthanasia in itself, we may as well legalize and regulate it.

The slippery slope and the abuse argument are both compatible with the view that there is nothing intrinsically wrong with the practices at issue. Any person could hold the view that euthanasia and assisted suicide are morally permissible, but then deny that they should be made legal on account of the slippery slope and the danger of abuse. As it happens, however, many if not most of those who advance the slippery slope and dangers of abuse arguments do think that euthanasia is immoral.

Those who think that euthanasia and assisted suicide are immoral often suggest that there are always alternatives to death for those whose lives have become intolerable. Thus, it is suggested that palliation is always a possibility, even if palliation requires sedating the patient to the point of minimal or no consciousness. What that suggestion fails to recognize, however, is that it is not always pain that renders a life not worth living. For some people, the prospect of continuing in a minimally conscious or unconscious state for the rest of their biological life is a fate worse than death. Opponents of a right to die sometimes reply that people with such views can be helped to realize that such a condition is not worse than death. However, this line of argument is dangerous precisely because it could as easily be argued that those who think that death is worse than sedation until natural death could be helped to realize that they are wrong and that they should therefore agree to euthanasia.

It is not at all unreasonable to view as undesirable continued biological life with only minimal (if any) consciousness. Nor is depression in response to such a prospect in any way irrational. To suggest that people who manifest such depression should rather be provided with psychiatric help is to pathologize an entirely reasonable response to an appalling situation.

The quality of life can fall to dismal levels. Not everyone agrees about just how bad life must be before it ceases to be worth living. However, the fact of that disagreement provides no more reason for prohibiting euthanasia than it does for requiring it. To force people to die when they think that their lives are still worth living would be an undue interference with people's freedom. It is no less a violation of human freedom to force a continuation of life when people believe that their continued life is worse than death.

Opponents of a legal right to die are fond of saying that freedom has its limits. However, just because freedom has its limits does not mean that a right to die falls beyond those limits. When a person deems that life is no longer worth living, then taking action to prevent that person from gaining assistance to die imposes a very serious harm. Although society may restrict a person's freedom to prevent the infliction of harm on others, it is very difficult to justify restricting a person's freedom when that restriction will result in an immense personal harm.

[a] Some of the arguments in the preceding few paragraphs are developed at greater length in Benatar D. Assisted suicide, voluntary euthanasia, and the right to life. In: Jon Yorke, ed. *The Right to Life and the Value of Life: Orientations in Law, Politics and Ethics*. Aldershot, U.K.: Ashgate; 2010: 291–310.

Correspondence to: David Benatar, Philosophy Department, University of Cape Town, Private Bag X3, Rondebosch 7701 South Africa.
E-mail: c/o philosophy@uct.ac.za