Compassion and choice

Comments on the ethical argument for a law change

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The introduction to the End of Life Choice Bill reads:

> ‘The motivation for this Bill is compassion. It allows people who so choose, and are eligible under this Bill, to end their lives in peace and dignity, surrounded by loved ones.’

The argument from compassion

1. If a person is suffering we should provide the best help possible

2. There are times when the best help possible is to end the life of that person

Therefore

C. There are times when we should end the life of a person who is suffering

Key questions for the argument from compassion

- It can be difficult to say when premise 2 applies
- It is not necessarily true that other people should always intervene when a person is suffering. Efforts to relieve suffering have to be tempered by the possibility of making things worse.

The argument from autonomy

"My life, my choice"

1. In a liberal, secular, pluralist democracy (LD) people should be free to do what they choose so long as their actions do not harm others

2. The choice to end one's life does not harm others

Therefore

C. In a LD, a person should be free to end their life if they choose to

Key questions for the argument from autonomy

- This does not fit with how we respond to other kinds of suicide (e.g. youth suicide).
- The choice, and making the option lawful, may in fact be harmful to others.
- Euthanasia/assisted dying does involve other people, in that it requires someone else to assist or perform the lethal action.

It seems some combination of the arguments is needed

- Something like this:

1. If a person is suffering we should provide the best help possible, as determined by both the considered judgment of that person and a shared social understanding

2. The considered judgment of some people who are suffering is that the best possible help is to end their life

3. There is a shared social understanding that in some cases it may be acceptable to end a person's life to end their suffering

C. There are times we should end the life of a person who is suffering

4 Meaning of **person who is eligible for assisted dying or eligible person**

(1) In this Act, **person who is eligible for assisted dying or eligible person** means a person who—

- Over 18
- Terminal Illness, likely to end the patient's life in 6 months or less, and
- Is in an advanced state of irreversible decline is physical capability, and
- Experiences unbearable suffering that cannot be relieved in a manner that the person considers tolerable, and
- Is competent to make the decision

Excluded: reasons solely based on suffering from mental illness, has a disability of any kind, or old age

- Those are the conditions that would distinguish assisted dying from suicide in New Zealand.

- Two questions that we need to consider:

  - How much does it matter that we have a shared understanding of what these conditions mean?

  - Is it possible that creating this option will have implications beyond the individual patient?

Considerations from overseas

Note:
Several of the options raised in the following are explicitly excluded by the End-of-Life Choice Bill

The international situation

- The number of jurisdictions permitting some form of euthanasia or assisted suicide has steadily increased over recent years (currently 8 countries and 7 US States, and recently Victoria in Australia).

- **Oregon** legalised assisted suicide in 1994. **The Netherlands** passed a law permitting euthanasia and assisted suicide in 2002.

- For a recent summary of the details see: Dyer, *et al.* Assisted dying: law and practice around the world. *BMJ* 2015;351 www.bmj.com/lookup/doi/10.1136/bmj.h4481

Reasons people are choosing aid-in-dying in Oregon and Washington

The data indicates that loss of autonomy is the primary reason

	Oregon: Reported Cases[2]	Washington: Reported Cases[3]
No. of reported annual cases	2015	2015
Total deaths	35 598[77]	52 028 (2014)[78]
Physician-assisted suicide (% of all deaths)	132 (0.39)	166 (0.32)
End of life concerns, %	1998-2015	2009-2015
Losing autonomy	91	90
Less able to engage in activities making life enjoyable	89	89
Loss of dignity	68	76
Losing control of bodily functions	48	51
Burden on family, friends/caregivers	41	53
Inadequate pain control or concern about it/pain[9]	25	36
Financial implications of treatment	3	9

From Emanuel *et al.* 'Attitudes and Practices of Euthanasia and Physician-Assisted Suicide in the United States, Canada, and Europe', *JAMA*. 2016;316(1):79-90. doi:10.1001/jama.2016.8499

An example

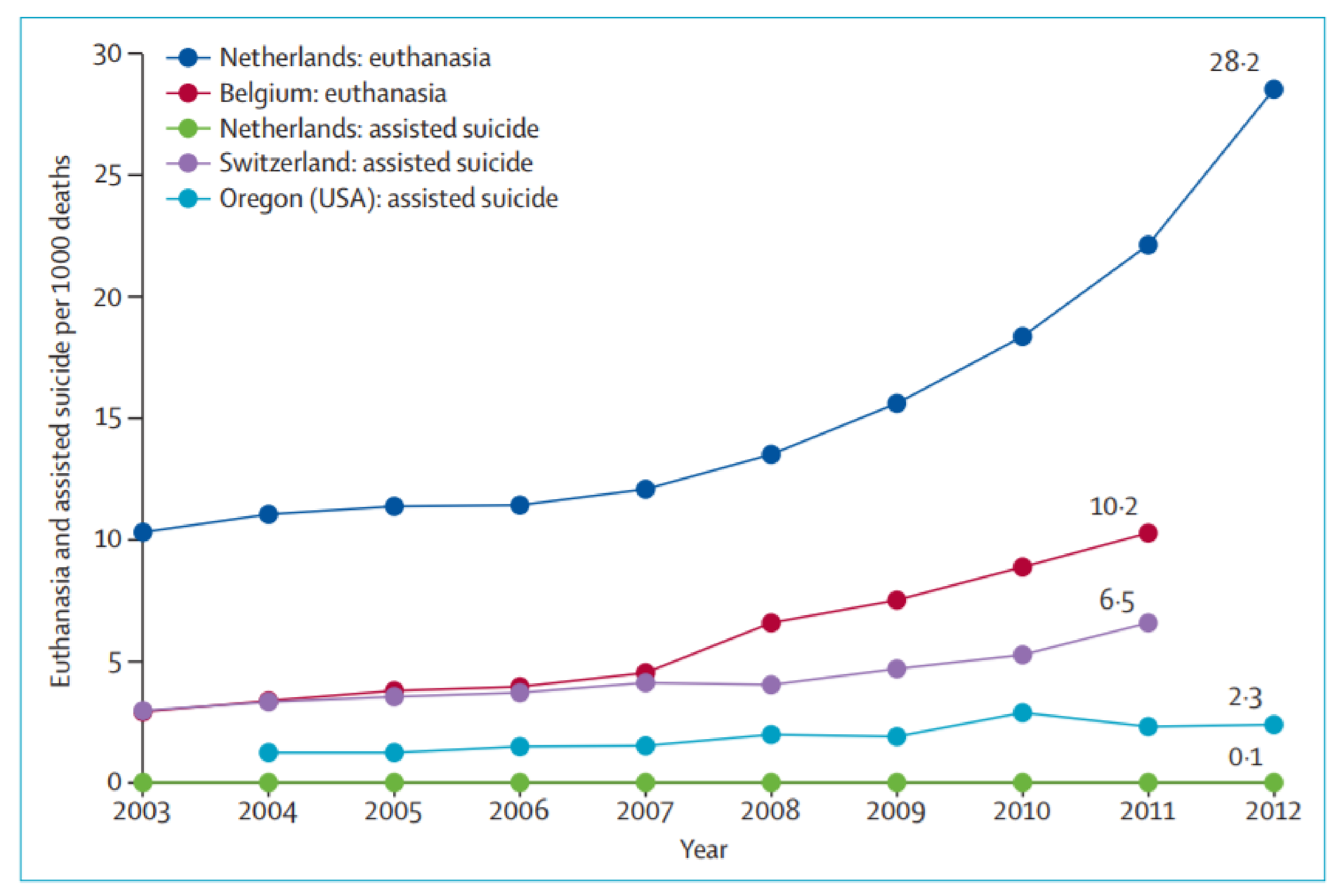
- In her submission to the High Court Lecretia Seales wrote the following:

"I have accepted my terminal illness and manage it in hugely good spirits considering that it’s robbing me of a full life. I can deal with that, and deal with the fact that I am going to die, but I can’t deal with the thought that I may have to suffer in a way that is unbearable and mortifying for me.

I have lived my life as a fiercely independent and active person. I have always been very intellectually engaged with the world and my work. For me a slow and undignified death that does not reflect the life that I have led would be a terrible way for my good life to have to end.

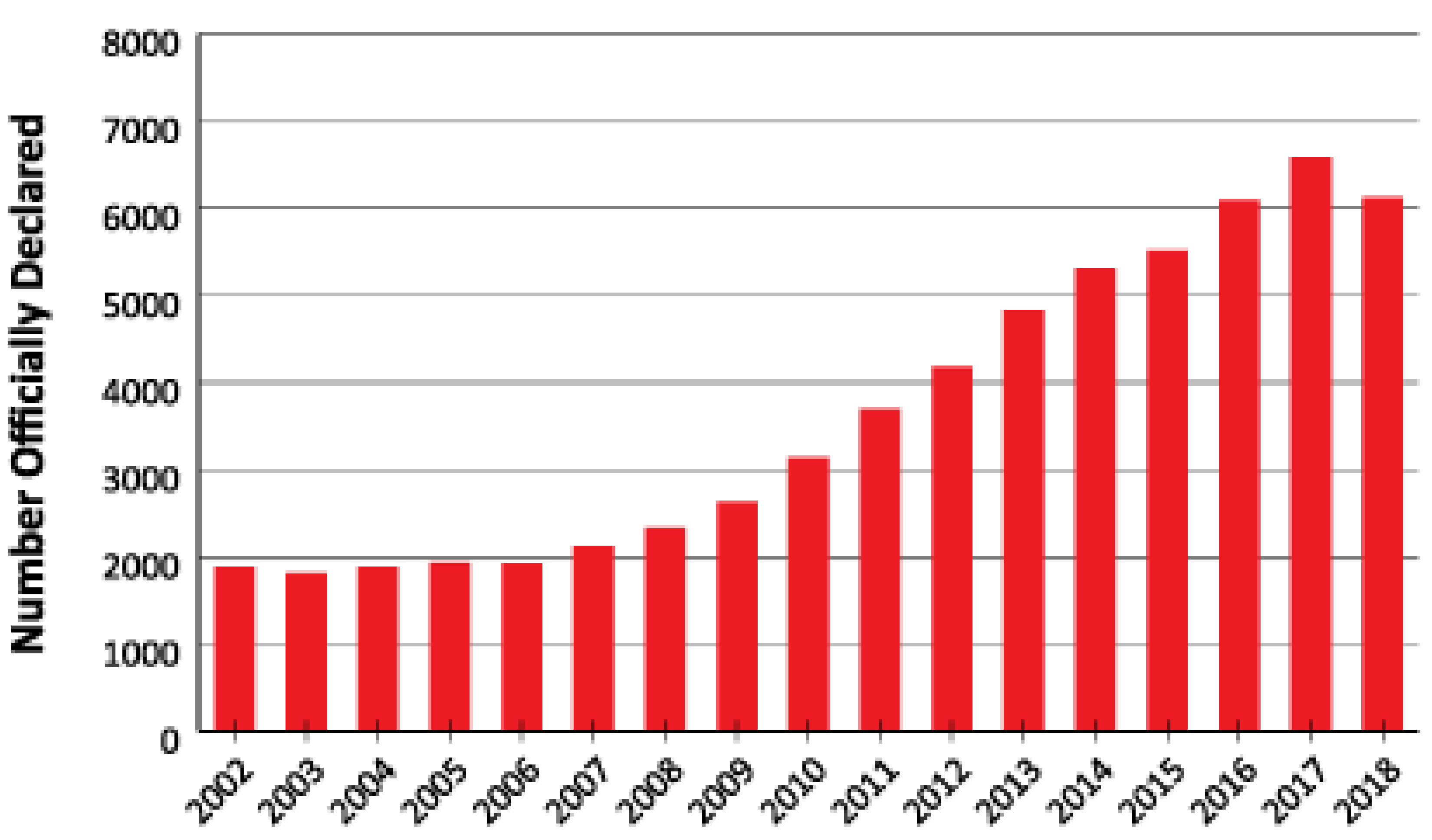
I want to be able to die with a sense of who I am and with a dignity and independence that represents the way I have always lived my life. I desperately want to be respected in my wish not to have to suffer unnecessarily at the end. I really want to be able to say goodbye well."

Increasing use of Assisted Dying in some jurisdictions



Gamondi, *et al.* Legalisation of assisted suicide: a safeguard to euthanasia? 12 July 2014. The Lancet

DOI: http://dx.doi.org/10.1016/S0140-6736(14)61154-5


Euthanasia and Assisted Suicide in the Netherlands
2002 - 2018
Number Officially Declared
8000
7000
6000
5000
4000
3000
2000
1000
0
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
Year

- There a various possible explanations for the increase in the Netherlands.
- However, official statistics indicate that more patients with non-terminal conditions are taking the option, including a small but growing number of patients with psychiatric illnesses.
- Theo Boer, who spent nine years on one of the regional evaluation committees, has suggested that people have begun viewing ‘aid-in-dying’ as a ‘right’ rather than an option of last resort.

See DutchNews.nl: Rise in euthanasia requests sparks concern as criteria for help widen http://www.dutchnews.nl/features/2015/07/rise-in-euthanasia-requests-sparks-concern-as-criteria-for-help-widen/

- Loneliness is cited by some patients as a reason that their life is unbearable. What is the appropriate medical response to that?

See for example: Torjesen, ‘More people opt to use assisted dying laws for greater variety of reasons’. *BMJ* 2015;351:h4332 doi: 10.1136/bmj.h4332

- In Canada, the law requires that death be ‘reasonably foreseeable’ for a patient to receive aid to die.

- Some disabled persons are claiming the law is discriminatory, and that it should be available to those who are suffering with a degenerative diseases also.

  http://www.cbc.ca/beta/news/canada/montreal/assisted-dying-quebec-canada-legal-challenged-1.4160016

Nicole Gladu is pictured with lawyer Jean-Pierre Ménard, who is representing her and Jean Truchon. (CBC)

Assisted dying could be legalised for over-75s who have had ‘enough of life’

Politics December 19, 2016

D66 MP Pia Dijkstra has proposed a change in the law.

Assisted suicide could be extended to anyone over the age of 75 who no longer wants to live, even if they are not ill, under a bill brought forward by D66 MP Pia Dijkstra.

The bill would make it legal to arrange the death of anyone with an ‘intrinsic and consistent’ wish to die. The request would be granted and carried by a registered end-of-life practitioner, which could be a doctor, nurse or psychologist, and they will have to seek a second opinion before deciding.

A number of safeguards are included in the proposed legislation. The wish to die must be confirmed in a second interview after the original request, with a gap of at least two months in between. The case will also be reviewed by an independent commission, as happens currently with euthanasia.

http://www.dutchnews.nl/news/archives/2016/12/assisted-dying-could-be-legalised-for-over-75s-who-have-had-enough-of-life/

Impact on palliative care and healthcare providers?

- A 2011 survey (n = 1456) among Dutch physicians found that 86% of physicians dread the emotional burden of performing euthanasia.[73] Interviews of physicians who have participated in euthanasia and PAS indicate that the decision to go through with a procedure is neither easy nor straightforward.[112,113] An Oregon study found that only 11% of hospice nurses (n = 397) rated caregivers of patients receiving PAS as more burdened than caregivers of other hospice patients.[114]

Emannuel *et al.* 'Attitudes and Practices of Euthanasia and Physician-Assisted Suicide in the United States, Canada, and Europe', *JAMA*. 2016;316(1):79-90. doi:10.1001/jama.2016.8499

Social, cultural and financial support

- It is often suggested that if assisted dying available vulnerable people will be pressured into an early death.
- A 2007 study of by Battin *et al* of the Oregon and Netherlands found there was no evidence this is happening.

  See Battin *et al*, Legal physician-assisted dying in Oregon and the Netherlands: evidence concerning the impact on patients in ''vulnerable'' groups. *J Med Ethics* 2007;33:591–597. doi: 10.1136/jme.2007.022335

- Not everyone agrees with the analysis. For one response:

  Finlay & George. 'Legal physician-assisted suicide in Oregon and The Netherlands: evidence concerning the impact on patients in vulnerable groups--another perspective on Oregon's data.'

  J Med Ethics. 2011 Mar;37(3):171-4. doi: 10.1136/jme.2010.037044.