

## **The Elitism Objection to Euthanasia, Physician-Assisted Suicide, and the Quality of Life Ethic**

This paper examines an objection lodged by two different groups—religious “pro lifers” and some (not all) disability rights advocates—to the legalization of euthanasia and physician-assisted suicide (PAS). The objection is that the practices, at least insofar as they rest on a “quality of life” ethic (QL), presuppose an elitist belief about who does and does not have a “life worth living.” Just as the Nazis held that blond, blue-eyed Aryans are superior to other races and that the more productive members of society have greater worth than the less productive, so too, it is alleged, legalized PAS and euthanasia imply that sick, disabled, and/or dying people have less value than the healthy and able. Justification of the practices requires an elitism that is incompatible with the equal rights and dignity of all human beings.

The elitism objection is present in the 1992 letter of the U.S. Bishops’ Pro-Life Committee entitled “Nutrition and Hydration: Moral and Pastoral Reflections.” It is clearly stated by one Protestant writer as follows: “The choice ... between the ‘sanctity of life’ ethic based on the idea of the image of God, and the ‘quality of life’ ethic based on brain function, is a choice between an ethic that protects all human beings in principle and an ethic with a sliding scale of human worth based on estimates of intelligence and mental function.”<sup>1</sup> The disability advocacy group “Not Yet Dead”, though declining to argue from a sanctity of life premise, lodges essentially the same objection to Oregon’s PAS law: “Though often described as compassionate, legalized medical killing is really about a deadly double standard for people with severe disabilities, including both conditions that are labeled terminal and those that are not.”<sup>2</sup> It opposes Oregon’s law, which limits eligibility for PAS to the “terminally ill” (defined as those likely to die of illness within six months), on the grounds that it implies that the disabled don’t have lives worth living. If the law were really about autonomy and empowering individuals, it

wouldn't limit eligibility for PAS to the terminally ill. That limit is proof of anti-disability animus.<sup>3</sup>

The fact that two different groups on the basis of very different moral and political agendas would both accuse the QL ethic of elitism suggests that the objection might have some merit.<sup>4</sup> Indeed, the objection *does* have merit when directed at the position of one of its defenders, namely, Peter Singer. But Singer's is not the only version of QL. This paper argues that it is possible for QL to support some PAS and euthanasia while remaining faithful to egalitarianism and avoiding any trace of elitism. It begins by laying out the differences between the QL and sanctity of life (SL) ethics and between the QL and libertarian cases for legalization. After noting how Singer's "personhood" definition of moral status leaves his view vulnerable to the elitism charge, we'll see how it's possible for QL to incorporate a different definition of moral status that does not have that shortcoming. Some proponents of SL argue that only a religious view grounded on the "image of God" idea can support egalitarianism, and they insist that such a view is inconsistent with any QL ethic. A number of objections to that argument will be raised.

The elitism objection pressed by disability advocates (DA), including Felicia Ackerman, alleges that the practices of PAS and euthanasia harm the class of disabled people, benefit the healthy and able, and do so because they express and seek to reinforce the ideology of "ableism," that is, the elitist belief that the healthy and able are superior to ("count for more than") the disabled. The disabled are a historically oppressed minority, and ableism is supposed to legitimate that oppression in the same way that racism tries to for racial minorities and sexism for women. Defenders of the DA objection regard PAS and euthanasia as analogous to such elitist practices as Jim Crow laws, pornography (as viewed by feminists like Catherine Mackinnon), or better still, eugenics programs aimed at preventing the births of "defectives." The problem with the objection is that PAS provides an obvious benefit to at least some terminally ill people. It's still *possible* that on balance and in the long run the practice is detrimental to disabled interests. But a belief that it's not detrimental in that way seems—unlike a similar claim about Jim Crow

laws and their effects on black people—reasonable. Though ableism is real, this paper will argue that legalized PAS for the terminally ill need not express or promote it.

### Sanctity of Life

What are the SL and QL ethics, and how do they arrive at their respective stances on the morality of euthanasia and PAS? The SL ethic rests on the sanctity of life principle, which may be stated as follows:

(SLP) It is *absolutely* forbidden to perform (or fail to) some action with the aim of causing or facilitating the death of an innocent human being (oneself or others), whether or not the person to die consents to the act or omission, and whether or not she would be better off dead.

In addition to this principle, the ethic employs a distinction between “ordinary” and “extraordinary” care. It holds that family and doctors can decide to withhold “extraordinary” treatment from a terminally ill person, foreseeing that it will hasten death without intending that it cause it. By contrast, any decision to withhold “ordinary” treatment (such as a feeding tube) can only be motivated by the intention to cause death.<sup>5</sup> Hence, if that is “passive” euthanasia, then the SL ethic opposes both “passive” and “active” euthanasia, as well as PAS. Under *no* circumstances are these practices permissible for *anyone*.

If the heart of the SL ethic is SLP as formulated above, then there is nothing religious about it. SLP makes no reference to God, so there is no logical barrier to an atheist’s accepting it. Still, it may turn out that the only way to defend it is on religious grounds. Some defenders of SLP say otherwise, insisting that it is part of a “natural law” accessible to unaided human reason as well as a “divine law” to which we are granted access *via* Scripture. For our purposes it will suffice to note that many defenders of SLP agree that an appeal to theological notions is *necessary* to SLP’s justification. Implicit in SLP is an egalitarianism as regards different classes

of humans, as well as a “speciesism” about the moral status of humans vs. nonhumans. Many proponents of SLP defend the former by arguing that *all* humans were created in the image of God and the latter by arguing that *only* humans were created in God’s image. We’ll return to the “image of God” idea shortly.

If all (human) *lives* are equally valuable, does that mean that all *ways of living* are equally *worthwhile*? Of course not. Defenders of SL would certainly agree that drug addicts are better off not being addicts. Many of them would even agree that the terminally ill who are in great pain are better off dying sooner rather than later. (That’s why many in that situation would pray for God to take them soon). They are not “skeptics about the good,” or even skeptics about all “better off dead” judgments. However, all defenders of SL insist that even in cases where someone might be better off dead, neither he nor any other person has the moral license intentionally to cause his death. To intentionally kill an innocent human being for any reason is to infringe on God’s dominion over life. Hence, defenders of SL reject the inference from “So-and-so is better off with a quick and painless death than a slow and agonizing one, and he wishes to die in the former way, either by his own hand or that of another” to “therefore, it is permissible for him to kill himself, others to help him kill himself, or others to kill him.”

#### The QL vs. the Libertarian Argument for Legalization

It is precisely this inference that all versions of the QL ethic accept. Any QL ethic supports *some* PAS on the basis of beneficence, the judgment that those whose suicides are to be assisted are better off dead. The only plausible versions of it will reject involuntary euthanasia because they place great value on respect for autonomy as well as beneficence.

Libertarians support the legalization of PAS on grounds that have nothing to do with beneficence (and thus, QL). They hold that any competent adult should be free to commit suicide if he wishes, with the help of a willing physician if he can find one. Imagine, for example,

someone who is physically healthy but wants help to end his life because he's convinced that life is cosmically meaningless and suicide is the most authentic expression possible of humanity's "radical freedom." The libertarian holds that society has no right to prevent a willing physician from assisting this troubled soul to commit suicide. People have the right to do whatever they want so long as they do not violate the rights of nonconsenting third parties. Whether or not the person wishing to commit suicide is better off dead or alive is simply not relevant according to the libertarian. We don't force competent adults to accept unwanted medical treatment, even if we think that their rejection of it is foolish or misguided (as many think of the adult Jehovah's Witness who refuses to consent to a life saving blood transfusion). So we should not think it acceptable to prevent a competent adult from committing suicide because we think that death is not in his best interests.<sup>6</sup>

Because a QL ethic appeals to the value of beneficence, it supports the legalization of PAS and euthanasia only for those whom it's reasonable to think are better off with a quick and painless death. We'll return to this issue later, but for now I'll assume that means that QL supports PAS eligibility only for the terminally ill and euthanasia eligibility only for terminally ill and suffering incompetents (such as the severely mentally retarded). People like the anguished existentialist should be ineligible for PAS because it is not true of them that they are better off dead. If they think otherwise, then they are mistaken. The defender of QL admits that denying them PAS eligibility violates their autonomy but maintains that beneficence overrides autonomy in such cases. That makes the QL argument for a limited PAS a species of "hard paternalism," which many liberal philosophers categorically condemn.<sup>7</sup> By virtue of its supporting PAS eligibility only for the terminally ill, not all competent adults, the QL position is attacked by conservatives for going too far, by libertarians for not going far enough, and by some disability advocates for reflecting an anti-disability prejudice.

## Prudential Value vs. Moral Status Judgments

The elitism objection to QL might derive some of its plausibility from confusion about what it means to say that someone has a “worthwhile life” or that someone’s life is less “worthy” or “valuable” than someone else’s. *Pulled out of context*, such talk is ambiguous. It can be construed in either of two ways:

1) As a *moral status* claim about whether one is a full, partial, or non member of the moral community. To say that one person is more “worthy” in this sense than another implies that his interests, needs, or wishes should “count for more” than the other’s. It is a judgment of this sort that we are making when we say that a human being’s life is more valuable than a dog’s. If a dog and a human being are in mortal danger and you can only save one, you should save the human. That doesn’t mean that dogs have no right to life. It means that their right is “weaker” than humans’ (i.e. that the range of permissible reasons to kill dogs, reasons that don’t violate their right to life, is larger than the range of such reasons for killing humans is).

2) As a *prudential value* judgment. In this case the comparative judgment about two persons is that the one is living a better life, a life that leaves him *better off*, than the other. For example, a heroin addict’s life is usually worse than a nonaddict’s. If the person whose life revolves around getting high were to kick his drug habit, get a job, find hobbies, etc., he would achieve increased *well-being*.

These two sorts of judgment are logically independent of each other. Hedonism, preference satisfaction theories, and perfectionism are competing views about how to determine the correct prudential value judgments. Racism, ableism, “speciesism,” and various versions of egalitarianism are competing views about how to determine the correct moral status judgments. The prudential claim that one is better off not being a drug addict does *not* entail the moral status claim that the interests of drug addicts count for less than the interests of nonaddicts. And the

prudential value judgment that a severely mentally retarded man in the late stages of lung cancer is better off with the quick and painless death caused by a lethal injection than the prolonged, painful death from “letting nature take its course” in no way implies that the interests of the severely mentally retarded count for less than the interests of the nonretarded.

### Singer, Speciesism, and Other Criteria for Full Moral Status

Many who press the elitism objection to QL will deny that they are guilty of confusing these two types of judgment. The proof that QL is committed to a hierarchy in the moral worth of different classes of persons, they will say, comes from the writings of Peter Singer, its most prominent defender.<sup>8</sup>

Singer asks on what grounds the traditional moral belief that all human life is more precious than all nonhuman animal life can be defended, and he argues that the answer is “none.” He dubs the idea that all and only *homo sapiens* have full moral status just by virtue of their humanity “speciesism.” The implication is that speciesism is morally unreasonable for the same reason that racism and sexism are: they make one’s moral status depend on irrelevant natural properties. After all, suppose that there are highly intelligent extraterrestrials somewhere in the universe. Members of their species are, on average, as reflective, conscientious, and virtuous as the most illustrious members of our own species, only they are not *homo sapiens*. It seems absurd to think that they have the same moral status that traditional morality assigns to pigs and cows merely because they are not members of *our* species. Singer argues in favor of replacing the traditional speciesist definition with a “personhood” definition according to which all and only creatures that are “self aware” have full moral status. If that definition is correct, then intelligent ET’s, as well as nonhuman primates like chimpanzees, will have full moral status, while humans who lack the capacity for self-awareness (newborns, the severely mentally retarded, PVS patients, etc.) won’t.<sup>9</sup>

Any version of QL that's based on the personhood definition of full moral status will be vulnerable to the elitism objection. If a creature has full moral status, then it may not be used as a "mere means" for the greater good of other creatures with full moral status. Hence, if the personhood definition is correct, then it would be wrong to kill one "self-aware" human in order to use his organs to save the lives of five other sick and dying, self-aware humans. But if that definition is correct, then either it will not be wrong at all to kill one severely retarded human in order to achieve the same outcome, or it will be a wrong of a much less serious order. The severely mentally retarded either have no right to life at all or a right that is "weaker" (in the sense described earlier) than the right of self-aware humans. Furthermore, the infanticide of *perfectly healthy* babies is not intrinsically wrong, but wrong only on account of the harm it does to others (parents, others eager to adopt, etc.). Something has gone wrong here, and it's the personhood definition of moral status.<sup>10</sup>

Defenders of SL who level the elitism charge at QL assume that it is wedded to the personhood definition of full moral status. But their assumption is mistaken. Instead of saying that all and only *homo sapiens* have full moral status, or that all and only "persons" have it, defenders of QL can embrace what we'll call the "hybrid" definition. (It's not the only alternative and may not be the best one, but it is a possible alternative whose chief attraction is that it renders QL immune to the SL version of the elitism objection). The "hybrid" definition says that one has full moral status so long as one is a person *or* one belongs to a species the mature, normal members of which are persons.<sup>11</sup> Unlike Singer's personhood definition, the hybrid definition implies that newborns and the severely retarded have full moral status. Unlike the speciesist definition, it implies that if there are any ET's whose mature, normal members have the same cognitive and moral capacities as ours, they have full moral status too. The hybrid definition does make the moral status of some (e.g. the severely retarded) depend on their species membership, but it does so in a *species-neutral* way. Most importantly, it does not create a hierarchy of humans some with partial and others with full moral status. It certainly does not

imply that people who produce much and consume little in way of valuable social resources have greater moral worth than people who do the reverse, or that people who can take care of themselves have greater moral worth than people who can't. (To be fair to Singer, though, his personhood definition doesn't imply that either). It is egalitarian, because it implies that all humans have full moral status.

### Egalitarianism and Being Created in the Image of God

Some proponents of SL insist that QL is *not entitled* to egalitarianism about the moral status of different classes of people, because egalitarianism requires a religious basis. In defending these claims, they might appeal to some work by Louis Pojman, who has argued that secular egalitarianism lacks foundations. Pojman notes that it is impossible to find any plausible candidate for a simple, *natural* property that all humans share equally and in virtue of which their lives have equal moral worth. From this he infers that the property that underwrites egalitarianism must be a *nonnatural* one. “The posit of God (or some metaphysical idea which will support equal and positive worth) is not just an ugly appendage or a pious afterthought but a root necessary for the bloom of rights.... You need some metaphysical explanation to ground the doctrine of equal worth, if it is to serve as a basis for equal human rights.”<sup>12</sup> The idea is that QL is vulnerable to the elitism objection simply because it does not ground its commitment to equality in anything like the “image of God” metaphor.

This objection to QL fails, for at least three different reasons. The first is that there *is* a natural property that all humans have in common and in virtue of which they have equal moral status, namely, the property identified by the hybrid definition. Of course, that property is not simple (it's disjunctive) or intrinsic (its second disjunct is relational). But why should the property on which full moral status is grounded have to have that logical structure? Notice that the nonnatural property of being created in the image of God is just as relational as the property

of belonging to a species whose normal, mature members are persons. So if the property needed to underwrite egalitarianism did have to be nonrelational, that would rule out the property of being created in the image of God too.

A second reason why the objection fails is that the idea that all humans were created in the image of God implies a *formal* equality only. In past ages the idea was thought compatible with the most virulent forms of racist, sexist, and caste-based discrimination in this world. All it was thought to entail is that all humans are eligible for salvation in the afterlife. Today the idea is interpreted as ruling out, for example, the enslavement of “inferior” black people by “superior” white people. The “image of God” idea does rule out elitist practices like slavery—but only if we’ve *already* figured out what the correct substantive conception of equality is and seen that *it* condemns them. The idea does not *provide* us with that substantive conception. It does not by itself tell us what treating people as equals requires, any more than “God commands us to do what’s right” tells us how we ought to act.

The third and most important reason why the objection misses its mark is that there is no incompatibility between a version of QL based on the egalitarianism of the hybrid definition, on the one hand, and the “image of God” idea, on the other. We saw earlier that SL is most at home in a religious framework, that possibly the only way to defend it is by means of an argument with religious premises. But from that it does *not* follow that QL has to be defended in a secular way, or that its defenders, if religious, are precluded from arguing for it on religious grounds. Perhaps the “image of God” idea is best interpreted as implying the hybrid definition, and a QL ethic accords with the will of a compassionate God.

Defenders of SL might respond that the Judeo-Christian scripture and tradition from which the “image of God” idea is drawn clearly condemn euthanasia and suicide. But even if they are correct in that claim, they are mistaken in assuming that the idea is the exclusive property of the Judeo-Christian tradition. As Pojman himself admits, “one could opt for a Stoic pantheism which maintains that all humans have within them a part of God, the *logos spermatikos* (the

divinely rational seed). We are all part of God, chips off the old divine block as it were. Other religious traditions, such as Islamic and Hindu, also have a notion of divine origins and high worth of humanity.”<sup>13</sup> The Stoics are proof that acceptance of the “image of God” idea doesn’t saddle one with SL. They rejected SL and thought suicide permissible in cases where there are insuperable obstacles to one’s leading “the good life.”

### The DA Version of the Elitism Objection and the Utilitarian Reply to it

Any moral theory that accepts a hierarchy of worth for different classes of persons might approve of killing a large number of the (allegedly) less worthy in order to provide small benefits to a small number of the (allegedly) more worthy. A willingness to withhold benefits from or impose harms of *great magnitude* on a large number of people in one class in order to provide benefits or prevent harm of a *smaller magnitude* to a small number of people in another class is the way that an elitist belief in the unequal worth of different classes manifests itself. As pressed by some disability advocates, the elitism objection alleges that legalized PAS and euthanasia would benefit the able at the expense of the disabled, expressing and promoting ableist ideology’s view of the subordinate status of disabled people.

In claiming that PAS harms terminally ill people as a group or class, proponents of the DA objection needn’t claim that it harms every member of the class. In particular, they needn’t deny that many terminally ill people benefit from having and exercising the option of PAS. To suppose otherwise is to think that one is *always* better off alive than dead, which implies that “mere biological life” is an intrinsic prudential good whose value trumps the value of all competing goods. Were a “vitalism” of this sort true, the PVS patient would be *better off* kept alive by means of “extraordinary” care than she is dead. Not even defenders of SL who regard suspension of “ordinary” care as murder believe that. The DA objection only requires that the

practice result in a net harm for the *class* of disabled people, which is consistent with its providing a net benefit to some members of the class.<sup>14</sup>

Suppose that if PAS were legal, the social costs of medical care would decline because many terminally ill people opt for an inexpensive PAS over a more expensive terminal medical and/or hospice care. As a consequence of that everyone's taxes are lowered. But suppose that partly as a result of making PAS available, society is less willing to fund decent hospice care for those terminally ill people who don't opt for PAS, thus worsening their position. In that case PAS benefits the healthy and able (by reducing their taxes) at the expense of many terminally ill people. Utilitarianism holds that there need be nothing objectionably elitist about a legalization that has such consequences. In fact, we should support legalization in these circumstances—not because the interests of the able count for more than the comparable interests of the disabled, but simply because there are more able people, and small benefits to a sufficiently large number outweigh large harms to a few.

There are two distinct concerns here that utilitarianism seems to ignore, making the utilitarian reply to the DA objection unsatisfactory. First, harms and benefits of different magnitudes seem incommensurable. That undermines the claim that the aggregate benefit of slightly lower taxes for the many “outweighs” the aggregate harm of being denied adequate hospice or medical care for the few.<sup>15</sup> Second, the able are in general better off than the disabled, and harms and gains to those who are already well off should count for less than equivalent harms and gains to those who are worse off. For both of these reasons the utilitarian reply to the DA objection is unconvincing. *If* legalization did benefit the able at the expense of the disabled, then the DA version of the elitism objection would be correct.

## Ackerman's Defense of the DA Objection

Felicia Ackerman has recently defended the DA objection to PAS.<sup>16</sup> Ackerman distinguishes three possible views about who should be eligible for PAS—1) all competent adults, 2) only some (such as the terminally ill), and 3) no one—and argues that there are no good moral arguments for 2. (She claims to be agnostic about which of the two remaining possibilities, 1 or 3, we should adopt). Because she thinks that there are no good arguments based on either autonomy or beneficence for 2, she infers that support for 2 probably reflects anti-disability bias.

Ackerman's objection to a QL argument for 2 is simple: the claim that *only* terminally ill people have a quality of life so low as to make plausible the judgment that they are better off dead is simply false.<sup>17</sup> Some people who are not terminally ill but suffer from severe physical disabilities like quadriplegia or severe mental disabilities like extreme bi-polar disorder may, because of the absence of an adequate social network to support their needs, have a quality of life just as low as the late stage cancer patient. Indeed, Ackerman argues, the class of persons who should be eligible for PAS, according to QL, because the remainder of their lives is likely to be utterly miserable, should include some who are not sick or disabled at all. She mentions in this connection “a young, healthy, and able bodied person who is serving a life sentence without possibility of parole or who is desperately poor, unskilled, and stupid, and able to earn a living only by working at drudge work that he detests.”<sup>18</sup> Since QL really supports PAS eligibility for anyone with a low quality of life, those who want to limit PAS to the terminally ill cannot really be motivated by a commitment to QL. Support for that limit instead betrays an elitist “double standard.”

The reply to Ackerman is that it doesn't have to be the case that every single terminally ill person has a lower quality of life than everyone who isn't terminally ill in order for QL to support 2. Two points can be made here. First, laws need to draw bright, easily identifiable lines. A law that makes only the terminally ill eligible for PAS draws such a line, whereas a law that

extends eligibility to everyone whose quality of life is extremely low and unlikely to improve does not. The second law would require that whoever administers it be empowered to make quality of life judgments about particular individuals, creating an administrative nightmare. Second, it seems perverse to accuse those who support PAS on the basis of QL of being motivated by an elitist “double standard” because they *oppose* PAS eligibility for the severely disabled who are not terminally ill. The overwhelming majority of severely disabled people would have a satisfactory quality of life if only society provided them a decent support network. By contrast, the majority of those who are terminally ill eventually reach a point where they are better off with a quick and painless death no matter how supportive society is of their needs. Ackerman seems to think that this difference between the two groups is irrelevant, because “if unbearable misery arises from a social injustice that is not being corrected, it is hard to see how justice is served by forcing the victims to live with it, rather than correcting the injustice or by allowing the victims suicide assistance if the injustice is not corrected.”<sup>19</sup> The reply to this is that allowing suicide assistance to the severely disabled because the injustice of inadequate social support has not been corrected would probably make it more difficult to correct it. A society that gives quadriplegics the option of assisted suicide is less likely to see the need to provide them with improved support; if quadriplegics have adequate support, few will want to exercise the option of assisted suicide. Disability advocates have made this very point repeatedly. Nothing prevents defenders of QL from citing it as part of their reason for supporting 2 rather than 1.

#### Ableism and the Tainted Preference Not to be Dependent on Others

The DA objection questions not just the motives of those who support PAS, but also those of the terminally ill people who would opt for it if it were available. This strand of the objection makes two claims: first, that a decision to opt for PAS would be based on preferences that are tainted or of questionable authenticity owing to their formation in a culture dominated by

the ideology of ableism; and second, to grant those requests would give legitimacy to that ideology and thereby do harm to other disabled people.

Consider a case involving someone who has contracted leprosy. As a result of absorbing his culture's view of lepers, he regards himself as an "unclean" person who deserves to die. Surely his attitudes are tainted by their genesis. He needs "consciousness raising," not help to commit suicide. Assisting his suicide would not provide him a benefit, and it would help perpetuate a social system that oppresses lepers and other stigmatized, disabled groups.

QL is supposed to be open to the DA version of the elitism objection not because it supports PAS eligibility for lepers (it doesn't), but because it supports it for the terminally ill—in spite of the fact that their requests for suicide assistance are similarly tainted and granting them would likewise do harm to other disabled people. What exactly are the preferences, and how are they supposed to be tainted? The claim is that the primary reason why the majority wants the option of PAS if and when they become terminally ill is so that they can avoid being "dependent" on others and/or a "burden" to loved ones. That preference is tainted, false, and/or irrational, because it is based on the myth that people who aren't disabled are self-sufficient.<sup>20</sup> The reality is that none of us in a modern technological society is self-sufficient. We are all dependent on others to supply our needs for food, shelter, clothing, medical care, etc. Ableism denies this and tells the lie that only the disabled are dependent on others. To grant the PAS requests of terminally ill people who fear losing their "independence" or being a "burden" to others would only give credence to the lie. Reinforcement of ableist ideology is the primary harm to the class of disabled people that proponents of the DA objection believe legalization would cause.

The main reply by defenders of QL is that their argument for PAS is different from the libertarian's autonomy-based one, and the DA objection has merit only when directed at the libertarian's argument. The QL argument appeals to what's prudentially good for the person dying, not to dignity or that person's views about dignity, and not to what's good for others or that person's views about what's good for others. The key premise in that argument is that life is

not worth living if there is little of it left in any case and what little is left will be racked with physical pain, anguish, and mental deterioration. As long as that premise is true, there is a strong *prima facie* case for PAS. To rebut that case one has to show that legalizing PAS would cause greater harm to many other disabled people with no wish to end their lives. If the publicly affirmed rationale for PAS were that we ought to respect autonomy by deferring to preferences not to be a burden on loved ones or dependent on others, that might do significant harm to other disabled people by giving credence to ableism. But if the justification of PAS is QL, and that is the justification for it that is *publicly affirmed*, then there is no reason to fear that the practice would reinforce ableist ideology.

Some may wish to turn the tables on the defenders of the DA objection, charging *them* with “elitism” for their willingness to disregard people’s own considered views about dignity and independence. Supporters of the QL case for PAS should resist the temptation to join them, however, for two reasons. First, this elitism charge presupposes that the views that DA activists propose to ignore really are—unlike the leper’s belief that leprosy makes a dignified life impossible—authentic or autonomous, and such an assumption is questionable. Second, even if the belief that it is undignified to be dependent on others for one’s care is fully authentic or autonomous, it might still be mistaken, and one might claim that society ought to uphold the correct conception of dignity even where that would violate people’s autonomy. Libertarians cannot claim this, because they insist that the autonomy principle is absolute. But supporters of the QL case for limiting PAS eligibility to the terminally ill reject the view that that principle is absolute. They support hard paternalism, claiming that beneficence overrides autonomy in cases like that of the anguished existentialist described earlier. Hence, they are in no position to insist that respect for dignity (properly conceived) could not possibly override autonomy too.

## Other Possible Harms to Disabled Interests

A problem with the claim that PAS and euthanasia would benefit the able at the expense of the disabled is this. If enough terminally ill people did choose a cheaper PAS over other, more expensive end-of-life treatment, and that reduced the cost of medical care for everyone, the primary beneficiaries of that reduced cost would be *other* chronically ill or disabled people whose medical expenses are much higher than average. The healthy and able who don't require much medical care yet would benefit by having their taxes reduced. But in any health care system in which everyone except the indigent has to pay a significant portion of his or her medical bills out of pocket, middle class disabled people who are not terminally ill seem likely to benefit the most.

Of course, it's still possible that legalization would produce harms for the class of disabled people that outweigh this benefit. We've already dealt with the most important harm to disabled interests that proponents of the DA objection fear that PAS would cause, namely, promoting ableist ideology. It's possible, however, that PAS would harm the disabled in other ways. Earlier we said that legalizing PAS for quadriplegics who lack an adequate support network would probably make it more difficult to create that network. It's not absurd to think that something similar may be true for the terminally ill—that is, that legalizing PAS for them would result in reduced funding for the care of the terminally ill who do not opt for PAS. It has also been claimed that many terminally ill people are harmed just by *having* PAS as an option. The legalization of PAS, Ackerman notes, would “deprive patients of the option of staying alive without explicitly choosing to do so and being seen as choosing to do so, and thus without having to justify their decisions to stay alive.”<sup>21</sup> If these harms together outweigh the benefits that PAS provides those terminally ill people who elect it, then defenders of QL would have to withdraw their support for legalization. It would be a strange principle of beneficence that told us we should go ahead and provide a benefit to some people even if doing so had the unintended effect of significantly harming many others.<sup>22</sup>

All things considered, the case for thinking the disabled people would on balance be harmed by legalization seems weak. While legalizing PAS might frustrate the preference of some not to have to justify their decision not to opt for a quick death, it's not clear that that should qualify as "harm." After all, we don't think that a state's switching to the liberal policy of toleration for all religions "harms" the person who prefers not to have to justify his decision to remain an adherent of the dominant religion rather than convert to one of its newly tolerated competitors. Perhaps the harm that Ackerman actually has in mind here is that of being pressured into choosing PAS to avoid the perception by others that one is being "selfish" by continuing expensive medical care. But any argument against PAS based on the prevention of that harm runs into difficulties. First, insofar as it assumes that the terminally ill are especially weak, vulnerable, and in need of paternalistic protection from their own foolish choices, it itself is a threat to disabled interests. As Anita Silvers has noted: "Characterizing people with disabilities as incompetent, easily coerced, and inclined to end their lives places them in the roles to which they have been confined by disability discrimination. Doing so emphasizes their supposed fragility, which becomes a reason to deny that they are capable, and therefore deserving, of full social participation."<sup>23</sup> Second, the argument that the choice of PAS is likely to be coerced in some way, and for that reason should not be permitted, does not distinguish it from the decision to refuse or discontinue medical treatment. Either the argument proves nothing, or it proves too much (i.e. that there should be no right to refuse unwanted medical care).<sup>24</sup>

What of the worry that spending on hospice care would decline if PAS were legal? Opponents of PAS ought to admit that this harm is speculative and in fact may not occur at all.<sup>25</sup> By contrast, the benefit that PAS provides those terminally ill people who elect it is certain. That benefit is probably the reason why most disabled people support legalizing PAS.<sup>26</sup> Surely the belief that this certain and tangible benefit outweighs whatever harms it *might* cause disabled people is *at least* reasonable. Given that it is reasonable and held in good faith, it is uncharitable to impute elitist motivation to anyone who supports PAS for the terminally ill on QL grounds.

## Conclusion

We began by noting that two different groups with different moral and political agendas both level the charge of “elitism” against PAS for the terminally ill and the QL ethic that supports it. Yet that agreement turns out on closer inspection to be rather superficial. (It is not unlike the “agreement” between social conservatives and some feminists that pornography is “degrading to women” and for that reason rightly restricted). The DA version of the elitism objection differs from the one pressed by religious “pro lifers” in two respects. First, it holds that we ought to oppose a PAS limited to the terminally ill because it would *harm* disabled people as a class, whereas the “pro life” objection is that it would give to man a prerogative that is God’s alone. This makes the latter a species of “pure legal moralism,” while the former invokes “the harm principle.”<sup>27</sup> Second, the DA objection only condemns a PAS limited to the terminally ill for present day, ableist societies. In a fully just society that has overcome ableism and shows equal concern for everyone’s most urgent needs, an unlimited PAS (of the sort favored by the libertarian) and possibly even a PAS limited to the terminally ill would not harm the disabled and thus would be unobjectionable. The “pro life” objection assumes, to the contrary, that PAS of any kind would remain wrong even in a society in which the disabled are fully empowered.

This last difference makes it possible to hope that the alliance of the two groups is fragile and will erode in the more distant future if and when the movement for disabled rights has achieved greater success. One can only wish that in the meantime opponents of PAS would retire the rhetoric of “elitism.” Associating PAS and/or the QL defense of it to Nazism, eugenics, or a “systematic devaluation of the lives of the terminally ill” packs a powerful rhetorical punch, but it is a polemical ploy of dubious intellectual or moral merit.<sup>28</sup>

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<sup>1</sup> John Jefferson Davis, *Evangelical Ethics: Issues Facing the Church Today* (Phillipsburg, N.J.: Presbyterian and Reformed, 1985), p. 170. The Bishops' letter is reprinted in B. Steinbock, J. Arras, and A.L. London (eds.), *Ethical Issues in Modern Medicine*, 6<sup>th</sup> ed. (New York: McGraw-Hill, 2003), pp. 341-48.

<sup>2</sup> See "Not Yet Dead"'s web-site at [www.notdeadyet.org](http://www.notdeadyet.org).

<sup>3</sup> See the Amicus brief authored by "Not Yet Dead" and other groups and submitted to the court in the case of *Gonzalez v. Oregon* (2005) called for invalidation of Oregon's PAS law. The brief is at <http://www.notdeadyet.org/brief.html>.

<sup>4</sup> Many disability rights advocates point out that they are "pro choice" on abortion. Some of them resent what they see as the pro-life movement's co-opting of the PAS/euthanasia issue, which they see as a civil rights issue for disabled people rather than a part of the "culture war."

<sup>5</sup> See the U.S. Catholic Bishops "Letter" cited above. Also, Thomas D. Sullivan, "Active and Passive Euthanasia: An Impertinent Distinction?," *Human Life Review* 3, 3 (1977) 40-46.

<sup>6</sup> Daniel Callahan has objected that the libertarian position in favor of legalizing PAS for all competent adults who want it amounts to "self determination run amok." Daniel Callahan, "When Self-Determination Runs Amok," *Hastings Center Report*, vol. 22 (1992), pp. 52-55.

<sup>7</sup> See Joel Feinberg, *Harm to Self* (New York: Oxford University Press, 1986), p. 12 for a definition of "hard paternalism." A thorough defense of the QL argument would need to explain why beneficence should override autonomy with respect to denying the anguished existentialist suicide assistance, while autonomy should override beneficence in the case of people who reject life saving treatment for what seem clearly foolish reasons.

<sup>8</sup> Such is the view of Wesley J. Smith. See his *Culture of Death: The Assault on Medical Ethics in America* (San Francisco, CA: Encounter Books, 2000), his post "Personhood Theory: Why Contemporary Mainstream Bioethics is Dangerous" at <http://www.wesleyjsmith.com>, and his essay "Pushing Infanticide" at <http://www.nationalreview.com>.

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<sup>9</sup> Peter Singer, *Practical Ethics*, 2<sup>nd</sup> ed. (Cambridge: Cambridge University Press, 1993) and *Rethinking Life and Death: The Collapse of Our Traditional Ethics* (New York: St. Martin's Press, 1995).

<sup>10</sup> This is not to deny that Singer's views on euthanasia have been distorted by many of his critics, including disability activists who opposed his attempts to defend them in public talks in Germany. See his "Academic Freedom in Germany," reprinted in *Writings on an Ethical Life* (New York: Ecco, 2000).

<sup>11</sup> Joel Feinberg considered but rejected a similar view in "Abortion," in Tom Regan (ed.), *Matters of Life and Death* (New York: Random House, 1980), pp. 183-217. The definition's disjunctive form allows it to sidestep an objection that Jeff McMahan pressed against the "species norm account," namely that it wrongly excludes from full moral status a hypothetical "Superchimp" who has a "rational nature, but he remains a chimpanzee, and thus does not belong to a kind that is characterized by having a rational nature." [Jeff McMahan, *The Ethics of Killing* (New York: Oxford University Press, 2002), pp. 214-17]. I agree that a Superchimp would have full moral status, and thus, give the hybrid definition a disjunctive form so that it yields that consequence.

<sup>12</sup> See Louis P. Pojman, "Why the Emperor Has No Clothes: A Critique of Contemporary Egalitarianism," in Louis P Pojman (ed.) *Political Philosophy: Classic and Contemporary Readings* (New York: McGraw-Hill, 2002), pp. 391-404.

<sup>13</sup> Pojman, p. 403.

<sup>14</sup> I must therefore disagree with an otherwise excellent paper on PAS and the DA objection by David J. Mayo and Martin Gunderson, "Vitalism Revitalized: Vulnerable Populations, Prejudice, and Physician-Assisted Death," *Hastings Center Report* v.32 no.4 (July-August 2002): 14-21. Its thesis is that the opposition of "Not Yet Dead" to PAS presupposes an untenable vitalism.

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<sup>15</sup> The Rawlsian contractarian method of argument (rational contractors behind a veil of ignorance who use the maximin principle of choice) can also be used to support this objection to utilitarianism.

<sup>16</sup> Felicia Ackerman, “Assisted Suicide, Terminal Illness, Severe Disability, and the Double Standard” in *Physician-Assisted Suicide: Expanding the Debate*, ed. by M. Pabst Battin, Margaret Rhodes, and Anita Silvers (New York: Routledge, 1988), pp. 149-61.

<sup>17</sup> Ackerman, p. 152.

<sup>18</sup> Ackerman, p. 153.

<sup>19</sup> Ackerman, p. 153.

<sup>20</sup> Ackerman argues that the altruistic wish not to be a burden to loved ones is misguided. Her argument (“the paradox of the selfless invalid” on p. 156) that seems flawed for reasons I won’t discuss.

<sup>21</sup> Ackerman, p. 155.

<sup>22</sup> The libertarian, by contrast, would support legalization *even if* the harm to disabled interests clearly outweighed the benefit. She judges it impermissible to restrict a competent person’s liberty in order to prevent harms to others that *that person* does not cause.

<sup>23</sup> Anita Silvers, “Protecting the Innocents from Physician-assisted Suicide: Disability Discrimination and the Duty to Protect Otherwise Vulnerable Groups,” in Battin, Rhodes, and Silvers (eds.), p. 132.

<sup>24</sup> As Mayo and Gunderson note, the *amicus* brief submitted by “Not Yet Dead” and other DA groups in *Gonzalez v. Oregon* appears to reject both rights. Its argument focuses on four widely publicized cases in which people with severe disabilities that were not life-threatening sought to end their medical treatment. The courts ruled that their requests had to be honored, and the brief protests that such rulings reflect an anti-disability bias.

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<sup>25</sup> Ronald Dworkin cites a brief submitted to the Supreme Court in *Washington v Glucksberg* (1997) by the Coalition of Hospice Professionals: “Removing legal bans on suicide assistance will enhance the opportunity for advanced hospice care for all patients because regulation of physician-assisted suicide would mandate that all palliative measures be exhausted as a condition precedent to assisted suicide.” Ronald Dworkin, “Assisted Suicide: The Philosophers’ Brief” in *The New York Review of Books* (March 27, 1997), pp. 41-47.

<sup>26</sup> According to Andrew I. Batavia and Hugh Gregory Gallagher, the founders of a DA group (“Autonomy, Inc.”) that supports Oregon’s PAS law, “Three consecutive Harris surveys have found that over 60 percent of people with disabilities support the right to assisted dying for competent terminally ill individuals.” That group’s web site is [www.autonomynow.org](http://www.autonomynow.org).

<sup>27</sup> See Joel Feinberg, *Harmless Wrongdoing* (New York: Oxford University Press, 1990) Chapter One for pure legal moralism, and Feinberg’s *Harm to Others* (New York: Oxford University Press, 1987) for discussion of the harm principle.

<sup>28</sup> The quoted phrase is from Ackerman, p. 154.