

**In Pursuit of a Good Death:  
Responding to Changing Sensibilities  
in the Context  
of the Right to Die Debate**

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## **ABSTRACT**

This thesis challenges a number of claims that are made in the context of the euthanasia debate: that there is only one version of the good death; that rights discourse is the most appropriate vehicle by which to secure legal recognition of a right to die; that the Netherlands is either a model for reform or the epitome of a slippery slope in its regulation of euthanasia; and that a key argument in the euthanasia debate, the sanctity of life doctrine, is a fixed, immutable concept.

In this thesis I use process sociology, developed by Norbert Elias, in order to capture changing sensibilities toward death and dying in the common law jurisdictions (Australia, England, the United States of America, Canada and New Zealand) and in the Netherlands. At the same time I analyse changing attitudes among key groups whose work impacts upon the euthanasia debate namely, parliamentarians, law reform bodies, the judiciary and medical associations.

My aim in adopting this approach is threefold. First of all, to examine evolving attitudes to death and dying in order to determine whether the institutions of law and medicine are responding in an adequate manner to changing sensibilities in the common law countries and in the Netherlands. Secondly, to highlight shifting balances of power within the euthanasia debate. Thirdly, to assess whether the various options for reform that I discuss are workable or not.

In this thesis I show that there appears to be a sensibility of support in the common law countries for euthanasia to be legally available when an adult is terminally ill, is experiencing pain that he or she cannot bear and has expressed a wish to die (the typical euthanasia scenario). However, the situation is far from clear cut. The methods adopted by one of the ways of measuring sensibilities, opinion polls, suggest that sensibilities may not always be well-informed. Further, attitudes within and between key groups are not uniform or settled.

In the context of this unsettled state of affairs, I show that responses to changing sensibilities from law and medicine in the common law jurisdictions are far from

satisfactory. So far as legal responses are concerned, case law outcomes in right to die applications suggest a lack of flexibility. Outcomes in prosecutions following active voluntary euthanasia or assisted suicide reveal a non-application of established legal principles and suggest that the courts do not focus, squarely, upon the real issues at stake in the euthanasia debate. Medical responses are similarly less than optimal due to a tendency to de-emphasise existential (emotional) pain which, research shows, is the prime motivating factor in requests to be assisted to die sooner. Responses to changing sensibilities to death and dying in the Netherlands are also unsatisfactory because of the disorganised manner in which euthanasia was legalised and because regulation is inadequate.

I come to the conclusion that there are three ways in which we could possibly resolve these problems and increase the flexibility of responses to changing sensibilities toward death and dying. They are as follows: by legalising euthanasia; by permitting a defence of necessity; or, by liberalising the use of terminal sedation in end-of-life care. Of these three, I conclude, in light of shifting sensibilities and overall negative attitudes among key groups to euthanasia, that the last is the most appropriate option at the present time. In closing, I address some of the larger issues at stake in the euthanasia debate. In particular, I deal with the effect that changing sensibilities toward the process of dying have had upon human social life, leading to the problematic situation that Elias referred to as the 'loneliness of the dying'.

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This thesis was written in loving memory of Dorothy Beatrice Hiley  
25 September 1923 – 3 December 2002

And then the rain stops. Gradually, the room is filled with light; the bare criss-crossing branches of the tree are hung with drops and as the sun comes out it catches the drops and they flash with colour – blue, yellow, green, pink. The branches are black against a golden orange sky, black and brilliant. Claudia gazes at this; it is as though the spectacle has been laid on for her pleasure and she is filled with elation, a surge of joy, of well-being, of wonder.

The sun shrinks and the glittering tree is extinguished. The room darkens again. Presently it is quite dim; the window is violet now, showing the black tracery of branches and a line of houses packed with squares of light. And within the room a change has taken place.

It is empty.<sup>1</sup>

Victoria Hiley, 2008

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<sup>1</sup> P Lively, *Moon Tiger* (A Deutsch, London: 1987) cited in T Walter, 'Historical and Cultural Variants on the Good Death' (2003) 327 *British Medical Journal* 218 at 220.

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## LIST OF ABBREVIATIONS

AMA	the Australian Medical Association
AS	assisted suicide
AVE	active voluntary euthanasia
BMA	The British Medical Association
CSA	<i>The Controlled Substances Act</i>
DAS	doctor-assisted suicide
DDE	the doctrine of double effect
DPP	the Director of Public Prosecutions
ECHR	the European Court of Human Rights
ERGO	Euthanasia Guidance and Research Organisation
GMC	the General Medical Council
ICCPR	the International Covenant on Civil and Political Rights
ICESCR	the International Covenant on Economic Social and Cultural Rights
LAWER	life terminating acts without explicit request
MDEL	medical decision to end life
ODDA	the <i>Oregon Death with Dignity Act</i>
PPS	the Public Prosecution Service
RDMA	the Royal Dutch Medical Association
ROTIA	<i>the Rights of the Terminally Ill Act</i>
SCEA	support and consultation for euthanasia
SCEN	support and consultation for euthanasia in the Netherlands
SLD	the sanctity of life doctrine
TLRASA	<i>the Termination of Life on Request and Assisted Suicide (Review Procedures) Act</i>
UDHR	the Universal Declaration of Human Rights