

Choose a case which
you consider

Business



Choose a case which you consider to be of crucial importance for medical ethics and the law. Explain why you consider that it is so significant, with a focus on the critical evaluation of judicial reasoning in your chosen case, as well as cases preceding and following it. The case which I have chosen to study, is that of Diane Pretty v United Kingdom (2346/02), a case that went through the English judicial system and on to the European Court of Human Rights.

The reason for this is that it challenges both ethical and legal aspects of our society that are considered to be norms and as such are vehemently protected and which some critics may say should not be questioned, any such questioning being morally wrong and distasteful. But as it will be shown it is not an isolated case, that of an individual with beliefs and a want for euthanasia or “ assisted suicide” that cause much controversy and legal difficulty. The very fact that this case finished in the European Court of Human Rights is perhaps a testimony to this very point. Further more it is not uncommon in other societies for such practices to actually be carried out. The Netherlands being one example of this, in which it was believed that approximately two fifths of the deaths in a year, roughly 50, 000 were due to euthanasia, with the individuals concerned having their lives shortened by varying degrees, anything from a few days to a few months or more¹.

Perhaps the words of J. Keown can best sum up many peoples views and opinions on why assisted suicide or euthanasia should be forbidden, they are:” traditional medical ethics...never asks whether the patients life is worthwhile, for the notion of a worthwhile life is an alien to the Hippocratic tradition as it is to English criminal law, both of which subscribe to the

principle of the sanctity of human life which holds that, because all lives are intrinsically valuable, it is always wrong intentionally to kill an innocent human being” 2From this, above anything else, the idea of sanctity of life and the need for it’s preservation is apparent. It suggests with no subtlety the need for life to continue free of what could be called “unnatural” intervention.

Such notions are contained within the European convention on Human Rights which is on what many of Mrs Pretty’s arguments are based, to be specific articles 2, 3, 8, 9 and 14 of the convention. Mrs Pretty’s condition, that of motor neurone disease is associated with progressive muscle weakness affecting the voluntary muscles of the body resulting in a failure of the respiratory system and pneumonia. Not only this, but up until the time of her death her state would have declined rapidly, subjecting her to what was described by the court as the extremely distressing and undignified final stages of the disease. Sympathisers of Mrs Pretty would agree, as she argued, that to have to continue in this way violated the idea that no one shall be subjected to torture or to inhuman or degrading treatment or punishment, that being article three of convention. In relation to article two, that of the right to life, Mrs Pretty argued that conferred upon individuals the right to die and a choice in how and when.

It is not possible for many to think Mrs Pretty irrational in her thinking for she gives logical reasoning for her wish to die. As Philosophers such as Harris and Glover argue when making decisions relating to ending of life the idea of quality of life should be encompassed. They believed human life should no longer be regarded as possessing intrinsic value per se; rather, what makes <https://assignbuster.com/choose-a-case-which-you-consider/>

life valuable is the life-holders capacity for pleasurable states of consciousness³. This is perhaps one of the key elements in why a right to euthanasia should exist, for while article two of the convention states: 1. Everyone's right to life shall be protected by law.

No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: a in defence of any person from unlawful violence; b in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c in action lawfully taken for the purpose of quelling a riot or insurrection. Can it be said that such a right should be protected by law when it is argued that there is no life there to protect, in the sense of a being having the " capacity for pleasurable states of consciousness" as Harris and Glover suggest. But perhaps we should not only look at the individual concerned but to those who are directly affected, loved ones who share in their anguish.

Not only will it relieve the individual concerned of their pain and suffering along with living a life of futility in their eyes, but relatives of the emotional torment as well. However perhaps most importantly of all, in relation to the medical establishment, is that it will free up its limited resources. Take the case of Bland⁴ in which a victim of the Hillsborough disaster was reduced to a permanent vegetative state (PVS). Here the victim was allowed to have life sustaining treatment/equipment withdrawn at the request of his father, for medical opinion was of the belief that his condition would not improve and <https://assignbuster.com/choose-a-case-which-you-consider/>

consequently life sustaining support was removed, bringing about the patient's death. As Lord Justice Hoffman stated "in my view the choice which the law makes must reassure people that the courts do have full respect for life, but that they do not pursue the principle to the point at which it has become almost empty of any real content and when it involves the sacrifice of other important values such as human dignity and freedom of choice"

5 Clearly this supports the ideas of Harris and Glover that are mentioned above, the idea that life becomes empty of content for which euthanasia should perhaps be an acceptable and respected recourse.

The process of letting an individual die in such a manner has become to be known as passive euthanasia, an accepted form of aiding a person to die. Furthermore it could also be seen as acting with respect to the individual's autonomy for the patient's father in Bland was of the very real belief that it would have been what he wanted. It perhaps highlights other issues that should be considered, the idea of acting in the patient's best interest for example. Is this not one of the fundamental roles of a doctor? While it may be argued that in turn it ignores other important principles such as non-maleficence, it may well be that over all this is the most beneficial of all options, not only to the patient but to society as a whole, relieving the individual, the relatives and society of the very real burden of having to care for such an individual. A utilitarian approach, but one that helps to justify the practice of euthanasia, or euthanasia in its passive form at the very least.

Though a point to note is when someone is in a PSV can you really determine an individual's best interest, surely they will be indifferent to all that goes on.

This highlights the idea of why “ living wills” may be of some use, this is discussed below. Again looking at the idea of acting in the patient’s best interests it is useful to look at the case of the conjoined twins⁶. Here it was deemed acceptable for a medical procedure to separate two twins, Jodie and Mary to be performed knowing that the weaker of them would die. The reasons for this were if they remained together they were both sure to die but should they be separated the stronger of the two would survive and live the remainder of it’s life in better health. In effect it was removing the life sustaining equipment from the weaker twin so that it could be relieved from a short and somewhat troubled life, justified by saying that she would die not because she was intentionally killed, but because her own body cannot sustain her life⁷.

Again while this in some respects promotes the idea of euthanasia it can be seen that behind it lie the ethical considerations such as autonomy and bodily integrity, natural rights that the law helps to protect. However what is not as clear here is a distinction that has yet to be made that of passive and active euthanasia. Whereas the withdrawal of medical treatment can be seen as passive euthanasia, in that it is not that very act that is the direct cause of death but another latent cause which is perhaps the reason for treatment, active euthanasia is, quite obviously, the opposite, death resulting from a specific intended action e. g. administering a lethal injection.

In the twins case it was argued that giving each bodily integrity and as a result of which one died did not constitute active euthanasia, however it certainly make the distinction far less clear. It is this second classification of euthanasia that gives rise to many of the legal and ethical debates

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surrounding it, for unlike Bland and Re A it involves a positive act which is the direct cause of the individual's death, something criminal law has sought to protect and continues to do so. In relation to assisted suicide it is the Suicide Act 1961 that makes such an act illegal, and is why the case of *Pretty v United Kingdom* is so important in my opinion. This case distinguishes the accepted legal role that euthanasia can play in society and medical law, distinguishing passive euthanasia from active euthanasia. It is for this very reason I believe the case was decided how it was. On the face of it it would appear that the arguments put forward, or at least some are rights the convention confer upon individuals are worthy of note, and their consideration by the ECHR reflects this.

The judgement of article 14 is a clear example of not wishing to promote active euthanasia, part of which is as follows: "there is, in the Court's view, objective and reasonable justification for not distinguishing in law between those who are and those who are not physically capable of committing suicide... The borderline between the two categories will often be a very fine one and to seek to build into the law an exemption for those judged to be incapable of committing suicide would seriously undermine the protection of life which the 1961 Act was intended to safeguard and greatly increase the risk of abuse" It can maybe be understood from the very last part of the extract above why the court did not grant Mrs pretty the right for her husband to assist her suicide, for the courts fear that should such a right be introduced, abuse will follow. To allow those who can't commit suicide have access to individuals who could help them obviously leaves the door open for abuse especially when individuals already abuse their powers, Dr Harold

Shipman for example. If active euthanasia was practiced in this country, or had been, he may have been considered a saviour as opposed to a criminal.

As well as this Mrs Pretty is requesting that her husband assist her suicide taking the matter away from the medical profession something that perhaps further provides reasoning for why this case was decided in this manner it was. However that is not the only implication, for example, take the case of *Kyte v Kyte*⁸. This case involved a married couple, the marriage was in difficulties the husband suffered from depression and attempted to commit suicide on a number of occasions. The husband asked his wife to help him commit suicide by bringing him drink and drugs, she did so without attempting to dissuade him knowing that she would profit from his death. This is clearly one of the reasons why the courts seek to restrict the idea of active euthanasia, to protect the weak, and even more so to stop people profiting from another's death, nothing could be much further from ethically correct than that.

However the possibility that a system of voluntary suicide may be abused does not automatically it is not possible for a limited system to operate. As it has been commented on before, the Netherlands do allow a practice of active euthanasia, it is highly restrictive and regulated which is undoubtedly necessary, and perhaps such caution is reflected in the words of the judgement of *Pretty v United Kingdom* in that the Court found that no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2 of the Convention. That is to say you have a right to life but not a right to die, your right to die in effect must be legitimised before that right is conferred upon you. As in this case it rest a <https://assignbuster.com/choose-a-case-which-you-consider/>

little uneasy that a person, of sound mind, can have their autonomy and right to self determination overruled, simply because of a disability. For example in the Netherlands it is even possible to be granted voluntary euthanasia if your are not terminally ill, for example being paraplegic is sufficient ground.

9Overall the significance of the decision in *Pretty v United Kingdom* can be seen in the clear boundary it imposes between the idea of passive euthanasia and active euthanasia. In cases proceeding it there is a clear conceptual difference that appears. When the issue concerns passive euthanasia society and law can allow it, perhaps because in the case of refusing treatment it is the natural event that will be the factor that causes death, an event for which no moral blame need be attached to one single person. It alleviates the individual and family of their anguish, releases valuable medical resources that may make the difference in saving another's life, and can act as another source of "medicine" at the doctors disposal when acting in the patients best interest. The idea of "living wills" also arises, documents in which an individual can express their wishes and exercise their autonomy before an event occurs, providing more certainty for doctors and their patients. However when it comes to active euthanasia it brings about the idea of infringing areas of life that the criminal justice system has been designed to protect, the deliberate and wilful ending of a life.

It is there for a reason to, to prevent involuntary acts of euthanasia. The idea of making someone kill you may be one perceptual step in the reasoning for it's continued denial. When the end result is the same though, it is perhaps <https://assignbuster.com/choose-a-case-which-you-consider/>

bizarre how society can justify one method easier than the another, perhaps we spend to much time focusing on living, in which law and medicine have become intimately bound, to preserve and enhance our stake in the world while the issue of death still remains peripheral to this process¹⁰.