

**EUTHANASIA IN THE NETHERLANDS:
THE POLICY AND PRACTICE OF MERCY KILLING**

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**BY
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*In Memory of my thoughtful and learned mentor
Geoffrey Marshall
April 22, 1929 – June 24, 2003
Cherishing his unfailing support
And his infinite wisdom*

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INTRODUCTION

The Dutch experience has influenced the debate on euthanasia and death with dignity around the globe, especially with regard to whether physician-assisted suicide and euthanasia should be legitimized or legalized. A review of the literature reveals complex and often contradictory views about the Dutch experience. Some claim that the Netherlands offers a model for the world to follow; others believe that the Netherlands represents danger, rather than promise, and that the Dutch experience is the definitive answer regarding why we should *not* make active euthanasia and physician-assisted suicide part of our lives.

Given these contradictory views, it has become clear that fieldwork is essential to developing a more informed opinion. Having investigated the Dutch experience for a number of years, and after thoroughly reading the vast literature published in English, I went to the Netherlands for one month in the summer of 1999 to get a feel for the local situation. I felt that this would provide the basis on which I could better interpret the findings of the available literature. I visited the major centers of medical ethics, as well as some research hospitals, and spoke with leading figures in the euthanasia policy and practice. The time spent was extremely beneficial and enriching. I followed in the footsteps of Carlos Gomez, who published a book following one month of extensive research in the Netherlands.¹ Two years later, during the summer of 2001, I returned to the Netherlands for a further two weeks to update my research, and in April 2002 I arrived for a further eight days. The present study reports the main findings of my interviews and provides detailed accounts of the way in which some of the Netherlands' leading experts perceive the policy and practice of euthanasia in their country. Their accounts are fascinating. Indeed, the experience was so overwhelming that after I left the Netherlands, I felt that I needed some months to digest the vast information in my mind before sitting down to write the book.

I commence the discussion by addressing the way different democracies view euthanasia and physician-assisted suicide. Attention is given to the familiar distinction between active and passive euthanasia, and then the current legal positions in the Netherlands, Australia, the United States, Switzerland, Belgium, England, France and Canada are analyzed.

The discussion in *Part A* begins with a review of the three major Dutch reports on euthanasia and the conflicting views and interpretations offered by the literature. Two of the reports, published in 1990 and 1995, appeared before my fieldwork to the Netherlands and the interviewees reflected on them. The third report conducted in 2001 and published in 2003 became public after my interviews. After analyzing the three reports I provide some data about the Dutch practice of euthanasia, the legal framework, and the leading court cases.

Part B of the study gives an account of the interviews conducted during the summer of 1999, denoting the similarities and differences between the points of view (*Phase I*).² It then reports (in *Phase II*) some of the major comments of the interviewees following their reading of the first draft of this study. I thought it is absolutely essential to let the interviewees have an opportunity to read the manuscript and voice their agreement, and disagreement, about the way their views were presented. I also provided the interviewees with the opportunity to read

¹ Carlos F. Gomez, *Regulating Death* (New York: The Free Press, 1991).

² One interview with Bert Keizer was conducted in April 2002.

the second draft, if they so desired. In turn, *Phase III* gives account of the communications I had with the interviewees during the summer of 2001 and in April 2002, before and during my return to the Netherlands in order to update my research on recent developments, most notably on the new euthanasia law that was enacted in April 2001 and came into force in April 2002 as well as on the work of the regional committees that monitor the practice of euthanasia and physician-assisted suicide.

Most of the discussion in *Phase I* gives voice to the interviewees. I want the readers to judge for themselves about how influential Dutch authorities in the field perceive the policy and practice of euthanasia in their country. My own voice is purposefully limited because I wanted to give the floor mainly to the Dutch, allowing them to describe what is going on in their country. That doesn't mean that I am merely reporting. My opinion is clearly heard when certain ideas emerge that deserve close analysis and criticism. The conclusions are also clear and carefully crafted, aiming to better the situation in the Netherlands for the sake of all concerned.

The analysis indicates that the Dutch Guidelines on the policy and practice of euthanasia are far from being stringent. Indeed they are loose enough to allow non-voluntary (when patients are incompetent) and involuntary euthanasia (when patients are competent and made no request to die). They do not provide effective safeguards against abuse and, in short, they simply do not work. Virtually every Guideline has been breached or violated. This finding reiterates that of Hendin.³ It should alarm all those who wish to make euthanasia legal. This finding should also press those who, like me, believe that physician-assisted suicide should be made legal, to devise better control mechanisms and establish more workable and effective guidelines. I believe that patients at the end stage of their lives should have the right to decide about the timing of their death.⁴ However, there is always difficulty in moving from the recognition of an individual right to the implementation of a policy. The Dutch decision makers have the best of motives, but the policy suffers from serious flaws. The picture that arises from the literature, as well as from the interviews, is disturbing. The Dutch should continue to conduct further investigation and research to improve their policy and practice of euthanasia. Sincere debates and open discussions in which all people who are interested in the subject, from different walks of life, cultures and nationalities, should be encouraged. Exchange of ideas is beneficial to all people concerned. As John Stuart Mill observed, any intolerance of opinions involves, *ipso facto*, a claim to infallible knowledge. Even those opinions of whose truthfulness we are confident, such as "Newtonian philosophy," must be exposed to scrutiny and doubts. Those who assume that they know what the truth is provide reasons against pursuing constant inquiry and debate, depriving humanity of exploring further truths, and so blocking the wheels of progress. Unity of opinion, Mill argued, unless resulting from the fullest and freest comparison of opposite opinions, is not desirable, and diversity not an evil, but a good.⁵ According to this view, the quest for truth is a vital as well as an

³ Herbert Hendin, *Seduced by Death* (New York: W.W. Norton, 1997), p. 23.

⁴ See R. Cohen-Almagor, *The Right to Die with Dignity: An Argument in Ethics, Medicine, and Law* (Piscataway, NJ: Rutgers University Press, 2001). See also the compassionate article of Timothy E. Quill, "Death and Dignity: A Case of Individualized Decision Making," *New. Eng. J. Med.*, Vol. 324, No. 10 (March 7, 1991): 691–694.

⁵ John Stuart Mill, *Utilitarianism, On Liberty and Representative Government* (London: J. M. Dent, Everyman's edition, 1948), esp. p. 83.

expedient endeavor. Every opinion should be allowed to be aired and then checked against experience, this out of the respect that we feel for the other's freedom of thought and expression; because of the desire to advance the search for the truth; and because debates on different views help individuals become aware of the interests of others, and thus contribute to a sense of community.

I conclude by recommending that the Netherlands amend its policy and remedy its troubling problems by adhering to more rigid Guidelines to prevent potential abuse. Many Dutch scholars take pains to emphasize that there is no slippery slope, and that the euthanasia practice is not deteriorating. Even if this observation is correct, the existing situation is bad enough. Democracies that struggle with the issue, whether to legalize euthanasia or physician-assisted suicide, should learn from the Dutch experience to avoid the pitfalls that are evident in the Netherlands.

