

Euthanasia: where
are we in 2015?



Elsabé de Kock

South Africa

Nelson Mandela appointed the SA Law Commission to write the South African Law Commission paper – project 86.

**Handed to Minister of Health: 1999.
Never debated or opened for public comment.**

Currently: advance directive and refusal to treatment.

Euthanasia not allowed – criminal offence for medical practitioner – 14 years in jail.

SALC –paper 71 (project 86), Draft Bill – The End of Life Decisions Act

Mentally competent, terminally ill, extreme suffering, older than 18 years.

A second independent medical practitioner to confirm diagnosis – to record this.

Patient to make the request repeatedly.

Voluntary active euthanasia or physician assisted suicide.

65 year old Cancer patient: Robin Stransham-Ford



April 2015: High court in Pretoria granted the request – assisted suicide or active euthanasia without the threat of legal action against the doctor while he had only a few weeks left to live.



Court indicated only applicable to this case



No medical doctor is obliged to accede to the request.



Not required to declare who the doctor will be, when, where or which lethal agent to be used.

We the People insure domestic Tranquillity provide for the common Defence and our Posterity

CONSTITUTION

Section 39 of the Constitution: Interpretation of Bill of Rights

When interpreting the Bill of Rights, a court, tribunal or forum.

Must promote the values that underlie an open and democratic society based on human dignity, equality and freedom.

Must consider international law.

May consider foreign law.

When interpreting any legislation, and when developing the common or customary law, every court, tribunal or forum must promote the spirit and purpose of the Bill of Rights.

We the People insure domestic Tranquillity provide for the common defence and our Posterity

CONSTITUTION

Section 8 (3) of the Constitution

When applying on provision of the Bill of Rights to a natural or juristic person , a court, in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right;

We the People insure domestic Tranquillity provide for the common Defence and our Posterity

CONSTITUTION

Section 8 (3) of the Constitution

b) may develop rules of the common law to limit the right, provided the limitation is in accordance with section 36(1).

- Stransham-Ford: Common law – by declaring the conduct lawful and constitutional in this circumstances.

Bill of Rights

*All human beings are
born free and equal in
dignity and rights.*



Section 10: everyone has inherent dignity and the right to have their dignity respected and protected.

Opposing the case...

- Acting Chief Director: legal services – application should be dismissed as it would promote inequalities and discrimination of the poor by the way of limiting access to the courts to the rich only.




National Prosecuting Authority (NPA) will appeal the ruling. Assisted suicide is illegal.

Ruling will affect NPA because they can't prosecute the doctor.

Supreme court of appeal to rule over this Constitutional court and parliament.

Justice department to receive several applications for case by case considerations -people take advantage of this ruling.



Parliament to develop
common law to be
presented for
comments

Public to
participate in
debate, before
parliament votes
on draft bill

What is?

Living Will/Advance Directive

- Living will not a will in the true sense of the word.
- Advance directive drawn up by a mentally competent person older than 18 years, setting out terms to medical professionals, care givers and next of kin –what to do in the event of a permanent and incurable illness or condition



Etymology



Euthanasia (from

the Greek: εὐθανασία meaning
"good death": εὖ
θάνατος, *thanat*

Most studied bioethics topic
Involves religion, medical
ethical science and social
science

... of ending
prematurely in
order to end pain and
suffering.



Passive

Active

Withholding treatment with the deliberate intention of causing the patient's death.

Example: Do Not resuscitate.

Patient terminating chemotherapy treatment.

Something is NOT DONE to preserve the patient's life.

Different social and moral issues.

Taking specific steps to cause a patients' death.

Example: Dr to administer a Lethal dose of medication.

You DO something to end the patient's life.

Assisted Suicide: lethal dose to be administered by patient.

Passive

Withholding treatment:
patient will die
due to the
disease

Death is not
immediate

Currently lawful
– self
determination

The intent
of doctor is
the relieve
suffering

Active

Patient dies
because of the
medication, not
the disease

Medication
provided by
physician, so
patient dies
because of the
physician

Death is
immediate:
unlawful

Intent of doctor is
to kill

**Assisted
Suicide:
Patient
also
actively
involved.
Self-
destruction
assisted by
physician**

Involuntary

Performing euthanasia against the individual's wishes.
Criminal punishment: execution.

Non-voluntary

Life of patient is ended without the patient's knowledge and consent. In general patient is unconscious or unable to communicate.

Voluntary:

A conscious and sane patient's request – full knowledge it will lead to death.

Palliative Care

Medical treatment of terminally ill patients, health can't be restored.

Instead of preserving life – relieving pain and suffering.

Pain medication hasten patient's death.

HCW should recognise that death is approaching and prepare for it.

Palliative Care

To comfort and care during suffering, is it too much for us?

We do need to change the way we think for this

Ageing population increase— more illness, more money (restricted) needed for palliative care.

We are NOT adequately trained for this.

We don't need to argue how to interpret human rights.

Palliative Care

By comforting people demonstrates the value on humanity and the intrinsic value of life

Ombudsman: Poor pain control, communication, care planning

Ombudsman: inadequate out-of-hours service

Ombudsman: failure to recognise that someone is dying

Ombudsman: delays in diagnosis and referral to care unit

Palliative Care: Barriers

Improved
utilization of
palliative
care .

**Inadequate
pain
assessment,
use of pain
medication.**

**Fear of legal
action if
opioids are
used.**

Fear of failing
to control pain
may increase
requests for
euthanasia.

**Inadequate
completion
of Advance
Directives.**

**Lack of
discussion
about
treatment
preferences.**

Palliative Care: Stransham-Ford – NO dignity



- 450 000 worldwide > 100 years.
- Advances in medical technology have increased medicine's capacity to prolong life to a point where it is unnecessarily burdensome and may diminish an individual's quality of life and personal dignity.
- Ageing population: Fastest growing part of the population.



Medical Ethics


- It can be described as the reflection on moral actions within the framework of health care.
- Its objective is to promote health, to care, to heal, to alleviate pain and prevent suffering.....and now to enhance.

Euthanasia
would change
the ETHOS of
Medicine.





Autonomy




Freedom of choice is the hallmark of human identity.

Right to die with dignity, to deny this right is to deny human rights. To die with dignity is pain free at a chosen time of death. Right to dignity in life and dignity in death is not competing rights.

To be able to control our lives more important to some people than other, legitimate part of human rights.

Autonomy




To have the right to decline treatment.

*Perhaps not the right to demand treatment that
could kill*

**Sick people may well choose to have their
own life terminated because they are
aware of the burden they place on others.**

Undignified death = lack of autonomy.

Autonomy



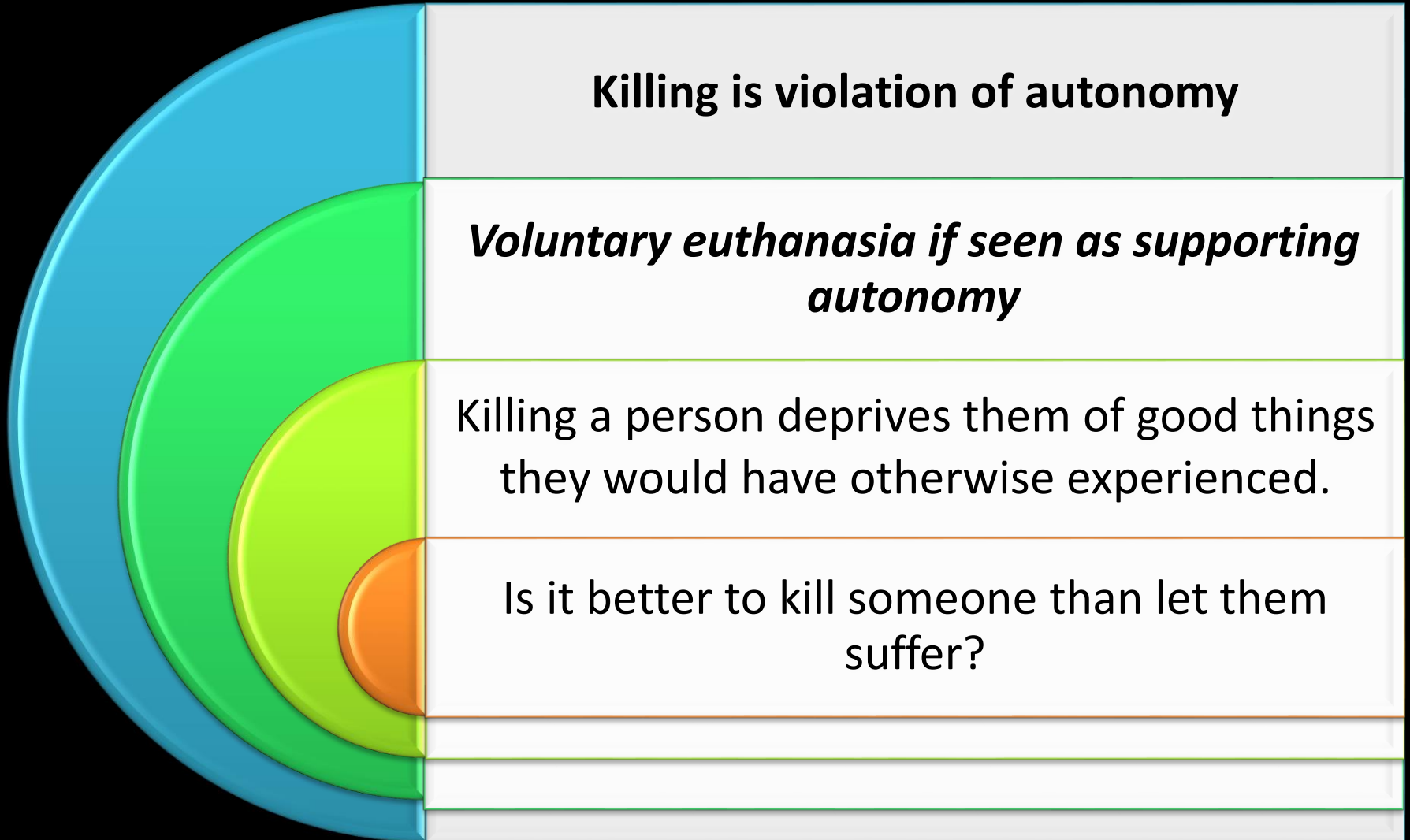
The real wishes and needs of the dying are often elusive and poorly expressed because of their condition, the effect of medications, their fears and beliefs, the information presented to them and their biases, needs and beliefs of those caring for them.

Many working in palliative care argue that the decisions made by the dying must not be readily accepted, but instead be sensitively explored.


The request for euthanasia may be based on the institutionalisation of the elderly and the growing social problems of isolation and loneliness.

SA has a democratic society with a cultural, religious and moral pluralism. Individual rights should be respected, individuals should have moral authority over their own lives and should be allowed the means to end their own lives.

Autonomy: killing a person



Autonomy



European Convention on Human Rights: Ombudsman – little evidence of importance of choosing the time of death.

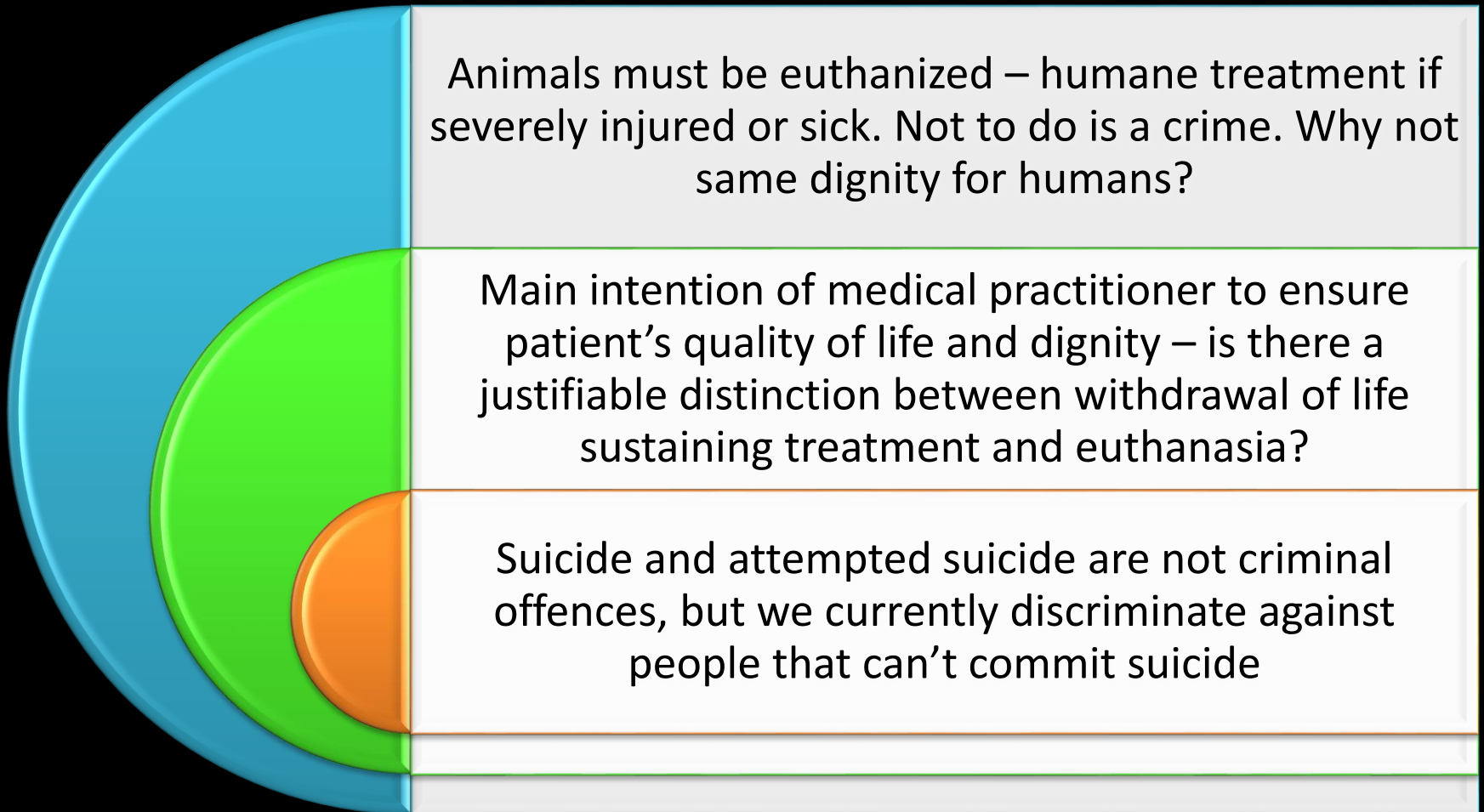
Autonomy or something else? FEAR.

Stransham-Ford: fear to die in pain.

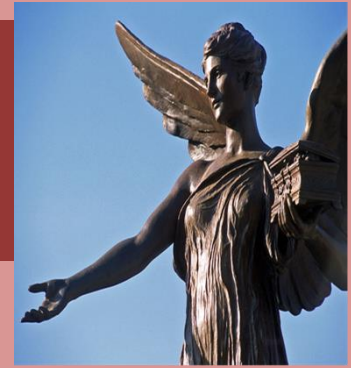
Stransham-Ford: not to be treated in a cruel, inhuman or degrading way. Bodily and psychological integrity.

Right to life is not only biological life, but also entitlement to quality of life. Life is not synonymous to an obligation to live.

Autonomy: Stransham-Ford



Beneficence



This reflects actions involving prevention of harm, removal of harmful conditions and positive benefiting.



Balancing of harm and benefit

If further treatment
outweighs the benefits – to
stop treatment , to ease

suffering and avoid prolonging of process of dying.

Non-maleficence...absence of harm

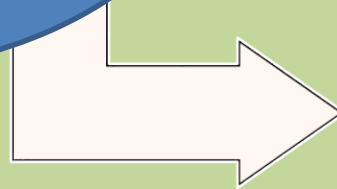
Above all, do no harm.

Prohibit intentional harm.

Anti –
euthanasia:
killing somebody
– do harm, take
away his life.

Pro- debate: Euthanasia
is rather seen as an act of
mercy than doing harm.

**Require the
justification of risk
versus benefit.**



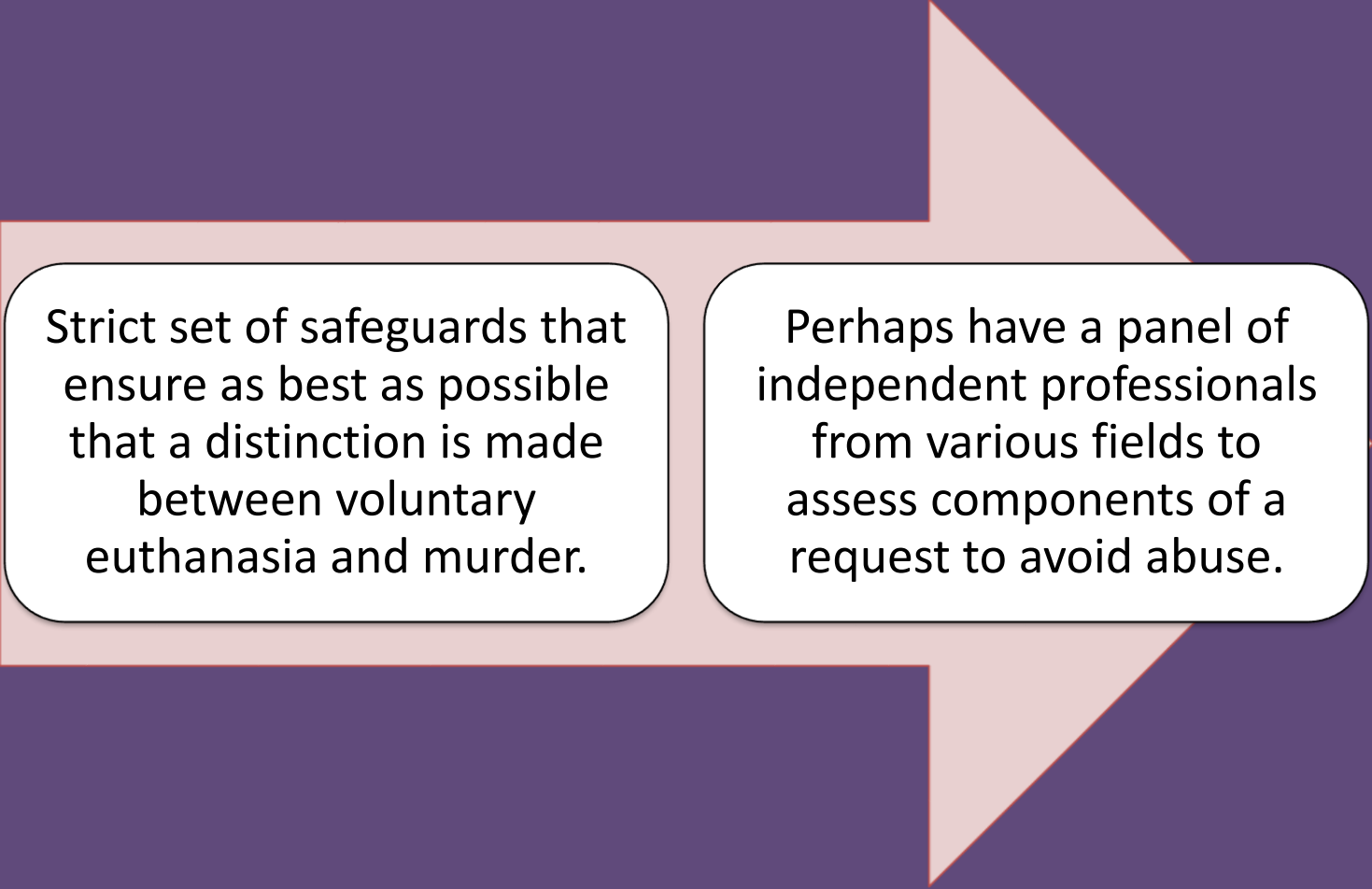
Non-maleficence

If voluntary cognitive request is made to end suffering – by means of assisted suicide, to deny it may cause harm.

Countries with assisted suicide – people are less likely to attempt suicide.

Morally harder to justify letting somebody die a slow and ugly death.

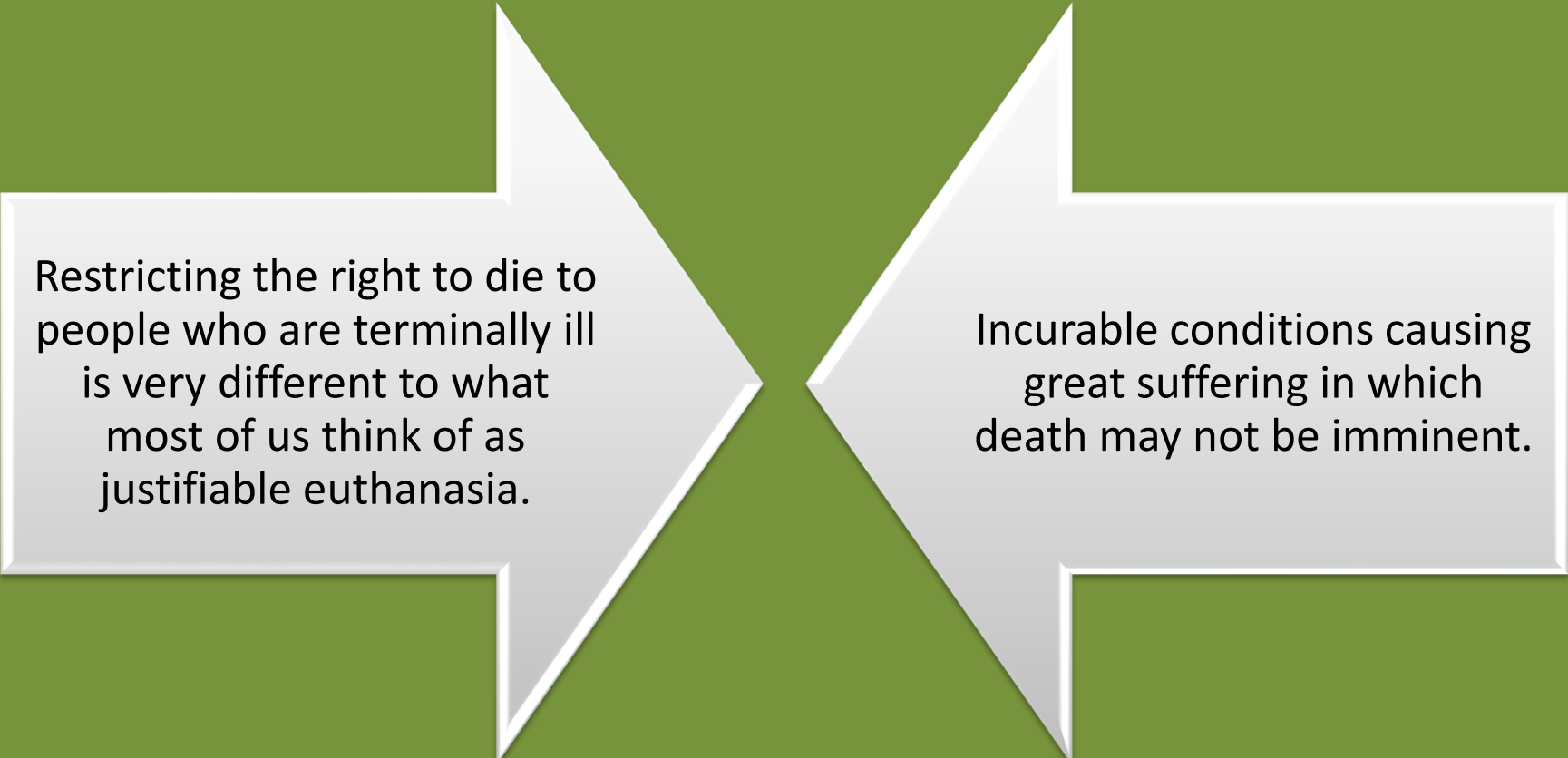
The ACT should...



Strict set of safeguards that ensure as best as possible that a distinction is made between voluntary euthanasia and murder.

Perhaps have a panel of independent professionals from various fields to assess components of a request to avoid abuse.

Act to clarify: terminally ill



Restricting the right to die to people who are terminally ill is very different to what most of us think of as justifiable euthanasia.

Incurable conditions causing great suffering in which death may not be imminent.

Conditions that may justify euthanasia

- Physical suffering in general accepted as justified.
- Suffering caused by grief, or shame or hopelessness.
- Physical pain versus emotional pain.



Conditions that may justify euthanasia

- Some jurisdictions where euthanasia is legal – will include psychiatric illness provided it is unbearable emotional suffering.
- If we don't include all it is doomed to fail because the lines we draw between acceptable and unacceptable death decisions, are cultural and arbitrary.



- Decision to die is not an ordinary choice.
- Decision has a quality of tragedy – some people have loved ones, but also because we are all involved in mankind.
- Death remains a tragedy. Deep down: death itself is bad.



To ensure that physician-assisted death is voluntary, only adults with decision-making capacity should be eligible for physician-assisted death.

The Act
should....age
> 18

From a pure choice perspective, strict adherence to the choice criterion would at least seem to safeguard a slide from voluntary to non-voluntary euthanasia.



Ref



- Mentally competent people can refuse treatment that will keep them alive, even if you are not terminally ill.



These may be excluded if the ACT is too strict



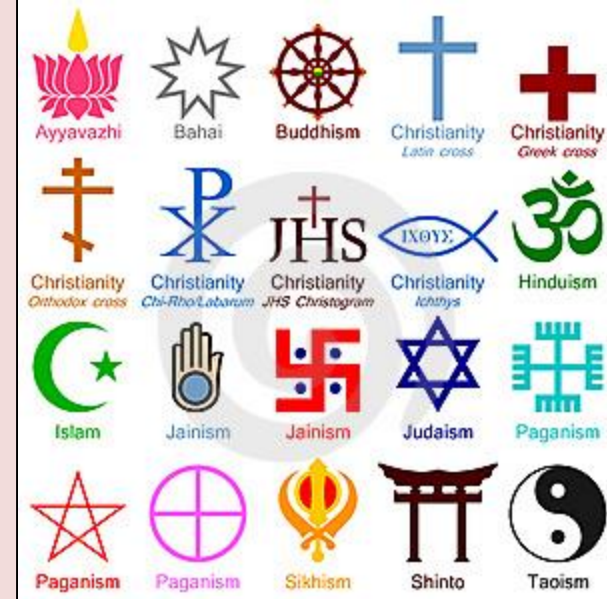
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e-makers c

European Convention on Human Rights: Ombudsman report

- People care about knowing that they are going to die.
 - Being able to prepare.
 - Where they die and with whom.
 - Also shows concern for pain-free death.
- NB: Fear of death: unexpectedness, squalor, loneliness.
 - Fear of what progression of disease will bring, therefore to control life.

Religious views

Religious argument will be the most influential one to change the law as it often dictates a person's choice.

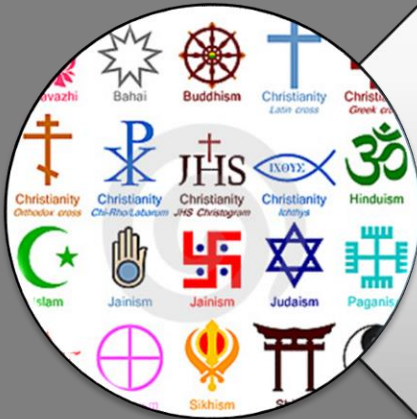


11 Sept 2015 – MP's England and Wales voted against changes in law. Warning letter to MP's: Roman Catholic Church, Muslim Council of Britain; Hindu Forum of Britain; Sikh Organisations, or Christian denominations including

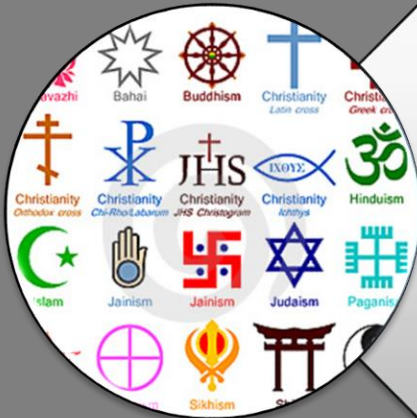


Desmond Tutu claimed he did not want his own life to be “prolonged artificially” and announced that he supports assisted suicide.

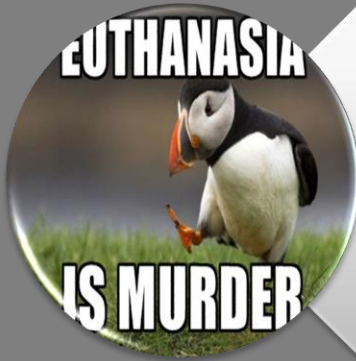
Religious view and autonomy



Can't impose your religious views on other. What makes a life worth living is subjective and specific to each individual, what is satisfactory to one person is not necessarily satisfactory for another.



Euthanasia will be immoral to some, but not to other.....



Euthanasia is killing somebody (murder) and is morally not the same as allowing somebody to die.



To have a law to permit it, the law will be lacking finesse, sensitivity and compassion to deal with the dying.



Medical knowledge is limited and can't always predict the nature of an individual's life, dying and death.



Doctors may make an incorrect diagnosis or fail to predict an individual's prognosis accurately, and even the sickest patient may recover.



When euthanasia is performed it can't be reversed.



Euthanasia may undermine the trust and confidence patients have in their doctor.



**All Life
is
Sacred.**

CEC4LIFE

The discovery of a new therapy or diagnostic error is of no value to a patient who is already dead and this risk of error weighs heavily against advocating euthanasia.



**All Life
is
Sacred.**

CEC4LIFE

Not morally acceptable to intervene and intentionally kill a patient – Maleficence and not Beneficence.

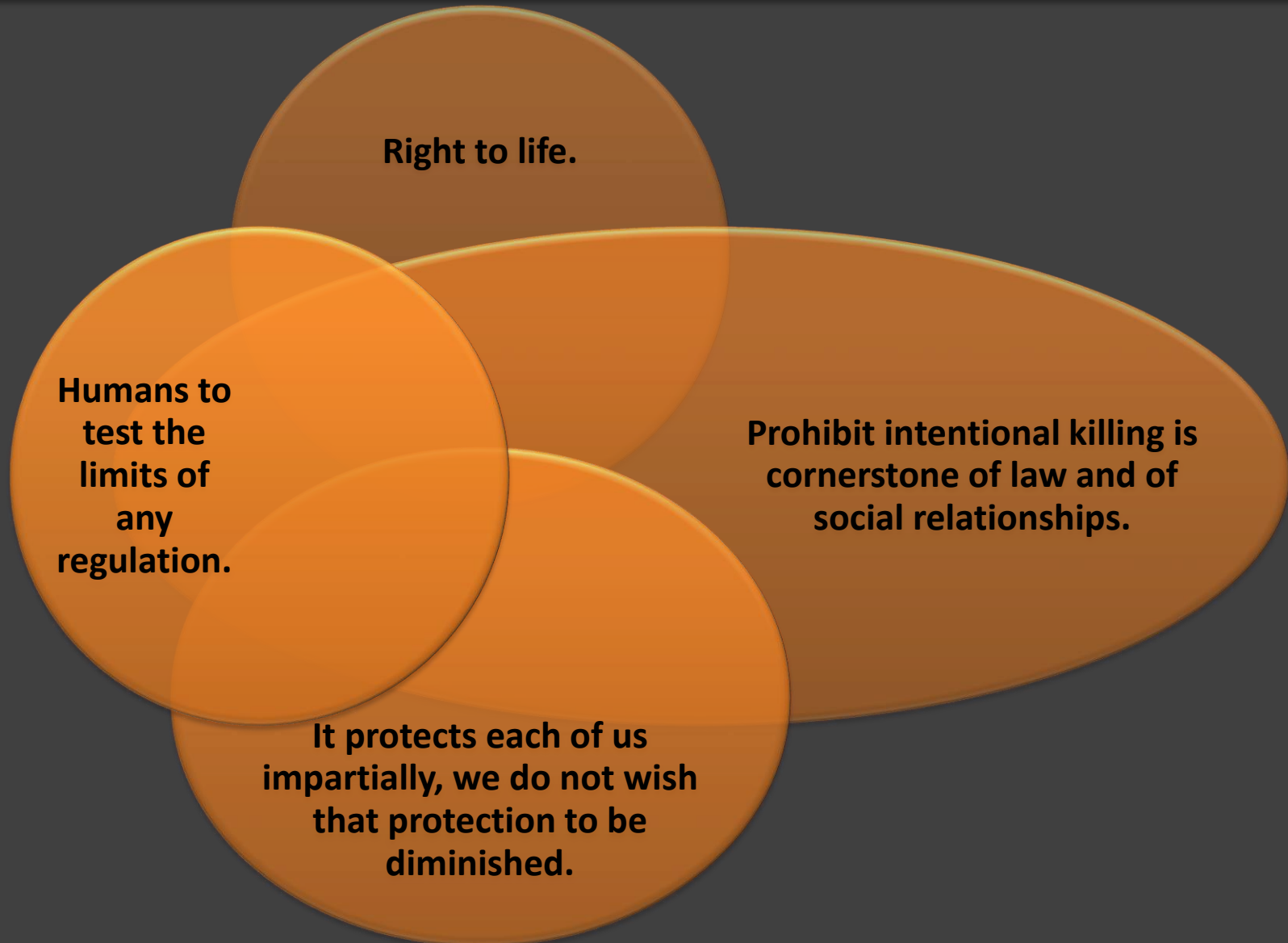


**All Life
is
Sacred.**

CEC4LIFE

Focus should be on the sanctity of life.

Euthanasia Debate



Euthanasia Debate: Anti-euthanasia

- The availability of a quick death may introduce subtle coercion on those who are frightened, powerless or feel their invalid state is a burden to others and they may choose death and not life.





Euthanasia will hamper the deep spirituality and morality of death.

The process of dying is not a science nor a problem to be solved by the application of euthanasia.

The dying process should be addressed by improving palliative care services.



Real moral issue



The central moral issues in the euthanasia debate are whether it is ever right to take one's own life and whether it is ever right for a physician to take the life of a patient who requests it.

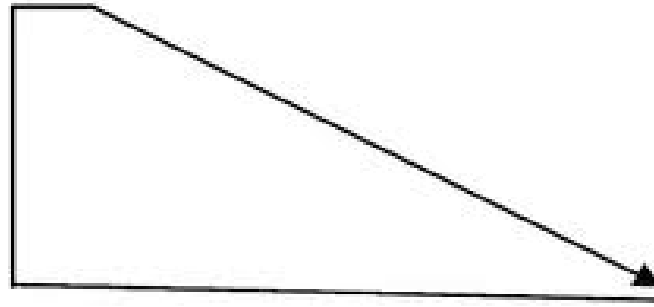


The Hippocratic Oath, expressly prohibits euthanasia. The oath reads, "Neither will I administer a poison to anybody when asked to do so, nor will I suggest such a course."



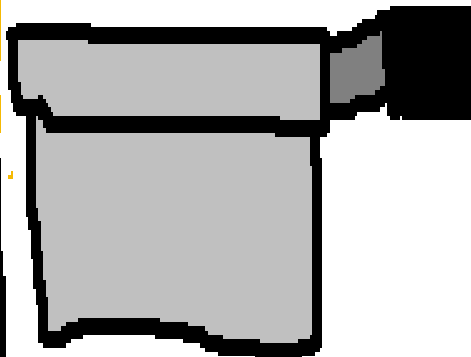


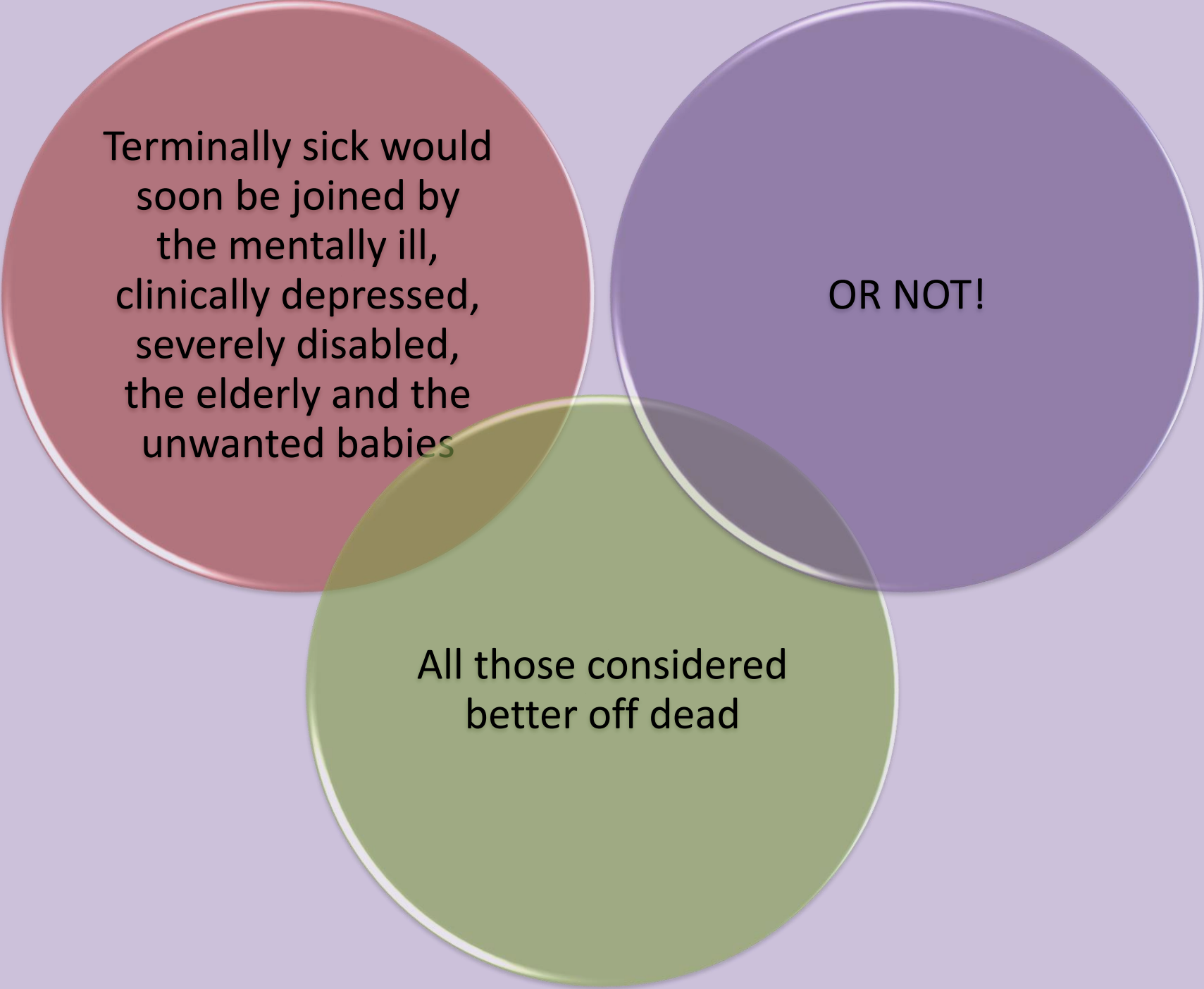
A: what is sought to be permitted



B: what is sought to be avoided

**The law has develop a long
uncontrolled momentum.**





Terminally sick would
soon be joined by
the mentally ill,
clinically depressed,
severely disabled,
the elderly and the
unwanted babies

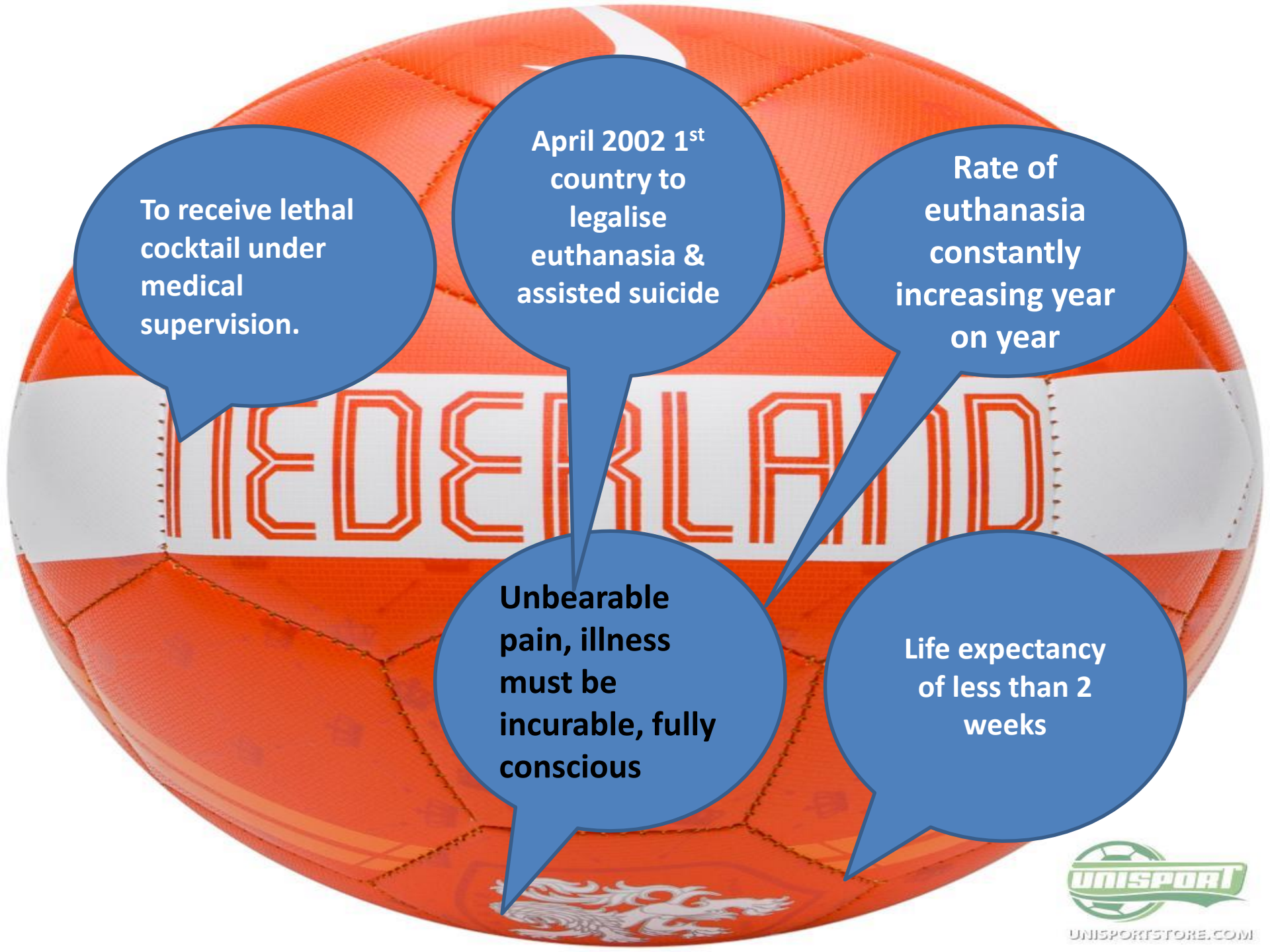
OR NOT!

All those considered
better off dead



Euthanasia legal

- 
- At least 11 countries or states which allowed assisted suicide or active voluntary euthanasia.
 - 24 May 1995 – Northern Australia passed the Rights of the Terminally Ill Act. But it was overruled later.
 - Belgium, Luxemburg, The Netherlands, Oregon, Washington, Montana. Albania, Canada, Columbia, Switzerland, Vermont, New Mexico
 - California: assisted suicide signed by Governor, Oct 2015.



To receive lethal cocktail under medical supervision.

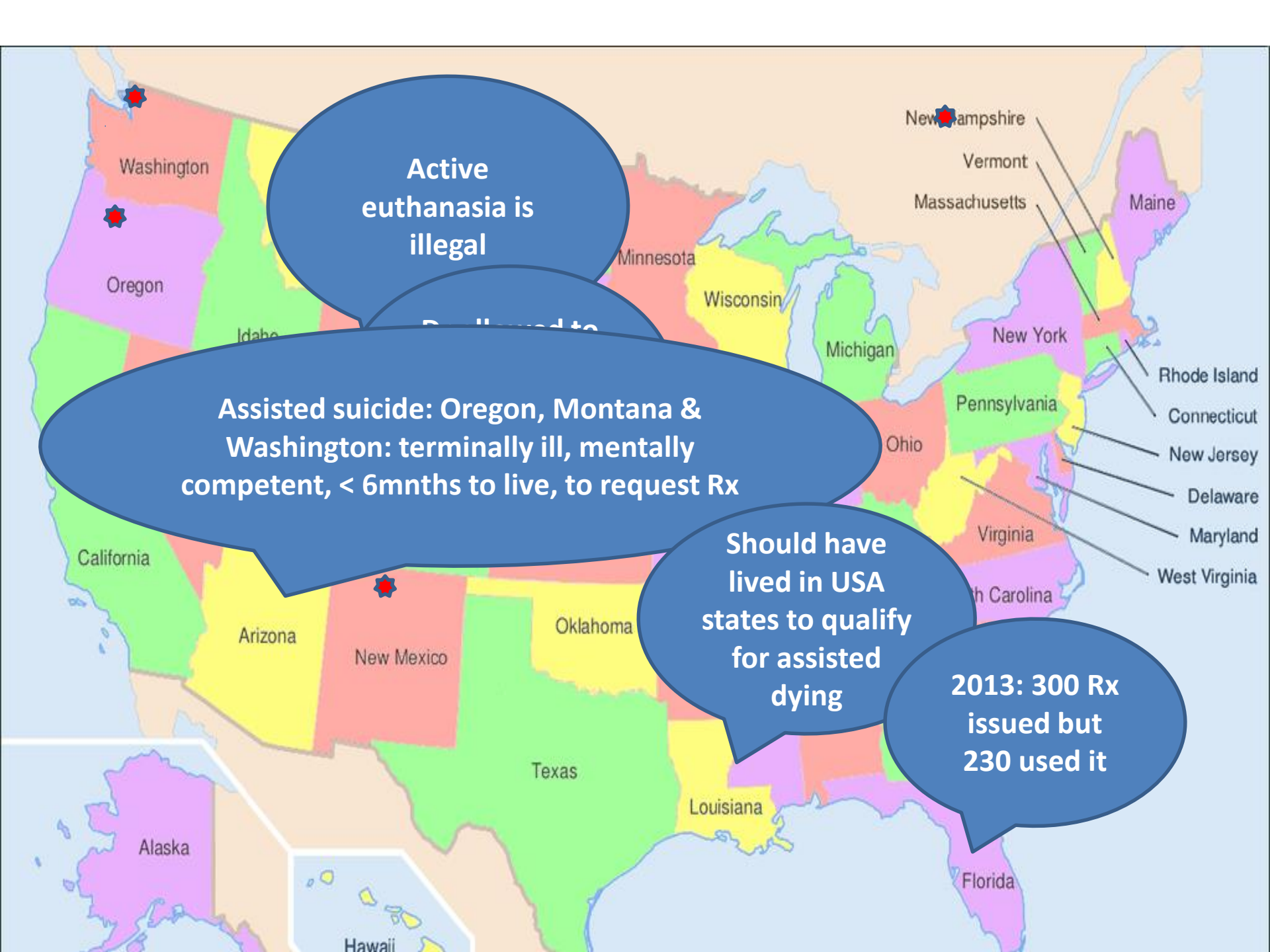
April 2002 1st country to legalise euthanasia & assisted suicide

Rate of euthanasia constantly increasing year on year

Unbearable pain, illness must be incurable, fully conscious

Life expectancy of less than 2 weeks





Active
euthanasia is
illegal

Assisted suicide: Oregon, Montana &
Washington: terminally ill, mentally
competent, < 6mths to live, to request Rx

Should have
lived in USA
states to qualify
for assisted
dying

2013: 300 Rx
issued but
230 used it



Switzerland: Assisted suicide allowed. Dr only required to prescribe cocktail, not required to be next to bedside. Pt to self administer meds.



Switzerland: organisations Dignitas and Exit; provide services for a fee.



Anyone to qualify for assisted dying – suicide tourism.

Germany



Word euthanasia not used.



Assisted suicide legal, active suicide not legal, but allow under certain situation.



NOW: Tighten the law, ban organisation such as Dignitas and Exit.

2014: 5 euthanasia cases per DAY. Increase of 27% from 2013.
2010 – 2013 increased by 89%

2002 – 2nd country

Feb 2014 – legal injection for children

Parents need to assent

Belgium

Netherlands

Germany


Antwerp

Brussels

Luxembourg

France

Assisted suicide not mentioned in law – physician to be present at the bedside

The background of the entire slide is a dark, high-contrast photograph of vertical prison bars. Light filters through the bars, creating a pattern of light and shadow on the floor and walls. The perspective is from within the prison, looking out through the bars.

Sept 2012: first prisoner euthanized. Life long prison sentence – death penalty removed.

Prisoner had a terminal illness, requested euthanasia.

9 other prisoners applied, they claim they suffer from unbearable suffering to be locked in a cell.
“dangerous” people deprivation of liberty. Not sick.

Senator: prisons overcrowded, inadequate facilities, and no prospect of a future – thus rather die than leave the prison.
Prisoners confined for 3 hours/day
2 square meters.

Prisoners apply in despair.



- to avoid prison sentence, looking for “freedom”



- is the prison conditions so bad?
- should euthanasia be used to free space in prisons?



- why did they abolish the death sentence?

Belgium 2 decades later....



it's very fashionable to ask to die in this way."

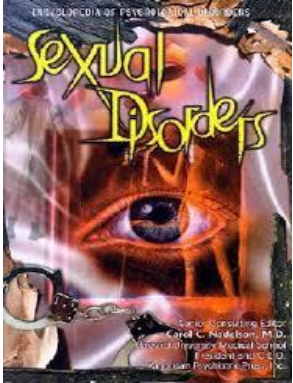
: Ethics expert on the right to
"Christian Today" Journal

- A landmark ruling in Belgium gave a convicted murderer, prisoner Frank Baeyens, a life sentence, win the 'right to die'.
- The 50-year-old filed a request for euthanasia, claiming "unbearable psychological suffering" and "uncontrollable violent sexual urges".

What am I supposed to do?
What's the point in sitting
here until the end of time and
rotting away? I'd rather be
euthanised...



Euthanasia was planned for 5 Jan 2015



The board of assessors previously insisted that he must seek psychological help, but after failing to find adequate treatment, his request was granted.

Netherlands clinic can treat, but Government denied request.



Physician to administer lethal meds: I decided to no longer act as attending physician for the euthanasia because I believe certain legal due diligence has not been respected.



We will all
decide
differently .



But we must
think long and
hard about why
and where we
draw those lines.



Society to be
involved to
participate in
debate.



Ethical responsibility

Our society have problems

Do we adequately provide care, compassion, respect, understanding and communications to those who are terminally ill?

Visit GHDonline: [Initiating End-of-Life Care Conversations](#)

Ethical responsibility



To avoid debating on a dangerously naïve view of rights, autonomy and society.

Study and learn from our euthanasia predecessors

Fundamental issue, it impacts you as the individual and your profession.

This is not about politics.

We have a pervasive lack
of an ethos of respect of
human life.

We are a
violent
society: 45
murders a
day.

Needless deaths in
hospitals through staff
neglect and indifference.

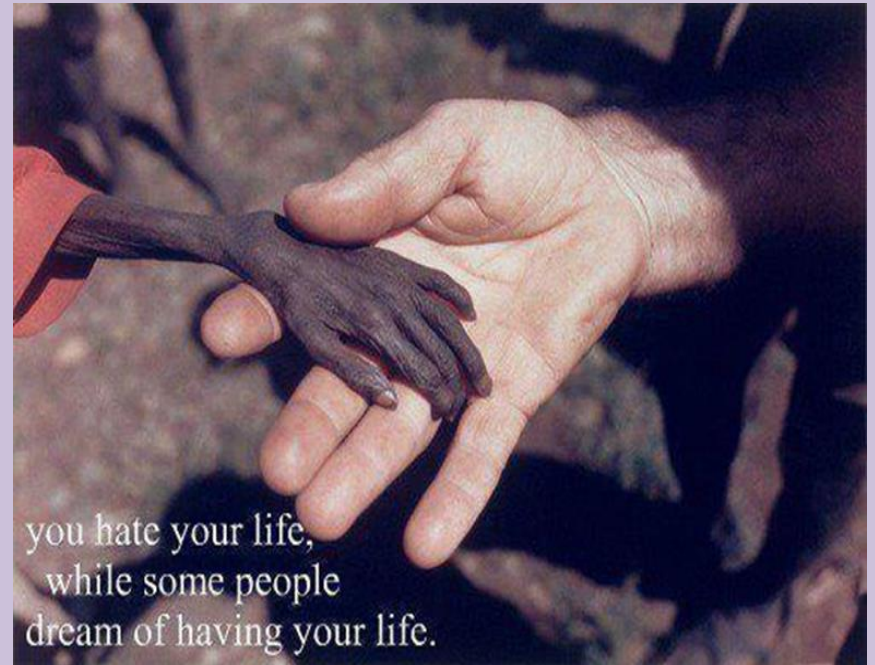
Health care
workers
down tools
during
labour
disputes.

Euthanasia Debate



Is SA a safe place and appropriate place for voluntary euthanasia legislation?

Severe constraints on health care facilities, total inadequate allocation of resources of highly effective medical treatments. Perhaps in a country with proper care for terminally ill, strong culture for respect of life, access to palliative care and well functioning judicial institutions...



you hate your life,
while some people
dream of having your life.

Dignity South Africa

- Prof Sean Davidson:
Arrested in 2010 –
assisted his mother, 85
years old, terminally ill
from cancer in New-
Zealand.



The law shall obey its own nature and not the will of legislators, and it shall inevitably bear the fruit we have sown in it.

“G.K. Chesterton”



