The Slippery Slope of the Middle Ground: Reconsidering Euthanasia in Britain

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It is an irony of progress that some of the most powerful technological advances in modern medical care that have made it possible to save the lives of thousands of people have also provided the means to prolong the suffering of others. They might be considered to be victims of medical technology that has developed in the last few decades with immense rapidity. Overly aggressive treatment in the final stages of terminal illness has exacerbated concerns regarding painfully prolonged deaths. Alongside these developments has appeared an expanding public awareness concerning individual rights under the law and the value of self-determination has gained in importance even in the legal context of healthcare. Although both the law and the medical profession have responded to the challenges of technological progress and social change, the limited possibilities for people to make decisions about the manner of their death has been insufficient to resolve the situation. There exists lively debate and an increasing number of ongoing wide-ranging research programmes that focus on the controversial issue of end-of-life decisions in modern medical care. Britain is no exception to the case, indeed: “Parliament is to re-examine the question of helping terminally ill people to die, ten years after the possibility of making it legal was rejected by the House of Lords Select Committee on Medical Ethics” (BMJ, 2003, p. 1186). More recently, a House of Lords Select Committee report has been published that would seem to take us one step further toward implementing new legislation regarding assisted suicide and voluntary euthanasia in the United Kingdom, but: “…the committee was divided on whether the law should be changed” (BMJ, 2005, p. 807). In what follows, I present a line of argumentation supporting the view that further legislation might be necessary on the issue. It constitutes a critique of the views of those who consider that the contemporary legal framework and medical practice concerning end-of-life issues might be problematic to a certain extent, but
are not worth changing in light of the possible consequences.

A few years ago McCall Smith presented, in a paper of his, some influential arguments supporting the view that the current United Kingdom law on euthanasia had reached a satisfactory level. According to him, the current law on this issue: “…represents the achievement of a morally sensitive compromise which should be left undisturbed…which satisfies the complex needs of a delicately-nuanced problem” (1999, p. 194). In the same paper, he also explicitly states that there is neither a need for legislation, nor a further need for extensive clarification by the courts on the subject. He is acutely aware that such a stance might be unacceptable for both “opposed parties” in the euthanasia debate and, moreover, according to his view on current law: “risks being branded as both complacent and conservative” (p. 194). So why is he taking these risks that accompany the position of the middle ground? Anyone who is familiar with British legal cases of the last decade concerning end-of-life medical decisions cannot seriously think that his position drives from a real satisfaction with the state of the law on this issue. The source may lie elsewhere, and might originate due to his worries concerning the long-term consequences of legal permission of euthanasia. As McCall Smith states: “…if we make euthanasia a special case, we run the risk of destabilising the law of homicide” (p. 197).

But is it realistic to think that by making a special case of homicide under the law that the strength and authority of the law would be weakened? Are there other ways for the law to lose its strength and authority? Before attempting to answer these questions we will discuss McCall Smith’s arguments in more detail as well as the main problems in current law concerning end-of-life medical decisions. But first we should make some preliminary remarks regarding the general nature of the euthanasia debate.

**Preliminary Remarks**

The issue is very complex; both its concepts and its empirical findings are controversial. Moreover, as Brazier observes: “The uncertainties and doubts that affect public attitudes towards the euthanasia debate are compounded by misunderstanding about, and lack of clarity in, the relevant law” (2003, p. 439).

In the euthanasia debate concepts are of great importance. To name is to create. The word *eu-thanasia* (good/easy-death) of Greek origin cannot be employed without the emergence of concomitant problems. The term is neither transparent, nor lacks a historical connotation with serious import; both circumstances may well, therefore, lead us to an understanding that fails to grasp the real question that is currently being asked (Macklin, 1999, p.