

A legal right to euthanasia, the most  
uncontroversial option: a reply to David  
Velleman

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**Abstract**

David Velleman argues against a legal right to euthanasia. By introducing such a right, we deprive individuals of a default option where euthanasia is illegal, forcing them to justify why they would not want to be euthanized. Consequently, they may succumb to social pressures which forces them to choose to exercise their legal right to euthanasia, even though they desire not to. In order to avoid criticism from anti-paternalists, Velleman claims this is the case for infallibly rational patients who would always choose what is in their best interests. In this paper, I highlight several inconsistencies with this view and possible responses to them. I argue, it is unlikely that infallibly rational individuals would be un-

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able to realise their top preferences, and even if they could not, this would not be morally problematic. Ultimately, it is unclear why infallibly rational patients would be harmed by an increase in their choice-set.

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David Velleman argues against a legal right to euthanasia. He contends, in offering such a right to individuals whose most desired preference is to live and not be euthanized, then such a preference becomes almost impossible to realise due to an increase in one's choice-set. Velleman distinguishes his argument from paternalist positions by introducing the caveat that he will only discuss his view in regards to 'infallibly rational patients' who will always act in their own benefit. In this essay, I will argue against this view by elucidating some inconsistencies in Velleman's argument. First, I will suggest that it is unclear why such infallibly rational patients would be unable to achieve their top preference in light of an increase in the options made available to them. I then stipulate two possible replies from Velleman. The first response would suggest there are some clear examples that illustrate how an increase in one's choice-set can be morally problematic. However, I argue, such examples are flawed because they conflate different modes which bring about pressure, namely physical and phenomenological ones. The second response would claim that such a prevention of preference satisfaction could be brought about by some degree of rational guilt. However, if such an emotion is deemed to be rational by individuals motivated exclu-

sively by their rational self-interest, then by their own lights, this is not morally problematic. Finally, I highlight some responses to my argument and the costs they entail. I conclude that either Velleman's argument is objectionably paternalistic or that there is no problem with introducing a legal right to euthanasia. Ultimately, Velleman does not provide a convincing argument against the right to euthanasia.

## **1 Velleman's Argument Against a Legal Right to Euthanasia**

Velleman argues, on consequentialist grounds, a legalised right to euthanasia can cause harm to many patients. In anticipating potential criticisms, Velleman suggests his argument is not subject to anti-paternalist objections. He asserts that his argument is not based on the claim that individuals cannot be trusted with exercising a legal right to die wisely. In order to avoid this very criticism, Velleman frames his discussion so as to include only patients who are rational and have "infallible" decision-making capacities - so that "euthanasia would therefore be chosen only by those for whom it would be a benefit"<sup>1</sup>. Therefore, Velleman argues that a legal option to the right to die might cause harm by simply being offered as it changes the ability of one to realise their top preference. He is not concerned

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<sup>1</sup> J. David Velleman, "Against the Right to Die", in *Beyond Price: Essays on Birth and Death* Cambridge, UK: Open Publishers, (2015): 8.

with other consequentialist arguments involving the effectiveness of individuals' decision-making abilities.

In this way, such harm arises not because patients may mistakenly decide to exercise their right to euthanasia, but instead due to the force that such a right will have on their ability to pursue their most desired preferences. This is because, granting patients the right to die changes their choice-set in a substantially controlling way, forcing them (in some situations) to exercise their right to die - even when they would have preferred not to, prior to the right being a legal option for them. Consequently, such individuals "will...feel some obligation to have themselves 'eliminated'", even though they "do not really want to die"<sup>2</sup>.

To illustrate this point, Velleman gives the example of being invited to a dinner party. If I invite a friend to my dinner party then I have changed the options available to him. My friend can now either choose to attend or choose to be absent from the party. But importantly, the very act of offering my friend an invitation has prevented him from having the option of being absent by default. If he wishes not to attend, he will now have to choose to do so. However, as with every action, he would have to justify his decision. Consequently, my friend may feel obliged to attend even though he had preferred not to when he was uninvited. This is because, now invited, he becomes somewhat coerced into attending as he begins to feel awkward about upsetting me by not attending and so forth. Therefore, as my

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<sup>2</sup> Ibid.

friend did not want to attend my dinner party when uninvited, but now feels obligated to attend when invited, this shows that given an unchanged preference structure, an increase in the availability of options deprives my friend of what he most prefers. His most desired preference of not attending dinner become significantly harder to achieve. Velleman claims, these attitudes are consistent because my friend choosing to be absent from my party, and being absent because he did not receive an invitation, are different outcomes. Even if rejecting the invitation may be better than accepting it, not having to make a decision at all is the best outcome. In this way, having more choices on a matter can prevent individuals from securing desired outcomes in which desirability is contingent on those outcomes occurring without being chosen<sup>3</sup>.

Similarly, by introducing the option of exercising the right to die, we have prevented individuals from having the safety net of the status quo, where they can choose not to make such a weighty decision. If elderly and infirm patients (being rationally infallible) did not want to be euthanized prior to the legal right existing, then after this right has been introduced they would be forced to justify why they do not want to be euthanized. Consequently, this justification is likely to place individuals under significant pressure that they would give into, leading to an undesirable outcome<sup>4</sup>. Velleman argues, because of this justification, which arises from the furthering of one's options, we cause harm to individuals. This is because, individuals who are

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<sup>3</sup> Ibid., 10-11

<sup>4</sup> Ibid., 9-10

in situations where they are required to make these decisions, may now begin to feel rational guilt as they believe they are, for example, an unfair emotional and financial burden on their families and so on - they become encouraged to choose to be euthanized. This change in one's choice-set which makes preferences harder to attain is, for Velleman, morally objectionable and must be avoided.

Moreover, it is not always possible to provide individuals with a second-order option to overcome this problem. For example, if inviting my friend to a dinner party would put him in an awkward position, then me asking him whether he wants to be invited would do so as well. Consequently, we must "take the initiative" in withholding options from individuals<sup>5</sup>. Ergo, if having more options can significantly change one's preferences in regards to substantive issues such as life and death, we should avoid providing such an increase in options.

## 2 My Criticism

However, I remain unconvinced by Velleman's argument. In particular, if patients are wise and infallibly rational as Velleman suggests, then an increase in their choice-set is not an issue for one of two reasons. First, if Velleman's optimally rational patient had a preference for not being euthanized prior to being burdened with the option of exercising a right to euthanasia. Then, this patient's decision to

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<sup>5</sup> Ibid.,11

choose not to be euthanized once they are presented with a legal right to euthanasia would be guaranteed to the same extent as it would have previously been, when one does nothing and accepts the default of option of not being euthanized. For this is what ‘infallible rationality’ dictates. If these sorts of patients with these sorts of preferences do not act in this way, then presumably they would be suffering from akrasia or weakness of will - but surely this is exactly what maximal rationality is meant to overcome. Our best rational selves, therefore, control our irrational fears and feelings. The supremely rational patients Velleman discusses would not be overcome with an incapacitating feeling of awkwardness when invited to a dinner party and therefore would not feel ‘obliged’ to attend. The maximally rational individuals would maintain that attending the party is not in their interests in so far as they do not want to go to it, and so would rationally choose not to.

At best, for Velleman, is that such a decision would become slightly more difficult to make as individuals now have to rationalise and mitigate these irrational emotions. Nevertheless, this does not at all prevent individuals from choosing the outcome which they would have preferred prior to the increase in options. For example, the fear of letting me down by not attending my dinner party may influence one towards attending, but this influence - by definition - would not be significantly controlling against an infallibly rational patient who did not want to attend. Therefore, it is unclear that an irrational change in preferences can occur for Velleman’s infallibly rational patients, so it cannot cause them harm.

Nonetheless, Velleman could respond to this in two ways. First, I suggest he may draw on a counter-example in order to show that even when one is rationally infallible, an increase in their choice-set may still make one's top preference harder to attain. This is because simply having an unexercised option can cause harm as it gives rise to certain coercive social and emotional pressures. In fact, Velleman attempts to do this by following Dworkin's and Schelling's analysis of the night cashier example. Velleman writes,

The night cashier in a convenience store doesn't want the option of opening the safe - and not because he fears that he'd make mistakes about when to open it. It is precisely because the cashier would know when he'd better open the safe that his having the option would make him an attractive target for robbers; and it's because having the option would make him a target for robbers that he'd be better off without it. The cashier who finds himself opening the safe at gunpoint can consistently think that he's doing what's best while wishing that he'd never been given the option of doing it<sup>6</sup>.

However, I remain unconvinced by this example. The night cashier's situation is disanalogous to that of someone faced with choosing whether to exercise a legal right to euthanasia. The night cashier is faced with a very different threat, namely a physical one. This difference between these two scenarios arises from the *mode* by which

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<sup>6</sup> Ibid.,10

the threat occurs. Moreover, this leads to a difference in the practical limit of what rationality can do in each situation. Although, the pressure and fear which arises from being held at gun point may indeed be equivalent to the type and force of pressure being faced with an option of exercising a right to euthanasia may cause, the situations differ crucially in terms of the effectiveness of what one's rationality can do.

The night cashier is faced with a very physical threat, while the patient who is offered euthanasia is not. Thus, depending on how such threats come about, will ultimately determine how effective rationality can be in overcoming them. This is something Velleman fails to acknowledge. In this way, once the cashier is held at gun point, he may be able to persuade or reason with the gunman to leave, but realistically anything short of the physical restraint of the gunman is highly unlikely to overcome the threat of being shot. Being held at gun point is an essentially physical threat and no matter how rational individuals are, the threat of being shot cannot be overcome using one's reason. But this is not true for the patient being offered euthanasia. If such patients are infallibly rational, then they would be able to act in accordance with their most desired preference and therefore overcome the pressure that arises from the introduction of legalised euthanasia. This is because there is no physical threat to them in this case, it is only a phenomenological one. Consequently, by their very nature, the most rational patients would be able to rationalise such a threat and if it happens not to be in their best interests, they would be able to overcome it.

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It, therefore, holds that for Velleman's rationally infallible patient, it would be irrational to give into the social pressures caused by the introduction of a legal right to euthanasia, if their principal preference is to live.

Second, Velleman may respond by claiming that my objection rests on a controversial understanding of the relation between one's rationality and emotions. He may claim that the awkwardness felt from receiving a dinner party invitation that one would rather not attend, or the feeling of being a burden to one's family when faced with the option of exercising a legal right to die, are (at least to some extent) rational feelings to harbour. Patients are warranted in feeling this sort of 'rational guilt'. However, if this feeling of guilt or awkwardness is rational, then how can it be irrational for some to succumb to it. This leads me to my second reason for believing that Velleman's rationally infallible patient cannot be problematically faced with an increase in their choice-set. This is because we may have reason to believe that such emotions represent some degree of epistemic truth - my family do think I am a burden on them, or that I would think less of my friend if he did not attend my party. There may be a badness to which rational individuals should attend. But depending on what individuals believe is in their best interests (as infallible rational agents), they would either accept this rationale and make decisions accordingly or they would ignore this as an irrational worry. Therefore, if an increase in options pressures one to not choose to what they may have believed was in their interests, then such a choice - if rational - would be welcomed by infallibly ra-

tional individuals. Ultimately, if Velleman's patients are rationally infallible then it is unlikely changes to their choices will occur, but even if they do, they will not be morally worrisome.

### **3 Conclusion**

In conclusion, I argue that David Velleman does not provide a compelling argument against the right to euthanasia. Velleman seeks to avoid objections from anti-paternalists by introducing the idea that his argument only applies to infallibly rational patients, who would only choose to exercise their right to euthanasia if it was the best option for them. Even with this caveat, Velleman argues that the legal right to die would further autonomy in an undesirable way because in offering such a right, harm will be caused to individuals. This is because individuals will not have the same options available to them prior to the introduction of the legal right, and consequently it is likely they will not be able to realise their top preferences.

However, I have argued this view is problematic. Velleman creates great inconsistencies in his argument by introducing the idea of 'infallibly rational patients', in his attempts to avoid anti-paternalist criticisms. This is because, it is unclear why infallible rational agents would find it so difficult to realise their preferences if they did not think such a choice was rational, and therefore in their best interests. I stipulated that Velleman could respond in two ways. First, Velleman may pose a counter-example to illustrate how one's de-

sired preference may be unattainable due to an increase in available options. I illustrated this with Velleman's discussion of the night cashier. However, this example is unsuccessful because it is disanalogous in terms of the mode by which pressure can arise by offering euthanasia to patients. The night cashier faces an explicitly physical threat, while the patient faces only a phenomenological one. Moreover, it is the case that the reaching effects of rationality are very different in the night cashier case and that of euthanasia.

Second, Velleman may claim that the change in preferences was caused by some rational guilt or emotion, which would not have been caused without an increase in options and this is what we ought to find morally concerning. Nonetheless, I responded that if an agent is infallibly rational then succumbing to pressure arisen from an increase in available options, if rational, would be welcomed and would consequently be unproblematic. The maximally rational agent would only ever act in order to realise their most desired preferences, which will always be beneficial to them.

Ultimately, this leaves Velleman with two options. First, Velleman could admit that his patient is not rationally infallible and so potential worries involving changes in succumbing to social pressures remain. However, it is unclear to what extent this is distinguishable from an objectionably paternalist argument (the type Velleman sought to distance himself from). Or, Velleman would hold that his argument is not paternalistic by maintaining that patients' are infallibly rational. But this makes it unclear why they would be unable

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to achieve their top preference and why this would be morally problematic - optimally rational agents would simply accept what is most rational. Consequently, Velleman's argument is either objectionably paternalistic or there is no problem with introducing a legal right to euthanasia. Both of these implications undermine Velleman's central thesis that there should not be a legal right to euthanasia. Therefore, overall, I believe Velleman's argument is unsuccessful.

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## References

- [1] Velleman, J. David. “Against the Right to Die”, in *Beyond Price: Essays on Birth and Death*. Cambridge, UK: Open Publishers, (2015).

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