A review of *Assisted Suicide and Euthanasia: A Natural Law Ethics Approach* by Craig Paterson, Ashgate Publishing, 2008, x + 217pp, Pbk £10, ISBN 978-0754657460 (part of the Ashgate series on Live Questions in Ethics and Moral Philosophy).

As the title of his monograph indicates, Paterson examines assisted suicide and euthanasia within the context of a natural law ethics approach, which he then uses to argue against the legalisation of both practices. As he concedes, traditionally, such an approach tends to rely on theological doctrine and religion as its basis. However, in a departure from conventional methodology, Paterson adopts a '*secular* "non-natural" approach to natural law ethics' (pp 1 and 2). This approach is pluralistic, objective, perfectionist and 'non-natural'; it is driven by reason rather than natural inclination (p 6). The role of 'practical reasoning' or 'practical rationality' is thus core to Paterson's way of thinking.

Usually 'practical reasoning' refers to the process of deliberation by which decisions are reached where the 'good' or the consequence that is being sought is already a 'given'. Paterson, however, builds on this and develops a notion of practical rationality that:

> (a) directly grasp[s] the goods that persons … seek to pursue … as … theological doctrine starting points for human well-being, and (b) generates requirements governing the way reasonable choices can be made concerning how we respond to and cultivate these goods in our own lives and in the lives of others. (p 48)

As 'practical rationality directs all purposeful action, and all purposeful action is undertaken for the sake of something good', its 'first principle' is that '*[g]ood is-to-be done and pursued and bad is-to-be avoided*' (p 49).[1] Paterson identifies a number of both 'primary' and 'secondary' goods, the most important of which is human life and health. Because practical rationality tells us that this good must not be violated, Paterson's central claim is that it is therefore 'always a serious moral wrong to intentionally kill an innocent human person, whether self or another …' (pp 6–7) and he utilises this not only to defend certain distinctions made in the law, for example as between intention and foresight,[2] and acts and omissions,[3] but also to oppose the legalisation of assisted suicide and euthanasia.

1 Or, as Paterson later explains, practical rationality 'requires us to pursue goods and avoid evils' (p 63). All italics in extracts are Paterson's.

2 Paterson defends the distinction, which is most evidently seen in the principle of double effect. This principle is used as a 'defence' by doctors when, for example, administering increasing amounts of pain-killing medication which has a known side effect of hastening death. The classic case on double effect is *R v Adams* [1957] Crim LR 365; see, more recently, *R v Cox* [1992] 12 BMLR 38 and *R v Moor* (unreported) Newcastle Crown Court 14 April–11 May 1999, and Anthony Arlidge, 'The Trial of Dr David Moor' [2000] *Criminal Law Review* 31 for details thereof.

3 This distinction also operates as a doctor's 'defence' when life-sustaining treatment is either withdrawn or withheld from an incompetent patient. Categorised as an omission to continue treatment, rather than as an act which 'kills' the patient, there is an implication that an omitter does not 'intend' (or cause) death. There are a number of relevant cases, beginning with *Airedale NHS Trust v Bland* [1993] 2 WLR 316. As a contrast, see eg *Re A (Children) (Conjoined Twins: Surgical Separation*) [2000] 4 All ER 961.

Usefully, in his introductory chapter, and mindful of the fact that his stance might be unfamiliar to his readers (p 2), Paterson begins by defining it and explaining the key definitional terms which inform his thinking and which identify the fundamental components (especially intention) that must be present in suicide, assisted suicide and euthanasia. However, whilst fully appreciating that his is a natural law approach, Paterson should have taken into account the implications of criminal law definitions of intent, particularly in his initial foray into the intricacies of *mens rea* in assisted suicide (p 10),[4] as this would have better supported, and provided a wider context for, his viewpoint.

Moreover, although Paterson does not delve into the complexities of proving causation where there has been an omission,[5] and although he defends the acts/omission distinction, he nonetheless supports the widely-held view that omissions, such as in treatment withdrawal, can be intended and can 'kill' in the same way that an act can kill (p 12).[6] He pursues this theme consistently, although as will be seen in his later analysis of the implications of autonomy and consent in non-voluntary euthanasia in chapter six, he has to compromise on his central claim that it is always morally wrong to kill an innocent human being in order to accommodate his one exception thereto. This exception is that although an omission can kill, it is nonetheless 'permissible to withhold or withdraw hydration and nutrition from PVS patients where the prior will of the patient is known, either by advance directive or by surrogate knowledge as to prior values and commitments' (p 144). While this is a valid viewpoint which is supported by the common law, it does, as will be seen below, conflict with Paterson's own interpretation of the role of autonomy.[7]

In his second chapter, Paterson bravely sets out six key 'justifications' which he states are used to support the practices of suicide, assisted suicide and euthanasia. He does this, firstly, so that he can in subsequent chapters counter these arguments, and secondly, because '[i]n order to examine a subject well, it is necessary to carefully consider the assumptions and strengths of opposing arguments' (p 15). The six arguments, based on religion, the inconsistency of sanctity of life, the value of life, self-determination, double effect, and the state's role, are effectively brought to light through a brief but detailed analysis and summary of the work of the main contributors to the debate, including Battin, Kuhse, Singer, Rachels, Glover, Harris, Dworkin, Mill and Feinberg.

4 Even though committing suicide is not an offence, the *mens rea* for aiding and abetting suicide is the same as for aiding and abetting a criminal offence. It is complex because the accessory and principal do not have to have the same intent. The relevant statutory position is contained in s 8 Accessories and Abettors Act 1861, but see the Law Commission's proposals for changes to accessorial liability at www.lawcom.gov.uk/assisting_crime.htm (accessed 12/6/09) and cl 46 Coroners and Justice Bill 2008.

5 In result crimes, such as homicide, it must be proven that a perpetrator - and nothing else - caused the consequence. This is notoriously difficult to prove where there has been an omission rather than an act.

6 Although this point has been hotly debated. See, eg, HLA Hart and Tony Honoré, *Causation in the Law* (Clarendon, 2nd edn 1985) and Luke Gormally, *Euthanasia, Clinical Practice and the Law* (The Lineacre Centre, 1994).

7 See discussion of pp 112 and 146–7 below.

Having set out these justifications, Paterson begins the challenging task of 'break[ing] down [his] … responses' to them in his next chapter, where he also proceeds to 'develop the general rudiments of [his] revised approach to natural law ethics' (p 41). It is in this chapter that he sets out what his notion of practical rationality is, and this is also where he lists and explains his notion of primary and secondary goods.

'Primary' or non-derivative goods are 'goods in themselves' which can be pursued for their own sake. They are: life and health; knowledge, truth and contemplation; practical rationality (note that practical rationality is not only the guiding factor in the pursuit of goods, it is also itself one of the six primary goods); family and friendship; work and play; and beauty. According to Paterson, these 'constitute the irreducible primary ingredients of a humanly fulfilling life' (p 50) and are pluralistic (as opposed to monistic) in nature.

The 'secondary' or non-intrinsic goods are: material goods and power; pleasure and pain; and personal autonomy. These are 'facilitative', in the sense that they can only be pursued for the sake of some other goods (p 50). In light of their relevance to suicide, assisted suicide and euthanasia, it is interesting to see that pain and autonomy are secondary, and not primary, goods, but Paterson's justification for including the absence of pain as a secondary good is that it affects our capacity to enjoy the primary health good (p 58). This explains why it is derivative. I am not however persuaded by his further argument that '[t]he experience of pain can sometimes fulfill a positive role in our lives'. While on the one hand the illustration he gives of touching a hot surface with our hands is true, on the other hand, it does not cover and is not comparable to the more serious and sometimes intractable pain suffered by chronically ill, terminally ill or dying patients.[8]

Similarly, Paterson categorises personal autonomy as a secondary, and not as a primary good. This is because it is not a good in and of itself; rather, it is an instrumental good because, as with the absence of pain noted above, it enables us to choose and follow other aims in our lives. As Paterson claims, '[t]he goodness of an autonomous choice or action will, crucially hinge on the pursuit of the objective to which autonomy is directed' (p 59).[9] So, the objective has to be good in order for the autonomous choice to be good. That the objective might be bad or that a person might use his autonomy to 'execute a profoundly self-destructive choice' is the reason why it is an 'instrumental', and not an 'intrinsic', good (pp 58–59). Thus, a person who chooses to have life-sustaining treatment withdrawn, or has left an advance directive to that effect, is making a bad decision. This, as noted earlier, does not lie easily with Paterson's single exception to his principal claim,

8 For more on this see, eg, Kathleen M Foley, 'The Relationship of Pain and Symptom Management to Patient Requests for Physician-Assisted Suicide' (1991) 6(5) *Journal of Pain and Symptom Management* 289.

9 The word 'good' is here used in a different context, and as the opposite of 'bad'. See Paterson's pp 76–77 for more on the rights and wrongs of actions. Compare Rachels, who has argued that 'the rightness or wrongness of an act is determined by the reasons for and against it', James Rachels, *The End of Life: Euthanasia and Morality* (Oxford University Press, 1986) 94.

which, ironically, is based on the patient having made an autonomous choice,[10] and moreover it ignores our right to make what may be regarded by others as a wrong or irrational choice.[11]

Having introduced us to primary and secondary goods, chapter four sees Paterson convincingly uphold both double effect and the acts/omissions distinction[12] while elaborating on the good of human life. He continues to defend the 'moral concrete absolute' that it is 'wrong to intentionally kill an innocent person' (p 77) and then, although he concedes that there cannot be a 'blanket prohibition on all forms of intentionally damaging action *full stop*' (p 80), he nonetheless asserts that the 'crucial negative demand of the primary good of human life' (ie 'that we refrain from acting in ways which violate the good of either our, or others' life and health') means that there is never a 'compelling reason' for intentionally killing an innocent person (p 81). This is particularly relevant in light of Paterson's discourse on autonomy in the context of suicide, assisted suicide and voluntary euthanasia in chapters five and six. In the former, he engages with the situation where patients have consented to death because of their pain and suffering, and conversely, in chapter six, he addresses situations where there is no patient consent.

Remembering his overriding premise and his previously expressed views on autonomy as a secondary good, Paterson refutes the generally held claim that autonomy (and pain and suffering) can overcome his assertion as to the wrongness of killing, be it by an act or by way of an omission. According to Paterson, even where there is pain and suffering, the exercise of (personal)[13] autonomy cannot justify killing oneself (or another) (p 112) because:

(i) the argument that one can be 'better off dead does not hold; death is a state of non-existence and in order to be better off, you must 'exist' (p 106);[14] and
(ii) it is based on an assessment of the worthwhileness of the patient's life, when it should be based on the worthwhileness of treatment (p 107). This is not a new sentiment,[15]

10 See discussion of pp 112 and 146–7 below.

11 See Lord Donaldson in *Re T (Adult: Refusal of Medical Treatment)* [1992] 4 All ER 649, 652–3: 'An adult patient … has an absolute right to choose whether to consent to medical treatment, to refuse it, or to choose one rather than another of the treatments being offered … This right of choice is not limited to decisions which others might regard as sensible. It exists notwithstanding that the reasons for making the choice are irrational, unknown or even non-existent.'

12 There are some novel arguments here on action types and elements of an action. As Paterson rightly notes, it would be very easy to 're-describe' an activity by concentrating on its consequence, ie that performing action X to describe consequence Y could simply be described as 'performing Y' (p 74). The problem with this is that it is a 'concealment by misdescription' which does not permit a full ethical analysis of the type of activity that X was. This supports his defence of the distinction between acts and omissions.

13 He distinguishes between personal and 'moral' autonomy; pp 112–13.

14 On this very point see Sheila McLean and Gerry Maher, *Medicine, Morals and the Law* (Gower, 1984).

15 See John Keown, 'Restoring Moral and Intellectual Shape to the Law After *Bland*' (1997) 113 *Law Quarterly Review* 481.

> and it is clearly right. However, it must be remembered that Paterson is arguing from an *objective* natural law viewpoint, and it is naïve to think that the patient's own subjective view of his pain, suffering and worth can be eliminated from the process. Moreover, there are situations where even doing '*as best we can*' (p 107) to treat pain and suffering is simply not enough.

Clearly, different considerations apply where a patient is unable to consent to treatment withdrawal. This then is the focus of chapter six, where Paterson moves on to 'assess the ethics of intentionally procuring the death' of persons who cannot or do not consent to death. He makes clear that even if individuals lose those attributes—such as capacity, consciousness or awareness—that traditionally characterise them as being 'persons',[16] they are still members of the same species and are therefore protected from intentional killing because the loss of certain functions 'are *questions of degree and not of mind*' (p 137). This would be applicable in cases of anencephalic infants and PVS[17] patients, which are the two types of patient that Paterson uses as illustrations (pp 140–3). He distinguishes between PVS patients who have previously made their will known and those who have not, and it is in his consideration of the former that he departs from his overriding premise. He argues that 'it is permissible to withhold or withdraw hydration and nutrition from PVS patients where the prior will of the patient is known' (p 144) because (i) on a balance of benefits *v* burdens, it would be an 'invasive treatment burden for that … patient' (p 145), and (ii) it is a form of self-sacrifice where the intention is not to hasten death (p 146). Contrarily, however, if a PVS patient has not previously expressed her will, (i) whether continuing the artificial nutrition and hydration would be a burden is unknown (p 148), and (ii) she 'can continue to participate in the primary good of life' (p 147).

There are two problems with this. First, it implies that persons who have previously made their will known cannot 'continue to participate in the primary good of life'. No explanation is given as to why this is so. Secondly, if a PVS patient has previously indicated that she wishes treatment to be withdrawn, then this takes priority over the negative demand not to intentionally kill the innocent and Paterson has already argued that the autonomous choice/consent of the patient does not override the negative demand (p 104). This conflict is further perpetuated by Paterson's assertion that to withdraw treatment from PVS patients who have not consented (involuntary euthanasia) would be wrong

16 Paterson concludes that a person is 'an individual who is a member of a class characterized by [certain] attributes' (p 136).

17 He provides an interesting definition of PVS as being a 'chronic state of wakefulness without awareness' (p 130). The term 'persistent vegetative state' was originally coined by Brian Jennet and Fred Plum in 'Persistent Vegetative State after Brain Damage: A Syndrome in Search of a Name' (1972) 1 *Lancet* 734. It is now more commonly described as 'Permanent Vegetative State'; see Royal College of Physicians, *The Vegetative State: Guidance on Diagnosis and Management* (2003).

because that would be to 'consciously [act] against the patient's will' (p 148). It appears then that autonomous choice *can* override the negative demand not to intentionally kill the innocent, although Paterson's reasoning does not adequately explain his deviation from his original hypothesis. This is, in essence, the only real criticism of the logic expressed by Paterson in pursuing his proposition.

Looking to the wider context in his final chapter, Paterson examines the state's role in regulating end-of-life practices. Bearing in mind that '[t]he ultimate ends of life are primary goods', a 'fundamental requirement of state action … is that its policies promote and do not undermine respect for the primary goods of persons' (p 168). Accordingly, state sanctioning of intentional killing would harm the interests of its citizens; would imply that not all lives are equal (p 171); and would categorise incompetent patients as 'non-persons' (although, as has been seen, different considerations apply to voluntary passive euthanasia) (p 172). Moreover, slippery slope arguments also endorse his view that neither assisted suicide nor euthanasia should be legalised. In fact, Paterson argues that there is no real distinction between voluntary active euthanasia and assisted suicide (p 174). Certainly, if the distinction simply rests on who performs the last act, then it has to be agreed that it is indeed very tenuous.[18]

In conclusion, it has to be said that Paterson, except for his reasoning[19] on the role of autonomy in the voluntary passive euthanasia cases, maintains his key argument both logically and coherently. Moreover, throughout his discourse, he provides some appealing insights into and ideas on, for example, the meaning of personhood (pp 132–9); the definition of death (pp 129–32); the changing role of quality of life as a measure of worth rather than as a measure of 'conditions that improve life' (pp 106–9); the nature of innocence (pp 82–85); action types and 'misdescriptions' (pp 74–75); and some interesting cases from the literature, such as *Burning Man, Captain Oates,* and *Soldier and Hand Grenade*, all of which involve some form of self-sacrifice and altruism (pp 120–5).[20] These, far from being distractions, add to the flavour of the book and enhance Paterson's novel interpretation of the topic. There is no doubt that his natural law ethics approach is a welcome contribution to the already-existing literature on this ever-developing, but controversial and emotive area of the law.

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18 See, for example, the tablet scenario described by Yale Kamisar, 'Physician-Assisted Suicide: The Last Bridge to Active Voluntary Euthanasia' in Keown's *Euthanasia Examined* (Cambridge University Press, 1995).

19 And it is simply the reasoning that is problematic. The conclusion is absolutely right.

20 Note his earlier comparison with patients who consent to treatment withdrawal also engaging in self-sacrifice in the discussion of p 146 above.