Kuhse, Singer and slippery slopes

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Author's abstract

Helga Kuhse and Peter Singer recently examined the view expressed by John Lorber that whereas at times it is permissible to allow severely handicapped infants to die, killing them must never be allowed. In attempting to demonstrate the mistaken nature of Lorber's fear that allowing active infanticide would lead us onto a slippery slope Kuhse and Singer make much use of John Harris's paper in the Journal of Medical Ethics in which he criticised Lorber's views. This paper examines some aspects of the case advanced by Kuhse and Singer and of the earlier paper by Harris.

In a recent discussion of the distinction often made between allowing handicapped infants to die and killing them, Helga Kuhse and Peter Singer (1) discuss the views of the paediatrician John Lorber at length, and attempt with some relish to dispose of them. In relation to his view that while it is at times morally correct for doctors to allow severely handicapped infants to die, they must never be allowed to kill them, Kuhse and Singer focus on Lorber's use of a 'slippery slope' argument. The slippery slope to which Kuhse and Singer refer is that which in Lorber's worst fears would lead to a repetition of the Nazi holocaust.

In an article published in 1975 Lorber (2) had written that he strongly disagreed with active euthanasia, because 'it would be impossible to formulate legislation, however humane are the intentions, that could not be abused by the unscrupulous'. He justified this claim by reference to 'plenty of horrific examples in the past' although he did not spell out what they were other than referring to Nazi Germany.

In support of their attack on Lorber, Kuhse and Singer first of all discuss the debate in the *Journal of Medical Ethics* between Lorber and John Harris (3,4). Since they seem convinced by what Harris has to say,

it is worth looking at his arguments in some detail.

First of all, Harris questions Lorber's rejection of active euthanasia on the grounds that what he says about active euthanasia applies equally to his own practices. In relation to the possibility of investing in doctors the power to decide to kill handicapped infants, Lorber had written that 'Few just or compassionate people would wish to give such a dangerous power to any individual or group of people'. Harris points out, correctly, that Lorber and others already have this power because they already make decisions about acting in ways that will bring about the speedy deaths of their patients and that furthermore '... they are very successful'. He appears to be suggesting one of two things. Either he is suggesting that if there is a slippery slope from active euthanasia to a repeat of the Nazi Holocaust then a bit further up that same slope is passive euthanasia, or he is suggesting that if allowing active euthanasia involves setting foot on such a slope then passive euthanasia is already precariously balanced on another such slope. If Harris is correct, and I believe that he is, then if Lorber still maintains that allowing active euthanasia would involve stepping onto a slippery slope, he is logically compelled to acknowledge already being on such a slope himself because he already advocates passive euthanasia.

This is a telling criticism of Lorber's rejection of active euthanasia on the grounds that it would involve stepping onto a slippery slope because of course, Lorber would not wish to admit to being on such a slope himself. However, although Harris is right to point out the moral equivalence, all other things being equal, of passive and active euthanasia, this in itself does not tell against the idea that permitting euthanasia legally would involve stepping onto a slippery slope. It is worth noting that Lorber could concede having set foot on a slippery slope and yet defend his rejection of active euthanasia further. He could do this by pointing out that being on a slippery slope need not commit him to agreeing to changes in legislation that will make it legally permissible for others to step onto the slope at a different point, especially if, as seems likely, he would consider that active euthanasia is at any rate, further down the slippery slope, than its passive equivalent. Harris could of course, chide Lorber

Key words

Euthanasia (passive); euthanasia (active); handicapped infants; Gorowitz S; Harris J; infanticide; killing; letting die; Lebensunwerten; Lorber J; Nazi analogy; selective non-treatment; slippery slopes; spina bifida.

further by suggesting that if he believes it would be wrong to facilitate the stepping onto the slippery slope by others then he (Lorber) must agree that he should step off it; if such a slope is a bad place to be then it is a bad place for anyone because wherever one steps onto it the feared lower reaches are the same.

In addressing Lorber's use of a slippery slope argument Harris firstly suggests, apparently plausibly, that '... if we fear it [the power to make life and death decisions about handicapped babies] may be abused, the best safeguard is to bring these life and death decisions out in the open, where there can be the widest possible debate and scrutiny'. But legalising non-voluntary euthanasia in such cases, even with the safeguards that he proposes, cannot protect against malpractice; malpractice could occur just as readily in a situation where restricted non-voluntary euthanasia was legally permissible as it could in a situation where it was still illegal. Harris is right in implying that the power to decide that some patients should die can be implemented even when this power is not legally acceptable. However, legalising this power in order to bring it out in the open, could not in itself guard against the slippery slope that Lorber fears, because legalising it in restricted circumstances could not in itself prevent anyone from continuing to carry on practices that were still outside the law. For example, allowing active euthanasia in the case of children with gross abnormalities that made it virtually impossible that they could survive, might not in itself inhibit those who wished to bring about the deaths of children with a far lesser degree of handicap. It might even be argued that to make some benevolent infanticide legal might make such practices more likely and of course, it is the making more likely of such practices that constitutes the slippery slope that Lorber fears. Once the euthanasia of some handicapped babies was legally accepted, it could be argued, the euthanasia of others, less handicapped, would not seem such a bad thing, to some people.

In his second point about Lorber's use of the slippery slope analogy, Harris rejects the claim that there is any analogy between Nazism and the proposal that active euthanasia should be made legal. He invites comparison of the motives of the architects of the Nazi programme with those, like himself, who advocate legalised euthanasia for severely handicapped infants. Whereas, he writes, '... under the Nazis euthanasia was simply one way of exterminating those racially or politically beyond moral consideration. ... It is precisely because we care about spina bifida children, precisely because we are in no doubt that they must not suffer, that we are concerned about what it is in their best interests to do'. Of course there is a considerable difference in motivation between those who would kill infants or allow them to die because they thought that this was in the best interests of those infants and those like the Nazis, who would do so because it was in the interests of others to do so. However, two points are worth making here. Firstly the analogy between

the Nazi euthanasia programme and a policy that allows or even encourages euthanasia for severely handicapped infants cannot be rejected even if the intentions behind each are different and I believe that in general they are different though not so different as Harris implies. Surely the point of the Nazi analogy is simply to point out that once the principle is morally accepted that some people should live while others should die, on whatever grounds, then it is possible to modify those grounds so that others may be killed. Underlying the Nazi euthanasia programme was the notion that some people could make the decision that others, innocent of any crime, should die, and underlying Harris's suggestion is the notion that it should be morally acceptable that some people should be able to decide that others, innocent of any crime, should die. If this is the analogy, then as far as I can see, it sticks. Secondly, as I have implied, the differences in motivation are not always as great as those suggested by Harris. Contrary to what Harris says about the motivation of those who advocate the infanticide of severely handicapped infants, this practice is sometimes advocated because of the effects that the lives of such infants might have on the feelings, needs, health and so on of their parents and others.

Kuhse and Singer go on to make three further points about slippery slopes.

- i. First of all, continuing Harris's attack on the Nazi analogy, they point out that the Nazi euthanasia programme began with the desire to get rid of 'lebensunwerten Lebens' or lives unworthy of life. What the Nazis had in mind was getting rid of lives that would not contribute to the health of the 'Volk', that is, of the German race. Kuhse and Singer point out that this is different from its having started with the simple desire to get rid of handicapped people. They suggest that 'Since our society does not believe in any such entity (ie the "Volk"), there is no real prospect that allowing active euthanasia of severely handicapped new-born infants would lead to Nazi-style atrocities'. But the point of the Nazi analogy does not rest upon its being the case that we share the Nazi belief in what Kuhse and Singer refer to as '... that mysterious racial entity, the Volk'. In our pluralist, multicultural society with comparatively weak notions of nationalism and national pride, economic and aesthetic considerations might nevertheless push some people towards a slippery slope where some human beings are considered to be less valuable than others just because, for example, they do not contribute to the health or wealth of the other inhabitants of this country. The point of the Nazi analogy is not that we could get onto the slippery slope in question by the same route as the Nazis. Even if Kuhse and Singer were right about its being impossible that those who do not believe in 'that mysterious racial entity, "the Volk"' could step, by their acceptance of active euthanasia of severely handicapped infants, onto a slippery slope to Nazi-style atrocities, at the same point as the Nazis, this does not mean that the step onto such a slippery slope could

not be made at some other point. It does not matter whether the slippery slope began for the Nazis with the idea of purifying the race or with the idea of getting rid of the handicapped. It does not matter at what point the handicapped began to be considered 'lebensunwerten'; what matters is that they were killed as part of a programme of active euthanasia because, being handicapped, they were considered 'lebensunwerten'.

It is a characteristic of slopes, slippery or not, that their upper reaches are continuous with their lower reaches and that hence someone who steps onto a slippery slope half way down its length is just as likely to end up at the bottom as someone who steps on at the top. The use of the Nazi analogy is surely to draw attention to the possibility that since one step can lead to another, having once taken the decision that certain types of action are acceptable, there is some increased likelihood of related actions being seen as permissible.

ii. Next Kuhse and Singer refer to evidence given by Sam Gorowitz to a United States Advisory Board enquiry into the ethics of research on *in vitro* fertilisation. Gorowitz, they relate, is an experienced skier and '... pointed out that we frequently make judgements about which slippery slopes we can handle and which we cannot'.

This analogy, however vivid, does nothing to assist Kuhse and Singer in disposing of the slippery slope argument. Let me demonstrate why by continuing the analogy. I was once a skier and as a skier I can remember many occasions when I stepped onto slippery slopes which I believed I could handle, only to find that I could not; such was my arrogance. And even when with practice I managed to moderate my arrogance and step only onto those slippery slopes that I could handle, I invariably found other arrogant young skiers on those slopes who could not handle them.

iii. Finally Kuhse and Singer refer to Clifford Grobstein's emphasis on the importance of our purposes. They write 'As long as our purposes are clearly spelt out, and we know how far we are willing to go, there is no reason to fear slippery slopes'.

This point echoes Harris's implication that having good motives somehow removes the slipperiness of the slope that legalising infanticide might involve setting foot upon. But good motives on the part of the architects of a programme of caring infanticide are not good enough. Those who advocate active euthanasia as a solution to the problem of what to do with severely handicapped infants may well have pure motives. They may well be certain of their purposes. But advocates of euthanasia, passive or active, for handicapped children are not saying that only they of pure motives and clearly spelled out purposes, should be permitted to engage in this solution to the problems such children create. They are advocating the adoption of a policy of euthanasia which despite safeguards may well be put into practice by others with less high motives and less clear purposes. It is naive to imagine that such a policy

would not be abused simply because those who were present at its conception and birth had pure motives and well spelled out purposes.

Conclusion

Whatever else they may have done, Kuhse and Singer have not demonstrated that Lorber's fear that legalising active euthanasia will involve setting foot on a slippery slope where the legal power to end the lives of handicapped babies may be '... abused by the unscrupulous', is unfounded. Harris has shown that if Lorber's fear is justified then he (Lorber) is already slithering and slipping on the feared slope.

I believe Lorber is right that there is a slope to be feared. And I believe that Harris is also right. Since, as he so elegantly puts it, '... selective non-treatment is a death dealing device', allowing babies to die and killing them are, all things being equal, morally equivalent and Lorber is already slithering and slipping, no matter how hard he tries to deny the fact. One could point out that his denial that he is on the feared slope amounts to self-deception and that self-deception in itself makes the slope all the more slippery since deceiving oneself about the nature of one's enterprise might increase the likelihood that one will slip.

So I think there is a slippery slope. I think Lorber is on it. And I think it is to be feared. And yet I believe that it is a slope onto which we must step if we are not to allow ourselves to be guilty of causing unnecessary suffering to babies that will die whatever we do to help them. Kuhse, Singer, Harris and endless others have shown that killing and letting die are equivalent to one another. However, to have done this is not to have solved the problem raised by babies who are severely damaged or unwanted because they are less severely damaged. At root the problem concerns how we manage to ensure that when people, even doctors, act, they do so for the right reasons. Harris's suggestion is that making decisions to end the lives of such babies, whether they are described as 'killings' or as 'lettings die', legally acceptable, may help by bringing decisions about the treatment of handicapped babies out into the open. And as he points out, such decisions are in any case already taken very frequently. However, as I have already said, this is not yet good enough because legislation in itself cannot ensure that people act either legally or morally correctly. What is needed in relation to the euthanasia of handicapped infants, as in relation to the euthanasia of others of whatever age, is a way of ensuring that their deaths, whether actively or passively brought about, do not occur for reasons that are morally wrong. The real problem is to decide what might constitute such reasons for ending a life.

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research. Rather, the central questions are whether the early embryo should be recognised as an individual worthy of respect in its own right, and whether specific research programmes can be justified by reference to their (intended or likely) consequences. Whether the Warnock Report or the Australian Senate Committee's report provide adequate answers to questions such as these is, of course, quite a separate matter (6).

Acknowledgment

This work was supported by an Australian National Health and Medical Research Council Special Initiative Grant to Professor J Swan, Dr J Funder, Ms B Gaze and Dr H Kuhse.

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- (1) Warnock, M. *A question of life: The Warnock report on human fertilisation and embryology*. Oxford: Basil Blackwell, 1985: 65.
- (2) Rather surprisingly (given its earlier insistence – in the Introduction – on the separateness of questions of fact from questions of value or decision), the Warnock Report seems to invite this objection to the quoted passage. For if there is indeed such a sharp fact/value distinction, how could there be a biological stage which implied moral conclusions about how to treat the embryo?
- (3) Senate Select Committee on the Human Embryo Experimentation Bill 1985. *Human embryo experimentation in Australia*. Canberra: Australian Government Publishing Service, 1986. (Textual references are to paragraph numbers of this report.)
- (4) This is a simplification of the report's position, but not, I believe, an unwarranted one. The report says only that *as yet* there is no 'compelling evidence' for the existence of a marker event (3.19). However, given its appeal to the continuity of the biological processes, it is not clear what could count *as* evidence for a marker event. Does the committee envisage the future discovery of a *discontinuity* in embryonic development?
- (5) In stressing this point the Senate Committee attaches most weight to one point of the quoted passage which is clearly vulnerable to objections. For, while it is certainly true that every stage in the embryo's development is equally necessary for that development to come to fruition, it is not therefore true that every stage is equally important. Morally speaking, the stage at which the brain is formed would seem to count for more than the stage at which the fingers or other external features are formed, even though the brain cannot be formed without the successful prior completion of the earlier stages.
- (6) I would like to thank Helga Kuhse and Peter Singer for helpful comments on an earlier version of this paper.

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