

Chapter Title: The Compassionate State? 'Voluntary Assisted Dying', Neoliberalism, and a Virtue Without an Anchor

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Book Title: Voluntary Assisted Dying

Book Subtitle: Law? Health? Justice?

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Published by: ANU Press. (2022)

Stable URL: <https://www.jstor.org/stable/j.ctv2bks5f6.8>

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The Compassionate State? 'Voluntary Assisted Dying', Neoliberalism, and a Virtue Without an Anchor¹

Daniel J Fleming

On 28 November, 2017, the Victorian Minister for Health and Ambulance Services, Jill Hennessy, published a Twitter post that read 'Victoria ... the compassionate state. ✓ #VAD #assisteddying #springst'.² The Tweet remained pinned to Hennessy's account (meaning that it was the first post seen there) until October 2018. It followed the marathon debate in the Victorian parliament – lasting more than 100 hours – which culminated in the passing of the *Voluntary Assisted Dying Act 2017*. This Act makes it legal in Victoria for individuals who meet certain criteria and have followed a set process to end their own lives by consuming a lethal substance or, in certain cases, have that substance administered to them by a doctor.³ It came into effect 19 June 2019.

1 An earlier version of this article is published in ABC Religion and Ethics Online, see Daniel Fleming, 'The Compassionate State? Voluntary Assisted Dying, Neoliberalism and the Problem of Virtue Without an Anchor', *ABC Religion and Ethics* (Opinion, 25 March 2019) <<https://www.abc.net.au/religion/compassionate-state-voluntary-assisted-dying-neoliberalism-and/10937504>>.

2 @JillHennessyMP (Twitter, 29 November 2017, 12:09pm AEST) <<https://twitter.com/jillhennessymp/status/935676976064487424?lang=en>>.

3 *Voluntary Assisted Dying Act 2017* (Vic) pt 4, div 1.

This article does not focus on the ethical issues surrounding the newly legal interventions that the Act legalises, referred to by the *Cambridge Textbook of Bioethics* as ‘physician assisted suicide’ and ‘euthanasia’.⁴ Commentaries that analyse the ethics of these acts already abound. Nor does the article in substance seek to grapple with the tragedy of those who die in pain or without adequate care: that indeed is a crucial moral question, globally, which equally tragically is circumvented when the fact of inadequate care is used as a bait-and-switch argument to propose only one solution to it. Instead, it presents an analysis of the use of the term ‘compassion’ in Hennessy’s tweet, which itself is reflective of the language and thrust of political and public sentiment following the voluntary assisted dying (hereafter referred to as VAD) debate. The claim here is that the state that legislates for VAD is the ‘compassionate state’. In the words of the Premier of Victoria, Daniel Andrews, in the media conference following the Act’s passing:

This is a day of reform, a day of compassion, a day of giving control to those who are terminally ill ... I’m proud today that we have put compassion right at the centre of our parliamentary and our political process.⁵

Compassion is a virtue – a stable, consistent and morally praiseworthy character disposition.⁶ This article considers the following question: according to what narrative is ‘VAD’ an expression of the virtue of compassion?

These questions build on the seminal work of Alasdair MacIntyre in his 1981 book *After Virtue*, which observed that contemporary moral discourse is so dysfunctional because it has lapsed into an emotivism in which ethical terminology is used in an incongruent manner, because it (1) is separated from its anchors in the bodies of thought that make it meaningful, (2) rests on different and often incommensurable assumptions or narratives, and yet (3) is communicated in public as if it has a universal foundation and meaning.⁷

4 *Voluntary Assisted Dying Act 2017* (Vic) pt 4 div 1; Bernard M Dickens, Joseph M Boyle Jr and Linda Ganzini, ‘Euthanasia and Assisted Suicide’ in Peter A Singer and AM Viens (eds), *The Cambridge Textbook of Bioethics* (Cambridge University Press, 2008) 72.

5 Cited in Jean Edwards, ‘Euthanasia: Victoria Becomes the First Australian State to Legalise Voluntary Assisted Dying’, *ABC News* (online, 29 November 2017) <<https://www.abc.net.au/news/2017-11-29/euthanasia-passes-parliament-in-victoria/9205472>>.

6 James Rachels and Stuart Rachels, *The Elements of Moral Philosophy* (McGraw-Hill, 2007) 176.

7 Alasdair C MacIntyre, *After Virtue: A Study in Moral Theory* (Bloomsbury USA Academic, 3rd ed, 2013) 10–12.

In such a context, moral discourse is unintelligible because there is no shared system of meaning that can be used to reconcile or adjudicate over moral differences – hence ‘compassion’ can be used with equal public weight to describe VAD by those who are in favour of it, and to sharply critique it by those who are opposed to it. In seeking to understand the narrative according to which VAD is seen as an expression of compassion, I therefore aim to provide a more robust framework for assessing the legitimacy of this claim. As I will show in the article, legislation for VAD makes sense as an expression of compassion only within the narrative of neoliberalism, especially in its manifestations in healthcare.

The article’s analysis proceeds in three parts. First, it uses two tangential examples and two virtues other than compassion to illustrate how the claim to virtue rests on particular narratives: the case of a soldier on a battlefield contrasted with a pacifist protester inasmuch as this refers to the virtue of courage, and the case of a Qantas flight that was delayed on account of missing pyjamas inasmuch as this refers to the virtue of justice. This allows for a deeper appreciation of the three aspects of MacIntyre’s critique noted above, and their implications.

Second, it develops an understanding of neoliberalism, including with an analysis of several ideas related to health and healthcare that are common within the neoliberal narrative. These can be summarised in an aversion to any form of economic or healthcare dependency, and a self-understanding of those who are unwell that prioritises self-governance and autonomy. In this way, I am using a ‘thick’ description of neoliberalism, which takes it beyond its thinner configuration as an economic doctrine and links this to a broader sociopolitical framework, which is also experienced by individuals on the level of self-understanding. It then considers what the virtues of courage and justice look like in this framework, before introducing the virtue of compassion and considering how VAD might be an expression of compassion according to a neoliberal narrative. The article then considers data from Oregon, which sheds further light on this point.

Third, the article considers how positioning ‘VAD’ as compassion according to the neoliberal narrative distracts from other visions of justice and compassion, and provides a number of final observations about the consequences of this.

Current thinking in virtue ethics: The battlefield and the pyjamas that delayed QF94

To begin our illustrations of how virtue is used today, we begin with a consideration of the virtue of courage. Consider the claim that a soldier on the battlefield in war is exercising the virtue of courage in contrast to the claim that a pacifist protesting against the same war is exercising the virtue of courage.⁸ Notwithstanding a retreat into some form of relativism or subjectivism, it is impossible to adjudicate on which of these is defensibly courage unless we appeal to a more comprehensive narrative, which will necessarily make claims about what the good life is, what justice is and in this particular case whether or not war is justified. On these foundations the worldview will provide a framework for determining what kind of acts are truly virtuous.⁹ On this basis, we can note that a strongly pacifist world view would not see the soldier's fighting on the battlefield as courageous (perhaps as foolhardiness), and a world view that sees the given war as entirely justifiable would not see the protester's pacifism as courageous (again, perhaps as foolhardiness or even cowardice). As the Notre Dame scholar Jean Porter argues, it is even possible to imagine such a contrast in the same person: a soldier who has a radical change of world view – perhaps on the basis of an experience of war – and becomes a pacifist.¹⁰

What is at stake here is not simply a case of the same virtue being exercised in a different context, but rather two different understandings of what constitutes virtue in the first place, founded on different narratives, and the different interests that these seek after and ultimately serve. The extreme pacifist narrative would see the good life as bound up with a commitment to nonviolence, and on that basis judge that fighting on the battlefield is not an expression of virtue. Instead, it would see the stable and consistent opposition of war as courageous. The pro-war position might see a soldier on the battlefield as the paradigmatic case of

8 Jean Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (William B. Eerdmans Publishing Company, 2005) 227–8.

9 Here my use of the word 'world view' is a replacement for MacIntyre's use of the words 'narrative' and 'story'. See for example MacIntyre (n 7) 250–2.

10 Porter (n 8) 227–8. Of course, it is possible to imagine a case in which someone says 'I admire the soldier's courage, but I do not agree with the soldier's cause'. However, most coherent theories of virtue claim that the virtues are held together as a comprehensive whole. Hence courage is only defensibly courage when it is set in the context of justice, and so on.

the virtue of courage, founding itself on a narrative that sees conflict as inevitable, holds up the capacity to fight as part and parcel of the good life, and judges the moral merits of individuals on this basis. This helps to demonstrate a key aspect of MacIntyre's critique of contemporary moral discourse: that often our moral claims rest on incommensurable visions of what constitutes the good life, and without a capacity to deal with the truth or falsity of these narratives we are doomed to an ultimately hopeless form of moral debate.¹¹

In a peculiar way, this leads us to QF94 and the virtue of justice. In August, 2012, the *Herald Sun* reported on an incident at Los Angeles airport that delayed a Qantas A380 bound for Melbourne.¹² Passengers in first and business class on Qantas long-haul flights are provided with pyjamas as part of the airline's premium package. In this case, the aircraft did not have XL-sized first-class pyjamas available for two of its first-class passengers. Declining the offer of the business-class alternative, the passengers demanded to be let off the plane. According to the *Sun's* article, one of the passengers demanded of the crew 'Make sure you tell everyone why we're so late: they didn't have pyjamas for us'. The Captain obliged, announcing to the rest of the plane's passengers, 'Just to inform you all, the reason we've had the delay is because two of our first-class passengers refused to fly on this plane as there was no extra large pyjamas on board for them'. As the story was told, the cabin erupted into laughter, though as one passenger observed it was clear that the pyjama-less pair expected common outrage.

Though a strange case, we can note a similar feature here to that which we saw in the context of the virtue of courage above, this time in relation to the virtue of justice. It is the Code of Justinian (sixth century CE) that gives us the most common definition of justice, that 'each person be given what is due to them'.¹³ In the case of the first-class pyjamas, that which was considered 'due' to each person was different when read through the lens of different classes. What was seen as a matter of just deserts in first class was an object of laughter across the rest of the plane. We can assume that for others what was considered 'due' was a safe, comfortable and timely trip to

11 See MacIntyre (n 7) 2–3.

12 Lachlan Hastings and Huda Hayek, 'Qantas Flight Delayed After Passengers Go Bananas for Pyjamas', *Herald Sun* (online, 10 August 2012) <<https://www.heraldsun.com.au/news/national/qantas-passengers-refuse-to-fly-from-la-to-melbourne-because-there-were-no-xl-sized-first-class-pyjamas/news-story/d68291bcd9eac75d1d560bf620c6cdeb>>.

13 Refer to Caesar Flavius Justinian, *The Institutes of Justinian*, tr JB Moyle (Project Gutenberg, 2009) <<https://www.gutenberg.org/files/5983/5983-h/5983-h.htm>> Book I of Persons, no I.1.

Melbourne, with or without branded pyjamas. The incommensurability of the concepts of justice at play here rests not only at a theoretical level, but also importantly at the social and practical level too: responding to the world view of the first-class passengers – or at least admitting defeat in the face of it – led to the delay of the flight for everyone else. This is no mere game of concepts: whichever vision of justice is given the trump card in a particular context will have implications for those who do not subscribe to it, and may also – at the level of action – overcome or interrupt what they consider as ‘due’ to them.¹⁴

There is a further consideration here that warrants attention. Referring back to MacIntyre’s analysis above, we can note the way in which each concept of justice is universalised by those who hold it, despite the incommensurable assumptions that sit underneath. In their request for the rest of the plane to be informed of the incident with the pyjamas, the first-class passengers revealed an expectation that others on the flight would be similarly outraged that they did not receive what they considered as their due. In the response of collective laughter, the rest of the plane demonstrated that they were operating out of a different understanding altogether. Both consider their standpoint as correct, despite the unacknowledged assumptions that rest behind them. For the first-class passengers, these assumptions included the idea that what they considered their ‘due’ was more important than the on-time departure of the flight. Many would argue that the rest of the plane was correct in its critique of this response, but that position itself rests on assumptions about which and whose priorities take precedence over others, and when.

These two examples lead us to a point at which we can now ask more nuanced and enlightening questions about the claim that the legislation of VAD is an act of the compassionate state. First, they invite a deeper consideration of the world view out of which specific moral claims arise, and hence the question we began with: according to what world view is ‘VAD’ an expression of the virtue of compassion? Second, they challenge us to critique the universalising use of moral concepts in the service of particular ends through the observation that such language can obscure the fact that those ends themselves serve the interests of particular groups and in so doing might interrupt or overcome the just deserts of others, as was the case on QF94.

14 It is hard to imagine the airline acquiescing to the delay on account of economy passengers complaining that an in-flight amenity kit was not available, for example.

Courage, justice and compassion according to neoliberalism

In answer to the first question, I argue that the world view out of which legislation for VAD can be considered compassionate is neoliberalism. Loïc Wacquant proposes that, among other features, neoliberalism includes ‘the reassertion of the prerogatives of capital and the promotion of the market-place’ as well as holding up the cultural trope of individual responsibility as the centre of personhood.¹⁵ Together, these aspects form the dominant narrative of individuals in neoliberal societies, who have internalised a framework that prioritises the construction of the individual self, largely in entrepreneurial terms and set aside from connections to tradition, history and community. Such a narrative casts suspicion on any form of dependency on others.¹⁶

Following this, the dominant ethical demand of neoliberalism is to create one’s own story and to ‘provide for one’s self’, which has both economic and health implications.¹⁷ As Peacock et al note, the neoliberal narrative coheres

around a valuing of the self-regulating, self-surveillant and autonomous self, where those who are not equal to this task face both strain and fears that others will judge them as insufficiently responsible.¹⁸

The ‘neo’ in neoliberalism takes what is laudable from liberalism (an emphasis on individual rights and autonomy for all people, balanced against the needs of the common good), and totalises the emphasis on autonomy without clear reference to the common good. In so doing, it tends to serve those who have the means to act autonomously, and so privileges those who have a certain degree of economic power, normally associated with higher socio-economic status. In so doing, it aligns neatly with various forms of free market capitalism.

15 Loïc Wacquant, ‘Crafting the Neoliberal State: Workfare, Prisonfare, and Social Insecurity’ (2010) 25(2) *Sociological Forum* 197, 213–14.

16 Wacquant (n 15) 213.

17 Marian Peacock, Paul Bissell and Jenny Owen, ‘Dependency Denied: Health Inequalities in the Neo-Liberal Era’ (2014) 118 *Social Science & Medicine* 173.

18 Peacock, Bissell and Owen (n 17) 175.

Such a narrative is reflected in the context of neoliberal policy frameworks and the way in which they address social problems. Deirdre Howard-Wagner analyses this point in regard to Australian federal policy on Indigenous disadvantage, in which neoliberal solutions address 'disadvantage through an individualistic framework of individual rights – the rights to a job, an education and housing' with the ultimate target as 'individual agency'.¹⁹ In its crudest form, this position is reflected in then prime minister Tony Abbott's recommendations for addressing Indigenous disadvantage as 'getting an education' and 'getting a job'.²⁰

This framework also leads to certain assumptions in the context of health, wherein the health of those operating out of a neoliberal narrative is predominantly seen as an individual (rather than communal) responsibility. In their fascinating study on attitudes to health among disadvantaged people in neoliberal societies, Peacock et al uncovered a common set of assumptions and beliefs, which they refer to as 'no legitimate dependency'. Collectively, they describe these as:

multi-stranded narratives in which almost everything about participants' lives were deemed to be the responsibility of the individual, who alone should be able to manage whatever was happening to them and where turning to others, or even acknowledging the need for help, was seen as weak and unacceptable. Participants described being alone with this responsibility (although in some circumstances it might be acceptable to turn to partners, but with a fear that they might not deliver and that ultimately, you would still be on your own).²¹

Furthermore:

attempts to make sense of this experience of responsibility using anything other than an individualistic frame of reference was cited as evidence of a wish to shirk one's responsibilities and duties. In other words, taking a socially contextualised perspective was interpreted as a self-serving attempt to rationalise or justify either failure or personal inadequacy.²²

19 Deirdre Howard-Wagner, 'Governance of Indigenous Policy in the Neo-Liberal Age: Indigenous Disadvantage and the Intersecting of Paternalism and Neo-Liberalism as a Racial Project' (2018) 41(7) *Ethnic and Racial Studies* 1332, 1340.

20 Howard-Wagner (n 19) 1340.

21 Peacock, Bissell and Owen (n 17) 176.

22 Peacock, Bissell and Owen (n 17) 176.

With these aspects of the neoliberal narrative in mind, we can consider how they relate to expressions of virtue along the lines that we explored above. First, courage, according to a neoliberal narrative, is predominantly concerned with the courage to undertake the human project as an individual. The paradigm of neoliberal courage is the person who ‘goes it alone’, creates their own self-identity against the expectations of others and is their own person. This is illustrated in contradistinction through the quotes above, which show what the lack of courage – cowardice – looks like according to a neoliberal framework. Moral heroes, on the neoliberal view, are those who exemplify self-mastery and self-sufficiency, able to craft their own path without undue reliance on those around them. ‘Be yourself’ is the relevant, popular, trope. The condition of possibility for realising this is often aligned with the opportunities afforded by one’s socio-economic status. It is much more straightforward for Bill Gates to be considered a neoliberal hero than it is for someone living in poverty.

As it relates to the virtue of justice, what is due in the context of neoliberalism is predominantly what can extend on the interests of the self-regulated, self-surveillant and autonomous self, held closely alongside a concept of just deserts that is indistinguishable from what is earned or bought. The first-class passengers on QF94 are an example of a neoliberal concept of justice *par excellence*. What is considered an offence against justice in this framework is therefore anything that might moderate autonomy or self-regulation, or which limits access to what can be bought. What is due to me is my self-mastery, autonomy and that which I have earned. Incidentally, it is also in this context that it makes sense to refer to those receiving care in the health or aged care systems as ‘consumers’, implying an economic mobility to be able to choose what health services one will purchase, and when. The inevitable correlate of this is that doctors, nurses and hospitals function like supermarkets – there to deliver what the consumer wants, when they want it. The relevant trope here is something along the lines of ‘I earned my place here: no-one has a right to tell me what to do with my life’.

As Aquinas noted, following Aristotle and Cicero, the virtues are inherently connected, and so now is an appropriate time to extend on this analysis and introduce the virtue of compassion.²³ This virtue takes its name from

23 Thomas Aquinas provides a synthesis of this tradition of thinking, see *The Summa Theologiae of St. Thomas Aquinas*, tr Fathers of the English Dominican Province (New Advent, 2nd rev ed, 2008) Part I-II, Question 65.

two Latin words, meaning to ‘suffer with’. In its traditional form, it has been a cornerstone of the Jewish and Christian ethical traditions, which have held it up as the highest virtue: to enter into suffering with others and respond to them is an ultimate expression of what it means to be human. The paradigmatic case of compassion in the Christian tradition is found in the story of the Good Samaritan, whose stomach turns at the sight of another person beaten and left for dead, and at personal cost and with an enduring commitment seeks to respond to him.²⁴

As we have seen, moral terms are used now in a manner absent from their original foundations, and hence it is important to note that – just as with courage and justice – compassion has a different ‘face’ in a neoliberal context. That face refers it to the dominant concerns of neoliberalism, which, as noted above, extend on the interests of the self-regulated, self-surveillant and autonomous self, held closely alongside a concept of just deserts that align with what can be earned and bought. Suffering in this context reflects the concerns of neoliberalism, which means that suffering predominantly relates to the loss of capacity in regards to self-regulation, self-surveillance and autonomy, and the capacity to be a productive citizen and thereby to earn and buy what is due. To be compassionate in this context is to suffer with the suffering that neoliberalism prescribes, and to offer solutions to that suffering that equally align with neoliberal concerns.²⁵ Abbott’s proposals to Australia’s Indigenous people make sense as an expression of ‘compassion’ in this context, and so too do the words often heard in today’s palliative care wards ‘grandma can no longer feed or go to the toilet herself – she has lost her dignity’. Both are perfectly configured, neoliberal positions.

VAD: Compassion according to a neoliberal framework

It is here that we can see how VAD makes sense as an act of compassion within a neoliberal framework. Importantly, this has little to do with a major feature of the public and political advocacy related to VAD, namely that it is necessary because of grave physical suffering. While

²⁴ See Luke 10:25–37.

²⁵ Cf Abbott’s response to Indigenous disadvantage above, which could be claimed as ‘compassionate’ on the neoliberal narrative precisely because it seeks to deliver what neoliberalism prescribes.

cases of such suffering do exist, they are relatively rare and most experts agree that the majority can be responded to with existing (not to mention future) techniques in the discipline of palliative care. However, such techniques cannot necessarily restore what is central to the neoliberal narrative. According to this view, physical suffering is less a concern than the suffering incurred by the dependency that fragility and illness entails, and its consequent loss of autonomy, self-regulation and self-surveillance. To be compassionate according to the neoliberal narrative is to suffer with these particular concerns. The commitment following such suffering with is to open up hitherto unavailable options for the exercise of autonomy in order to reinstate what has been lost, even to the extent of that ultimate expression of individual choice: to end one's life.

This position is not mere speculation. In jurisdictions in which VAD or its equivalents have been legislated, by far the dominant reasons for it being sought have to do with loss of autonomy, loss of dignity (which is left undefined in the data, though would be understood according to the dominant narrative), loss of capacity to engage in activities considered worthwhile, and becoming a burden on others. In Oregon, which has had such legislation for 20 years and has seen 1,275 individuals die through the regime, 'inadequate pain control *or* concern about it' is sixth on the list of end-of-life concerns cited by individuals who accessed VAD, with 25.8 per cent noting this as a concern in comparison to 90.9 per cent noting 'losing autonomy'.²⁶ These same trends have been reflected in Victoria, including in the recent release of the state's third Voluntary Assisted Dying Review Board report, which, while not providing statistical data, noted the same dominant reasons as Oregon for accessing VAD (loss of autonomy, loss of capacity to engage in activities considered worthwhile, and loss of dignity). Grave physical suffering as a reason for accessing VAD is not mentioned in the report.²⁷

This same narrative is reflected in an article written by members of the Ministerial Advisory Panel, which was established to consult on, and ultimately produce the framework for, the Victorian VAD legislation. The article has the express purpose of assisting other jurisdictions

26 These categories are not mutually exclusive. See Oregon Health Authority Public Health Division, *Oregon Death with Dignity Act 2017 Data Summary* (Report, 9 February 2018) <<https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year20.pdf>>.

27 Voluntary Assisted Dying Review Board, Safer Care Victoria, *Report of Operations January–June 2020* (Report No 3, 31 August 2020).

who are ‘considering similar legislative changes’.²⁸ That the neoliberal framework rests behind their considerations is borne out with great clarity throughout the document. The authors begin by noting the significance for the VAD movement of ‘the rise of the value of individualism and personal autonomy’.²⁹ This is consistent throughout: in an article of less than four thousand words, derivatives of ‘autonomy’, ‘individual’ and ‘choice’ appear nearly 40 times, and the word ‘pain’ does not appear once. Consistent with the analysis above, the neoliberal framework is assumed here rather than stated, and so deeper questions about the common good and whose interests are served by the legislation, not to mention its neoliberal underpinning, are avoided.

Those questions are helped by further consideration of the data set from Oregon noted earlier. This is updated yearly, and is readily available on the Oregon Health Authority’s website. Here I note particularly racial and socio-economic factors (the latter is indicated in this data set through educational achievement, which can be mapped to socio-economic status in Oregon). These factors relate to a further question within the article: namely, if neoliberalism is the framework according to which the virtue of compassion is being claimed, which group in society’s interests does it serve? This takes us beyond that simplistic notion introduced earlier that the claim of a virtue indicates an automatic universality, and invites us into a much deeper analysis.

First, racial demographics in Oregon. Of the 1,275 people who have ‘died from ingesting a lethal medication as of January 19, 2018’ since the legislation was enacted, 1,223 were white. That’s 95.92 per cent. Across the 20 years, of other races who sought and out VAD and died as a result of it, one was African American (0.08 per cent), two were American Indians (0.16 per cent), 19 were Asian (1.49 per cent), one was a Pacific Islander (0.08 per cent), 15 were Hispanic (1.18 per cent), and those classed as two or more races, other or unknown make up the remaining 14 (1.1 per cent).

28 Margaret M O’Connor et al, ‘Documenting the Process of Developing the Victorian Voluntary Assisted Dying Legislation’ (2018) 42(6) *Australian Health Review* 621.

29 Ibid.

While these statistics alone suggest that the legislation is primarily used by those who are white, it is important to consider them against demographic data from Oregon itself (if the trends match the demographic differences in the population, then the disparity is not significant but instead is representative of the population). One comparison suffices for this analysis – in Oregon, whites account for 87.1 per cent of the population and African Americans account for 2.2 per cent of the population. Measured against the trends in accessing physician-assisted suicide, this means that on balance white people are 30.9 times more likely to access this option at the end of their lives compared to the African American population.

Next, education demographics. Of the 1,275 people who have ‘died from ingesting a lethal medication as of January 19, 2018’, 46.5 per cent had a bachelor’s degree or higher, 26 per cent had some college education, 22 per cent were high school graduates and 5.5 per cent had less than high school education. In comparison with the population of Oregon, 31.4 per cent have a bachelor’s degree or higher, meaning that those at the top tier of educational achievements are 2.7 times more likely to access VAD than those with less than a high school education. As noted above, such educational demographics map clearly to socio-economic status in Oregon.

Similar trends in the area of race exist in Washington State³⁰ and California,³¹ in which VAD is legal and reports are publicly available. With some subtle differences, they also show similar trends in the area of class, and in gender, which sees that in all states bar California men are slightly more likely to access the legislation than women. Montana and Vermont do not publish their data, and the remaining jurisdictions, in which similar legislation exists – Colorado, the District of Columbia and Hawaii – are too recent for data to be available. Thus far, the reports provided by the Victorian VAD Review Board do not include sufficient data to undertake a similar analysis of demographic details of those accessing the regime.

30 Washington State Department of Health, *Washington State Death With Dignity Act Report* (Report, March 2018) <<https://www.doh.wa.gov/Portals/1/Documents/Pubs/422-109-DeathWithDignityAct2017.pdf>>.

31 California Department of Public Health, *California End of Life Option Act 2016 Data Report* (Annual Report, June 2017) <<https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/CDPH%20End%20of%20Life%20Option%20Act%20Report.pdf>>.

First class or economy? Whose interests are being served through the VAD legislation? And what might a contrast between them teach us?

I have already noted that the virtues are necessarily connected to one another. In any Aristotelian or Thomistic account of the virtues, all of the virtues are considered in relation to the virtue of justice. Hence, each claim to virtue must be considered against the framework that requires that each be given their due. A critical question of any claim to virtue is therefore whether it is being expressed in such a way that serves the good of all (as a vision of justice should) or only the interests of some (which we can expect of a virtue claimed on behalf of a highly specific narrative, such as neoliberalism). Autonomy is a laudable goal, but as we have seen under neoliberalism it is the autonomy of those higher on the socio-economic ladder that is served. This contradicts the virtue of justice when it is concerned with the good of all. To make a link back to our earlier example of the virtue of justice, we can now consider whether the link between VAD and compassion is more like the claims of the first-class passengers on QF94 or the claims of those spread throughout the rest of the plane. It seems clear, based on this analysis, that it is more like the former. This is a 'first-class' vision of compassion, though it is curious – and perhaps the result of the pervasiveness of neoliberal ideology in our context – that the claim to compassion gathered such wide-reaching public support in Victoria, including among groups that are normally suspicious of neoliberal agendas, and that it was led by a Labor government. That fact requires another paper for another time.

We saw in the case of QF94 that placing different visions of virtue alongside one another helped to illustrate some of the deeper concerns at play in that situation, including whose interests were being served as a priority. Here I would like to briefly place the neoliberal narrative alongside the longstanding ethic of medicine, held together across that which is broadly considered the 'Hippocratic' tradition of medicine and also the Judeo-Christian conception of healthcare and its expressions through compassion. As they pertain to end-of-life care, both of these traditions express care in the following commitments: to always comfort and accompany, to never abandon, to offer fully sufficient pain relief, even if that has the effect of hastening the end of a person's life, and to honour requests to withdraw or withhold treatments that a person wishes

to withdraw or withhold, or which have become overly burdensome. In this way, both of these traditions have developed an ethic of respecting autonomy but hold this alongside a commitment to several norms that are at the heart of healthcare practice: that one should never intentionally kill, nor assist a person to kill themselves. As examples, this is the current position of the World Health Organization, and the same is held by the official teaching of the Catholic Church. Importantly, both traditions of healthcare see access to this kind of care as a right, which aligns with the current teaching of the United Nations. On both of these views, what is due to every person – and what the ‘compassionate state’ looks like – is the state that provides such care for all of its citizens.

We saw in the context of QF94 that the privileging of the first-class vision of justice led to a small, but significant, inconvenience to the passengers who had different considerations of justice. There are more serious implications for the privileging of one narrative in the case of VAD. Before the marathon debate regarding VAD in 2017, Palliative Care Victoria noted that of the 40,000 Victorians who die every year a full 10,000 do not have access to the universally agreed upon methods of compassionate care. They estimated that it would cost a minimum of \$65 million a year to address this gap.³²

In the lead-up to that same debate, the Andrews Government announced an extra \$62 million investment in such care spread across five years, so less than 20 per cent of what was needed.³³ In the election campaign in 2018 an additional one-off \$23.4 million was added to this amount, which still falls short at only 27 per cent of what was needed. In contrast to this amount, \$6.35 million was announced for the implementation of VAD, which the government believes would be accessed by around 150 people a year (a number that was premised on Oregon’s data).³⁴ The recurring costs of VAD are unknown, and most who have been close to the implementation agree that it has – to date – cost the government far more than what was committed. This of course does not include the

32 ‘New Victorian Palliative Care Funding Announcements are Disappointing and Inadequate’, *Palliative Care Victoria* (Blog Post, 15 November 2017) <<https://www.pallcarevic.asn.au/new-victorian-palliative-care-funding-announcements-disappointing-inadequate/>>.

33 Daniel Andrews, ‘Palliative Care Boost to Support Terminally Ill Victorians’, *Premier of Victoria, The Hon Daniel Andrews* (Media Release, 16 November 2017) <<https://www.premier.vic.gov.au/palliative-care-boost-to-support-terminally-ill-victorians>>.

34 Stephanie Anderson, ‘Euthanasia in Victoria: How the State’s Assisted Dying Laws will Work’, *ABC News* (online, 22 November 2017) <<https://www.abc.net.au/news/2017-11-22/euthanasia-in-victoria-how-assisted-dying-laws-will-work/9115210>>.

incidental costs to healthcare organisations who are attempting to respond to the regime, whether or not they are participating. And then there are the significant establishment costs and resources that were committed to the passing of the legislation, which are highlighted as a matter of pride in the Ministerial Advisory Panel's article cited earlier.³⁵ This casts in clear light whose interests are being served, and what 'compassion' according to the neoliberal narrative costs. Many palliative care physicians yearn for the moment in history wherein their service is given this much attention and resourcing.

Aside from the obvious contrast with the Hippocratic and Judeo-Christian traditions of care, it is also relevant to consider how a different political narrative sees this issue, so to avoid any accusation that I am simply falling into 'right' vs 'left' or 'religious' vs 'secular' politics. To close, therefore, I refer to the telling case of Portugal in May 2018, at which time their parliament voted against the legalisation of euthanasia. This caught some by surprise, given the general direction of cultural change in Portugal, which has seen a succession of left-leaning governments and the waning influence of the Catholic Church.³⁶ In a BBC report in the lead-up to the vote, the euthanasia debate was framed as pitting 'left-leaning parties in parliament against the Catholic Church and traditional social order'. The record of the vote is far more interesting: the vote against was carried by the Portuguese Communist Party (PCP), a work of the left that explicitly founds itself in Marxist theory, and so a tradition that is diametrically distinct from neoliberalism.³⁷ António Filipe of the PCP put to the Assembly of the Republic that:

Faced with the problems of human suffering, illness, disability or incapacity, the solution is not to remove responsibility from society by promoting the early death of people in these circumstances, but to promote social progress in order to ensure conditions for a decent life.³⁸

35 O'Connor et al (n 28).

36 Associated Press, 'Portugal Considers Allowing Euthanasia and Assisted Suicide', *Los Angeles Times* (online, 28 May 2018) <<http://www.latimes.com/world/la-fg-portugal-assisted-suicide-20180528-story.html>>.

37 'A Dignidade Da Vida Não Se Assegura Com a Consagração Legal Do Direito à Antecipação Da Morte [The Dignity of Life Is Not Guaranteed by the Legal Consecration of the Right to Anticipate Death]', *Partido Comunista Português* (Web Page, 29 May 2018) <<https://www.pcp.pt/dignidade-da-vida-nao-se-assegura-com-consagracao-legal-do-direito-antecipacao-da-morte>>; On the PCP's statutes, see: 'Estatutos Do PCP [PCP Statutes]', *Partido Comunista Português* (Web Page) <<https://www.pcp.pt/estatutos-do-pcp>>.

38 'A Dignidade Da Vida' (n 37).

Conclusion

In this article, I have undertaken an analysis of the claim that the state that legalises ‘voluntary assisted dying’ is the compassionate state. I have drawn on Alasdair MacIntyre’s observations regarding the separation of moral language from the narratives that make sense of it in order to uncover the narrative framework according to which it makes sense to refer to VAD as an expression of compassion. I have argued that this makes most sense in the context of neoliberalism, and have illustrated the implications for this in terms of whose preferences are served through the VAD legislation. That neoliberalism predominantly serves the preferences of the socially privileged is borne out in discussions of its impact in healthcare, and is also reflected in the data related to who accesses VAD in Oregon. Placing this framework in contrast to different narratives, including the Hippocratic and Judeo-Christian ethics of compassion, reveals the stark contrast here, and the substantial concerns that arise when neoliberalism is used to claim that VAD is compassionate. As many laughed with the economy passengers in the story of QF94, these observations should cause any of us who object to the neoliberal narrative and its competency in matters of healthcare to pause and think before accepting the claim that Victoria is now ‘the compassionate state’.

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