Mercy Killing: Euthanasia Beyond Law and Policy

The history of euthanasia, presented in the previous chapters, began with the decline of the *ars moriendi* tradition in the early 19th century. The passing of the traditional art of dying was accompanied by the rise of medical euthanasia as a new way to die. Shortly thereafter, euthanasia moved beyond the medical sphere into the realm of positive law and social policy. Finally, during the mid-twentieth century, the technical mastery over dying furthered its reign with the emerging practice of lethal dosing. With lethal dosing, euthanasia disappeared as a problem and death became a mere side-effect of the medical effort to relieve pain.

The story of euthanasia would not be complete, however, if viewed only within this line of development, i.e., the medicalization, legalization and bureaucratization of euthanasia. While there is no doubt that the latter developments have become central to the way we die, we must also note alternative forms of euthanasia which have existed alongside and in tension with the attempts to regulate death.

This chapter presents a different practice of euthanasia, performed by a lay person rather than by a doctor. I shall refer to such cases as “mercy killings” proper, to distinguish them from the practice of medicalized and legalized euthanasia discussed in earlier chapters. Mercy killing, as opposed to euthanasia, involves neither the whiterobed physician nor the blackrobed lawyer. What further distinguishes mercy killing from
legalized euthanasia is its ambiguous legal status. Though mercy killers act in clear violation of state law, they often receive surprisingly lenient punishments.

“Mercy killings,” a New York magazine reported in 1939, “now occur in the United States at the rate of about one a week. Mercy killers are those who take the lives of some member of the family afflicted with insanity or some incurable malady. They are seldom convicted. The longest sentence given a mercy killer was three months in prison.”

The magazine report overstated the leniency in punishment, but the overall picture it portrayed was generally accurate. In over 70 documented cases of mercy killing between the 1920s and the 1960s, nearly half did not even arrive in the courts. Of the 33 cases in which court results are available, two-thirds were acquitted and in less than a handful was the defendant convicted of murder. With few important exceptions, juries sentenced mercy killers to very short prison terms, at times fully exempting the defendant from punishment. As one scholar noted, “[w]hatever the legal basis on which [such cases] were acquitted, the public will always look upon them as mercy killers.”

Most mercy killers were indeed acquitted since juries and judges have refused to call the act murder.

---

1 Windsor (NY) Standard, May 18, 1939.
2 A detailed list of mercy killings appears in the Appendix. The list is based on reported cases of mercy killings in the NY Times and in the archives of the Euthanasia Society of America. The list is, of course, not comprehensive. A significantly shorter list of mercy killings appears in Joseph Sanders’s article “Euthanasia: None Dare Call it Murder” (Sanders 1969). It is interesting to note that I was not able to locate any detailed descriptions of mercy killings prior to the 1920s. This is not to suggest that such killings did not take place, but only that they did not capture the public attention. The earliest known case of mercy killing that was brought to trial is the Roberts case to be discussed later on. There is one case in the 19th century, which does not fall into the mercy killing category discussed in this chapter but is nevertheless worth mentioning. This is the case of a mother who chose to save her children from the evils of this world by throwing them off a cliff.
3 Silving, 1954.
4 (Sanders 1969)
For many on both sides of the euthanasia debate, however, the ambiguous legal
treatment of mercy killings posed a serious problem. Common sense demanded a clear
decision: either such killings were justifiable, and then they should be formally legalized,
or else mercy killings are unjust, and should be punished accordingly. Charles Potter, the
founding figure of the Euthanasia Society of America, conveyed this sense of uneasiness:

“I recognize fully the fact that there are a number of individuals who should be
mercifully put out of their misery-- certain types of idiots and imbeciles, and
hopeless sufferers in the last incurable stages of painful diseases such as cancer.
But the act of mercy should not be performed by private citizens as it is
increasingly done today. Nor should it be done secretly by physicians. The law
itself should speedily be brought into accord with public opinion. Euthanasia
should be legalized and supervised.”

But is it not possible that mercy killing was (and still is) not merely a precipitate
and under-regulated form of euthanasia? Rather than conceiving mercy killing as a threat
to the legal order, perhaps we should try and understand it on its own terms, and ask,
what is it about mercy killing that gives rise to an ambivalent legal and moral response.
From this perspective, mercy killing would not merely be a violation of the law, but
rather an exception that does not fall under state law. Rather than prejudging mercy
killing in light of the standards of regulation, we would do better to reexamine the desire
to regulate euthanasia in light of mercy killing. Mercy killing would thus appear as a
challenge to the very attempt to systematize euthanasia through medicalization and legal
regulation. This murderous act of mercy, neither medicalized nor legalized, may lie
beyond the reach of bureaucratic regulation, adhering to no written law, and constituting
a law of its own.

---

Editorial from the *New York World-Telegram*, distributed by the ESA as a pamphlet.
What, then, is the unwritten law to which mercy killing adheres? And what can mercy killing as an exception tell us about the attempt to establish the medical treatment of dying as a rule?

**Case History**

1923 was an eventful year for the Greenfield family, which was expecting its first child. The great joy occasioned by the birth of a son turned into sadness with the growing realization that he was not developing normally. The baby was only a few weeks old when the parade of doctors began, “ranging from the neighborhood doctor to the specialist to the super-specialist.” Jerome, the experts informed the parents, was suffering from Laurence-Biedl syndrome, a condition of gradual mental degeneration. Indeed, at the age of ten the child could not talk, only babble. Despite his mental retardation, he was well-developed physically and had the body and presumably the passions of a near-adult. At the age of sixteen Jerome was six-feet tall and weighed more than 170 pounds, but had the mental age of a two-year-old. Frequently, he suffered violent and painful fits that almost drove his parents out of their minds with anguish.

Jerome was not fit to attend public school, from which he was eventually barred due to his “social and intellectual unfitness.” On two occasions the Greenfields placed the child in an institution, but each time he was taken out at his mother’s insistence because he lost weight and was not cared for in what she considered a proper manner. His loving parents decided to bring him back home. “I loved him more than a mother loves

---

6 Mr. Leibowitz, *NY Times*, May 9, 1939, 48:1.
7 *Washington Times*, May 12, 1939.
9 According to Dr. Sarah Hirsdansky, child specialist for the Board of Education.
a normal child,” explained Mrs. Greenfield. “I felt that if I looked after him myself a miracle might happen and he might show some improvement.”

Jerome spent his early adolescence living with his parents in a small apartment in the Bronx. Mr. Greenfield was a 45 year-old prosperous milliner and World War veteran, who lost his fortune after the war and could no longer afford the costs of a private institution or outside help. The responsibilities involved in raising Jerome rested solely on his wife and himself.

As the boy grew older his condition worsened – Jerome became dangerous to his surroundings. One doctor, an authority on impaired children, warned the Greenfields that they should have the boy sterilized because he posed a threat to his mother. Several incidents of paralysis attacks increased the burden on his parents. The boy’s suffering caused both his parents to deteriorate mentally and physically. “I began to pray,” said his mother, “sometimes on my knees – always in my heart, that God would take him away.” For months Mr. Greenfield was haunted by the need to bring to an end the suffering of his son, his wife, and himself.

January 12, 1939 was a cold winter’s day in the Bronx. Mr. Greenfield rose early after a sleepless night. At 9 A.M. he asked his wife, Anna, to go to their millinery shop and assist his partner, Edward Rothenstein. Sometime between 10 and 11 A.M. the son suffered a particularly severe attack, and his father put the 170-pound youth to bed, fully clothed. When the boy fell asleep, his father took the bottle of chloroform he had purchased in advance and emptied the contents onto two freshly laundered handkerchiefs. He placed the soaking fabrics over the boy’s mouth and nose, leaving them there for

---

10 (Magazine Digest, Taking Life Legally, March, 1947).
11 Wolbarst, “The Case for Voluntary Euthanasia.”
fifteen minutes. For an hour afterwards, he did nothing except pace through his apartment.

At 12:30 P.M he summoned the doorman of the house, told him what he had done, and asked him to notify the superintendent. When the latter appeared, he told him to call the police. During the police interrogation Mr. Greenfield insisted that his wife knew nothing of his intention to kill the boy.

The killing had been premeditated months in advance. On November 15, according to Mr. Greenfield’s confession to the police, he traveled to Trenton, New Jersey, where he purchased three ounces of chloroform for 50 cents in a drug store. He had had to travel to New Jersey after his first attempt to purchase chloroform in the Bronx failed, because the druggist refused to sell it.

After hearing District Attorney Samuel J. Foley and seven witnesses, the Bronx grand jury indicted Louis Greenfield on a charge of first-degree manslaughter for killing his son. The grand jury deliberated more than an hour before handing down the least severe of three indictments it might have returned – the other two being first and second degree murder.

The defendant was released on bail that was fixed at $3,000. The trial before Judge Lester W. Patterson in Bronx County Court opened on May 9, 1939. In his opening speech, the prosecutor remarked, “Even I, the prosecutor, have to approach this case with sympathy for the defendant.” However, he went on to declare that the father had broken the laws of God and man and should not be exempt from punishment.¹²

Greenfield was represented by Samuel J. Leibowitz, one of the nation’s top criminal lawyers and later one of New York’s most distinguished judges. Leibowitz
argued for acquittal on the basis of Greenfield’s temporary “defective reasoning” brought on by years of agonizing over his son’s condition. Leibowitz called to the witness stand a stream of psychiatrists and educational experts, who described Jerome as “unfit” and a “menace” to himself and others. The strain on the family was thoroughly described by Mrs. Greenfield and several of the couple’s friends. But the most crucial testimony came from Greenfield himself.

The milliner answered the questions posed by his counsel in a firm, measured voice. But he broke down when Mr. Leibowitz asked, “You loved this boy, didn’t you?” Greenfield dropped his head, covered his face with his handkerchief and sobbed for a full minute before answering, “I loved him more than anything in the world.” After Greenfield regained control of himself, the attorney asked, more in the tone of a prosecutor than a defender, “Well, you killed him, didn’t you?” Greenfield acknowledged, “Yes.” Why?” asked the lawyer. “Because I loved him; it was the will of God.”

Greenfield then went on to describe how irrepressible “voices” that came to him during his sleepless nights and commanded him to “stop his suffering,” and that such was “the will of God.” Greenfield told the court that these voices forced him to slay his 16-year-old-son as an act of “mercy.” Asked why he had chosen chloroform to kill his son, Greenfield replied, “The unknown voice in my dreams told me it was the easiest way…It said that Jerry would just go to sleep forever.” Finally Leibowitz posed the question that would determine the legal outcome of the trial, “You knew it was against the law, didn’t you?” “I knew it was against the law of man,” replied the defendant, “I didn’t want to do

---

12 (Birmingham (Ala.) Age Herald., May 13, 1939.)
it, but God urged me to stop his suffering. The law of God is mightier than the law of man.”

In his concluding remarks, the state prosecutor, Mr. Tilzer, urged the jury again and again to return a verdict of guilty and leave the question of mercy up to Judge Patterson. On each occasion he was reprimanded by the judge upon the vehement objections of Mr. Leibowitz. In his charge to the jury Judge Patterson, who quoted at length from a recent decision of the Court of Appeals concerning “defect of reason,” said:

“If you find the defendant was suffering from an insane delusion – if you find that God appeared to him and urged him to commit this act, then you must acquit him.”

Leibowitz requested the court to charge the jury that “if for any reason the defendant was suffering from defect of reason – any cause whatsoever, it need not have been insanity, any cause – so as not to know the nature and quality of his act, then he must be acquitted.” Judge Patterson so charged the jury.

After four hours of deliberation, which according to one commentator, could have been shortened to four minutes, the jury returned with a verdict of not guilty. An enthusiastic outburst took place among the fifty spectators in the courtroom. “I’m thankful to justice,” sobbed the father after he heard the jury’s verdict. “Justice has been vindicated, but I can’t be happy, for after all, I loved Jerry more than anyone in the world.”

Several newspapers responded favorably to the jury’s decision. An editorial in a California paper considered, “That, somehow seems to be the universal rule: fathers and mothers lavish affections upon a child that is physically or mentally unfit... But great, indeed must be the love of a parent who can decide upon and actually carry out such a
... we take it, the jurors must have been completely satisfied as to his sincerity and truthfulness...” Nevertheless, the editorial went on to recommend, “It would be much better to leave the decision of life or death to a commission of reputable physicians, as was proposed in the British House of Commons a few years ago.”

Mr. Greenfield killed his son. The father planned the killing months in advance, and performed the act in cold blood. According to the general principles of criminal law he should have been charged with first degree murder and sentenced to life imprisonment, perhaps even to death. The possible justifications for his action should have made no legal difference. An intentional and premeditated killing of another human being is murder, notwithstanding the benevolent motives underlying it. Thus, the fact that the boy’s life became a prolonged torment, and that his condition impaired the emotional and physical well-being of his parents, should not have made any legal difference. Nor could Mr. Greenfield’s lawyer argue self-defense, since the boy did not pose an immediate threat to the life of his parents, and even if he did, such a threat could have been prevented by less severe means.

Therefore, despite the unequivocal standards of criminal law, Mr. Greenfield was not indicted for murder, but only for the lesser offense of first-degree manslaughter. The charge of first-degree manslaughter is a puzzling one, for it implies a lack of intent to kill. The less severe charge runs counter to the undisputed facts of the case, and can only be explained by the jury’s conscious decision to go beyond the law. This decision is also reflected in the final verdict of the jury to acquit the father even from the lesser charge of manslaughter.

13 Wolbarst
14 *Shreveport Journal* (LA), May 17, 1939.
The killing of Jerome Greenfield was characterized by the press, the public, and even some jurists as a case of “mercy killing.” The case reflects a patent discrepancy between the severity which the law requires in treating mercy killings, and the de-facto exemption from criminal responsibility it granted this particular culprit.

Though each mercy killing encompasses a drama of its own, a similar pattern emerges in many other cases…

How should we understand the ambivalent, perhaps even contradictory, response to mercy killing exhibited by the courts as well as by both advocates and opponents of legalized euthanasia? On the one hand, we encounter full comprehension of the deed and feelings of empathy towards the doer; on the other hand, we see a reluctance to support the act and an uneasiness vis-à-vis its practitioner. Mercy killing appears to operate in an ambiguous zone between violence and sainthood, between life not worth living and life as sacred, between calculability and madness, between justice and mercy. The practice of mercy killing appears as a mirror image of legalized euthanasia. Mercy killing brings into question precisely what the medicalization, legalization and bureaucratization of euthanasia has strived to achieve, namely, the certainty of law in the regulation of death. What is it about mercy killing that inspires this exceptional legal and moral response?

The Gift of Death
The key for deciphering the phenomenon of mercy killing lies not in the extraordinary suffering that the act is meant to relieve, but rather in the ordinary relationship of care between perpetrator and sufferer: the relationship of kin. It would be hard to imagine an act of mercy killing outside of the kinship framework. If Sergeant Paight had not been shot dead by his distraught daughter but rather by a well-intentioned
stranger, or even by a friend, the jury would most likely have convicted him or her of murder. But there is no need for speculation. All documented cases of mercy killings have been committed within a kinship relation (with perhaps one exception, in which the killer was a very close family friend). This generalization is only valid, of course, with the qualification that killings performed by physicians or medical staff by definition fall under the different category of medical euthanasia, and not mercy killing proper.

Yet, it is not so simple to understand why. There is, of course, an obvious explanation: a close relative is likely to be aware of the person’s suffering and have both motivation and opportunity to perform the act. But practical considerations alone cannot explain the extraordinary legal status of mercy killing. Kinship, as we shall see, goes deeper to the heart of mercy killing, for it stands as a law on its own, at times superseding the positive legal prohibition on murder…

Mercy killing follows a law of its own, a law whose source lies in family relations. But it is not kinship as such that motivated Mr. Beers. Not just any close relative would perform such a dreadful act. It was Mr. Beers’s unique and untransferable role as Frances’s sole provider which led him to kill her. It goes beyond the fact that Frances had to be cared for, and that Mr. Beers fulfilled her needs in a way anyone else could have. His obligation was unique, stated in the first person singular, an inalienable commitment. And this led Mr. Beers to rule out the option of leaving Frances in the hands of a mental institution. We may thus characterize mercy killing as an act of destruction arising out of a familial obligation to care. This extraordinary act of taking life follows a paradoxical justification: “Only I truly cared for her, therefore I had to kill her.”
The shift from caring into killing also appeared in the case of a 27 year-old mother who walked into the Newburgh Police Headquarters with a dead child in her arms, and explained: “I could not feed him. I could not see him hungry. So I walked into a creek until the waters were over his head.” The mother was first sentenced to death and sent to the infamous Sing Sing Death House, but after her appeal was accepted the punishment was limited to a short jail term.

How does the duty to care transform into a death wish? Mercy killing can be perceived as the final step in a long series of acts of care. It is only after the duty to care for life becomes frustrated that ending life emerges as a possibility, perhaps even as a duty. Mr. Beers and his wife always gave Frances “more” than they gave to their other children. It is only out of the frustration of his duty to do more that Mr. Beers felt the need, the duty, no doubt even the privilege to take the life of a child. His act of mercy killing can be seen as the final act of giving bestowed on his child. It is an act undoubtedly more questionable, but not less demanding than the giving of life – the poisonous gift of death.

As the above cases demonstrate, the most common relationship in mercy killings is that between parent and child. At times, however, the deed is committed not by a parent or child, but by a sibling or loving partner. Here, too, the governing principle remains the same. The killing is not performed by just any close relative, but is confined to the unquestionable caretaker. For that person, mercy killing appears as an inescapable task, just as the caring itself had been. Thus, when two sisters killed their mentally retarded brother, whom they had nursed day and night for twenty years, they justified their action by claiming that they did so not only out of love for their brother, but also to
fulfill a promise to their mother to care for their dependant sibling. Although they were tried for murder, as in so many cases of mercy killing, the sisters ultimately received a lenient sentence, and were released within a short period from the Broadmoor Institution for the Criminally Insane.

Mercy killing is motivated by an inalienable duty to care. As a one-sided duty, mercy killing does not depend on the expressed death wish of the suffering person. Unlike attempts to legalize euthanasia, the logic of mercy killing does not require consent. In this sense too, mercy killing follows the logic of a gift, which remains a gift whether or not requested or even expected. Legalized euthanasia attempts to turn the gift of death into a contract. Under legalized euthanasia the spontaneity of the gift assumes the predictability and calculability of a legal transaction. This is not to suggest that mercy killings are never preceded by a death wish. Rather, the point is to understand that a request for mercy killing by the victim is not a precondition for the act’s unique legal status. As the following 1920 case of People v. Roberts demonstrates, the lenient treatment afforded to mercy killing does not at all depend on the voluntary nature of the act. 15 …

A sincere commitment to care underlies most reported cases of mercy killing. But the desire to relieve the suffering of a close family member is not the only motivation underlying the practice. Mercy killing is not merely a benevolent act of grace. What makes it a complex phenomenon is precisely the way in which care for another is accompanied by care for oneself, and the altruism of the merciful deed is joined by the self-interest of relieving oneself from the burden of care. Mr. Greenfield killed his son, not only to relieve the boy’s suffering, but also to save his wife and himself from the
impossible life they had come to live. A similar motivation led Mr. Cahill, a former Mayor of Watertown, New York, to strangle his wife who had been ill with a nervous disorder for nearly eight years. In a public statement justifying his action he did not hesitate to point out his self-interest in her death, allowing the newspapers to report: “her illness had worn him out because of the care he had to give her and from lack of sleep.”

This less favorable aspect of mercy killing is not accidental, but is inherent to the practice and further sets it apart from medical euthanasia. For a physician to ethically perform euthanasia, he must assure himself and others that the killing is purely for the sake of the suffering patient, and that the physician has nothing personally or institutionally to gain, otherwise his act will be morally tainted. [There are different ways to guarantee this demand. Among others are the need to consult other professionals, the decision should not be made by a physician from the same hospital ward.

With mercy killing, however, it is impossible to separate motives in this way. The special relation of care is at once the source for both altruistic and egotistic motivations. Self-interest does not taint the moral character of the deed, but on the contrary gives the act its unique moral aspect. Mercy killing is at once a performance of the duty to care and the annihilation of that duty. Thus, a further paradox of mercy killing comes to light in a more precise reformulation of its justification: “Out of care for her suffering, I killed her to relieve myself of my own suffering.” One judge justified his lenient verdict in a 1954 case in which John Petyo strangled his sick wife. Judge Edward A. McGrath explained: “There are times when a human being can’t take it any longer. Petyo was a devoted

---

16 Apr. 20, 1942, Watertown, NY Times.
husband. Few men are as kind to their wives.”\textsuperscript{17} Here we have an example of a judge expressing the paradoxical nature of mercy killing by suggesting that few men are as kind to their wives as to strangle them when they can’t take it any longer…

Mercy killing embodies a tragic collision between the good will of the perpetrator and the horrifying prospects of the deed, between the unwavering prohibition of the legal system and the merciful compassion of the bystander, and most significantly between two normative orders, that of the state and that of the family. It is almost as if underlying the well-ordered legal system of the modern state lies hidden a different moral order: the natural relations of the family counter to the human-imposed laws of the state. But it is not as if the natural relations of blood forcefully overpowers the authority of the state. On the contrary, it is that precisely within the legal operations of the state that the alien laws of blood are recognized. And it is at the alter of the modern legal system, in the courtroom, that sanctuary is granted to the mercy killer.

**Mercy Killing in Court**

The most striking aspect of mercy killings, as we have seen, is the disparity between the severe sanction that exists on the books, and the lenient sentencing that takes place in practice. We are now in a better position to understand this discrepancy and explain why judges and juries \textsuperscript{overwhelmingly} acquit mercy killers even as the law demands that they be found guilty of murder and punished accordingly.

Unlike ordinary criminal trials, there is usually little dispute concerning the facts in mercy killings. The perpetrator most often turns himself into the police immediately.

\textsuperscript{17} Vol IV, no. 10, March-April 1954 \textit{(Herald Tribune}, March 20, 1954).
after committing the deed, prior to any investigation or criminal trial. Lack of incriminating evidence is not, therefore, the reason for the high rate of acquittals.

It is very likely no coincidence that in the one notable case in which the killer did not confess his actions, the court found him guilty of murder, and sentenced him to death by electric chair. This was the case of John F. Noxon, a well-to-do lawyer from Pittsfield Massachusetts, who was charged with killing his mentally deficient son. The prosecution charged Noxon with first degree murder for killing his six month-old Down Syndrome son by wrapping him in a lamp cord and electrocuting him. Noxon denied he killed his son and claimed that the child’s death was an accident. He testified that he was about to repair a broken radio in his library when he realized he forgot his tool box in another room. When he returned to the library after a brief absence he found the baby entangled in an extension wire lying on the floor. He said he had put the child in a metal tray on the floor because he feared the infant might fall from a chair where he had been left.

The prosecution contended that an electrically charged wire had been purposely “clamped” to the baby’s arm. Noxon was convicted of first degree murder. His death sentence was commuted to life. Later, his sentence was further reduced to six years to life in order to make parole possible; this occurred shortly thereafter (Jan. 4, 1949). The Massachusetts Supreme Court affirmed the trial court’s decision and denied Noxon’s appeal for a new trial based on technical grounds.¹⁸

As likely as the defendant is to confess the facts, he is equally likely to deny his guilt. It is rare for the accused to express any remorse for committing the deed. But neither will he speak out against the law, call for its amendment or imply any injustice.

The mercy killer does not wish to defy the law, but nevertheless refuses to adhere to it. He acts as if his murderous deed is not governed by ordinary criminal law, but instead comes under a higher legal order. In the Repouille case in 1939, the defendant killed his “blind, deaf and deformed” 13-year old child, calling this an act “of mercy.” He later told the detectives: “If I had to do it again, I’d do it... I know I did the right thing in ending my son’s misery.”

As noted above, the absence of incriminating evidence is not the reason for the high rate of mercy killing acquittals. And yet it is relatively rare for a jury to return a verdict of not-guilty in murder cases when the defendant admits to the facts of the case. On what grounds, then, do juries and judges find the defendant not guilty?

The most common line of defense in mercy killing trials is insanity. In some instances, the mercy killer will not even be brought to trial because the state psychiatrist declares him mentally insane and thus legally incompetent. In such cases, the defendant is likely to be confined to a mental institution. In other cases, however, the defendant will be declared competent enough to stand trial, but will be exempt from criminal responsibility on the basis of the more limited “temporary insanity” defense. Courts may find a defendant as temporarily insane if his attorney can demonstrate that at the time of the crime, due to a disease of the mind, the defendant was unable to understand the nature of his actions, or their wrongful moral character. The legal defense of temporary insanity does not require that the defendant show previous signs of a mental disease. This line of defense allows great flexibility for juries and judges to find the accused not guilty.

For many observers, the insanity defense, whether temporary or prolonged, serves as a loophole offering an easy way out for juries who sympathize with the defendant and

---

19 The Repouille case was reported by the *NY Times*, October 14, 1939.
do not wish to convict. But the legal defense of insanity suggests something beyond that, and we should consider it more than at face value. Declaring mercy killing as an insane act implies that the action escapes human intelligibility. But insanity here does not simply mean “craziness” in the popular or medical sense. The insanity of the mercy killer signifies more closely what the ancients meant when they spoke of mania and attributed manic powers not only to the madman, but also to the prophet and poet. Rather than being unintelligible, the latter transcend ordinary intelligibility. In the same way, the mercy killer does not merely violate the law, but transcends it by obeying a different legal order arising from a kinship relation, or at times, as in the Greenfield case, following a command from God.

In this sense, the insanity defense is a way of saying something very simple but striking: “We, judges and jury, understand that the action performed by the accused was not committed in defiance of state law, but instead followed a law of its own, and therefore cannot be judged by the standards of ordinary criminal law.” The act of mercy killing is not unintelligible, but instead belongs to a different order of intelligibility, and it is this level of understanding that can be granted to the accused. As Miss Haug, who was acquitted after killing her loved one explained, “I’m so glad you could understand,” she told the jurors. “That means more to me than freedom.”

There are good reasons for seeing at least some mercy killings as insane. A further aspect of mercy killing that distinguishes it from medical euthanasia are the extreme means used to bring about death. The sterile death produced in medical euthanasia by using chloroform or morphine is replaced in mercy killing with violent means. One need cite only a few instances, such as Mr. Beers who killed his daughter
with a wrench and an ice pick, or the case of Mrs. Mumford who put her son in a gas oven after the doctor pronounced the child to be incurably retarded. Or the horrifying case of Mr. Matlock, who admitted striking his mother with a jar, hammer and bottle and stabbed her “15 or 20 times” above the head with a hunting knife.

The defense of insanity is only one channel for passing a lenient judgment in mercy killing cases. The strict application of legal rules has not been a common response to this act of mercy. The courts are more likely to match the mercy of the killing with the mercy of judgment. One of the most striking trials in this respect took place in the courtroom of Judge Clyde Webster in 1952. The defendant, William R. Jones, a factory worker, was charged with electrocuting his diabetes-ridden wife. Jones told how his wife was in constant pain after both her legs were amputated and begged him to “take me out of all this.” Both Jones and his wife agreed to a suicide pact. They were to take turns sitting in a bathtub of water with electric wires wrapped around their bodies. Jones’s wife, who went first, died almost instantly, but a relative arrived unexpectedly before he could fulfill his part of the bargain.

Jones, aged 62, was convicted of second-degree murder and sentenced by the judge to serve a year and a day, “a minimum sentence.” The sentence was passed during a tearful courtroom scene. Both judge and defendant wept freely as the case was reviewed before the sentence was passed. “I want to thank you, Judge, but I can’t talk” said Jones, when it was all over. “I can’t either, very well,” said Webster as both men lifted handkerchiefs to their eyes to dab away tears. “I can’t hold that you had a right to kill your wife,” Webster told Jones. “All I can do is show you every consideration I can.

With the sentence I hope you’ll still have some happiness ahead.” Defense counsel said a request for parole would be made immediately, and the judge prepared an urgent appeal to the state parole board for leniency. \[22\] …

---
