
End of Life Care for the Incarcerated

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As the prison population ages, a new need has come to light – caring for those who are in the final stage of life. This paper will examine the current end of life services provided to those in prison throughout the United States. After a general awareness of the system is presented, a more complete discussion of end of life care for prisoners will be considered, in light of ethics, social justice, and the Christian perspective. The two care options presented, hospice care and compassionate release, are observed through these lenses. In order to make a decision on how to care for elderly inmates, these issues must be considered seriously, providing the ethical and fair death experience for a growing population of American society.

The prison system, as it is now, is the setting for convicted criminals to serve out sentences of one year or longer. Prison, which originally was a place to house those awaiting their public punishment, now serves for many as the place to wait out the ultimate punishment, death, whether that comes from age, illness, or execution. In this paper, end of life (EOL) care for dying prisoners will be evaluated from various ethical perspectives, in light of reforming current practice: hospice or compassionate release.

The current system, for those not sentenced to life without parole, appears to be that of punishment rather than a system for rehabilitation. It would seem logical to create a system that equips individuals for success outside of prison upon their reintegration into society. If during their stay a change can be made through educational programs, job training, and even psychological aid, prisoners will likely be better prepared to become contributing members of society upon release, as opposed to when entering the criminal justice system.¹ Until the mid-1970s, the

prison system functioned as a system of rehabilitation. However, during the mid-1970s a stricter system was implemented, especially for drug related crimes. This caused the prison population to rapidly increase, at a rate facilities could not handle.² To accommodate the increased influx, rehabilitation programs were cut to reallocate money towards feeding, housing, and guarding the prisoners. This meant a key piece of the rehabilitative effects of prison were lost; providing enough beds became more important than having educational programs.

One aspect of prisoner care that is seldom talked about is health care. While it is required, in accordance with the ruling in *Estelle v. Gamble* (1976), there is very little regulation, but much controversy. This controversy was apparent when researching the system – the lack of specific data is appalling on a national level. For example, in a Bureau of Justice Statistics report on monitoring of in-prison deaths from 2001 to 2007, 82% of all deaths in this period were attributed to illness. After reading through all of the findings reported, there seems to

¹ Davis, 2013, pp xvi-xvii

² Benson, 2003

be no further discussion as to what is considered illness, which raises questions of whether these deaths were preventable, caused by a lack of care services, or if they were unpreventable or terminal illnesses.³ Enhanced data collection in only a few states have appeared more recently. For instance, a study on California prisons took all deaths in 2014 and categorized them into “possibly preventable,” “non-preventable,” and those deaths possibly aided by lapses of care. The results demonstrated that a great number of deaths were not preventable; however, 30% of “possibly preventable” deaths were accompanied by lapses of care.⁴ There are a number of questions that surround this issue ranging from what level of care is appropriate to how should it be funded.

How do these questions apply to the needs and interests of the general public? Most citizens have no deep ties to the justice system since they have no incarcerated relatives or friends. Yet, with the vast numbers of people incarcerated in the United States, citizens should be concerned with the health care prisoners are receiving. Without it, the potential health risks to the U.S. population are great ranging from the heightened chances of contracting a communicable disease, to the increase of taxes that could burden the free citizens when a released prisoner who has not received care in years, now requires repeated emergency treatment.

In an *American Journal for Public Health* article, it was suggested that prison is one of the largest incubators of tuberculosis (TB), which is often left untreated upon release. When a person is released after being imprisoned in a facility where they have contracted TB, they are now carriers, coming in contact with an increasing number of people as a free person. This also

applies to sexually transmitted diseases, the flu and MRSA.⁵ If the system were more effective and efficient, these diseases could easily be prevented from being spread throughout the population. A notable number of those opposing increased prisoner care do so based on cost. If simply arguing the cost of caring for prisoners, one should consider that usually the makeup of a prison is largely poor minority groups who have a greater disposition to chronic illnesses such as diabetes, hypertension, and heart disease. Often, these are the people who are not able to receive regular treatment before being imprisoned. If care is given during prison, there is a chance that these illnesses could be managed so that they cost less in the long run. If a person is uninsured in the free world and needs immediate care, they arrive at an emergency room and are treated. One way or another, the public ends up paying for their unpaid medical expenses, especially if the prisoners are at a government run facility. Hypothetically, if an inmate received standard care while in prison, this could lead to lower chances of medical crisis upon release. There are a multitude of questions that surround healthcare for prisoners; all are valid and arguably need to be answered; however, the focus of this paper will be towards the care of the sick and elderly imprisoned population.

As the population of prisons rose in the late 1970’s and on, the age of prisoners began to rise as well. A large number of prisoners today are considered elderly- 50 or older- and are sentenced to life in prison⁶. The prison system is not set up for these prisoners, especially as they begin to enter the EOL stage. There seem to be two prevalent and realistic options for how to manage elderly and dying prisoners: hospice or compassionate release.

³ Bureau of Justice Statistics, 2010, Table 1

⁴ Imani, 2015, pg 5

⁵ Restum, 2005, pp 1689-1691

⁶ ACLU, 2012, pg i

Hospice

A functional hospice system in prison most commonly appears as inmates volunteering, going through training, and being selected to work with the inmates who are mere days from death. This system allows for a multitude of benefits, as pointed out by Ami Harbin, in giving the dying prisoner a personal death, being cared for in any way that they need, and also by giving the volunteer a chance to show that they are more than just a criminal. A multifaceted explanation of the benefits of having an inmate serve in the volunteer position was described by Kelly and colleagues where one benefit of this situation is that an inmate volunteer can relate and comfort much better than anyone else since they have lived alongside these individuals in prison and shared the same experiences on a higher level.⁷ Volunteers learn to show compassion and responsibility, allowing them a chance to interact with staff, earning respect and trust from authority figures.⁸

A major concern for most who oppose this program is the cost; most do not want to spend more money on caring for prisoners by adding what they would consider to be an unnecessary service. In prisons like the Louisiana State Penitentiary, however, their extensive hospice program does not cost any more than normal health care does for an elderly inmate. In fact, it should be pointed out that most of the hospice care systems do not impose an extra financial burden on prisons.⁹ If this can be used to provide ways for the volunteering inmates to be further rehabilitated, provide job skills, and not cost the prison more, why not implement this system?

The other argument that exists is whether or not a prisoner deserves this kind of care and compassion, as they are in fact imprisoned for breaking laws. This attitude

ignores basic social justice. A crime is not all a person is – often it seems that we cannot look past what someone has done to see the person behind this act. These individuals may have committed a horrendous crime. However, when they can no longer function on their own, dependent upon people feeding, changing, and caring for them, they can no longer harm the public. If prison is for the purpose of rehabilitation, the dying prisoners can no longer be rehabilitated; but those caring for them can. Allowing inmate volunteers to care for the dying presents them with the opportunity to generate compassion, empathy, and a vulnerability that accompanies caring for their peers, which can lead to better reintegration into society upon the end of their prison sentence.¹⁰

Compassionate Release

Another option in caring for the aging and sick is compassionate release. The premise of this option is that upon the diagnosis of a terminal illness reaching the final stages, a petition process can begin for an inmate to be released from prison to die “free,” surrounded by their family and friends. In order for this release to occur, there are a multitude of things that must be proven, but as soon as the physical status is confirmed, the family is considered. The family must be willing to take in and able to care for these dying prisoners, or to provide them with some suitable living arrangement and care. There is a misconception, though, that if this system were adopted, any prisoner who was sick and dying would be released. This is not so – there would have to be a willing and able family there to receive them. Unfortunately, the majority of these inmates do not have a family willing or able to do this for them, especially considering the number of inmates who

⁷ Kelly, 2012, pg 974

⁸ Harbin, 2015, pp 158-159

⁹ ACLU, 2012, pg ii

¹⁰ NRRC, 2014, pg 4

entered at a young age and have remained in prison for the majority of their lives, or extremely violent offenders. In order for compassionate release to be granted, there has to be a capable family and secure place for this individual to reside. There are hefty requirement lists and checks to make sure that an individual does not leave the prison to be put in harm's way or be left on the streets.¹¹

Ethical Arguments Regarding EOL for Inmates

An interesting approach to this issue is to understand the different ethical arguments surrounding medical care for inmates. Taking into consideration four common biology-related systems of ethical thought (Kantian, evolutionary, utilitarian and virtue ethics), there are various standpoints on the issue. After looking at what these positions mean in general, a closer discussion of EOL care can start.

Kantian Ethics

Kantian ethics deals with the theory of having categorical imperatives; simply stated, there are things that are right, and there are things that are wrong. Kantian ethics also use the humanity of a person as a basis, by treating a person as an end not as a means.¹² When placing the question of EOL care in front of a Kantian ethicist, it seems that the general consensus would be that there should be a level of care for these individuals, where they are given the dignity, respect, compassion, and care towards the end of their life.

Evolutionary Ethics

Evolutionary ethics focuses on connecting the realms of the natural sciences and world with philosophy and theology. In a sense, it strives to connect the "is/ought" dilemma

that occurs between science and philosophy-how things are, based in scientific claims, and how things ought to be, coming from a philosophical approach.¹³ It is difficult to frame an approach to prison EOL care using evolutionary ethics. At face value, it does not seem like the two really apply to each other. However, if you dig into the materials, it is plausible that an evolutionary ethicist would be in favor of providing specialized care to these imprisoned individuals. There seems to be a tinge of self-sacrifice found in the description by Steven Wilkens, an ethicist who wrote *Beyond Bumper Sticker Ethics*. In an attempt to be more reproductively favorable, we will try and bring about the most happiness for the person, which leads to the claim that the unselfish thing to do would be to care for these people, making their dying process more humane, even if you have a desire for retribution and punishment for their actions.¹⁴

Utilitarian Ethics

Utilitarian ethics focuses on the idea of doing the best for the most people. Wilkens writes that even more than this, it is a striving for happiness. He states that "happiness is the only thing that has intrinsic value"¹⁵. Wilkens also writes that one person's happiness is no more valuable than the next person's happiness; pointing to this idea as a key philosophy of utilitarianism that is not always at the forefront of the common definition of utilitarian ethics. If this is a pillar of the utilitarian ethicists theory, then the question of whether or not hospice or compassionate release should be utilized in prisons is no longer a hard one. It becomes obvious that these individuals should be allowed happiness and comfort during this process as anyone else should.

¹¹ U.S. Department of Justice, 2015, pg 10

¹² White, 2009, pg 35

¹³ Wilkens, 2011, pg 89

¹⁴ Wilkens, 2011, pp 93-94

¹⁵ Wilkens, 2011, pg 98

Virtue Ethics

The last ethical system we will look at is virtue ethics. This is a harder theory to draw one concise stance for. It seems that the key principle of this system is that one should do what one feels is virtuous. If a person is of good, righteous character, they will be able to act instinctively in a scenario and be able to determine if this is a good ethical decision or not. To approach the question posed from this position would likely lead to different answers from each individual asked because people have different character traits that are valued at different levels. Overall, if a person is holding all virtues as equally important, a common approach may be to consider that a person is more than a single action, and that he or she should be treated as a person rather than as a crime, especially in this delicate stage of life.¹⁶

Is a “Biblical Ethic” Helpful?

Overall, it is hard to narrow down a single “correct” approach to this issue-- each one can be used based off one’s personal background and experience with crime. One way that could help make a decision clearer is to take a Biblical approach. There is no shortage of instances of prison and prisoners throughout the Bible. Hebrews 13:3 reads, “Remember those who are in prison, as though in prison with them, and those who are mistreated, since you also are in the body.”¹⁷ Such a verse suggests that as Christians, there is a call to care for the marginalized, even those who are there because of their own actions and decisions. It is the issue of EOL care for prisoners, possibly prisoners who have committed horrendous, violent crimes, that calls to mind the second greatest command given to Christians-- “to love your neighbor as yourself.”¹⁸ A neighbor is not restricted to

those directly nearby, it can be the person in prison fifty miles away suffering in their last days, as they often cannot be given pain medication¹⁹. As Christians, showing God’s love to this population may involve advocacy for their EOL treatment. By advocating to allow prisoners to have a peaceful EOL by treating them as equals, as people who deserve respect and dignity, this command is filled, as it is how we likely would want to be treated at the time of our death. If we are to live like Christ, showing compassion to the sinner as they pass on is an act that Jesus himself did.

It is also possible and effective to approach EOL care issues outside of the realm of the Christian duty. There are many aspects of showing dignity and respect to those who are experiencing their last few moments that are universal, and the impacts to those that are there caring for the dying are incredible as well. This seems to be more of a moral, ethical issue than one based solely in religion. One does not have to be religious to show compassion, to realize the suffering of others and work to relieve this. The goal of most Americans is to help rehabilitate those who are incarcerated, independent of religious identification. If there is a possibility of an offender being rehabilitated while incarcerated, it seems that a large percentage of the American public wants this to be attained.²⁰ It seems that prisoners can work toward social rehabilitation through programs such as hospice and many other job-training programs that were cut quickly. If the hospice program does not cost more, the most efficient option is to offer rehabilitation to inmates and allow for a more ethical death of an inmate.

¹⁶ Wilkens, 2011, pp 133-137

¹⁷ NIV

¹⁸ Matthew 22:39, NIV

¹⁹ Kelly, 2012, pg 975

²⁰ ACLU Poll, 2015

Conclusion: Is Providing EOL Care Deserved?

There is a clear ethical question that is posed when looking at providing “extra” services to the incarcerated. Is it deserved? After all, these people have failed in some way, from drug possession to multiple murders. It is hard to declare a blanket statement that is fair to all, but that is often the way things must be done in institutions like prison, where there is already a shortage of staff, money, and a large array of people within. There is no harm in providing personal EOL care to inmates. While compassionate release is a difficult path to navigate, and one that is often not effective, the option of in-facility hospice seems to be a legitimate one worth serious consideration. By providing this care to the dying inmates in their last days, they are able to feel cared for, loved, and safe. They are surrounded by their peers, who have taken on a role of compassionately caring for them, making for a more personal death experience. For those who volunteer to help with hospice, they are taught invaluable character traits such as compassion, dedication, empathy, and how

to properly interact with authority. They are trained with job skills, personal skills, and are able to learn how to both follow a work system and how to control their emotions better.²¹ In the documentary *Serving Life*, many of the hospice volunteers stated that if they had the knowledge they gained from hospice in the first place, they likely would have never committed the crime they had—most of which were violent murders²². Even if a program such as hospice would offer no other benefits to the prison aside from a prisoner gaining these emotional traits, it is worth it—rehabilitation is the goal, after all.

The question of justice and of ethics is not an easy one to answer, especially in light of what a prisoner is worthy of receiving. To claim that a prisoner does not deserve healthcare seems to be in opposition to the four ethical standpoints presented here – Kantian, utilitarianism, evolutionary and virtue ethics. All returned in some way, to the idea of a person deserving personhood. To look beyond a crime is hard, but past every crime is a person who made a mistake and deserves compassion, especially at the end of his or her life.

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²¹ Berry, 2014, pg 746

²² Cohen, 2011

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