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Cultural, Political, Judicial, Medical, and Structural Reasons for the Difference Between the Euthanasia Policies of the United States and Netherlands

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Cultural, Political, Judicial, Medical and Structural Reasons for the Difference Between the Euthanasia Policies of the United States and the Netherlands

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May 7, 2000
Chapter 1

INTRODUCTION

The Dutch and American policies on euthanasia are different for a number of reasons. In this paper I have attempted to explain historical, cultural, governmental, and judicial differences between the two countries that contribute to the differences in euthanasia policies. This points out how historical, medical system, and structural differences can influence the policies of a government. There are many things that contribute to policies of a democratic country besides the majority opinion. The ability of the majority’s opinion to influence policy is affected by the structure of the institutions and their opinions are greatly influenced by their history and culture. In this paper I do not examine public opinion concerning euthanasia. I focus on historical and structural differences between the two countries. The reason for this is partially. The Dutch do not conduct public opinion polls in the same way American’s do. They rely on other methods of forming policy. My goal was to discover if there were reasons in the political structure, medical structure, and history that influenced the policies.

I begin this paper with an explanation of the current status of Dutch and American policies and a historical over view of how that status came to be. The current status in both countries is primarily defined by case law, so I attempt to explain the various cases that have contributed to the Dutch and American euthanasia policies. After that I explain differences in origins of the two countries and how that contributes to the euthanasia policies. Then I look at the differences in the way the medical professions work and ways that contributes to the euthanasia policies. Finally, I look at the governmental
structure and how that effects the policies. I look at differences in the judicial systems, especially the prosecution office, and also differences in the legislation that are partially a result of the electoral system. The conclusions sum up all the differences between the two countries and how these differences have produced two different euthanasia policies.

**DEFINITION**

It is important to begin with a definition of euthanasia. Euthanasia is basically the act of ending a person’s life in order to relieve the person’s suffering. Assisted suicide is closely related to euthanasia. Assisted suicide takes place when the patient performs the actions that lead to his/her own death i.e. taking the pills oneself versus the doctor administering the pills. There are various ways to classify euthanasia and assisted suicide. Euthanasia and assisted suicide can be classified as *active* or *passive*. *Active* is when a doctor's actions end a patient's life and *passive* is when the patient dies as a result of the doctor's non-action, such as not resuscitating a patient. Euthanasia can also be classified as *voluntary*, *non-voluntary*, or *involuntary*. *Voluntary* is when the patient requests it, *non-voluntary* is when the patient is incapable of making a request, and *involuntary* is when the patient is capable of making a request, yet does not. In both the Netherlands and the United States, *voluntary passive* euthanasia, in which a competent person refuses medical treatment, is considered to be 'normal medical practice' and is treated completely separate from the other forms of euthanasia. The other forms of euthanasia and assisted suicide are all the subject of this paper and will be referred to as euthanasia.
Chapter 2

EUTHANASIA POLICY STATUS

Euthanasia is considered by Dutch criminal code, Articles 293 and 294, to be a type of homicide. However, the Dutch Supreme Court has held that under certain circumstances a doctor can invoke the defense of nooedtoenstand, or justification due to necessity. This basically means that a doctor was facing a conflict of interests, the interest of protecting life and the interest of relieving a patients suffering, and he chose to relieve the patients suffering, which is assumed to be the more important interest by the Dutch courts. There is now legislation in the Netherlands that regulates the circumstances that must be present in order for a doctor to qualify for the defense of nooedtoenstand and to avoid prosecution.

In the United States every state has its own laws concerning assisted suicide. Assisted suicide is criminalized, under common law or state statute, in all but four states. Three of those states, North Carolina, Utah, and Wyoming, have no laws concerning the issue. Oregon is the only state in which euthanasia is legal.

DUTCH LAWS

Article 287 of the Dutch Criminal Code prohibits assisted suicide. It states that "A person who intentionally incites another to commit suicide, assists in the suicide of another, or procures for that other person the means to commit suicide, is liable to a term
of imprisonment of not more than three years or a fine of the fourth category [f 25,000], where the suicide ensues." Article 293 prohibits euthanasia. It states that "A person who takes the life of another person at that other person's express and earnest request is liable to a term of imprisonment of not more than twelve years or a fine of the fifth category [f 100,00]." Euthanasia and assisted suicide are clearly prohibited by Dutch law. However, most people, Dutch and non-Dutch, think that euthanasia is legal in the Netherlands. This is because euthanasia is openly practiced in the Netherlands. How is this possible? I will explain the reasons for this apparent contradiction between laws later in detail. There were several different attempts to get around these laws by different legal arguments in the courts, but the argument that the courts finally accepted is based in Article 40. "A person who commits an offence as a result of force he could not be expected to resist is not criminally liable." The basic argument is that the responsibility to ease a patient's pain can be considered strong enough to "force" a doctor to end the patient's life.

**HISTORY OF THE DUTCH POLICY**

To understand how something can be so obviously prohibited in the law, but still allowed by the courts, it is helpful to examine the developments that led to the situation. In 1972, a committee was set up in the Netherlands to study the issues surrounding euthanasia. The committee issued a report that stated that *passive* euthanasia, in which life-prolonging measures were stopped or not started in the first place, were legitimate normal medical practices. It was and is not considered euthanasia in the Netherlands. In the opinion of that committee, *active* euthanasia should not be permitted.
Around the time this report was issued, there was a case concerning a woman, who was a doctor, who had, in the presence of her husband who was also a doctor, purposely terminated her mother’s life with an overdose of painkillers. The defendant’s mother had suffered from a cerebral hemorrhage that had left her paralyzed on one side and on several occasions she has asked her daughter to end her life. She had spoken to many people about her desire to die. The Medical Inspector testified that in the eyes of the medical community, under certain circumstances it was acceptable to risk a patient dying from an overdose of painkillers if the motives are to end their pain. The Inspector listed the following circumstances:

- the patient is incurably ill
- he/she finds his/her suffering mentally or physically unbearable
- he has expressed the wish to die
- he is medically speaking in the terminal phase of his illness
- the person who accedes to the request is a doctor, preferably the doctor responsible for treatment

The District Court agreed with most of the Inspector’s opinions. The only part it did not agree with was the condition of the patient being in the terminal phase of his illness. The court did not feel that a person living in tremendous pain, yet not being close to dying should be treated differently than person who’s death was more eminent. Even though all of the remaining conditions were met the court ruled that it was not right for her to use a dosage that was immediately lethal. She should have prescribed a dosage
that would have permitted the court to assume that her primary motivation had been to
ease the pain and that the result had been the patient’s death, rather than simply a dosage
that was intended to be immediately lethal. The defendant received a jail sentence of one
week with one-year probation.

This ruling pointed out another classification that euthanasia can be classified by.
It pointed out the difference between direct and indirect euthanasia. Direct is when the
actions of the doctor directly cause the death, and indirect is when the action to relieve
pain causes death. Indirect, like passive, was not considered to be a violation of the anti-
assisted suicide laws, provided the conditions listed above were met.

In the spring of 1981, the Wertheim case established certain conditions, which
when met, would protect doctors who performed euthanasia from being prosecuted. In
this case it was determined that Ms. Wertheim’s actions did not meet these conditions.
However, the guidelines that the courts would use in euthanasia cases were established in
this case. Those guidelines stated that:

◊ the physical or mental suffering of the person was such that he
   experienced it as unbearable

◊ this suffering as well as the desire to die were enduring

◊ the decision to die was made voluntarily

◊ the person was well informed about his situation and the available
   alternatives, was capable of weighting the relevant considerations, and had
   actually done so

◊ there were no alternative means to improve the situation

◊ the person’s death did not cause others any unnecessary suffering
The assistance had to:

◊ be decided upon by more than one person

◊ involve a doctor in the decision making process, both concerning the action and method used

◊ show that the doctor exhibited the utmost care, by consulting other doctors through all stages of the process

Three main cases set the foundation for the present legal position of euthanasia in the Netherlands. The Schoonheim case allowed the defense of *noodtoestand*, or necessity, and was the first time a doctor was prosecuted for assisted suicide and not convicted. The Chabot case allowed psychological pain as well as physical pain to be a reason for euthanasia and the Kadijk case set the base for involuntary euthanasia. These three cases are the core of the Dutch euthanasia policy.

**DUTCH CASES**

**Schoonheim**

The Schoonheim decision was issued by the Supreme Court of the Netherlands, Criminal Chamber, November 27, 1984. A general practitioner in Purmerend performed euthanasia on his 96 year-old patient, Ms. B. Ms. B had been in his care for six years. During that time she had repeatedly stated her wish to have her life terminated if her situation developed into one in which no recovery to a tolerable and dignified condition of life could be expected. In April of 1980, she signed a living will stating this desire and
in September of 1981 she again stated her desire when surgery for her broken hip was considered. The weekend preceding her death, Ms. B's condition severely deteriorated. Although her health improved slightly later in the week, she feared another such deterioration and repeatedly asked her doctor to perform euthanasia. The practitioner consulted his assistant-physician concerning the case and they discussed the case in depth. After several conversations with Ms. B's son, the practitioner complied with her request and performed euthanasia. The practitioner immediately reported the euthanasia to the local police.

The practitioner was brought to trial. The first argument used by the defendant was that he had not committed a crime under the spirit of the law because he had not 'taken another person's life' since he had done so at the person's request. He argued that he had not taken the life, but that it was given. The court responded that it was a crime against human life in general even if not against the specific person, to end a life. That argument was therefore rejected.

The second argument was based on the argument that there was not a substantial violation of the law. The defendant's council argued that the right to self-determination should be deemed more important than the right to physical and mental inviolability or the respect for human life. They argued that this was the generally accepted view, but the Court disagreed. The Court stated that it "cannot be considered to be a view so generally accepted as correct throughout society that it can support the conclusion that euthanasia, performed in a fashion and under circumstances as in the present case, is as such legally permitted and therefore cannot be considered punishable conduct as described in article 293 of the Criminal Code."

1 As translated by J. Griffiths Euthanasia and Law in the Netherlands, Appendix
The third defense, the one that the courts finally accepted, was based on *overmacht*, or Article 40, as stated above. Two types of defense fall under this law. One is duress and the other is necessity or *nooedtoenstand*. Duress is basically saying that the offence is punishable, but the offender is not. The courts had previously rejected this argument in other euthanasia cases. Necessity basically means a conflict of duties.

It was argued that the defendant was faced with a conflict of duties, the duty to preserve life and the duty to relieve pain, and when he weighed both options he chose the proper action. Therefore his actions were justifiable. The Court of Appeals had rejected this defense, but the Supreme Court reversed this decision and determined that the “euthanasia performed by defendant, according to objective medical opinion, must be considered justified, as having been performed in a situation of necessity.”

**Chabot**

On June 21, 1994, the Supreme Court of the Netherlands, criminal chamber, issued a judgement in the Chabot case. This case set the precedent for allowing people with psychological pain to be given the same access to euthanasia as people with physical pain. Chabot, the defendant, was a psychiatrist, who on September 28, 1991, supplied his patient, Ms. B, with drugs for the purpose of committing suicide.

Ms. B was a divorced woman and a mother of two. Her first son had committed suicide in 1986. Her marriage had been bad from the start and she often stated that she lived only to care for her youngest son. She was committed to a psychiatric ward for a brief stay in October 1986. After that she received polyclinical psychiatric treatment. Neither event had any effect on her mental health. She was not interested in working
towards any acceptance of her son’s death. In 1988, Ms. B’s father died, and her husband left her and took her youngest son with him. In 1990, her son was diagnosed with cancer. He died May 3, 1991. That evening Ms. B attempted suicide with drugs she had saved from her psychiatrist visits in 1986. Much to her disappointment, her attempt was unsuccessful. She immediately began saving drugs for another attempt. She became obsessed with finding a way to die. She discussed various suicide plans with several different people. She was afraid that if she failed she would be placed in a mental institution and would not be able to make another attempt.

Before providing Ms. B with the drugs, the defendant had four series of discussions with Ms. B, totaling some 24 hours. He also spoke with some of Ms. B’s relatives and discussed the matter with four different consultants. He provided these consultants with detailed accounts of his sessions with Ms. B, asking for their help, suggestions, and their opinion of his diagnosis. These experts agreed that Ms. B’s decision was well considered and that her suffering was long-term and unbearable. They agreed that under the circumstances there was no “concrete treatment perspective”.

In this case the Court once again accepted the defense of nooedtoenstand. They decided that given the facts, the doctor appeared to have weighted the two conflicting duties and chosen the one of greater weight. They stated that when a doctor has performed euthanasia the courts must consider “whether the doctor, especially in light of scientifically responsible medical opinion and according to the norms recognized in medical ethics, made a choice between mutually conflicting duties that, considered objectively and in the context of the specific circumstances of the case, can be considered justifiable.” They decided that the defendant had complied with this standard.

2 As translated by J. Griffiths in the second appendix of Euthanasia and Law in the Netherlands.
The most important part of this decision was the allowance of non-somatic pain as ground for euthanasia. The court did not see that the defense of necessity required somatic pain. It did recognize that it was more difficult to establish the level of suffering in a non-somatic case and therefore stated that such cases must be looked at more closely by the courts.

Kadijk

The Kadijk case was decided by the Court of Appeals, Leeuwarden, Second Full Criminal Chamber, on April 4, 1996. A doctor was charged with murder, not euthanasia, under article 289 of the Criminal Code. He had ended the life of a severely handicapped baby at the parent’s request.

On April 1, 1994 a child was born with several serious congenital defects, consisting of a cleft palate and upper lip, defects of the nose, a protruding forehead, and skin/skull defects on the top of her head. The child was breathing very poorly and needed artificial respiration from time to time. Her kidneys were functioning poorly. It was determined that she had a chromosomal defect trisomy-13.

The parents agreed with the doctors that in light of her unfavorable prognosis, artificial respiration should no longer be attempted and nature should be allowed to take its course. The parents were informed that the baby had a few days to a few months left to live. They chose to take her home, so that they could be with her during her final days. On April 12th she was discharged from the hospital.

On April 19th a swelling appeared, at the site of one of the skin/skull defects. The swelling grew larger and the baby’s condition grew worse. The doctors discussed the
surgical options but in light of the child’s poor life expectancy the parents refused all surgery. The child was clearly in pain anytime it was moved or the wound was treated. The painkiller caused the baby to experience cramps and her breathing difficulties became more frequent.

The parents informed the doctor that they felt the child should not be made to suffer such pain. On April 25th the parents requested that the doctor look into ending the child’s life. He consulted the local prosecution office for information. He also had another doctor review the patient’s medical file. The other doctor agreed with the active termination of the child’s life and with the method the defendant was planning on using. On 26 April the doctor performed the euthanasia. The baby died in the mother’s arms.

The defendant first argued that what he had done did not constitute ‘taking another person’s life’. The Courts rejected this defense stating that “the medical behavior involved in this case is a subject of considerable debate, both publicly and within the medical profession, so that the defendant’s claim that such behavior can no longer be considered to amount to ‘taking another person’s life’ is incorrect.”

The second defense used by the defendant was that of medical exception. Medical exception normally refers to a doctor being permitted to cut a person with a knife for surgical purposes, while slashing a man with a knife for non-medical reasons is clearly prohibited. The courts found no legislative history for comparing the type of situation listed above to a doctor’s termination of a person’s life. Nor did it find that the current public opinion and debate gave reason to relate the two issues. Furthermore, it recognized that the legislator had continued to recognize the termination of a person life, by a doctor, regardless of consent, as falling under the criminal law.

3 As translated by D. Griffiths in the second appendix of Euthanasia and Law in the Netherlands.
The third defense used was that of *noodtoenstand* and as in the cases before this was the defense the courts accepted. The courts looked at three main issues when considering the punishability of this case. The first issue was whether the confrontation with this decision was the result of careful medical practice from the beginning or a case of negligence on the part of the doctor. The courts determined that from the child’s birth the doctor’s had acted in medically acceptable ways and that the child’s deterioration was not a result of negligence. Motives were the second issue. The court found that the parent’s motives were based upon their concerns for the child’s suffering. Finally, the courts found the current medical opinion, in medical reports and expert testimonies, to be in agreement with the defendant’s actions.

In light of these three findings the courts ruled that the defendant’s actions were justifiable. It stated 5 reasons for this and those reason serve as the current standard for determining the acceptability of the practice of involuntary euthanasia. Because of these requirements were met the court found that the doctor’s actions were justified.

- there was no doubts concerning the diagnosis and prognosis, and the parents were well informed of these
- there was no doubt as to the well-considered consent of the parents
- the defendant contacted other doctors who were involved in the child’s care and received their advice
- the defendant acted in a conscientious and careful matter concerning the termination of the child’s life
- the doctor provided a careful, detailed account of his actions
DUTCH LEGISLATION

These three cases set the euthanasia policy in the Netherlands. Several attempts have been made to change the law, but no legislation concerning that matter has been passed. The laws remain the same. However, ignoring the illegality of euthanasia, the legislative body has set up policies for the reporting of euthanasia. Doctors must follow these reporting procedures after performing euthanasia in order to keep from being prosecuted.

Reporting Procedure

On December 2, 1993, legislation was passed concerning the amendment of Article 10 of the Law on the Disposal of Corpses. The original law that simply stated that if a coroner could not issue death certificate he was required to report it to the prosecutor by means of a form prescribed by Our Minister of Justice. It was changed to a form prescribed by the Order in Council, with additional text added concerning the approval of the Order of Council and the publication of the form.

The form issued by the Order in Council took effect January 1, 1994. The information requested by this form is what the prosecutor uses in determining if a case of assisted suicide or euthanasia should be prosecuted. First of all the coroner must state his involvement with the deceased both before and after the death. Then the doctor must give information concerning the medical aspects such as pain and chance of recovery. The doctor must also supply information concerning the request for the termination of life or reasons for a lack of such request. Additionally, the doctor must supply
information concerning who he consulted. Finally, he must disclose information concerning the method he used to end the life of the patient.

This is the only change to the legislation concerning euthanasia. Euthanasia is still prohibited under the Criminal Code. The prosecutor is responsible to review these reports and make sure the actions of the doctors are in compliance with the court rulings concerning the defense of necessity.

**UNITED STATES POLICY**

In the United States, legislation concerning euthanasia or assisted suicide is not an issue in the hands of the federal government, but an issue that falls under the jurisdiction of the states. The authority of the United States federal government is restricted by the Constitution to a few specific areas. Appeals have been made to the Supreme Court arguing that laws prohibiting euthanasia violate the 14th amendment, however the Supreme Court disagreed and has continued to allow states to legislate euthanasia as they see fit.

**FEDERAL CASES**

Two major cases have come before the Supreme Court concerning assisted suicide. Both cases, Washington v. Glucksberg and Vacco v Quill, were decided June 26, 1997.

**Washington v Glucksberg**
In Washington v Glucksberg, four doctors, three patients, and a non-profit organization filed a suit against the State of Washington claiming that its ban on assisted-suicide was unconstitutional. They claimed it was a violation of Amendment 14, which requires states to treat all people of similar situations alike. This amendment was originally placed in the Constitution as a guard against racism. Glucksberg claimed that there was a right protected by the Fourteenth Amendment which extends to a personal choice by a mentally competent, terminally ill adult to commit physician-assisted suicide and that the ban places an undue burden on the exercise of that constitutionally protected right. Therefore, they claimed the ban violated the Due Process Clause. The Court disagreed.

First of all the court began by examining the historical aspects of the legislation. The court found that in almost every state, and most every western democracy, it was a crime to assist in suicide. This had been the case for well over 700 years. The right to commit suicide was not historically considered a right or liberty and the prohibition of suicide was deeply rooted the nations legal tradition.

The court also examined current opinion and ethics and found that in most cases, where assisted-suicide bans had been re-examined they had been reaffirmed as well. The refusal of life-sustaining treatment by competent adults has generally been considered a personal right, but the right to assistance in suicide has not. Therefore, based on historical president and current opinion, the court held that there was not a constitutional right to euthanasia.

4 The Due Process Clause "protects individual liberty against 'certain government actions regardless of the fairness of the procedures used to implement them' " Daniels v Williams, 474 U. S. 327, 331 (1986).
The Due Process Clause provides individuals with protection from government interference with certain rights and freedoms. However, the Supreme Court simply did not find euthanasia to be such a right.

The Constitution places an additional requirement on the State. It requires that a State have a legitimate interest in any ban. The Courts had already established that the State of Washington had an interest in the preservation of human life. It found that the State’s ban on assisted suicide “both reflects and advances its commitment to this interest.” It was argued that this interest depends on the medical condition and wishes of the person involved. The State of Washington held, and was allowed to continue to hold, that “all persons’ lives, from beginning to end, regardless of physical or mental condition, are under the full protection of the law.”

The State was also determined to have an interest in preventing suicide, and in studying, identifying, and treating its causes. Additionally, the Court found that the State has an interest in protecting the integrity and ethics of the medical profession. The Court pointed to an American Medical Association study that concluded that “physician-assisted suicide is fundamentally incompatible with the physician’s role as a healer.”

The State’s interest in protecting vulnerable groups was also acknowledged by the Court. Finally, the Court stated that the State had a legitimate interest in prohibiting euthanasia for the simple fact that it could lead to acceptance of euthanasia for all people, both voluntary and involuntary. The Supreme Court referred to the Dutch government’s own study of the results of its allowance of euthanasia, specifically the report of over 1,000 cases in which euthanasia was performed without the patients’ explicit consent.

5 AMA, Code of Ethics 2.211 (1994).
In light of all these interests, the Supreme Court found that the State did have a legitimate interest in banning assisted suicide. With this established, as well as the fact that euthanasia was not a protected right, the Court found that the Washington State ban did not violate the 14th Amendment.

**Vacco v Quill**

In Vacco v Quill the question of whether or not New York's ban on assisted suicide was a violation of the 14th Amendment was also questioned. In this case, however, the issue was whether or not it was it violated the Equal Protection Clause, rather than the Due Process clause. The petitioners claimed that since a person was allowed to refuse life-saving treatment, but could not receive life terminating treatment, a person who wanted to die, but did not need treatment was discriminated against by the law.

The petitioners claim was based upon the argument that the refusal of life sustaining treatment was "essentially the same" as physician assisted suicide. The Court did not find this to be the case. Instead, it found that the distinction between assisted suicide and withdrawing of life sustaining treatment both important and logical. One reason for this was that when a patient refuses life-sustaining treatment he dies from the disease, not from the actions of the doctor. Additionally, a person who commits suicide has the motive of ending his life, while that may not be the case for a person who refuses life-sustaining treatment. The motives of an action, even when the result is the same, are valid issues under United States law.

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6 The Equal Protection Clause states that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”
Therefore, the conclusion of the case was that New York’s law was consistent with the Equal Protection Clause in the Constitution since it permitted everyone to refuse medical treatment, while prohibiting everyone from receiving assistance in suicide. For discussion of the State’s interest in the ban the Court simply referred its Glucksberg decision.

STATE LAWS AND CASES

As stated above, only one state, Oregon, permits physician assisted suicide. The majority of states have laws prohibiting assisted suicide that have never been challenged. Even the recent highly publicized case of Kevorkian did not establish any new case law concerning assisted suicide, because it was tried as a murder case. A few states have had referendums allowing citizens to vote on laws that would legalize assisted suicide, but in every state except Oregon these referendums have been rejected by the citizens.

Oregon

The voters of Oregon passed Measure 16 legalizing euthanasia on November 8, 1994. On December 27, 1994, in Lee v Oregon, the United States District Court for the District of Oregon, issued an order for a temporary postponement of the legislation while constitutional concerns were fully heard and analyzed. On August 31, 1995, the Death with Dignity Act was declared unconstitutional on the grounds that it violated the 14th Amendment and therefore implementation of the Measure was put under a permanent injunction. This ruling was appealed, and the 9th Circuit Court of Appeals found no grounds for the injunction. As a result the District Court of Oregon lifted the injunction.
The act became law on October 27, 1997. It was appealed to the Supreme Court, however the Supreme Court did not grant writ. Because of this the argument still remains undecided. The Supreme Court’s failure to grant writ does not signify that sometime in the future it will not accept the argument that the Death with Dignity Act violates the 14th Amendment, but only that in this particular case the plaintiff failed to show the imminence of the case.

The plaintiff’s argument was that their 14th Amendment right to Equal Protection of the Law could be violated if certain circumstances were to take place. Were it a case of violation of rights having taken place, the Court would have been more likely to have granted writ. The United States Supreme Court requires a plaintiff show that the cases is moot, that an actual violation has taken place against him.

Lee v Oregon

In Lee v Oregon, Plaintiffs claimed that Measure 16 violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the Constitution, statutory and First Amendment rights of freedom to exercise religion and to associate, and the American with Disabilities Act.

The argument that the District Court accepted was one that fell under the Equal Protection clause. The argument was that the Measure provided unequal protection for the terminally ill and the non-terminally ill. According to the Court “where terminally ill persons are provided the means of hastening death, there is a potential for exposing members of society to life-threatening mistakes and abuses.” Therefore, it was important to be certain the safeguards, provided in Measure 16, sufficiently protected the
terminally ill from making ill-considered decisions. For various reasons the Court felt that the terminally ill were not sufficiently protected by Measure 16. Therefore, the District Court of Oregon declared Measure 16 unconstitutional.

**Ninth Circuit Court**

The Ninth Circuit Court of Appeals reversed the ruling of the District Court. It ruled that challengers of the law failed to show immediate threat of harm to patients and legal standing to bring the case. It did not comment on the Constitutionality of the law, but only that there was not sufficient legal standing to hear the case in the first place. The Circuit Court, like the Supreme Court in a later appeal, decided that the case was moot. Since no one's rights had been violated yet, the plaintiff's did not have a case worth hearing.

**SUMMARY**

In the Netherlands, euthanasia policy is in the hands of the federal government. However, the Supreme Court of the United States has held that euthanasia policy is under the jurisdiction of the individual states. That is not to say that sometime in the future an argument might be brought before the Supreme Court that finds assisted suicide legalization or bans in violation of the Constitution and therefore make it a matter of national policy. But based on the Court's recent rulings, it is not likely to happen anytime soon. The United States Congress could also choose to adopt euthanasia policy, but so far it has not.
Although euthanasia is much more widely practiced in the Netherlands, the laws of the United States are actually more liberal. For at least in one state euthanasia is legal and the federal government says nothing whatsoever, while the national Dutch government expressly forbids euthanasia. However, it is a combination of laws and legal system that determines the euthanasia policy in the Netherlands and the United States.

The following chapters deal with the reasons the euthanasia policies in the two countries are the way they are. In the third chapter, I explain historical differences between the origins of the countries and how those differences effect the euthanasia policy. The Dutch origins are partially responsible for their concept of gedogen. The American origins are one reason American’s do not have a true concept of gedogen and also contribute to why their euthanasia policies are the way they are.

The fourth chapter is an explanation of differences in the medical profession, concerning its structure and the role doctors play in decision making. These differences contribute to the way the euthanasia policies are laid out in the United States and the Netherlands.

Chapter five is about the legal system, primarily the prosecutor’s office. The prosecution office in the Netherlands has a different set of qualifications that must be met before it decides to prosecute an act, than the United States has. These differences also contribute to the differences in the euthanasia policies of the two countries.

The follow chapter, chapter six, examines the differences in the way the legislative branches operate. The United States has a highly adversarial way of working compared to the Dutch consensual nature. This is partially due to the electoral system of
the two countries. I will explain how that has effected the euthanasia polices in the two countries.

But first I must take a moment to explain the Dutch policy of gedogen. Which is a concept that the Dutch use to explain many of their policies in which things are illegal and yet openly permitted and regulated, such as drugs and prostitution. It is because of this concept that the Dutch have their particular policy concerning euthanasia. I will explain what gedogen is and then in the following chapters I will touch on why it is a concept the Netherlands.

**GEDOGEN**

In order to fully understand the Dutch policy on euthanasia one must understand how something can be illegal by law, yet permitted, regulated, and not even discouraged, by policy. This concept is called gedogen. The word gedogen cannot easily be translated into English. A loose translation is ‘to tolerate’ or ‘to allow’. This definition does not grasp the full scope of gedogen’s meaning. Gedogen is “to officially criminalize something and yet never prosecute: not because you cannot due to lack of manpower or something similar, but because you don’t want to: and finally, to make it official policy to do so.”\(^7\) Gedogen is an official policy of not prosecuting criminal acts. Originally it was the national centralized prosecutor’s office that made a policy to not prosecute doctors who euthanized their patients. Now even the Parliament has passed a law requiring doctors to fill out reports every time they perform euthanasia. Parliament fully accepts that euthanasia is performed and makes no attempt to get the prosecutor’s office to

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\(^7\) Dr. Hoogers in email sent February 10, 2000.
uphold the laws that criminalize euthanasia. It is important to remember that the legislation passed by parliament was not an amendment to the euthanasia laws, but to the Coroner’s Act. Euthanasia remains completely illegal yet totally allowed.

It is very hard to explain the full effects of this policy. An analogy might be the best way to explain the situation. If gedogen were operable in the United States, then the highway patrol could have a policy that they would stop giving tickets to speeders, but they would get the legislature to pass a law requiring everyone who exceeded the speed limit to write a letter to the highway patrol explaining why they speed. Yet legally they would keep speeding illegal. That would be gedogen. Another example would be if the police quit prosecuting people for selling cigarettes to minors, provided they kept records of how many times each month they broke the law. In America they might lower the smoking age, but the prosecutor’s office is not going to stop prosecuting because they believe it should be lower.

The euthanasia policy in the Netherlands is possible because of gedogen. Gedogen is a popular concept in the Netherlands. The prostitution and drug policies are also a result of gedogen. Euthanasia is illegal, yet it is tolerated and allowed, permitted and regulated. In the following chapters I will explain why gedogen is possible in the Netherlands.
Chapter 3

HISTORICAL REASONS

The character of a country can often be traced back to its beginnings. Just as humans are shaped by events that take place in their childhood, countries are shaped by events that happen during their birth. Alexis de Tocqueville believed that every event, custom, opinion and law of a country could be explained by looking at the origins of the country.8

Some of the reasons for the differences between the American and Dutch euthanasia policies can be traced back to the countries’ beginnings. The moralism and adversarial nature of the American legal system and the compromising and accommodating nature of the Dutch system can be traced back to origins of both countries. The puritans’ political philosophy had effects on the American judicial system and the Dutch system was influenced by the manner in which the Dutch provinces came together to form one nation.

The puritans, the most influential of the early American settlers, believed that the purpose of government was to help create society that was pleasing to God. They felt that the laws of a nation should act as a contract between a nation and God. Therefore the laws should reflect godly morals and should be based on what is right and what is wrong.

The first laws in the Dutch nation had a very different purpose. Their laws were not designed for a moral purpose, such as the puritans’ goal of making a society pleasing

8 De Toqueville, Alexis Democracy in America, p.40.
to God. The first laws of the Netherlands were simply an attempt to join a bunch of small provinces into one country capable of defending itself against the Spanish, French, and Germans. It was insecurity and the fear of the outside that drove the provinces together. They wanted the protection of unity with as few laws as possible.

These differences account for the differences we see in the two country’s euthanasia policies. The Dutch laws are not seen as moral standards of right and wrong, but as practical means of bringing control and unity to a diverse society. In America, we still have a sense that laws are about moral rights and wrongs, thus the family values and moralistic speech of political and governmental figures.

**DUTCH HISTORY**

The Dutch Republic began to come together in the 16th century during a revolt against Spanish rule. The original seven provinces banded together to form a loose federation, primarily in order to throw off Spanish rule and to promote economic growth. There was very little national unity in the original federation that officially began in 1648 through the peace of Munster.\(^9\)

The provinces were divided by different interests, cultures, and religions. The large trade oriented provinces of Holland and Zealand had very different priorities than the rural, farming provinces of Groningen and Friesland. As a matter of necessity the national government focused mainly on security matters and left other matters in the hands of the individual cities and provinces. Sometimes the national government did

legislate in areas that were outside normal security and economic matters. However, in these cases it was always willing to compromise.

For example, in the early years of the republic Roman-Catholic churches were officially banned and Roman-Catholics were not allowed to hold public office. This was mainly because Spain, who the Dutch had just revolted against, was a Catholic country. But despite this official oppression the Roman-Catholics enjoyed “unofficial freedom.” They were allowed to practice their religion as long as it was “done in secret.” A full 40% of the population was Catholic. Many of these Catholics became very wealthy and powerful.¹⁰

Even though Catholicism was illegal, the Dutch knew they could not survive unless they reached a compromise with the 40 percent of the nation that was Catholic. Not only did the nation need to remain united to face foreign foes, it also had to find a compromise to get anything done domestically. The Protestants were only 50% of the population, a very small majority to try to rule the country in an adversarial way.¹¹

**AMERICAN HISTORY**

American history is very different from Dutch history. The early American settlers came to America with an idea of creating a better place to live. The Puritans came from England to the New World seeking a place where they could practice religion freely. They came to America to start a new society that would be pleasing to God. They believed that the purpose of government was to help them create a society that was

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pleasing to God. Before they even left the boat and stepped a foot on the shore they drew up and signed the Mayflower Compact which was a covenant between themselves and God. In the Mayflower Compact they wrote that “in the presence of God and one another, [we] covenant and combine ourselves together in a civil body politick, for out better ordering and preservation.” They were setting up a government as an agreement between themselves and God.\textsuperscript{12}

The Puritans believed in the concept of Providence, that is, if they pleased and obeyed God, God would bless them. Their government and laws were an attempt to please God and gain his blessing. According to Alexis De Tocqueville a political philosopher who studied early America, “the chief care of the legislators … was the maintenance of orderly conduct and good morals in the community.” The laws were based on morals and were to support moral values. There were laws concerning the attendance of religious services, premarital sex, idleness, drunkenness, and lying. The laws were to reflect the morals and standards of the society.\textsuperscript{13}

**EFFECTS ON EUTHANASIA POLICY**

The Dutch and American policies on euthanasia are partially a product of the two countries’ origins. The Dutch euthanasia policies are very open and loose. Euthanasia is not legal because there are groups in the Netherlands that do not agree that euthanasia should be legal. The Dutch try to reach a consensus on all of their laws, just as they tried to keep all of their laws from alienating any one province in the early days of the republic. However, euthanasia is allowed and regulated, because the Dutch see that as

\textsuperscript{12} De Toqueville, Alexis *Democracy in America*, p. 44-45.
the most practical. The Dutch leave the moral question of whether or not euthanasia is right to philosophers. Their policies reflect the fact that euthanasia happens and thus it is best and most practical that the government regulates it.

American laws are often based on morals. The most common argument used by people who want to legalize euthanasia is that euthanasia is a moral good or that people have a right to die. The argument against euthanasia is that it is a moral wrong. The argument based more on practicality, that euthanasia takes place anyway and so it might as well be legalized, is rarely used. American’s believe that their laws are more than rules that make life run smoothly. American’s believe that laws should reflect morals and should be based on what is right and wrong. The reasons for this belief stem from the country’s puritanical origins.

13 De Toqueville, Alexis Democracy in America, p. 44-45.
Chapter 4

MEDICAL PROFESSION

Another reason for the differences between the euthanasia policies in the United States and the Netherlands is the two countries’ views of doctors and their roles in society. The Dutch tend to have a great deal more respect for doctors than Americans have. The Dutch allow their doctors to have a much more influential role in the decision making process concerning a person’s health than Americans do. They exhibit a “remarkable degree of trust in the medical profession.” The Dutch government also tends to defer to the judgement of doctors more than the American government.

HUISARTS VS HOSPITAL VISITS

One reason for the Dutch respect and trust of the medical profession is the wide use of huisarts or ‘house doctors’ in the Netherlands, compared to their near extinction in the United States. In the Netherlands, the family doctor still makes house calls on a regular basis. The family doctor usually lives in the neighborhood and has an office in his home. This is conducive to a much greater measure of trust between a patient and his/her doctor than the system in American, where a patient only sees a doctor in an office or hospital and often does not know that doctor before he arrives at the hospital. The home visits promote a much greater feeling of trust between the doctor and the

14 Hendin M.D., Herbert Seduced by Death: Doctors, Patients, and the Dutch Cure, p.146.
patient. The doctor takes more of a trusted friend or a member of the family than he is in American where he is simply a person hired for his medical services.¹⁵

Fifty percent of Dutch patients die at home as opposed to twenty percent of Americans. Usually these patients have already been to the hospital and after the hospital has done all that it can do it sends the patients home to die. House doctors often make daily visits to a dying patient's home. This promotes a great deal of trust on the part of a family towards their doctor.

**THE LITIGOUS NATURE OF AMERICA**

In the Dutch system people are not as likely to sue their doctors if something goes wrong. The doctor is most often a family doctor, who is very close with the family. The Dutch often comment on the speed with which an American will threaten to sue and the large number of lawsuits in American courts. This attitude of "you screw up and we'll get you" is both a result and a cause of the mistrust between a patient and his doctor. When an American is dying his doctor is usually the doctor on shift at the hospital. This is not a person the American society is willing to give a large say in questions concerning ending a person's life.

**MEDICAL DECISION MAKERS**

When a patient cannot speak for himself concerning medical decisions, who should decide what happens? In America the family decides. Usually the whole family expresses their opinion and the parents or the wife makes the final decision, depending on

¹⁵ Hendin M.D., Herbert *Seduced by Death: Doctors, Patients, and the Dutch Cure*, p.146.
the person's marital status. The American family is very involved in its family member's medical decisions.

In the Netherlands, according to Professor Joost Schudel, chair of a KNGM subcommittee on medical decisions at the end of life, "The doctor decides." He expressed the principle that the doctor should put himself in the patient's shoes and then decides what he would want.¹⁶ This is very much the same process that most families go through in America when decided how to care for a person who can no longer express oneself.

**JUDICIAL DEFFERMENT**

The courts in the Netherlands also defer their judgements, at least in euthanasia cases, to the advice of the physicians. The Dutch courts have "turned to the medical profession to weave the legal and political tangle of euthanasia law into something that could remain consistent to Dutch legal tradition." They have relied heavily on the opinions of the medical profession when making judgements concerning the prosecution of a euthanasia offender. American courts often take a professional opinion into account when ruling on a matter, but not to the same extent as the Dutch court system. The Dutch judiciary has basically completely deferred to an extra-governmental body, the medical community, to determine the euthanasia policy.¹⁷

The standards that the courts have applied to euthanasia cases have basically been carbon copies of standards set by the KNMG, the Royal Dutch Medical Society, the American version of the AMA. The guidelines given by the KNMG to doctors

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¹⁶ Hendin M.D., Herbert *Seduced by Death: Doctors, Patients, and the Dutch Cure*, p.80.

¹⁷ Belian, Julian *Deference to Doctors in Dutch Euthanasia Law*. 
Concerning euthanasia are basically the same guidelines the courts have used in determining a defendant's guilt. Basically, medical opinion was taken as more important than the law. The court based its judgement on the opinion the "average physician in the Netherlands." 18

The final argument that the court accepted in acquitting doctors of euthanasia was that of *noodtoestand*, or necessity when faced with a conflict of duties. The court relied on the medical community's definition of whether or not *noodtoestand* existed instead of any legal definition. It is kind of a chicken and the egg scenario. The doctors decide to euthanize a patient and then decide that it was the proper decision under the circumstances. This basically leaves the judiciary out of the whole process and places the entire process in the hands of the medical community.

Judgement is also sometimes left in the hands of the medical community. In a case in Amsterdam a medical tribunal criticized a doctor's actions in performing euthanasia. However, this case was never brought to court. It is noteworthy that a case can be condemned by the medical authorities and yet not brought to trial. It is as if the judgement of the medical community was enough and that no further judgment was needed. 19

As lenient as the Dutch policies are concerning euthanasia the courts have made it clear that only doctors have the authority to euthanize a patient. In 1981, in Rotterdam, the courts ruled that the *noodtoestand* defense was only available to doctors. The person was convicted under Article 294. Even nurses are not permitted by the courts to

18 J. Griffiths, Euthanasia and Law in the Netherlands, Appendix 2, Kadijk Case.
19 Belian, Julian *Deference to Doctors in Dutch Euthanasia Law*. 
euthanize a patient. A nurse, who was a personal friend of the patient, had euthanized the patient under a doctor’s supervision. She was convicted in the Dutch courts.  

**LEGISLATIVE ACTION**

The legislature also demonstrates its respect for the medical profession in its euthanasia legislation. Its requirement that doctors report all cases of euthanasia as non-natural deaths and fill out special reports puts doctors in the role of the police. The doctors are given the authority to report on their own actions. There is very little accountability in this process. Doctors are trusted to report on their actions. They are responsible for filling out the reports from which the prosecutor’s office makes decisions on whether or not to prosecute. If a doctor were to do something that the prosecutor’s office disapproved of he would have to incriminate himself. This is a remarkable amount of trust and authority to give doctors.

**EFFECTS ON EUTHANASIA POLICY**

Because of this deferment by the judiciary to the medical profession euthanasia has come to be seen as a medical issue in the Netherlands, rather than a political issue. In America, euthanasia is a political issue, debated on in the political arena. The American Medical Association has issued statements concerning euthanasia, but these are not influential in determining the legalization of euthanasia. Doctors do not have the same position of authority in America in the legal, legislative, or even medical setting, as they

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have in the Netherlands. This is why the euthanasia policies in the United States have remained in the hands of politicians and judges, while in the Netherlands the policies have, to a great extent, fallen into the hands of the medical community.
Chapter 5

LEGAL SYSTEM

There are two main reasons, besides the historical cultural differences, that *gedogen* can take place in the Netherlands and not in the United States. They both have to do with the legal systems of the two countries. One reason has to do with adversarial versus consensus seeking trials and the other reason is the policies and purposes of the prosecutor’s office.

**PROSECUTOR’S OFFICE**

In the Netherlands the prosecutor’s office has tremendous latitude when deciding whether to bring a case to trial. The prosecution system in the Netherlands is a centralized national system. They have nation wide policies for determining which cases to prosecute. In order to prosecute a case the prosecutor must have enough evidence to convict and the prosecution of the case must “be in the public interest.”

This gives the Dutch prosecutor much more power than a prosecutor has in the United States. The Dutch prosecutor is in a position not just to determine how to prosecute, but whether or not that prosecution is in the public interest. The United States’ prosecutors decide whether or not to prosecute based on if they have enough evidence to get a conviction. In the United States it is the role of the legislature to make sure the laws are in the public interest, not the role of the prosecution.

Belian, Julian *Deference to Doctors in Dutch Euthanasia Law.*
It is part of the separation of powers in the United States. The legislative branch makes the laws and the judicial branch interprets and prosecutes violations of the laws. It would be considered a violation of separation of powers for the American prosecution system to behave in the same manner as the Dutch prosecution system. The Dutch government is not set up with the same principle of separation of powers. Thus it is perfectly acceptable for the prosecutor’s office to decide on the public interest when prosecuting a crime.

A key factor in the United States when deciding whether or not to prosecute a crime is a person’s guilt or innocence. In the Netherlands, public interest is an equally critical factor. This is why doctors have been able to openly practice euthanasia for so many years without fear of prosecution. The prosecutor’s office decided that it was not in the best interest of the public to prosecute euthanasia cases. The office believed that euthanasia would take place anyway, regardless of prosecution. The prosecutor’s office believed that it was in the public good to allow euthanasia to be practiced openly and to be regulated. This rational is perfectly understandable when you consider that the Dutch do not see there laws and moral standards of right and wrong, but as practical tools for maintaining order in society. Were the laws against euthanasia considered to be moral standards, the prosecutor’s office might be more inclined to uphold them as such. But since their laws do not carry the weight of morality, it is much more rational for them to decided not to prosecuted violations of the law when they perceive that public interest is at stake.
ADVERSARIAL VS CONSENTUAL NATURE

The American court system is highly adversarial. There is a winner and there is a loser. The two sides battle in court. Each side’s goal is to win the case. Americans have always considered adversity to be a valuable part of government. One of their founding fathers, James Madison, believed that the only way to check a person’s self-interest was to pit it against another’s self-interest. Madison was the main person responsible for the checks and balances system of the United States government, which relies on adversity between the branches of government to keep the leaders in check.

Madison also wrote about the value of factions in the Federalist Papers. He wrote that “impassioned disagreement” was the basis for the American form of Government. This disagreement went hand and hand with moralism. Dr. James Kennedy said “The American ‘rhetorical tradition,’ with its emphasis on debate, has always used appeals to morality to persuade public opinion, and morality to denounce opponents.” Americans use morality to win debates. Debates are a basis for their form of government and debaters fight to win.

The Dutch do not believe that adversity is beneficial. They value consensus more than adversity. The events that take place in the courtroom reflect this value. The two parties are not engaged in battle in which each side is attempting to win, but more in a joint effort to find out what is in the best interest of not only the parties involved, but the general public as well.

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American’s value adversity and the Dutch value consensus. Americans won their independence by fighting a war. After winning their independence they were able to feel basically territorially safe from aggression because of their geographic location far from the other world powers. When the nation was in danger of breaking up over slavery and states rights, it was a war that kept them together.

The Netherlands is in a much different position geographically. Situated between the great powers of Germany and Spain, the sovereignty of the tiny country of the Netherlands was constantly threatened. Any disunity might have served as an excuse for Germany or Spain to retake control of the country. Not only was it important for them to find consensus among themselves they also had to find peaceful solutions to conflicts with their large neighboring countries.

**EFFECTS ON EUTHANASIA POLICY**

The differences found in the judicial system account for some of the differences in euthanasia policies in the United States and the Netherlands. In the United States, without the policy of determining if a prosecution is in the greatest good of the general public, any euthanasia case with enough evidence to convict, especially the open practice of euthanasia, will very likely come to trial. The adversarial system in the United States provides that in any euthanasia case one side will be pushing for conviction of the person who committed euthanasia. With the law on the side of the prosecutors, the prosecution will usually win the case and so any open practice of euthanasia in the United States carries with it a very real possibility of punishment.
In the Netherlands, the prosecution office is able to decide if a prosecution is in the best interest of community at large, before decided to prosecute. This has allowed them to set a policy that they will not prosecute euthanasia cases that meet specific guidelines, first set up by the prosecutor's office and later spelled out by the legislature. Therefore, euthanasia can be practiced openly in the Netherlands.

Sometimes euthanasia cases are brought to trial. This happened more often before the official policy of not prosecuting cases that met certain regulations. However, in these cases the goal of the prosecution was not to win the case and to convict the defendant. The goal was to find a consensus between the parties that would meet the greater public good. That is the reason that despite the law, euthanasia offenders were able to avoid conviction or at least punishment.
Chapter 6

LEGISLATIVE DIFFERENCES

The cultures of the two societies effect the legislative process. And the legislative process has had a significant impact on the euthanasia policies of the two countries. The Dutch legislative process is much less adversarial than the American legislative process. The Dutch do not view factions as beneficial in the same way that Americans do. America is generally a much more competitive society. American’s love a good fight. The Dutch prefer a peaceful compromise. A famous American once said “Winning isn’t everything, it’s the only thing.” Dutch sayings all go along the lines of “Don’t rock the boat” or “Fit in with the crowd.”

AMERICAN SYSTEM

In the winner takes it all system of American politics, a simple majority is all that is necessary for a bill to become law. A party in America will be perfectly happy with a one-vote majority, if its agenda gets passed. Winning is the object. Each party or faction tries to push as much of its legislation through as possible. Finding a solution that pleases everyone is only important in so far as it allows a bill to get passed. Pleasing everyone is not important, pleasing 51% is.

Part of the reason for this is the electoral system in America. Americans have a winner takes all system, in which the person with the majority of the votes wins. A typical election has two people from different parties competing against each other for
one seat. The person with the most votes, even if it is only one more than the other person, wins.

**DUTCH SYSTEM**

In the Dutch system finding a compromise is valued. The legislature tries to reach a compromise on all legislation. This is partially because the Dutch have a multi-party system. No one party ever has a pure majority. Compromise is always necessary. Compromise is also a part of their culture. The Dutch value a consensus more than a competition with a victor. There are historical reasons for this that have been explained previously.

The Dutch electoral system is partially responsible for the consensus seeking nature of the legislature. The Dutch electoral system is one of proportional representation. In a proportional representation system people vote for parties and each party gets to fill a percentage of proportional to the percentage of the votes that it receives. This system leads to a multi-party system and causes the parties involved to be much more consensus seeking.

Were the Dutch system an adversarial system like the American system, the pro-euthanists would probably have outvoted the anti-euthanists and euthanasia would be legal. However, because the Dutch value reaching a consensus, they generally do not push legislation through on a majority vote. They have not been able to reach a consensus on such a controversial issue such as euthanasia, so they have left the law intact and left euthanasia in the hands of the judicial branch. The Dutch legislature has not ignored euthanasia. They have continued to debate the subject, all the while trying to reach a compromise.
The legislation that passed in 1993 was a compromise between those who wanted to legalize euthanasia and those who wanted to keep the law that made euthanasia illegal. This legislation that lays down the rules for the reporting procedure was not a change to the euthanasia law, but a change to the Coroner’s Act. Euthanasia remained illegal, but a doctor’s answers to the questions in the Supplement Points of Consideration would determine if he were eligible for the defense of *noodtoestand*.

**EFFECTS ON EUTHANASIA POLICY**

The adversarial American legislative process is one reason euthanasia remains illegal in most of the United States. Euthanasia is a very controversial issue in most parts of the country. The fight necessary to get legislation passed would be too great a price for most politicians to pay.

In the Netherlands, it is the compromising nature of the legislative branch that has kept euthanasia from being legalized. The Dutch have not been able to reach a consensus on what to do about euthanasia so they have left everything alone and let the judicial branch to deal with it.
Chapter 7

CONCLUSION

Policymaking is a complex process. Various factors influence a country's policies on any given issue. In this paper I have attempted to explain some of the factors that effect the Dutch and American euthanasia policies. These factors, historical, cultural, and structural, all effect policy and effect each other. Historical differences effect the culture and structure of both the government and medical arenas. Structural differences effect the culture and the way the policy makers behave. Structure and culture effects whom the policy makers are. In this paper I have explained how they effect euthanasia policies in the United States and the Netherlands.

The origins of both countries effect the status of law, whether it is thought of as a moral power or strictly a utilitarian tool. The origins also effect the values cultures place on adversity versus compromise. History generally effects the governmental policies of different countries.

The structural composition of the medical profession effects the power that doctors have in a given society. This in turn effects how much power people are willing to give doctors concerning the ending of life. The system in the Netherlands leads to a much higher level of trust between patient, family, and doctor. Because of this, people have been willing to give the doctors a great deal of responsibility in the area of life ending procedures.

The structural arrangement of the electoral system effects whether or not governmental leaders will work to find a compromise that makes all parties happy or will
simply work to defeat the other parties. Multi-party systems, with proportional electoral systems, such as the Netherlands, tends to value reaching a compromise more than two-party, winner takes it all systems, as in the United States. The consensual or adversarial system that the electoral system helps produce effects which policies will be passed in an individual country.

The priorities of the prosecutor's office effect whether or not a case is brought to trial. This effects what actions are permitted in each country under each countries individual laws. The mindset of the lawyers and judges, towards winning and losing, or finding the best for all parties, also effects the outcome of the trial, and the policies the trials produce. The Dutch have a sense of the value of the public good apart from the law, while Americans see the public good as upholding the law, for laws sake. Upholding the law is a value in and of itself in America, while in the Netherlands, laws are only enforced when the law in seen to be in the general public good. Law has an inherent value in America that it does not have in Dutch culture.

These factors are interconnected and combine to produce the two nation's euthanasia policies. The Dutch allow euthanasia because of their tolerance, desire to find compromise, and trust of their doctors. The Americans do not allow euthanasia because they believe laws should protect morals and protecting life is held as a higher priority than self-determination. The relationship between the pro-euthanists and pro-life groups in an adversarial one and has been fought in the courts as such. In America there is little attempts to seek compromise between the two groups. This is one reason euthanasia remains completely illegal in most of the country. Doctors are not as highly regarded in America. Americans are often treated by doctors, which they have no knowledge of
before they arrive at a hospital. Therefore, Americans are much less likely to trust doctors with the authority to end their lives.

These factors combine to explain the differences between the euthanasia policies of the United States and the Netherlands. Policies are more than just the result of the will of the people, or even the good of the people, even in Democracies. Policies are formed by many structural and historical factors that are possibly just as influential as public opinion. At least these factors are determinants in the policy making process.


<http://www.law.emory.edu/EILR/volumes/spring96/belian.html>


