Law and the Individual Life

IT SHOULD COME AS NO surprise that "mercy killing" has ever been quietly provided by doctors confirmed in the belief they were doing best for their patients. The surprise is that now, as a result of two recent court rulings, physicians have been given legal authority to kill. Their action is also called euthanasia and assisted suicide. The former term means "good death," that is, death is deemed better than the phase of life it is summoned to end. The latter term means the patient considers a doctor necessary in terminating their terminal condition.

There are ethics in these matters, but without some transcendent anchor, they are too nebulous and relative to offer a basis for humane and consistent application. Such understanding was part of the common wisdom shared by the country's founding Fathers. In his Farewell Address, George Washington rhetorically asks, "Where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in the courts of justice?...Reason and experience forbid us to expect that national morality can prevail in exclusion of religious principle."

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The moral heritage of the Christian tradition and its Jewish antecedents includes a prohibition of suicide. In imitation of Christ himself, Christians are to endure any suffering rather than take their own lives. The Christianization of culture was marked by the spread of canonical and civil legislation prohibiting suicide. One of the earliest (first century) catechetical manuals, the *Didache*, makes clear that the only way of entering the Church was to shed the "Way of Death" and to take upon oneself the "Way of Life," which included an explicit rejection of abortion and infanticide. But significant erosion of Christian morality became clear with the infamous *Roe v. Wade* decision of 1973 which legalized abortion. It, in turn, provided the next generation with a precedent for the extension of the culture of death and a reversion to the pagan Roman practice of "noble" dying.

It has been noted that no court has been able to extract a right to medically-assisted suicide during the two hundred years the U. S. Constitution has been in effect. How can it now be so construed? One term helpful in explaining the new perception is used in the 1992 case *Planned Parenthood v. Casey*—the right of individual "autonomy." Govern-

ment is established to secure domestic tranquillity and to safeguard individual life, liberty, and the pursuit of happiness. It's that word *liberty* that has been getting a workout in recent years, and the expanding catalogue of rights that define that liberty, which now includes the right to take life.

On March 6, 1996, the Ninth Circuit Court of Appeals in San Francisco ruled that the Constitution guarantees a "liberty right" to assisted suicide. The decision simply extended the domain of rights enunciated in the *Casey* ruling, which maintains that the abortion license is "central to personal dignity and autonomy," and, as one of "the most intimate and personal choices a person can make in a lifetime," abortion lies within the sphere of individual autonomy—is, in other words, a constitutionally protected liberty interest specified under the Due Process Clause of the Fourteenth Amendment.

The Ninth Circuit applied the same line of argument to suicide. Judge Rothstein, who wrote the Circuit's majority paper, found "highly instructive and almost prescriptive" the passage from *Casey* which maintains that "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." An individual would be under compulsion were these concepts defined and mandated by the state.

Here we may most clearly see the value of religious or transcendent principles in guiding and ordering human behavior. When these truths and the ethos in which they are embedded lose their controlling influence, individual rights advance and correspondingly assert their self-centered and, too often, self-destructive priority.

Two weeks after the Ninth Circuit's decision, the Second Circuit Court of Appeals in New York City handed down its decision in *Quill v. Vacco* that terminally ill patients have a right to assisted suicide, based on another provision of the Fourteenth Amendment, the Equal Protection Clause, which requires that similarly situated people be treated alike. The class of people referred to are the terminally ill. It is already legal for such a patient to refuse treatment and authorize withdrawal of life-support systems, in many instances thereby hastening death. The court ruled that a subclass of the terminally ill were being discriminated against by being refused doctor assistance in suicide through the administration of a death-promoting agent.

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Abraham and Isaac

"Blessed is he that offereth himself up as a holocaust to the Lord as often as he celebrates or communicates."—Thomas à Kempis. Abraham sought not to take life but to give it. His obedience may be the Old Testament's closest parallel to the Gethsemane oblation of personal will: "not my will, but thine, be done"—Luke 22:42.

The alleged equivalence in this argument is patently fallacious. As Charles Krauthammer observes (*Time*, April 15, 1996), "There is a great difference between, say, not resuscitating a stopped heart—allowing nature to take its course—and actively killing someone. In the first case the person is dead. In the second he only wishes to be dead...[But] prescribing hemlock initiates it."

We see opening up what Michael Uhlmann, a Washington attorney, describes in his article "The Legal Logic of Euthanasia" (*First Things*, June/July, 1996) as "the bottomless pit of constitutional litigation based on claims of individual autonomy." The euthanasia issue will surely be considered by

the Supreme Court. But, Uhlmann concludes, "the question will be not how far we slide down the slippery slope of sanctioned killing, but how fast." A grim prospect, indeed. We need the legal proscription of suicide to dissuade against its enactment. As Krauthammer says, "The law is the last barrier to arrogance." The arrogance here is playing God with one's own or another's life.

How significant at this juncture becomes the knowledge about the post-mortem condition of the suicide made available by Max Heindel: "The suicide, who tries to get away from life only to find that he is as much alive as ever, is in the most pitiable plight. He is able to watch those whom he has, perhaps, disgraced by his act, and worst of all, he has an unspeakable feeling of being 'hollowed out,'" which feeling persists for as long as the physical body should properly have lived (*Cosmo*, page 104). Here is a deterrent to the suicide impulse. For if no religious assurance avails in times when living conditions seem intolerable, yet may the knowledge of entering into an even more intolerable state after a forced demise, give one pause.

In a survey of Oregon doctors published in the *New England Journal of Medicine* earlier this year, 60% said they should be able to help some terminal patients die, which action, though motivated by compassion, is in violation of the Hippocratic injunction to "do no harm" as articulated in the oath "I will give no deadly medicine to anyone if asked." Furthermore, the annals of medicine are rife with instances of inexplicable cures and spontaneous remissions of hopeless cases. Supporting statistics do not sanction the unconscionable practice of passing a death sentence on a patient, whom the diagnosing doctor may then more likely assist in fulfilling his assessment.

Both unremitting, intense pain, as well as clinical depression, are often behind a terminal patient's death wish. But, as Dr. William Wood, clinical director of the Winship Cancer Center at Emory University in Atlanta, reminds us, "If we treat their depression and we treat their pain, I've never had a patient who wanted to die."

The ways in which the legalization of the right to assisted suicide may be abused are numerous, including nonvoluntary euthanasia, admittedly already taking place in the Netherlands. That the practice shall continue, legal or illicit, is certain. But surely it need not be an authorized addition to the runaway ethic of an autonomous individualism bereft of the belief in a loving God Who inscru-tably uses pain and darkness to bless us and bring us into the embrace of his Light.

To live with hopelessness, and not act upon it, may just be the most important, life-affirming, spirit-empowering, death-overcoming deed of our entire life. Only living until unassisted death arrives will prove it.

From another angle, Wilfred Sheed reflects that "Strangers can never decide whose life is worth living, because strangers by definition don't know enough; but neither do friends, because the outside of an illness is so different from the inside...Happiness seems to proceed on a quite separate track from health" ("Dr. Death, a 90's Celebrity," *Time*, June 3, 1996).

Our affliction may be unto death—it may not. God knows, God Who gave us life and is Life beyond our death, beyond and in our pain, in the heart of our hopelessness. That we forget this truth and assert our despair in the desire for death is understandable and human. But the desire is one thing, acting on it is another. There are perhaps few who have not made at least a passing commitment to suicide. But to commit suicide robs us of our freedom to prevail in suffering, to "glory in tribulation." To live with hopelessness, and not act upon it, may just be the most important, life-affirming, spirit-empowering, death-overcoming deed of our entire life. Only living until unassisted death arrives will prove it. ❒