

Physician-Assisted Suicide-A Time for Action

By Kenneth A. Feucht, M.D., Ph.D., F.A.C.S.

Dr Kenneth Feucht is a practicing surgical oncologist in Puyallup, Washington. His major interests include the development of a theology for the practice of medicine.

Introduction

The Christian medical community was recently alerted to the possibility of a shift in the way medicine would be practiced at the end of the twentieth century. On March 6, 1996, the Ninth Circuit Court of Appeals¹, and again on April 2, 1996, the Second Circuit Court of Appeals² argued in favor of allowing physicians the right to kill their patients, if requested and performed in a manner agreed upon by the state. This announcement came as a bitter blow to me, as I realized that soon physician-assisted suicide (PAS) and euthanasia may become common medical procedures, possibly as common as abortion is now in the United States. What are the usual arguments for and against PAS? How should Christian physicians react There is certainty that if Christians do not speak out now, we will bear responsibility as to why PAS will be commonplace. We have the ability to change, or at least to restrain the progress of evil, and will be held accountable to Almighty God if we do not speak out against this great sin.

THE ARGUMENTS

The Ninth Circuit Court argument in *Compassion in Dying v. State of Washington* ruled in favor of physician-assisted suicide on entirely different grounds than did the Second Circuit Court of Appeals in *Quill v. Vacco*. The Ninth Circuit Court argued predominantly on the basis of constitutionally protected liberty interest, while that of the Second Circuit Court argued instead on the basis of the equal protection clause of the Fourteenth Amendment, which states that "all persons similarly circumstanced shall be treated alike." I will discuss ramifications of the liberty-interest, or "rights" argument first.

Rights Argument

Several conclusions will eventually be drawn when the rights argument is pushed to its logical conclusion. In the discussion of legal counsel Barbara Shickich to the Washington State Hospital Association regarding the Ninth Circuit Court decision, she notes, "Some hospitals may not have a choice about permitting physician-assisted suicide. Public hospitals may be required to allow physician-assisted suicide or face litigation ...a public hospital which does not allow physician-assisted suicide could be subject to a section 1983 civil rights action for denying a patient a right protected under the Fourteenth Amendment of the Constitution. As such, the hospital would be at risk of liability for monetary damages as well as attorneys' fees."³ The implications of the rights argument are that while public (and not private) hospitals will initially be held liable to provide means to terminate life, such a ruling will easily evolve to apply to all institutions under the aegis of federal review, including those hospitals which are reviewed by the JCAHO, or who receive federal moneys from Medicaid or Medicare. There is no suggestion that physicians themselves will be accountable for refusing to perform PAS or euthanasia, but that PAS may be an expected alternative that we would be required to discuss in any consultation with a patient, or in any hospital admission.

The Ninth Circuit Court decision also remarked that the states have the right to govern or regulate the performance of patient killing. This is most interesting, in that even the Ninth Circuit Court accepts that there are limitations to a person's rights. If suicide were truly legal, then all people under the protection of the liberty clause would have that right to commit suicide, with or without the assistance of a physician. Bottles of

hemlock or cyanide should be made available without prescription as an over-the-counter drug to all who wish to exercise the liberty clause of the Fourteenth Amendment. To restrict such actions is to interfere with both the right of privacy, and the more far-reaching rights of equal-protection. The question thus is really not a matter of rights, because even the Ninth Circuit Court realized the legitimacy of the state restriction of individual autonomy in personal matters that do not affect others. The real argument is not over rights, but over who in society has the ability to define where personal rights end, and on what basis that dividing line of rights versus constitutional protection is enacted. In this case, the court has felt it could offer a better definition of that dividing line than the voting public, since the possibility of making assisted suicide legal was taken to the Washington state public in 1991 (Measure 119), and it lost.

The editors of *First Things* comment, "The Supreme Court will face the difficult task of explaining why its abortion precedents do not invite the conclusion drawn by the Ninth Circuit... If... the Supreme Court uphold[s] the Ninth Circuit, the battle over abortion would likely be transformed into near unconditional warfare against the arrogance of courts that short-circuit democratic deliberation by the imposition of their moral (or grossly immoral) dictates. Make no mistake, the Ninth Circuit has thrown down the gauntlet to the people and legislatures of nine states, and by implication to the entire country... If the decision of the Ninth Circuit is declared the law of the land, our public life will move from widespread alienation and protest to open insurrection. No sensible person will welcome that prospect. But if it comes, the guilt will surely fall on judges who arrogated to themselves the political and moral authority that once belonged to the people of this democratic republic.

The quote is long, yet it emphasizes the fact that the courts have established themselves as more capable than the democratic process at determining public morality.

The courts seek help through the history of assisted suicide in our culture and others. Sadly, because their arguments were a matter of rights and human liberties,

they failed to investigate the historicity of rights in America. Stuntz notes that the American concept of rights has changed since the institution of the Constitution. Americans were originally concerned primarily with protection of their property rights. We wanted the ability to control the use of our property and have protection from the invasion of others, including government, on that property which we own.

As Stuntz discusses, "Two dramatic changes in the nature of legal rights took place in the first half or so of this century. The idea of strong, constitutionally protected property rights declined sharply; the Great Depression made such rights seem selfish or even socially dangerous. The government still cannot take my property away from me without paying for it, but the government can dictate my use of it in a host of ways. Constitutionally speaking, property rights may not be dead, but they are at least on some kind of life support. As one paradigmatic right declined, another took its place. Freedom of speech grew stronger ... [and] the First Amendment ceased to be a constitutional backwater and became instead the starting point."⁵ In essence, no constitutional framer understood rights in the manner in which we understand them today. It would be safest to avoid rights arguments all together, or at least achieve a greater clarification as to exactly what we mean in using the word "right" in its historical sense.

Equal Protection Argument

The Second Circuit Court argued for the "right" of the physician to perform murder on his patient based on the equal protection clause of the Fourteenth Amendment. The argument is based as follows. Since the distinction between "natural" death and assisted death is quite blurred, and "natural" death is permitted by previous court rulings, such as *Brophy v. New England Sinai*, other patients should have equal opportunity for death if desired. The argument fundamentally states that intent has no role to play in the legality of PAS. This is odd, since intention makes all the difference in general murder trials. Just recall the effort made to prove that OJ. Simpson had absence of intent to murder his wife. The argument also confuses medicalization of life versus life naturally sustained. Christians can be mostly blamed

for this loss of distinction. By insisting that refusal to treat or refusal to continue certain treatments was tantamount to murder, we created the moral necessity to maintain aggressive medicalization of a patient, in spite of the patient's overall prognosis or (sometimes even) wishes. Christian ethics conferences were often oriented around such topics as the morality of withdrawal of treatment. This was good, but often this thinking led to arrogance in imagining that we had control over life and death. This arrogance was bolstered by our non-Christian colleagues' sense of medically ushering in a Utopian state, and little thought was given to the fact that God remained in control of the finality of life. This is not an argument to refuse to interfere with "nature"; Camus (in *The Plague*) confused the Christian role of acting to prevent personal or societal ill, and we must not do the same. I argue that medicalization of life is not necessarily a moral good, while the medicalization of death is always a grave moral evil.

This argument is also an example of how subtle changes in our approach to medical problems are the result of vast changes in our Weltanschauung. The Second Circuit Court is an argument that implies that minimal incremental changes are of negligible moral implication. Christians should not be new to this line of thinking, since just about any theology or any ethic has been justified as being negligibly different from the real thing.

The "Tough-issue-with-no-easy-answer- Argument

This is the most common preamble issued when the discussion of physician-assisted suicide is presented. It is offered as a request that we truly consider and weigh the issue of PAS, hear the subtleties of all sides, and all aspects and ramifications of the issue before we make our minds up. No! No! No! No! No! This is not a discussible issue. If people wish to discuss this, suggest also that we discuss and seriously consider other issues, such as the legalization of cannibalism, or legislation to enact torturous executions of all people that make more than 5100,000 per year, or the possibility of state-sanctioned incest and sodomy, or ...who knows what. If all moral issues are a venue for serious dialogue, then let all issues be of serious dialogue.

Christians need not be ashamed to admit that PAS is an issue that lies entirely out of the prospective topics of legitimate oral exchange. There is never, ever, a situation where PAS would be acceptable, and there is never a situation in which it would be a morally acceptable situation. Even once. We should not be afraid of expressing our absolute disgust and horror that such a topic would even be considered. Perhaps the problem is that we don't see how offensive this action is to our Almighty Father in Heaven.

I often use an analogy. If you lived in Stalinist Russia and were caught defacing or destroying an image of Stalin, you would need no great understanding or insight to be convinced that the death penalty would be swiftly delivered. Yet, if humans are created in the image of God and bear that image, to kill an innocent human, whether it be an infant, elderly person, healthy or sick, black, white, or Jewish, you would be defacing the image of God. Why would God be less offended than Stalin? In summary, PAS is an easy issue with simple answers. Period.

Slippery Slope Argument

The slippery slope argument is used by both sides of the debate, but more often misused by Christian ethicists. A Christian ethicist will argue the narratives of Nazi Germany, Holland, and the U.S.A. (in regard to the abortion issue) as legitimate reasons to avoid PAS. Certain concessions will quickly permit abuse. The slippery slope argument is legitimate, but it has several problems associated with it.

First, it assumes that both sides have some agreement about what "the good" is. As an example, we could argue the slippery-slope argument for abortion, yet if more abortions are really better, and if the consequences of abortion can be successfully overcome, we would have no argument. The moral argument would be entirely consequentialist in its approach, rather than arguing for a fixed and universal moral Law that Christians feel define the "good."

Secondly, the slippery slope argument does not always predict public behavior. As an example, a "slippery slope" leading to genocide began in Germany with the

forced sterilization of unwanted people. They took the lead from Americans, who were far ahead of the rest of the world in the area of forced sterilizations of the mentally infirm and criminals. Yet, America did not slip too far or long in this regard.

As an alternative to the slippery slope argument, I propose the "future contingency" argument. This argument will not fare well with blind optimists who view America's prosperity and wealth as a steadily increasing phenomenon. The future contingency argument asks if the moral decisions we make today are going to provide the same protection and moral groundedness when things in the world change. Are we building a moral base that will permit our children to exercise these same moral principles? Or, are we providing for our children the ultimate temptation, to unbolt the door and crack the door open just enough to make anything permissible? Already, it is easy to be lulled into thinking that a suffering patient would be helped by giving a "small" supplemental dose of potassium. But I don't do it. What if the economic landscape of medicine has so changed that there becomes undue pressure on our sons and daughters to yield to the call of "love"? What if a segment of our population becomes vilified and open to general public contempt? Like the Freemen in Montana? Or the Mexicans? Or illegal aliens of all sorts? Or Christians? Will we then medically "love them to death" also?

"Not-a-religious-issue" Argument

Most of our ethical practices are done in a secular, or semi-Christian environment, and so it would be easy to imagine that our offensive against PAS needs to be waged on a secular front. This is a concession that Christians need not make. It doesn't help matters to try to argue that all philosophies are a person's individual religious beliefs, since what really matters is simply that fundamentalist Christian ethics are not pushed on another person.

All that we do in medicine has a religious ring to it. We are present at the most significant events in a person's life, including his birth and his death. Old Testament "medical practice" was performed by the priest.⁸

In Western tradition, the church used to do everything that now happens in the hospital. When someone was sick, was born, or died, the church was there. What we do in medicine has a ceremonialism to it that suggests a religious ritual, and the imagery of religiosity is easily supplied by such writers as Richard Selzer.⁹ Hauerwas¹⁰ details well the activities of medicine as a religious experience. The presence of the physician, like no other person, denotes a sense of transcendence and reverence for life. This is why the physician is asked to perform the religious ceremony of terminating the "useless" life.

Think about it for a moment. Why use the physician to assist in the suicide? Why not the hospital janitor? Or the patient's personal lawyer? A hospital Chaplain? Or a civil executioner? Anyone but the doctor! Yet both of the discussed court cases do not even conceive of anyone but the doctor assisting in this dastardly deed. If the issue really was one of reassuring that the procedure was medically permissible, such as to prevent insurance companies from denying reimbursement for foul play, the laws of the land could easily designate a legal hitman for the suffering soul desiring death. But death needs its high priest, and the physician is the only shaman of the land that can perform that duty. Medical killing is too sacred an action to confer the privilege on the profane. This is most certainly the reason why Nazi killing always demanded that a physician make the final decision for death, whether it was to terminate the life of a deformed child, or to terminate the life of a gangrenous appendix (Jew) at Auschwitz and other death camps.¹¹ The sanction of the physician purified the decision and made it religiously permissible. This is something a politician or lawyer could never do. They are not the cultural high priests of the land as the physicians are. Society naturally treats physicians in a religious fashion, and so the arguments about PAS need to be religious arguments.

"Love-and-Compassion" Argument

The Nazi physicians that ran the death camps were often characterized as kind, distinguished, loving, caring, morally responsible, deeply religious, genteel, and polite. They were such compassionate doctors, and

they loved their patients to death. Studies have shown how Nazi physicians truly meant well and acted as benevolently as was humanly possible.¹² When the gas chambers and other methods of killing patients were developed, great efforts were made to make these methods of killing as humane as possible, so that the "patient" (victim) suffered as little as possible and death occurred quickly. It was mighty kindly of the Nazis to do so, and the euthanasiologists of our time must study the virtues of phenol injections and Zyklon-B inhalation therapy before subjecting "patients" to a less-than-kindly death.

In Latin, the word compassion is broken down into "cum pati," or "to suffer along side with." It is a strange concept of compassion that suffers along side with the sufferer by terminating the sufferer. As the high priest of autonomy Joseph Fletcher argues, "Think for a moment what it means to smooth the bed of death lovingly. When doctors and nurses truly love their patients, they respect their rights not just because rights may happen to be legally reinforced, but because rights-morally valid claims-are surely an essential part of loving concern. One of these rights is the right to die, the right to choose to die."¹³

In essence, it will become morally imperative, according to Fletcher, to kill the sufferer, since that may be a part of loving concern if the sufferer himself is in anguish about making the decision to end life comfortably. This will all be done in the name of being compassionate physicians. There is no "suffering along side with," or provision of respect and dignity to the sufferer, but convenient termination of that life.

This is where a strong Biblical basis for ethical behavior is most needed. How do the Scriptures define love? What is love in the Biblical context? Most of the examples and instruction that we have come from Old Testament narratives and Law, but unfortunately, most Christians derive their instruction only from the New Testament. It is important to see the abiding basis for this law in governing the life and behavior of the Christian and in defining on a societal level what it means to love God and man. Since love for God transcends love for man, we do not purposefully

destroy His image. Authority from God to terminate a person's life is well laid out in the Old Testament law, including situations of war, and as punishment for various sins such as witchcraft, homosexuality, adultery, bestiality, Sabbath breaking, or blaspheming the name of God. ¹⁴ Such actions were intended to form a community that models God's holiness and righteous indignation against sin. Love for God demanded judgment for offenses against the Almighty. Is God no longer angered by sin or our lackadaisical attitude toward sin?

What about the love we show for a man when he suffers? The examples that the courts selected to use are poor. In the Second Circuit Court judgment, the argument for assisted suicide was introduced by presenting three cases where the sufferer was demanding termination. One plaintiff was a lady with end-stage locally advanced thyroid cancer, of whose simple withdrawal of medical intervention would have led to her death, and indeed, she died before the court case was even defended, thus not needing the help of man. The other two cases were those of AIDS patients, and the court account of their suffering demonstrated that their suffering was occurring primarily from the medical treatments they were receiving to keep them alive, and not the disease! Duh! Obviously, the plaintiffs' agendas were far greater than caring for the suffering of those who supposedly had no other answer to their suffering.

What if our society decides for physician-assisted suicide? What characteristic do you think this decision will paint on our culture? How will our children's children talk about us? Do we view the ancient Greeks as more caring because their physicians would assist in their deaths? Are the Nazis viewed as compassionate, in spite of their excesses? Do we visualize the Dutch community as the paragon of virtue and love? I fear the answer is always in the negative. Such actions as PAS do not describe the society as a more compassionate society, no matter how you may argue for an individual situation. This is where Christians can really make a difference. Are we reaching out to the despondent in their last hours, providing them with the value of being a human being? Are we doing this to those within and without the household of faith? Who should know how

to love more than the Christian, who has been touched by love "so amazing, so divine"?

ACTION PLAN

There are a number of actions that Christians might consider taking for combating this great evil in America.

Establish a solid Biblical base

Sound theology should be the prime interest of all physicians. It is the basis for our morality, and the better we know God as He has described Himself in His Word, the better we can discern what behaviors are morally permissible.¹⁵ When the Westminster Shorter Catechism asks, "What rule hath God given to direct us how we may glorify and enjoy Him?" the answer "The Word of God ...is the only rule to direct us..." confirms the uniqueness and sufficiency of His Word to answer all questions of moral judgment. Yet many physicians identify themselves as not being the best theologians. Perhaps a time of formal theological instruction should be encouraged before a Christian physician engages in medical practice.

Doesn't a strong systematic theology divide rather than unite Christians since there are so many schools of thought? Shouldn't we just depend on the simple Word of God as plainly understood? Doesn't too intense a study of theology, as in seminaries, lead to a dampening of the Spirit of God? The answer to all these questions is emphatically NO. We spend the bulk of our professional lives accurately and finely discerning the nature of God's world and have no problem with that. Yet, we approach the Word of God as kindergartners. That is not right, and the church will never have a strong defense against the world if it doesn't have a solid theological base. A good theology, in spite of differences, will always unite those truly faithful to the Word.

Get on ethics committees

Why are there not more Christians on hospital ethics committees? This has been an extreme frustration to me as Chairman of a rural hospital ethics committee. Well-spoken and well-thought-out arguments offered in a

gentlemanly fashion go over with acceptance in a secular community, even among those that strongly disagree with you. Yet, Christians stay away from ethics committees, fearing that to participate will unnecessarily force their religion on others. How lazy we can get! We must not let nonChristians decide for us what is morally proper for hospital behavior. I am surprised that non-Christians and liberal Christians have a better sense than we evangelical Christians about the importance of thinking through difficult moral issues. It is by default that they are winning the moral decisions of the day, because Christians simply are not showing up for the debate. I have tried hard to recruit Christian physicians, nurses, and ancillary personnel onto the ethics committee but have been mostly ineffective at the task. It will be our own fault when we see our hospitals decline to such a position that we Christians will also be intimidated into killing our patients.

Develop regional protests

Dr. Michael R. Jackson, a family physician that I know through the church that I attend, and I were lamenting the recent court rulings and decided to spearhead a county action. We developed the Pierce County Physicians Against PhysicianAssisted Suicide. We then drew up a short document that stated that the co-signer of the said document would never engage in PAS, nor refer a patient to another physician for the same. This document, along with a cover letter and return envelope, was assembled by the church youth group at Faith Presbyterian Church (PCA) in Tacoma on a Wednesday night and mailed to all 700+ physicians in Pierce County. The cover letter asked them to sign the statement and return it to us with \$20.00. With the acquired funds, we took out a page of the local newspaper announcing those physicians that the public can trust with their lives, declaring our opposition to PAS. Since then, Dr. Jackson and I have been asked to speak at Washington State Medical Association meetings as the representatives of the contrasuicide position and have been invited onto both television and radio to argue our position.

Develop a national response

When the *Tacoma News Tribune* displayed the result

of the Ninth Circuit Court decision on March 7, 1996, my reaction was mixed between extreme anger and sullen depression, viewing what was soon to come. My practice as a Surgical Oncologist involves caring for many patients in the terminal phases of their lives, and I realized how deeply such a judgment would affect my practice and the way I respond to my patients. It came as a bitter surprise to me that there was little interest among evangelical Christians in generating a clear response to this problem. There were concerns about the political repercussions that might ensue, the desire to not push one's faith onto someone else, the concerns that they were too involved in their church to make a public response, but mostly, the sentiment was expressed that this was not something to make a big deal over. A number of times, people have told me not to get so excited about PAS, as I was fabricating a scenario that would never happen in America.

Sadly, the people who were most willing to assist us in making a community response were those physicians from faiths that we would classify as cults, or from physicians of a liberal Christian and non-evangelical persuasion. The antipathy of the evangelical Christian community remains a great puzzle and disappointment.

Christians should be actively examining the arguments presented by the advocates of a death society, in order to render intelligible discussion. Our colleagues who support the Hemlock Society usually acquire their positions because of a "gut feeling" of what is right, rather than a carefully considered position. Christians especially should be studying the battlefield and learning the arguments, in order to be prepared to answer for our moral position. Read the two Circuit Court cases. Carefully study the legal decisions and arguments that led to the current court stance. Know what the Hemlock Society and others are doing. And oppose it.

This is a call to war.

This is a call to war. To fight, we must return to a theology that truly holds God as Sovereign Creator and us as created servants of Him, that holds an intense respect for life, and that calls us all to the ministry of being the watchmen and light in society. Let us seek to encourage our fellow physicians, our hospitals, our

patients, our cities, and our nation to repent and return to our Christian heritage.

solo sapienti Deo per Iesum Christum cui honor in saecula saeculorum amen Romans 16:27, Vulgate

References

1 *Compassion in Dying v. State of Washington*, 79 F.3d 790 (Ninth Cir. 1996).

2 *Quill v. Vacco*, 80 F.3d 716 (Second Cir. 1996).

3 Shickich, Barbara, letter of counsel to the Washington State Hospital Association, March 1996.

4 Editorial Comment, "The Ninth Circuit's Fatal Overreach," *First Things* (May 1996), pp. 12-13.

5. Stuntz, W .J., "When Rights Are Wrong," *First Things* (April 1996), p. 62.

6 Genesis 1:26, 5:1, 9:6; I Corinthians 11:7; Colossians 3:10; James 3:9.

7 This is really an argument for raising our offspring in the fear and admonition of the Lord, while at the same time establishing societal laws to promote Godliness in our children and remove temptations to stray from God's law (e.g., Deuteronomy. 4:10, 6:7) and to keep the farthest distance from evil (Proverbs 5:8, 1 Thessalonians 5:22). It is in keeping with the prayer of Bernard: 'Grant us Lord, that we may so partake of temporal felicity, that we may not lose the eternal,' or the attitude of John Chrysostom when tempted to compromise by the empress Eudoxia: "Nihil nisi peccatum timeo" (I fear nothing but sin): May a similar attitude so direct the construct of the laws of our society. See also Thomas Brooks "Precious Remedies Against Satan's Devices," especially pp. 30-31, Banner of Truth rus, first published in 1662. John Craven's work on the mortification of sin speaks also of ordering one's life to not dispose one's children to sin. The future contingency model might be construed by some to imply an appeal to moral groundedness through absolute, unchanging natural law(s), although I don't intend it as such.

8. See for example Leviticus 13:16, where skin diseases are presented to the priest.

9. Selzer, Richard, *Confessions of a Knife* (New York: William Morrow Press, 1979), pp. 15-21, and *Mortal Lessons: The Surgeon as Priest* (New York: Simon and Schuster, 1974) , pp. 24-36.

10. Hauerwas, Stanley, *Suffering Presence*, University of Notre Dame Press, 1986.

11. Lifton, Robert Jay, *The Nazi Doctors*, Basic Books, 1986.

12. Update reprint, from the Loma Linda University Center for Christian Bioethics.

13. Deuteronomy 20:16-18, Leviticus 24:17, Leviticus 20:13, Leviticus 20:10, Leviticus 20:15, Exodus 31:15, Leviticus 24:16.

14. Ethical behavior is determined by the character of God, Who instructs us to be holy as He is holy (Leviticus 11:44, 45, 19:2; I Peter 1:16).