

Assisted Suicide and the Supreme Court

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Should it be legal for a physician to help a patient end her own life at her request? This question has been asked in private conversations, hospital rooms, legislative chambers, and courthouses, particularly since Dr. Kevorkian brought it to public attention in the early 1990s. Although Dr. Kevorkian now sits in a Michigan prison cell for aiding in the televised death of a patient on CBS television's *60 Minutes*, the issues he raised grow in intensity. In 1997, the United States Supreme Court was asked to rule on whether there is a constitutional right to physician-assisted suicide. They heard appeals of two cases, *Compassion in Dying v. State of Washington*, and *Quill v. Vacco*. The Court rejected the argument that the liberty guaranteed by the Constitution covers the right to commit suicide with a doctor's help. Although assisted suicide is not a constitutional right, neither is it clearly ruled out by the Constitution, they concluded, and it would be up to the states to debate these issues and make their own regulations.

At that time, one state had already had this debate and had crafted a law permitting limited physician assisted suicide, and today it remains the only state to have done so. In 1994, Oregon legalized physician-assisted suicide, and by the end of 2004, over 208 people had ended their lives this way. Under Oregon's *Death With Dignity Act*, a patient must be: 1) 18 years of age or older, 2) a resident of Oregon, 3) capable of making and communicating health care decisions for him/herself, and 4) diagnosed with a terminal illness that will lead to death within six months.

On January 17, 2006, the Supreme Court issued a ruling on a case that had the potential of reversing the Oregon law. During President Bush's first term, Attorney General John Ashcroft had objected to a doctor's use of legal drugs to end a life, and attempted to use federal drug control laws to prohibit Oregon's physicians from assisting in the suicides approved by Oregon's voters. He claimed that using drugs in this way did not serve a "legitimate medical purpose" and threatened to remove from offending doctors the right to prescribe drugs of any type, thereby putting an end to their medical careers. In defense of their law, Oregon officials and physicians sought to block the implementation of these federal restrictions.

The Court's 6-3 majority, in a decision written by Justice Anthony Kennedy, ruled that Ashcroft had exceeded the authority delegated by Congress to combat drug trafficking when he attempted to apply those laws to the practice of medicine. It is for the states, not the federal government, to regulate the practice of medicine. This is in keeping with their earlier decision to allow these matters to be regulated by the states. In his first significant decision, Chief Justice John Roberts Jr. voted with the minority against the Oregon practice.

Where does this leave American society on the issue of physician assisted suicide? This ruling has to do with the Attorney General's power to regulate the practice of medicine, and is not directly an endorsement of physician assisted suicide, yet the effect is to permit the taking of innocent human life. Legislative options remain, as Congress could outlaw physician assisted suicide or the use of legal medications to assist in these

deaths.

How likely is this? Currently, it might be politically risky to push strongly to curb physician assisted suicide, because American opinion has shifted strongly in favor of such practices, although there remains a vigorous minority who oppose them. Although in 1950 only 26% of Americans agreed that doctors should be able to end patients' lives in certain circumstances, today 72% agree, according to Gallup polls. A 2001 Harris poll finds that 65% of Americans believe assisted suicide should be legal, and a *Time* magazine poll found that 59% of Americans agreed strongly or somewhat with the decision to discontinue the life prolonging feeding of Terri Schiavo.

It is crucial to remember that the Christian ethical tradition has clearly and consistently rejected euthanasia and physician assisted suicide, and most Christian ethicists continue to firmly stand against these practices. The biblical material that seems most relevant to these topics is the command to do no murder. Christian tradition has overwhelmingly rejected hastening the death of those who are ill or dying. To take one example, Bishop Jeremy Taylor's seventeenth century work, *Holy Dying* was meant to be a guide to help the Christian to prepare for death. Taylor discussed the commandment, *Thou shalt do no murder* and found its duties to include

1. To preserve our own lives, the lives of our relatives, and all with whom we converse, (or who can need us, and we assist,) by prudent, reasonable, and wary defences, advocations, discoveries of snares, etc.
2. To preserve our health, and the integrity of our bodies and minds, and of others.
3. To preserve and follow peace with all men.

The commandment is violated, says Bishop Taylor, by practicing suicide and euthanasia: “They sin against this commandment... that willingly hasten their own or others death.”¹

In a recent ecumenical statement issued jointly by the Church of England and the Roman Catholic Church to the British House of Lords, the churches expressed centuries old teaching when they claimed

Because human life is a gift from God to be preserved and cherished, the deliberate taking of human life is prohibited except in self-defence or the legitimate defence of others. Therefore, both Churches are resolutely opposed to the legalization of euthanasia even though it may be put forward as a means of relieving suffering, shortening the anguish of families or friends, or saving scarce resources.

Further, they argue that “deliberately to kill a dying person would be to reject them.”

They go on to affirm that

Our duty is to be with them, to offer appropriate physical, emotional and spiritual help in their anxiety and depression, and to communicate through our presence and care that they are supported by their fellow human beings and the divine presence.

The biggest challenge to a Biblical perspective on death and dying is not the courts, but the hearts of our fellow citizens. Unless the value and dignity of human life at all stages

¹ ¹¹ Jeremy Taylor, *Holy Living and Holy Dying*, 2 vols., ed. P. G. Stanwood (London: Clarendon Press, 1985)

is upheld, laws will inevitably follow opening the doors to further killing of the sick and dying. The alternative, to progressively open the doors to voluntary active euthanasia, will lead us down the sad path taken by the Netherlands. Dutch physician Richard Fenigsen has written that Dutch general practitioners are estimated to perform from 5000 to 20,000 cases per year, which he notes that in American terms would be from 80,000 to 300,000 cases per year.² In his research he has found “involuntary euthanasia...is rampant.” He found that “a staggering 62% of all newborns' and infants' deaths resulted from ‘medical decisions,’” and that in 1995 alone there were 900 lethal injections given to patients who had not requested euthanasia.³ Among that group, 189 were fully competent and could have been consulted about their consent but were not. He concludes that “those who contend that it is possible to accept and practice “voluntary” euthanasia and not allow involuntary totally disregard the Dutch reality.”

There is little reason to hope that the killing of patients in this country will remain voluntary, nor that our sick will be able to count on compassionate care rather than a hasty death, unless voices are raised against physician assisted suicide.

² “A Case Against Dutch Euthanasia,” *Hastings Center Report* special supplement, Jan/Feb, 1989.

³ Richard Fenigsen, “Dutch euthanasia revisited,” *Issues in Law & Medicine*, Winter 1997 v13 n3 p301-311