

5-1-2003

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### Recommended Citation

Myers, Richard S. (2003) "[Book Review of] *When Killing is Wrong: Physician-Assisted Suicide and the Courts*, by Arthur J. Dyck," *The Linacre Quarterly*: Vol. 70: No. 2, Article 10.

Available at: <http://epublications.marquette.edu/lnq/vol70/iss2/10>

## Book Reviews

*When Killing is Wrong: Physician-Assisted Suicide and the Courts*,  
by Arthur J. Dyck (Cleveland: Pilgrim Press 2001)

Arthur J. Dyck's new book, *When Killing is Wrong: Physician-Assisted Suicide and the Courts*, is a valuable addition to the literature on physician-assisted suicide. In this short book (127 pages), Dyck discusses the "conflicting modes of moral argumentation" that are present in the debate about the legalization of physician-assisted suicide. He vigorously defends the sanctity of life ethic and critiques the contemporary assault on this ethic in recent judicial opinions and in the works of certain modern philosophers. Despite some flaws, which are discussed below, I think this book is well worth reading.

The book focuses narrowly on *Washington v. Glucksberg* and *Vacco v. Quill*, the 1997 Supreme Court decisions rejecting the claim that laws banning assisted suicide violate the Constitution. Dyck discusses the key lower court opinions in these cases and then finally discusses the key Supreme Court opinions. Dyck, who is the Mary B. Saltonsall Professor of Population Ethics in the School of Public Health and a member of the Divinity School faculty at Harvard University, is not a legal scholar. His treatment of these cases focuses not so much on the legal doctrine or on constitutional interpretation or on the proper role of judicial review in our society, but rather on the moral frameworks that are implicit in the varying judicial approaches to assisted suicide.

His analysis critiques, from a philosophical perspective, the moral theories and the underlying theological anthropology expressed by those who support a constitutional right to physician-assisted suicide. According to Dyck, the physician-assisted suicide position "would leave homicide law without a principled basis." (p. 8.) "[T]here is [, then,] an urgent need to examine carefully what philosophical justification exists for the principles that now guide and support homicide law." (Id.) His "book intends to provide such a justification." (Id.) He considers, accordingly, "what makes killing wrong, when it is [wrong], and what moral and legal concepts will provide a principled basis for homicide laws" and also for laws banning assisted suicide. (p. 7.)

In this discussion, Dyck discusses three traditions that he claims are vying for ascendancy in American law. First, is the tradition rooted in Judaism and Christianity. Second, is the tradition rooted in Hobbes. Third, is the tradition that is traced to a particular reading of the thought of John Stuart Mill. In Dyck's account, the first two traditions combined to create a

“Natural Rights Synthesis” that provides a rationale for modern Western democracies and for their long-standing protection for the right to life and their opposition to direct killing. In contrast, the third tradition appeals to utility as the basis for rights. This tradition, which he contends has emerged in recent court decisions favoring assisted suicide, does not provide a basis for retaining the Anglo-American legal traditions’ affirmation of the right to life. Dyck maintains that this rupture with the long-standing premises of our legal and moral traditions threatens “the protection of life and liberty necessary to perpetuating communal life....” (p. 13.)

The way out of this situation, according to Dyck, is to emphasize the elements in the Millian tradition that are supportive of the traditional ethic and to incorporate these elements with the Natural Rights Synthesis into a new synthesis. This new synthesis would avoid the theological conflicts implicit in these varying traditions while providing support for a view of the sacredness of human life “such that the law reflects, teaches, and supports the incalculable worth of the life of each individual.” (p. 119.)

As noted, much of this book is a detailed review of the moral reasoning that is either explicit or implicit in court opinions on physician-assisted suicide. Most of this analysis is full of insights into what is really at stake in these opinions. The debates in these cases are not simply about fine points of legal doctrine; they reflect rather a deep divide about human nature, about the meaning of freedom, about the value of human life, and about the nature of moral reasoning.

Of special value is Dyck’s focus on the communal aspects of this controversy. (Dyck’s earlier book, *Rethinking Rights and Responsibilities: The Moral Bonds of Community* (Cleveland: Pilgrim Press 1994), explored this aspect of rights in great detail.) He does emphasize that the intentional killing of an innocent person is wrong because “it violates an individual’s natural and inalienable right to life and all the expectations and claims it makes on human behavior.” (p. 96.) But, he is particularly persuasive in explaining how “the act of killing oneself or someone else violates and threatens to undermine the mutual moral responsibilities that are requisites of individual and communal life.” (Id.) This is a welcome corrective to the more typical discussions of these issues with their exaggerated emphasis on individual autonomy.

There are some weaknesses in this book. First, I found it striking that there is almost no mention of abortion in this book. His entire legal and moral discussion of physician-assisted suicide is completely detached from its connection to abortion. I realize that physician-assisted suicide is a weighty enough topic of its own, but I think it is impossible to provide a well-rounded picture of the court decisions and the underlying philosophy these decisions express without exploring the linkage with abortion. There is, for example, just one brief mention in Dyck’s book of the Supreme

Court's decision in *Planned Parenthood v. Casey* (1992). This is a real puzzle given how prominent a role that decision played in subsequent judicial treatments of physician-assisted suicide.

Second, I found inadequate Dyck's treatment of the relationship between physician-assisted suicide and the refusal of life-sustaining medical treatment. This is a central portion of the book. Dyck largely defends Chief Justice's Rehnquist's conclusion in the 1997 assisted suicide cases that "[t]he distinction between letting a patient die and making that patient die is important, logical, rational, and well established." Most of Dyck's discussion of this issue is sound, yet I found it to be troubling in some significant respects. He defends the permissibility of what he terms "comfort-only care" even when this care clearly hastens death. I agree that there is a case to be made for this distinction, but it depends greatly on how one defines "comfort-only care." At one point (p. 38) he seems to equate "comfort-only care" with passive euthanasia, and I don't think he adequately treats just how threatening an acceptance of passive euthanasia is to what I take to be the thrust of the whole book—that is, to defend the sanctity of life, or as Dyck sometimes describes the matter, the incalculable worth of the life of each individual. And, I don't think he adequately comes to grip with the reality that many of the "refusal of life-sustaining treatment" cases in the courts really do accept the permissibility of lethal choices and an acceptance of the idea that some lives are not worth living—concepts that Dyck effectively criticizes in the rest of the book.

In the end, reading this book left me uncertain how Dyck would handle the withdrawal of food and water cases. (He has criticized the withdrawal of food and water from patients in a persistent vegetative state in earlier writings.) His principles seem sound (he does seem to focus on the important point that the issue in these cases involves determining whether the treatment is burdensome, not whether the patient's life is a burden), but he does not explore at all the threat that these cases truly represent. Because this book is characterized by much clear thinking, I found this ambiguity striking. (I have discussed the food and water cases in some detail in a recent article. See Richard S. Myers, "Physician-Assisted Suicide: A Current Legal Perspective," 1 *National Catholic Bioethics Quarterly* 345, 356-361 (2001).)

Third, I thought it a bit odd that his treatment reflects no real engagement with Catholic thought on these issues. Dyck is not a Catholic [I don't think], and he tries to put theological issues to one side, but I think it would have enriched the book if he had discussed, for example, the thought of Pope John Paul II as expressed in *Veritatis Splendor* and *Evangelium Vitae*. No one has written more eloquently or persuasively on the clash between the culture of life and the culture of death than Pope

John Paul II, and so it is, I think, a significant omission to leave him out of the discussion altogether.

Fourth, I thought that Dyck's discussion was disengaged from the broader cultural forces in play. He seems to reflect some confidence that his new synthesis will work us out of the problems that we are facing in this area. The tone at times almost seems to reflect the belief that we can solve these problems if we just clarify our thinking. I think he understates the extent to which the culture of death has been institutionalized in our culture (maybe this is due to his neglect of abortion), and that the long-term battle is really spiritual, and not just legal or moral.

On the whole, however, Dyck's short book is worth reading. I think, in particular, that his more communal understanding of human rights is valuable. As he notes, "[h]uman rights become actual only through actions, patterns of behavior, and social arrangements that render their actualization possible." (p. 91.) And, as he also notes, it is essential that our "law reflects, teaches, and supports the incalculable worth of the life of each individual." (p. 119.)

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*The Healer's Calling: A Spirituality for Physicians and Other Health Care Professionals* by Daniel P. Sulmasy, O.F.M., M.D., (New York/Mahwah, N.J.: Paulist Press, 1997) 135 pages, paperback, \$11.95

Sulmasy, a Franciscan brother and a physician, writes that his book evolved from a retreat he gave for physicians. The material comes from his experience of being a Christian who works as a health care professional. The book should be understood "as a series of reflections on the lived spiritual experience of one Christian health care professional, asking where God is to be found in the work of health care, and asking where a person who purports to be a follower of Jesus of Nazareth can lay claim to the work of health care in the name of the kingdom of God." (p. 3)

Sulmasy senses a malaise among health care professionals that is partly, if not wholly, a spiritual affair. While medicine is able to do more and more for the patient, health care professionals are taking less satisfaction from their work. Status, money, vacation time are not enough to motivate the hard work of these professionals. Clinical work itself will not cover the sense of despair and frustration. While repairing a damaged patient does bring a certain amount of joy and satisfaction, it is not enough to satisfy one's longings. Only the pursuit of one's ultimate end, union with God, will quench human longings.