August 1987

Aid in Dying: Problems and Paradoxes

Robert Barry

Follow this and additional works at: <https://epublications.marquette.edu/lnq>

Recommended Citation

Barry, Robert (1987) "Aid in Dying: Problems and Paradoxes," *The Linacre Quarterly*: Vol. 54: No. 3, Article 8.

Available at: <https://epublications.marquette.edu/lnq/vol54/iss3/8>

Aid in Dying: Problems and Paradoxes

Rev. Robert Barry, O.P., Ph.D.

Father Barry is Linacre Quarterly's book review editor and is a visiting assistant professor of religious studies at the University of Illinois, Champaign-Urbana.

At its international conference in September, 1986, the *Hemlock* Society announced that it would introduce a referendum into California in January, 1988 which would allow a physician to give "aid-in-dying", lethal injections to terminally ill persons on request. In recent months, the Dutch Supreme Court gave wide-ranging approval to this sort of action, and it appears that physician-administered lethal injections have become rather common in Holland at the present time.

The grave practical problems which would result from legal endorsement of a proposal such as that put forth by the *Hemlock* Society will be discussed here. Then, the serious logical dilemmas and paradoxes of legalized "aid-in-dying" or voluntary euthanasia will be analyzed.

1

Euthanasia: The Educational Problem

The most serious problem with the *Hemlock* referendum would be the message it would communicate to the unstable and immature. On the ABC television program, "Nightline", Dr. Pieter Admiraal, M.D., indicated that the ideal way to give "aid-in-dying" would be to gather the person's family

about the individual as he or she is receiving it. This would show the person receiving "aid-in-dying" that he or she was not being abandoned and that the action was one of compassion, love and support.

This scenario points out the serious educational problem which legalized euthanasia would present. In either very blunt and crude ways or in much more subtle ways, legalized and socially endorsed "aid-in-dying" would communicate a message to the immature and emotionally unstable that the rational and intelligent way of coping with grave suffering or loss of dignity would be to deliberately end one's life. Dr. Admiraal wishes to limit "aid-in-dying" to those who are rational, emotionally stable, competent and in control of their lives. But limiting self-killing to them alone would communicate to the immature and emotionally unstable that suicide is the way for those who are emotionally mature to cope with suffering, a message we do not wish to communicate to our young today.

We should also recall that the immature and the emotionally unstable do not perceive reality in the same way that the mature, rational and competent do. The immature and unstable are often not able to see the fine distinctions and subtle reasons that the mature, competent and rational see. They tend to act impulsively and without due consideration, and when they perceive their elders electing to end their lives when they experience suffering, they will see this as a warrant to end their own lives, but on their own terms.

At this time in America, we need to communicate that they are not to harm themselves deliberately to cope with suffering. We wish to teach them that they are not to take drugs, smoke, engage in frivolous sexual encounters or kill themselves to resolve problems of alienation, loneliness, suffering and anxiety. But if they see their elders, who are supposedly wise, mature and intelligent, killing themselves to escape their sufferings, it will be difficult, if not impossible, to persuade them not to imitate them in their own way.

2

Overturning the Common Law Tradition

Another serious problem with legalizing "aid-in-dying" is that it would overturn the common law tradition on homicide. This tradition has consistently prohibited acts such as giving "aid-in-dying" because these acts are deliberate and willful killings of innocent sick, despairing, disabled, and dying private citizens by other private citizens. The common law tradition has also objected to legalized voluntary mercy killing because the motive of a homicidal act not done in self-defense has never been permitted as an excuse for the act. The common law tradition has seen that if altruistic motives were allowed to excuse homicidal acts, then one would be logically committed to permitting such motives for killing the innocent as protecting the welfare of the community to justify other forms of killing of innocent private citizens.

The common law tradition has also refused to allow motives to justify killing because it is not possible in a great number of instances to determine what the motives of an individual actually are. The experience of German physicians between 1920 and 1945 should remind us of how difficult this is, for many of them, during the Weimar and National Socialist eras, killed energetically, believing that they were acting out of laudable motives. They thought their actions were wholly upright, and when the law permitted them to follow their own judgments, frightful consequences followed. Medicine needs clear guidelines to direct itself to keep from being the most dangerous of all professions.

Any killing which has been permitted by this tradition, with the exception of killing in self-defense, has been governed and controlled by the state, so that it could bring the rigorous scrutiny of the judicial system to prevent unjust killings. Legalization of "aid-in-dying" would deny the state its classical role of protecting private citizens from other private citizens, and this would be an unprecedented change in the common law tradition.

The common law tradition has been adamantly opposed to permitting private citizens to kill other private citizens, because such actions cannot be rectified if a wrong is done. Unlike other actions such as extortion or embezzlement where there is the possibility of the damage being rectified, if an unjust act of killing occurs, there is no possible way of rectifying the damage. Legalized mercy killing would have to be subjected to the same rigorous standards that regulate capital punishment to minimize the danger of unwarranted and unjustified acts of mercy killing. Should legalized mercy killing be permitted, it would be a revolution in our common law tradition of the most profound nature.

Probably the most important reason "aid-in-dying" has been rejected by the common law tradition has been that the practice of mercy killing is fundamentally uncontrollable. This is seen by the fact that those societies which have permitted voluntary mercy killing have found that they could not keep it under effective control. ABC television reported on Feb. 3, 1987 that nurses in Holland were being convicted of homicide for having given euthanasia to patients without the authorization of a physician, which was contrary to contemporary Dutch law. The euthanasia programs of Germany under the Weimar Republic and National Socialists were notorious for being out of control. In our own country, in December, 1986, Dr. Joseph Hussman was convicted of mercy killing because he put a dose of Demerol in his mother's feeding tube. There was never any pretension of the act being voluntary suicide as his mother never requested this, and Dr. Hussman killed her simply to accede to the wishes of his family. However, he was not sentenced to jail because the judge claimed that no good purpose would be served by such a sentence. These incidents all show that non-voluntary mercy killing simply cannot be controlled without expanding it to such an extent that it poses grave dangers to the sick, handicapped, disabled, dying and despairing.

Advocates of "aid-in-dying" claim that they seek to limit it to the rational and those who are emotionally stable. But there is no agreement among its advocates as to what constitutes rationality. Nor is there agreement as to what classes of patients or persons should be given or denied mercy killing. For example, some wish to administer "aid-in-dying" only to those who are experiencing severe physical pain, while others would give it to those who believe their lives are hopeless, whatever that might mean. If either of these classes of persons is permitted to kill themselves, the other will press its claims even more vigorously. Approving it for some classes of patients will only increase pressure for it to be given to other classes of patients.

Even allowing only those who are in incurable and untreatable suffering to kill themselves eventually becomes uncontrollable. This is so because there is nothing in their principle that those who are suffering can end their lives which could restrict this to one class of patients. If self-killing were not to be allowed to a class of patients it would not be because some principle prohibited it, but merely because an arbitrary decision was made to exclude that class. There is no way of determining whose suffering or loss of dignity is worse than someone else's. Is the suffering of a terminally ill cancer patient worse than that of a lovelorn adolescent? How can the law determine which of these two should have the right to commit suicide?

3

"Aid-in-Dying": Health Care Providers Turned Killers

Legalizing "aid-in-dying" would necessarily make killers out of healers which would undermine and compromise the objectives of the healing professions. Legalized euthanasia would necessarily involve health care providers in killing because it would be necessary to use their expertise and judgment to assure that mercy killing was restricted only to those categories of patients for whom it was intended. But to use them for these purposes would make them formal cooperators in the killing of the sick, terminal, dying, depressed and despairing.

Legalizing "aid-in-dying" which turns healers into killers is objectionable because, in the words of an Auschwitz survivor quoted by Dr. Robert J. Lifton, M.D. in his recent book *The Nazi Doctors*: "The doctor . . . if not living in a moral situation . . . where limits are very clear . . . is very dangerous." Dr. Lifton attempted to understand from a psychiatric viewpoint how it happened that many German doctors were turned from their traditional professional goals of healing into killers for the Nazis. Lifton suggested that they engaged in a psychological process called "doubling", in which the physician created an alternate "self" who was responsible for the killings. Legalizing mercy killing would create a severe identity crisis for medical professionals, a crisis they do not need at this time.

Turning physicians into killers would create not only grave personal

problems for health care providers but also grave social consequences as well, as the trustworthiness of the medical profession would be undermined. The ABC television program, "Nightline", reported that there were signs that some of the elderly in Holland were reluctant to enter hospitals because they mistrusted the physicians. For the well-being of all in our anonymous society, it is absolutely necessary to keep our healers from becoming random killers.

Health care providers would find their roles unduly complicated by legalization of mercy killing. Giving them "the killing option" would confront them with the awful question of when they would have to abandon healing and start killing. Without legalized mercy killing, they would not have to confront this option which could be preferable to most health care professionals today. This is the sort of decision that many physicians would consider to be wholly foreign to their professional objectives.

4

The Paradoxes of "Aid-in-Dying"

Besides the practical problems, there are also logical problems in legalized mercy killing. One of the serious problems with "aid-in-dying" is that most of its proponents want the law to permit it to be given quickly, so that a person will not have to suffer pain or loss of "dignity" for a long period of time. But the more expeditiously mercy killing is given, the fewer will be the legal safeguards to prevent it from being given without warrant to those who do not wish it. Proponents of "aid-in-dying" want to have it both ways: they want to have it administered in a way that protects individuals from unwanted mercy killing, but they also want it administered so swiftly that "deliverance" from suffering or "indignity" would not be delayed even momentarily. In practice, it is not possible to give mercy killing swiftly to relieve intolerable pain while also giving it only to the rational and in such a way that only those who truly want it are given mercy killing.

A further paradox with legalized "aid-in-dying" is that there is no consensus among suicidologists, psychiatrists, ethicists, philosophers and physicians that choices to end one's life are free and rational. If a patient is truly in a condition of intolerable and untreatable pain, then the freedom of such a person is probably very limited. A choice of such a person would be questionably free because of the limited options available to the person, and also because of the clouded judgment that the person would probably experience from the pain. And if the person did not suffer from intolerable and untreatable pain, there is a serious question as to whether a choice for death would be in the best interests of the person.

The same can be said of persons who attempt to justify choosing suicide because of a purported loss of dignity. If they have truly lost so much of their dignity that they judge their lives to no longer be worth living, one would

have to wonder if they have sufficient rational power or freedom left to make such a monumental decision. And if they have not lost this dignity, one wonders what good purpose would be served by their choice of death. Mercy killing should not be legalized because it is immoral, and it should certainly not be legalized until the profound difficulties and paradoxes concerning its rationality and freedom have been resolved to the satisfaction of society.

Finally, mercy killing is intolerable because it cannot be done either openly or in secret. If it is done secretly, the possibilities of abuse are so great that it cannot be permitted. There must be public scrutiny in order to prevent unwarranted mercy killings. But if it is done in public, it would influence the immature and unstable to take their own lives. Thus there is no possible circumstance in which mercy killing can be practiced in which others could not be positively harmed by it.

Some appear confident that "aid-in-dying" could be legalized in this country with no harmful side effects or consequences. It is my judgment, however, that very harmful consequences would accompany legalization of any form of mercy killing. In all likelihood, these harmful consequences will be seen shortly in Holland, and that nation's experiment with mercy killing should be studied very closely. But even if very dangerous practical consequences are not found in the Dutch experiments, we should be very cautious about taking any measures to endorse it in this country because our legal systems are so different and what might not appear in Holland might very well plague us in America.

There is one thing we should not forget about "aid-in-dying". No matter what the motives of the mercy killer are, the action remains the deliberate killing of innocent, sick, disabled, dying and suffering persons. Our culture has espoused the principle that killing innocent persons does not resolve problems, and legalization of "aid-in-dying" might very well be a wholesale abridgement of that principle. It is by no means certain that legalized mercy killing will truly resolve any of the serious social problems which will confront our society as it enters the next century, and it might very well destroy some of the traditions which could help us in solving those problems.