TEN INTRODUCTORY LECTURES ON BIOETHICS

PHYSICIAN-ASSISTED DEATH

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OUTLINE OF TALK

- Terminology
  - Different kinds of PAD and whether the differences matter morally
- Legal background
- Moral arguments in favor
  - Autonomy/suffering/equal protection
- Moral arguments against
  - Physician role/impact on palliative care/risks
- Data from Oregon
- My conclusions

TERMINOLOGY

- Physician-assisted death (PAD)
  - Euthanasia
  - Physician-assisted suicide (PAS)
    - Preferred term in US is aid-in-dying
- Difference solely in terms of who administers the lethal dose
- Does the distinction have moral significance?
  - Not intrinsically: physician is the agent in both cases
  - Pragmatic reason for PAS: better guarantee of voluntariness
    - But arbitrarily excludes those who cannot swallow

Definition of Euthanasia

- Causing the death of a person for his/her own good
  - Typically, to relieve unbearable suffering that cannot otherwise be ameliorated
- Voluntary vs. non-voluntary (those incapable of consent, e.g., infants, young children, severely cognitively impaired)
- Nazi "euthanasia" program
  - Originally limited to "Aryans" suffering from incurable diseases
  - Became a way to get rid of "undesirables," "useless eaters"
    - Disabled, mentally ill, Jews, gypsies, homosexuals, etc.
  - Not euthanasia at all, but murder

ACTIVE VS. PASSIVE

- Active euthanasia: killing the patient, usually by lethal injection
- Passive euthanasia: withholding treatment in order to bring about the patient's death
- Why this is the wrong comparison
- Withholding treatment may be legal, even where euthanasia is forbidden
  - Right to refuse treatment
  - Treatment is not warranted (futile, too burdensome)

LAW

- In most countries, PAD is illegal
- In the US, euthanasia is illegal
  - PAS legal in OR, WA, VT, and CA by statute; in MT by court decision
- PAS legal in Canada by court decision, to go into effect 2016
- In The Netherlands, both euthanasia and PAS are legal
- In Belgium, euthanasia is legal, but not PAS
- In Switzerland, physician or non-physician assisted suicide is legal, if done without self-interest

OREGON'S DEATH WITH DIGNITY ACT

- Only competent, terminally ill patients are "death-eligible"
- Must request prescription for lethal pills in writing twice over a period of two weeks
- Physician must ascertain that the patient is competent
  - No requirement of psychiatric evaluation
- Physician must get a second opinion from another physician not involved in the patient's care that the patient is terminally ill and the request is voluntary

SAFEGUARDS

- Voluntariness
  - Required in US; understood as contemporary competence
  - In The Netherlands, voluntariness requirement can be satisfied by advance directive
  - Infant euthanasia permitted in cases of unbearable suffering if both parents and doctor convinced there is no reasonable alternative solution
- Terminal illness: death within 6 months
  - Required in US
  - Not required in Canada, Belgium, The Netherlands, Switzerland
    - Emphasis on unbearable suffering
  - Arguably arbitrary – what about those who have progressive illnesses, but are not imminently dying?

Arguments in favor of PAD

- Argument from suffering
  - We euthanize pets to prevent suffering; shouldn't human beings have the same right?
- Argument from autonomy
  - People should be able to make important decisions about how their lives go – and end.
- Patients already have the right to refuse treatment, including life-sustaining treatment
  - Arbitrary to allow those who can refuse treatment to die while forcing those for whom there is no treatment to continue to live

ARGUMENTS AGAINST PAD

- Legalization of euthanasia would cause patients to lose trust in physicians
  - Physicians are healers, not killers
- Permitting euthanasia would weaken society's commitment to provide optimal palliative care for dying
- Imposes heavy burden on patients who can now choose to die
  - Is this a choice we really want to offer gravely ill persons?
    - Will we go from killing people who are *in pain* to killing those who are *a pain*?
- Slippery slope from morally permissible cases to wrongful cases, e.g., infants, depressed patients
- Risk of mistake and abuse too great

RESPONSES

- Giving patients a "good death" can be seen as part of physician's job
  - If request is voluntary, no reason for loss of trust
- Palliative care consistent with PAD
  - Data from OR suggests that legalizing aid-in-dying may have improved palliative care
- Not having the choice may be a greater burden
- Slippery slope can be avoided with careful legal restrictions

THE NEED VS. THE RISK

- Those opposed to PAD argue that the dangers of legalization are too great to risk it
- Palliative care can alleviate suffering at the end of life without killing patients or helping them to die
  - Instead of legalizing euthanasia, we should be trying to make sure that all people have access to excellent medical care, including palliative care
    - After everyone has that, we can talk about euthanasia
- In those few cases where suffering cannot be alleviated, even with the best palliative care, health care providers can (and do) quietly help their patients to die
- Not one has been convicted of criminal homicide

RESPONSES

- Aid-in-dying legal in OR since 1994
  - Yearly data collection
  - General agreement there hasn't been mistake/abuse/slippery slope
- Palliative care not a panacea
  - Brittany Maynard
- Safer to have careful regulations than to allow doctors to give PAD under the table
- Even if no criminal convictions, some doctors and nurses have faced criminal charges, even for palliative care

MY CONCLUSIONS

- People have a *prima facie* right to make their own medical decisions, including when their lives should end
  - The religious/moral objections of some should not limit the liberty of others
- At the same time, society has an obligation to protect individuals from being killed against their will or coerced to choose death
  - Legal safeguards are necessary -- but which ones?
  - PAD should be a *last* resort
    - Also need access to adequate health care, including palliative care, and a culture of caring for old and sick