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No: Preserve Traditional Restraints

BY YALE KAMISAR

The distinction between letting people die and killing them by lethal injection is now an integral part of the medico-legal landscape. This is the compromise we have arrived at in the struggle to take a humane approach toward seriously ill patients while still preserving as many traditional restraints against killing as we possibly can. This may be neither the logician's or the philosopher's way to resolve the controversy, but it may nevertheless be a defensible pragmatic way to do so.

As eminent bioethicist Thomas Beauchamp of Georgetown University has written, rules against killing "are not isolated moral principles," but "pieces of a web of rules" that forms a moral code. "The more threads one removes," warned Beauchamp, "the weaker the fabric becomes."

For that reason, I think that the legalization of active euthanasia will have much greater impact than is generally realized on our society and on the dynamics of the sick room. Criminal penalties create unconscious as well as conscious inhibitions against committing certain acts.

But if active euthanasia were legal, these acts would not only be thinkable, but speakable—an acceptable alternative to treatment that could and would be discussed in

polite conversation.

The first person to broach the subject might be the physician or a relative or close friend. Or the gravely ill person might ask advice of those close to her. What should relatives and friends tell her? How would a patient react to the suggestion that she end her life? How many patients would opt for euthanasia because they feel obliged or pressured to do so—to relieve their relatives of financial pressures or emotional strain? And how many severely ill patients will feel that to reject euthanasia, once it is a viable alternative and others are "doing it," would be selfish or cowardly?

Chilling Imperatives

I recall what a septuagenarian said on the op ed pages of *The New York Times*: "There is a movement to limit use of medical technology to younger people. ... A related movement thinks of us as leaves drying on trees, implying that we'd better drop off or be pulled. There is a children's book called 'Freddy the Leaf' that I have not bought for my tree-climbing machine."

In a recent article, University of Michigan philosophy professor David Velleman argues that legalizing active euthanasia may harm some patients by "denying them the possibility of staying alive by default:

"When someone shows impa-

tiency or displeasure with us, we jokingly say, 'Well, excuse me for living!' But imagine that it were no joke; imagine that living were something for which one might reasonably be thought to need an excuse."

We may be fairly sure of one thing. If we legalize active euthanasia for only the "terminally ill," it will not remain limited for very long. At first, living-will statutes provided that the directive only became operative when its maker became "terminally ill." But in response to strong criticism that such a restriction unduly limited the impact of such legislation, a growing number of states have removed the limitation either by statutory amendment or case law.

We may be fairly sure of another thing. If active euthanasia is legalized, it will not be confined to competent patients. As active euthanasia grows in acceptance, there will be a strong impetus to extend the same "benefit" to the incompetent patient who has a life-threatening illness but has never expressed any desire for euthanasia.

As SMU Law School's Thomas Mayo has observed, "the history of our activities and beliefs concerning the ethics of death and dying is a history of lost distinctions of former significance." If active euthanasia is legalized, there is little reason to think that that history will come to an end. ■