

Spring 1998

Religious Perspectives on Assisted Suicide

Cristina L.H. Traina

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Cristina L.H. Traina, Religious Perspectives on Assisted Suicide, 88 J. Crim. L. & Criminology 1147 (Spring 1998)

This Criminal Law is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

RELIGIOUS PERSPECTIVES ON ASSISTED SUICIDE

CRISTINA L. H. TRAINA*

Yale Kamisar's writings add up to an impressive argument against the legalization of assisted suicide and euthanasia, an achievement all the more notable because it does not depend on a blanket moral condemnation of these practices and so avoids becoming mired in the contemporary debate over moral pluralism. My assigned task, nonetheless, is to explore the contribution of religious thought to the debates over both the morality of physician-assisted suicide (PAS)/euthanasia and the moral implications of their legalization. I have chosen to end with feminist theological and philosophical reflections on these questions because they supplement in important ways the "official" positions of religious bodies and so illuminate the assisted suicide debate freshly. The whole cant of this discussion may reveal a medieval sensibility about the connections between law and morality: that the bindingness of law depends on its justice, and its justice is dependent on its genuinely advancing the common good.¹ But given our current understandings of the ways in which social practices construct morality, perhaps such medievalism is again appropriate.

My reflections come in three parts. First, what do the religions say about PAS/euthanasia? Second, in what ways are those teachings relevant to courts and legislative bodies? And, finally, what can feminist philosophers and theologians contribute to the discourse?

* Assistant Professor, Northwestern University Department of Religion. Thanks to Ann Nicholson Weber, Manfred Vogel, and Benjamin D. Sommer for helpful comments on an earlier draft of this essay, and to the editors of *The Journal of Criminal Law & Criminology* for their gracious assistance with the notes.

¹ See ST. THOMAS AQUINAS, *SUMMA THEOLOGICA* 993-95, 1019-20 (Fathers of the English Dominican Province, trans., Christian Classics 1981) (first part of the second part, question 90 and question 96, article four).

I. RELIGIOUS CONTRIBUTIONS

Because policymakers often ask about the official or representative positions of the major religious communions, I begin with these.² Across the major traditions there is a history of opposition to PAS/euthanasia, for related but slightly different reasons. In each case the practices must be seen in the context of the tradition's beliefs about death and the ways in which we ought to prepare for a good death. And in most cases, the incredible existential weight accorded the "natural" process of dying is traceable to a belief that our final days or hours have profound significance for reincarnation, afterlife, or resurrection.

Buddhists and Hindus believe in reincarnation—a person's earthly life and earthly suffering do not end with the death of her current body. But the death of a human being does end the period in which she can most fruitfully improve her karma and reduce future earthly suffering. Thus artificially shortening life in order to relieve physical suffering in the short term may actually increase existential suffering in the long term. Even painkillers that dull the consciousness or induce coma, while not forbidden, can compromise preparations for death.³

Roman Catholicism and Eastern Orthodoxy likewise oppose PAS/euthanasia, for strenuous efforts either to hasten death or

² Not all representative positions are official. Many communions do not function as policymaking institutions, and in many that do, there has been such a presumption against assisted suicide that few have thought it necessary to speak out against it. Gerald Larue's 1985 Hemlock Society survey uncovered the near-consensus below. GERALD A. LARUE, *EUTHANASIA AND RELIGION: A SURVEY OF THE ATTITUDES OF WORLD RELIGIONS TO THE RIGHT-TO-DIE* (1985). Subsequent discussions rely to some degree on Larue's book, suggesting both the force of religious opposition in the 1980s and the need for more thorough and contemporary research. See Ron Hamel & Edwin R. DuBose, *Part Four: Views of the Major Faith Traditions*, in *ACTIVE EUTHANASIA, RELIGION, AND THE PUBLIC DEBATE*, 45-77 (Ron Hamel ed., 1991); Rev. Richard E. Coleson, *Contemporary Religious Viewpoints on Suicide, Physician-Assisted Suicide, and Voluntary Active Euthanasia*, 35 *DUQ. L. REV.* 43 (1996). Analyses not relying on Larue include *THE CHURCHES SPEAK ON EUTHANASIA* (J. Gordon Melton ed., 1991) [hereinafter *THE CHURCHES SPEAK*], and (less directly useful) *PERSPECTIVES ON DEATH AND DYING: CROSS-CULTURAL AND MULTI-DISCIPLINARY VIEWS* (Arthur Berger et al., eds., 1989). All five texts have been used in constructing the mosaic below.

³ On Buddhism, see LARUE, *supra* note 2, at 135-37; Hamel & DuBose, *supra* note 2, at 75-77; Philip A. Lesco, *Euthanasia: A Buddhist Perspective*, in *THE CHURCHES SPEAK*, *supra* note 2, at 199-204. On Hinduism, see LARUE, *supra* note 2, at 138-39; Hamel & DuBose, *supra* note 2, at 74-75. For a thorough discussion of Hindu medical ethics, see generally PRAKASH N. DESAI, *HEALTH AND MEDICINE IN THE HINDU TRADITION* (1989).

to prolong life interfere with God's plans for the soul. Many approve what has been called passive euthanasia, ceasing all but palliative treatment for a dying patient. But both suicide and killing the innocent are forbidden. For Roman Catholics and the Eastern Orthodox, as for Buddhists and Hindus, pain medication that severely dulls a patient's sensibilities may hinder her from preparing spiritually for death—a disvalue that, if not absolutely to be avoided, at least ought to be weighed.⁴

Recent Orthodox, Conservative, and Reformed Jewish statements stress that both hastening the death and unnecessarily prolonging the life of the dying are wrong. Because most Jews do not believe in resurrection or an afterlife, they do not generally hold that PAS/euthanasia jeopardizes a dying person's future; but there is strong agreement on the more important point that it is wrong to trespass on the divine prerogative to determine the moment of her death. Palliative care that eases suffering without speeding death is encouraged or even commanded.⁵

Muslims cite several Quranic texts against murder, point out that all suffering has a divine purpose (for instance, encouraging remorse for sin), and exhort doctors to recognize the distinction between the process of living and the process of dying.⁶ Most Protestant communions recommend palliative care and termination of extraordinary treatment, are less anxious than

⁴ On Eastern Orthodoxy, see LARUE, *supra* note 2, at 45-57; Coleson, *supra* note 2, at 48; Hamel & DuBose, *supra* note 2, at 71-74. On Roman Catholicism, see Pope John Paul II, *Evangelium Vitae* ¶¶ 57, 64-67 (Mar. 25, 1995). On Catholicism, see also LARUE, *supra* note 2, at 35-43; THE CHURCHES SPEAK, *supra* note 2, at 1-53 (citing numerous documents); Coleson, *supra* note 2, at 45-48. One Conservative treatment of PAS may be found in BARRY D. CYTRON & EARL SCHWARTZ, WHEN LIFE IS IN THE BALANCE: LIFE AND DEATH DECISIONS IN LIGHT OF THE JEWISH TRADITION (1986).

⁵ For a general discussion of rabbinic responsa on euthanasia, see LARUE, *supra* note 2, at 19-25. On Reform responsa, see Hamel & DuBose, *supra* note 2, at 46-49. See also responsa by Reform rabbi Solomon Freehof, in THE CHURCHES SPEAK, *supra* note 2, at 193-97, and the discussion by Orthodox rabbi Immanuel Jakobovitz, in *id.* at 190-93. One Conservative treatment of the issue can be found in BARRY D. CYTRON & EARL SCHWARTZ, WHEN LIFE IS IN THE BALANCE: LIFE AND DEATH DECISIONS IN LIGHT OF THE JEWISH TRADITION (1986). *But see* David M. Shoet, *Mercy Death in Jewish Law*, 8 CONSERVATIVE JUDAISM 1, 1-15 (1952) (dissenting from this consensus). More ambiguous is the National Council of Jewish Women's recognition of the right to "die with dignity," in THE CHURCHES SPEAK, *supra* note 2, at 190.

⁶ See LARUE, *supra* note 2, at 140-41; Hamel & DuBose, *supra* note 2, at 51-52. Hamel and DuBose cite the following verses in the *Qur'an* against killing: 5:3 (killing); 4:29 (suicide). Verse 6:102 (God as Creator of all) is interpreted to mean that human suffering has a purpose.

some others about painkillers causing loss of consciousness, but stop short of euthanasia.⁷

The exceptions are the Unitarian Universalist Association (UUA) and the more liberal portions of the United Church of Christ (UCC). Cultural pluralism and a concern to preserve patient autonomy do play a part in their arguments for supporting those who choose PAS or euthanasia freely, but looming large for both is the image of a medical institution obsessed with the prolongation of bodily life and uninterested in matters of the spirit. Significantly, Unitarian Universalists have no doctrinal commitment to either reincarnation or resurrection; in the opinion of many, PAS/euthanasia thus has no repercussions for future life.⁸

II. SIGNIFICANCE FOR POLICY

This quick trip through religious opinions generates mixed results for the law. On one hand, it yields a near-consensus that PAS/euthanasia is morally wrong. And this judgment is longstanding, for euthanasia and assisted suicide—unlike in vitro fertilization, organ transplant, and other recent medical advances—have been a possibility since the dawn of humanity. The traditions are genuinely unanimous in their conviction that there is such a thing as an appropriate time to die; that death is not the ultimate evil; that suffering ought to be eased; that meaning and hope exist in and transcend suffering; that a cry for death is often a cry for better dying—more support, comfort, and counsel; and that all care at the end of life should bear in mind the patient's spiritual well-being.

But the usefulness of this information to judges and legislators—at least on the narrow question of whether PAS/euthanasia should be legalized—is limited. First, if they are interested in religious understandings of death's meaning and in religious arguments for or against assisted suicide it

⁷ Protestant refusal to approve euthanasia is rooted in the biblical prohibition of murder, see *Exodus* 20:13, and the idea that human beings must not usurp God's prerogative. See also LARUE, *supra* note 2, at 58-98, 101-17, 120-22 (discussing the Protestant view on PAS, divided by denomination); Hamel & DuBose, *supra* note 2, at 52-67 (same); Coleson, *supra* note 2, at 48-54 (same).

⁸ See LARUE, *supra* note 2, at 99-100, 118-19; Hamel & DuBose, *supra* note 2, 68-71; see also THE GENERAL ASSEMBLY OF UNITARIAN UNIVERSALISTS, 1988 PROCEEDINGS 74 (1988).

ought to be because they are interested in what people in general think—not as “religionists” but as contributors to a social consensus without which law is unenforceable. Second, the near-consensus that does exist is deceptive. Even within those religious bodies in which concord or autocratic authority is strong enough to generate a position, there are conscientious people who dissent.⁹ And that a conviction is longstanding does not make it true. Perhaps change is around the corner; other communities, when they overcome institutional inertia, may follow the more permissive elements of the UUA and UCC.

Finally—and now I write as a layperson with respect to the law—religious consensus is very shaky ground on which to prohibit assisted suicide because it invites counter-arguments that assisted suicide is a matter of religious freedom. It is not. Appropriately or inappropriately, the courts rule on whether religious activities seem socially objectionable or acceptable in themselves, apart from their religious significance. They have forbidden established religious practices—like peyote use¹⁰ or polygamy¹¹—that contradict dominant social mores—while permitting others—like the ritual use of alcohol by minors—that do not. Likewise, at bottom the PAS/euthanasia decision has nothing to do with religious freedom and everything to do with whether, in our current context, PAS/euthanasia erodes or sustains the values and rights to which we are already socially and constitutionally committed. Hence my final section: the contribution of feminist ethics, theological and philosophical.

III. FEMINIST CONTRIBUTIONS

Feminist insistence upon factoring context into all discussions of freedoms and rights provides strong additional sup-

⁹ Another good example of this phenomenon is opinion on the death penalty: official American religious opinion largely opposes it, but the majority of American citizens support it. See J. GORDON MELTON, *THE CHURCHES SPEAK ON: CAPITAL PUNISHMENT* (1989). I am not aware that any bodies that opposed capital punishment when this book was published have reversed themselves. But see Robert M. Bohm, *American Death Penalty Opinion 1936-1986: A Critical Examination of the Gallup Polls, in THE DEATH PENALTY IN AMERICA: CURRENT RESEARCH* (1991), cited in HELEN PREJEAN, *DEAD MAN WALKING: AN EYEWITNESS ACCOUNT OF THE DEATH PENALTY IN THE UNITED STATES* 116, 258 n.18 (1993).

¹⁰ See *Employment Division, Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

¹¹ See, e.g., *Potter v. Murray*, 750 F.2d 1065 (10th Cir. 1985) (upholding constitutionality of a Utah statute barring plural marriage).

port—in a form more readily useful to the law than simple religious disapproval or approbation—for Professor Kamisar's opposition to legalizing PAS/euthanasia. For rather than adding further denominational voices to the debate they ask us to reexamine cultural assumptions—many of which are subtly formed by religion—that might lie behind apparently areligious legal judgments.

First, Cathleen Kaveny, Notre Dame theologian and professor of law, reminds us in good feminist fashion of the importance of context to both moral and legal rights. "Rights language creates and legitimates social practices," and it does so within an existing culture that is hardly neutral.¹² For example, the "right" to surrogate motherhood is not a simple matter of women's freedom to dispose of their bodies as they like. In our culture it involves the morally questionable pressure for biologically related children; the exploitation of poor women; the shaming of "barren" ones; and the trafficking of children.¹³ We need to formulate the moral and legal rights of the dying in the context of equally questionable pressures to reduce costs and preserve dignity—topics to which I return below.

Second, philosopher Susan Sherwin reminds us that, overall, doctors do not seem to treat female patients with the same care and respect as male patients.¹⁴ Women's medical complaints have generally been taken less seriously than men's; doctors have been less likely to use existing diagnostic technology for women and more likely to overmedicate and misdiagnose them; and the degree of injustice deepens as the patient's skin color darkens.¹⁵ Thus we have to wonder whether women who request suicide wish it partly because their doctors have disrespected and abandoned them. Will doctors, if subconsciously,

¹² M. Cathleen Kaveny, *Assisted Suicide, Euthanasia, and the Law*, 58 THEOLOGICAL STUD. 124, 130-31 (1997). On the same issue with respect to reproductive technologies in general, see SUSAN SHERWIN, NO LONGER PATIENT: FEMINIST ETHICS AND HEALTH CARE 117-36 (1992).

¹³ Kaveny, *supra* note 12, at 130-31; see also SHERWIN, *supra* note 12.

¹⁴ SHERWIN, *supra* note 12, at 223-25.

¹⁵ *Id.* Sherwin relies on numerous studies and arguments in drawing her conclusions. See, e.g., GINA COREA, THE MEDICAL MALPRACTICE: HOW AMERICAN MEDICINE MISTREATS WOMEN (rev. ed. 1985); BARBARA EHRENREICH & DEIRDRE ENGLISH, FOR HER OWN GOOD: 150 YEARS OF THE EXPERTS' ADVICE TO WOMEN (1978); Richard J. McMurray, Gender Disparities in Clinical Decision-making (Report to the A.M.A. Council on Ethical and Judicial Affairs) (1990); see also ALEXANDRA DUNDAS TODD, INTIMATE ADVERSARIES: CULTURAL CONFLICT BETWEEN DOCTORS AND WOMEN PATIENTS 77 (1989).

comply with these requests without exploring alternatives, simply because they find women irritating patients? The same questions must be raised about men of color.

Along these lines, it seems to me that we can learn something from the cost-cutting tactics of managed care and public responses to them. Health maintenance organizations have, for example, cut hospital stays for many procedures across the board—in some cases, from several days to several hours—but two policies have caught wide attention: discharge of women within twenty-four hours of giving birth, even when their births were difficult or their newborns are ill; and radical reductions in women's hospital stays after mastectomy. Luckily in both cases legislators have stepped in, but they have obvious reasons for doing so: these patients will probably be long-lived and loyal constituents. The dying are not. Were assisted suicide legal, it is unlikely that legislators would with equal vigor protect the rights of the dying to the palliative care that would reduce their desire for euthanasia.

Third, theological ethicist Margaret Farley raises questions about the significance of the body¹⁶ that should cause us to re-examine our assumptions about the meaning of "death with dignity." For centuries the West has associated masculinity, immortality, and goodness with the rational mind, and femininity, senescence, and evil with the body.¹⁷ Is there any chance that our fascination with rationally controlling death has something to do with a theological or philosophical repugnance at our bodies' gaining the upper hand? Is our shame at the gradual decay of our own bodies not perhaps inappropriate? Are normal human pain, incontinence, fear, and dependence inherently undignified? Or is it only that we treat people who suffer from them in undignified ways?

Finally, as theologian Mary McClintock Fulkerson and philosopher Martha Craven Nussbaum have argued, each in her own way, what it is that each of us would need in order to cross

¹⁶ Margaret A. Farley, *Feminist Theology and Bioethics*, in *WOMEN'S CONSCIOUSNESS, WOMEN'S CONSCIENCE: A READER IN FEMINIST ETHICS* 285, 291-93 (Barbara Hilkert Andolsen et al. eds., 1985).

¹⁷ This is a claim of considerable standing within contemporary western feminism, particularly Christian feminism. For one articulation, see ROSEMARY RADFORD RUEYER, *GAIA AND GOD: AN ECOFEMINIST THEOLOGY OF EARTH HEALING* chs. 5-7 (1992).

the threshold of dignity and flourishing depends upon what we already have, and that in turn depends upon our position within society.¹⁸ The wealthy or well-insured terminally ill elderly may need to be freed from ill-advised overuse of life support technology and to be made more comfortable in death. These are changes we can in theory accommodate within existing practices and institutions. But the larger problem is that the poor—and increasingly, the middle class—do not even become victims of medical vitalism, because they have limited or inconsistent access to basic care to begin with. Debates like this one, if they are in effect arguments of the privileged over our right to control our own deaths, divert too much moral energy from the task of figuring out how to care justly for the majority of the dying—not to mention the living. In their professional roles, lawyers and judges may be able to do little to solve that problem. But as people who possess authority and social power, they can do much.

¹⁸ MARY MCCLINTOCK FULKERSON, *CHANGING THE SUBJECT: WOMEN'S DISCOURSES AND FEMINIST THEOLOGY* 355-95 (1994); Martha C. Nussbaum, *Human Functioning and Social Justice: In Defense of Aristotelian Essentialism*, 20 *POL. THEORY* 202, 231-33 (1992). Fulkerson addresses the effects of social and religious position on spiritual needs and Nussbaum, the effects of social location on other human needs.