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"Mercy Killing": When Love & Law Conflict

What's Your Reaction?

I'd sooner be dead than live in a nursing home.

I've chosen to emphasize that point now, when I am relatively young and in good health, to show solidarity with two brave men who have recently found themselves at the center of the public debate over assisted suicide. One is Paul Weinstein, a 78-year-old retired pharmacist from New Rochelle, New York, who killed his dementia-afflicted wife of fifty years to fulfill a pledge not to institutionalize her. The other is James Fish, a 90-year-old California physician who shot to death his 88-year-old wife, Phyllis, to end her ongoing suffering from dementia and terminal pancreatic cancer. Mr. Weinstein now faces murder charges, while Dr. Fish -- who is recovering from a self-inflicted gunshot wound -- will apparently be tried for manslaughter. Such prosecutions may vindicate the rule of law, but they do so by compounding human suffering. The real tragedy in both of these cases, beyond the obvious misfortune of human illness, is that both Mr. Weinstein and Dr. Fish felt compelled to act illegally. But the fault is not theirs. The blame rests squarely with a society that forces devoted husbands and wives to choose between the welfare of their spouses and the letter of the law.

Which returns us to nursing homes. I respect the fact that some older Americans find rich and meaningful lives within such institutions, and that many of the caregivers at these facilities are deeply devoted to their work. I would certainly never deny anybody the right to live out his final days in such a place, if he affirmatively so chooses. At the same time, such facilities impose grave limits on human autonomy. These restrictions often encroach upon the residents insidiously, as their conditions decline. One may enter a nursing home with mild cognitive impairment, but soon enough one needs permission to leave one's room unsupervised or is being forcibly medicated to reduce unwanted behaviors. That is a risk I am entirely unwilling to take. As a personal matter, I find the prospect of relying on another human being to change my clothing or to empty my bedpan incompatible with the minimum level of human dignity that I ever wish to endure. When I can no longer manage my activities of daily living at home, I am prepared to conclude my life with the same dignity that I hope I have displayed during my life. I prefer a timely death to a lengthy sojourn in a human warehouse. Moreover, when I do pass on, I want my money to go to the causes that I believe in and to the people that I care about -- not into the coffers of health care conglomerates. Needless to say, the nursing home industry views matters differently.

Some opponents of legalized aid-in-dying are genuinely motivated by a concern that the process will be abused -- and these concerns ought to be taken seriously. Any legislation on the subject should certainly include safeguards to ensure that participants are willing, or if incapacitated, have spelled out their wishes...
clearly in advance. Other opponents of legalized aid-in-dying appear to believe that human suffering is somehow ennobling and that God's mission is for each of us to die a "natural" death. These zealots are often far harder to engage in any meaningful dialogue, as there is little purpose in discourse with individuals who believes they are acting in accordance with divine will. What should not be overlooked is that there are also organizations, such as "True Compassion Advocates" of Washington, which oppose legalized aid-in-dying in the name of better end-of-life care. These groups would have us believe that well-funded palliative therapies and hospice programs cannot exist simultaneously with legalized aid-in-dying. The experience of the Netherlands, which has both a well-developed aid-in-dying system and some of the best palliative care in the world, belies this claim. However, as people choose to control their own deaths and the legal system increasingly accepts these choices, as is already the case in Oregon, Washington and Montana, one can expect these palliation-only organizations to align themselves ever more closely with a "nursing home-industrial complex" that stands to lose billions of dollars if people choose to die on their own terms.

Each year, millions of Americans enter into conversations similar to the discussion that Paul Weinstein allegedly had with his wife, Helena. Mothers and fathers tell their children that they would rather die peacefully at home than in hospitals or nursing facilities. Husbands and wives pledge to each other that they will never end up in institutions. I have witnessed these conversations in my own family and, during my work as a clinical ethicist, I have heard them recounted at patients' bedsides. Unfortunately, the vast majority of these individuals do end up in nursing care, often against their own strongly-stated wishes. Most families are not equipped to care for their loved ones at home. Some such patients lack any social support at all. So their choice is either the "slow glue factory" – as my grandmother used to call nursing homes -- or to convince someone to help them die. In an ideal world, that would be a clinic where trained professionals could ease the suffering out of earthly existence. Or they might summon their own family physicians, who would provide lethal cocktails to be consumed in a home setting, as is done in Holland. The cruel reality, in forty-seven states, is that the suffering must hope they have relatives or friends who love them enough to sacrifice their companionship, and to risk prison time, in order to effectuate their wishes.

Mercy killing is not a problem. It is a symptom. While I certainly do not encourage the spouses of terminally ill or chronically suffering patients to take the law into their own hands when asked, I cannot fault those who do so. It may be that the tide is finally turning on aid-in-dying, as the cause has gone from a television spectacle associated with Jack Kevorkian to a matter of personal dignity embraced by large numbers of ordinary citizens. Great Britain is poised to establish guidelines for when not to charge those who aid in dying. California and New Hampshire appear ready to follow in the path of Oregon and Washington. After centuries of suffering, jointly-fostered by a partnership of church and state, a moment of moral enlightenment appears at hand. Alas, that does little good for men like Mr. Weinstein and Dr. Fish. Or for their wives. They do not have time to wait for the dithering of legislators to overcome political inertia or for meddlesome bishops to adopt a different cause célèbre. So while legalized aid in dying may be a few years off for many, we desperately need a moratorium on prosecutions in cases where such action is both altruistic and desired.

Men like Paul Weinstein and Jim Fish are neither heroes nor villains. They are ordinary men who have been forced to make decisions that no reasonable human being ought ever have to confront. We should honor their fortitude, but temper any admiration with a healthy concern for the value of the rule of law. And, most importantly, we should change that law. As much as I wish that, when I'm no longer independent, I have someone who cares about me enough to help me die, even if doing so is still illegal, I can only hope that nobody ever has to choose between love and the law on my behalf.