

The Politics of Physician Assisted Suicide

Nina Clark



Garland Studies on the Elderly in America

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For my mom, Roma

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Contents

Figures and Tables.....	ix
Foreword	xi
Acknowledgments.....	xiii
Chapter I: Introduction	3
<i>Purpose of Study</i>	5
<i>The Primary Issue</i>	7
<i>Methodology</i>	11
Chapter II: Early Policy Developments.....	15
<i>Hospice Care</i>	15
<i>Advance Directives: The Living Will and Durable Power of Attorney</i>	19
<i>The Do-Not-Resuscitate (DNR) Order</i>	24
<i>Federal Efforts: The Patient Self-Determination Act</i>	26
<i>The Elderly Population: Knowledge, Attitudes and Behavior</i>	28
<i>One Step Further: Physician Assisted Suicide</i>	29
Chapter III: Court Responses	35
<i>Is There A Constitutional Right-to-Die?</i>	38
<i>The U.S. Supreme Court: Activity And Opinion</i>	44

<i>The Case Of Elizabeth Bouvia</i>	47
<i>Other Active Euthanasia Cases</i>	49
<i>In Pursuit of Legalization</i>	56
<i>The Ninth and Second Circuit Courts of Appeals</i>	58
Chapter IV: Policy-making By Default: The Initiative	65
<i>Timing: When An Idea's Time Has Come</i>	70
<i>The Initiative: Purpose and Practice</i>	74
<i>The Default Model</i>	78
<i>Physician Assisted Suicide: The Default Model Applied</i>	83
Chapter V: Individual vs. Interest Group Behavior	91
<i>Elderly Activism and Proposition 161</i>	92
<i>Senior Attitudes on the Right-to-Die</i>	97
<i>The Pasadena Senior Center Survey</i>	98
<i>Findings of the Survey</i>	100
Chapter IV: Prospects For Self-Deliverance	107
<i>Making Strides</i>	108
<i>International Activities</i>	109
<i>Future Activity</i>	111
References	117
Index	133

Figures and Tables

Figure 4.1: The Default Model	80
Table 5.1: Survey Responses by Gender	101
Table 5.2: Survey Responses by Party Identification.....	101
Table 5.3: Survey Responses by Level of Education.....	102
Table 5.4: Survey Responses by Stated Religion.....	103

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Foreword

The winds of change are blowing across the deathbeds of America. By the turn of the century, after twenty-five years of hot debate—sometimes compassionate and intelligent, often dogmatic and bitter—we shall be in a new era of death by choice for those who would rather not suffer unbearably when they are assuredly dying.

The circumstances and events which have brought about this seminal change from two thousand years of Judeo-Christian tradition that suicide of any kind was a mortal sin were mainly the following:

- The introduction of high-technology medicine (including sophisticated drugs) which often defeated the specter of death but reduced quality of life.
- A better educated and informed public now capable (through the expanded news media not available to our grandparents) of making up its own mind on issues of medical decisions and ethics.
- The rise from 1980 onwards of a militant right-to-die movement campaigning consistently, and with high visibility, for change in attitudes and laws relating to justifiable assisted death.
- The publicity-driven, maverick campaign commencing in 1990 of Dr. Jack Kevorkian to destroy the official myth that doctors must never kill no matter how much their patients are suffering.
- The publication and rise to the bestseller lists in 1991 of *Final Exit*, making easily available to the public a manual by which terminally ill patients could—with or without a doctor's aid—take their own lives if they wished.
- Voters' ballot initiatives in three West Coast states asking for lawful physician-assisted dying, the last of which (Oregon, 1994) was successful.
- Landmark rulings by both the 9th and 2nd Circuit Courts of Appeal (1996) which agreed that existing states' laws prohibiting physician-assisted suicide were unconstitutional. Whether or not

these rulings are eventually overturned, the impact of arguments cogently made by some twenty-seven high court judges remain historic.

In the 1980s the arguments concerning hastened death revolved around whether or not the procedure was ethical. In the next decade, with public opinion moving as high as 70 percent in favor, the arguments switched to whether or not it could be successfully regulated by law or better left to the medical profession to self-regulate.

Yet another debate broke out over whether the courts could or should not only approve acceptance but also sanction the criteria for physician-assisted suicide. Could a small group of non-elected jurists fix a nation's social and ethical policy? Sometimes in the American democratic system, the issues are so divisive—abortion and gay rights are the best modern examples—that the high courts have no choice but to step in and adjudicate. 'The right to die' is the latest hot topic to be dropped into the laps of the nation's senior judges.

The religious right has never forgiven the U.S. Supreme Court for its 1973 decision in *Roe v. Wade* to allow a woman the right to have a legal abortion. So successful have they been in keeping their dissent alive that a visitor to America listening to the news on the radio or television could be forgiven for concluding that abortion was still illegal here!

It is virtually certain that the right to die movement will have to spend the next twenty years defending the modest gains it has made so far. Successful ballot initiatives like Oregon's Measure 16 will be opposed in the courts with claims of 'unconstitutionality', attacked in legislatures and either overturned or neutered, or negated by counter initiatives specifically criminalizing assisted suicide.

Social progress never comes easily in a democracy, especially one so wonderfully open and argumentative as America's. That is why Nina Clark's book is a pithy and valuable record of the political battles so far over voluntary, medically-hastened death. As Winston Churchill commented, unless we learn from history we are destined to repeat its mistakes.

Derek Humphry
Oregon, September, 1996

Acknowledgments

About half way through writing what was originally my doctoral dissertation, I recognized the hidden agenda which compelled me to choose physician aid-in-dying as the topic I would research for three years: the inevitability of death frightened me and studying it offered a way to reconcile the dying process.

In my post-manuscript moments, however, I would be remiss to assert that I am without fear and at peace with the fact that death remains a reality for all of us. Both of my maternal grandparents passed away during the time that this project was under way—my grandmother just as I was beginning, and my grandfather as I was finishing. Even though I had thoroughly saturated myself with death and dying issues and believed that in the process I had fought a sufficient battle with mortality, I found these losses difficult. Thus, in spite of and perhaps because of my discomfort with death I continue to strongly believe that we should be able to at least control the time and manner in which it occurs.

As I worked on this manuscript, numerous people have been helpful at different points. Warmest thanks are due to the members of my dissertation committee: Dr. William W. Lammers, Chair, Dr. Alison Dundes Renteln, and Dr. Phoebe S. Liebig, who were supportive and always challenged me to go “one step further.” Special thanks to Alison, for help in accessing legal information and for her wonderful mentoring skills.

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In counting my blessings, I consider Todd D. Clark, my husband and best buddy, one of my greatest. He has made many cups of tea and coffee, lent me his good humor when mine was nowhere to be found, and in spite of his own extremely demanding schedule, willingly shared his computer and statistical expertise with me, in addition to facilitating the creation of tables and figures. Many thanks, Todd, for ardently pursuing your own goals and achieving your own success because in the process, you inspired me to strive for my own.

Dr. Nina Clark
Connecticut, October 1996