

1-1-2000

## Book Review [Freedom to Die: People, Politics and the Right-To-Die Movement]

Santa Clara Law Review

Follow this and additional works at: <http://digitalcommons.law.scu.edu/lawreview>



Part of the [Law Commons](#)

### Recommended Citation

Santa Clara Law Review, Book Review, *Book Review [Freedom to Die: People, Politics and the Right-To-Die Movement]*, 40 SANTA CLARA L. REV. 609 (2000).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol40/iss2/8>

This Book Review is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact [sculawlibrarian@gmail.com](mailto:sculawlibrarian@gmail.com).

## BOOK REVIEW

**Freedom to Die: People, Politics and the Right-To-Die Movement.** By Derek Humphry & Mary Clement. New York, St. Martin's Press, Inc., 1998. Pp. 388. Hard Cover. \$24.95.

*Reviewed by Rebecca C. Morgan\**

### I. INTRODUCTION

In the United States, after over twenty years of litigation and legislation, it is generally understood that competent adults have the right to consent to and refuse health care, including life-prolonging medical procedures.<sup>1</sup> The right is one based in law, even though it is puzzling to think that the law can regulate a person's ability to refuse the use of, or consent to the withdrawal of, life-prolonging procedures. Yet law has been intertwined in this issue for over two decades.<sup>2</sup>

---

\* Professor of Law, Stetson University College of Law, St. Petersburg, Florida. Professor Morgan is the co-author of Matthew Bender's *Tax, Estate & Financial Planning for the Elderly* Treatise and companion forms book. She is the immediate past president of the National Academy of Elder Law Attorneys, and serves on the ABA Commission on the Legal Problems of the Elderly and the Board of Directors of the National Senior Citizens Law Center. She served as the Reporter for the Uniform Guardianship & Protective Proceedings Act.

1. See Alan Meisel, *Managed Care, Autonomy, and Decisionmaking at the End of Life*, 35 HOUS. L. REV. 1393 (1999). Meisel, a recognized authority on right-to-die issues, summarizes the current status as follows:

[M]ore than one hundred . . . cases litigated . . . resulting . . . in a consensus about end-of-life decisionmaking. The essentials of this consensus are that competent patients have the right to refuse medical treatment even if that refusal will result in the patient's death, that families ordinarily have the authority to decline life-threatening medical treatment on behalf of patients who no longer possess the capacity to decide . . .

*Id.* at 1402.

2. Generally, the case of Karen Ann Quinlan is cited for the beginning of the law's involvement in the issue of termination of life-prolonging procedures.

Where we have been, how we got to where we are today, and where we are heading are the focus of Derek Humphry and Mary Clement's new book, *Freedom to Die: People, Politics and the Right-To-Die Movement*. Although this book is primarily about physician-assisted suicide ("PAS"), it also offers a popular look at the history, people, and competing forces that make up the "right-to-die" movement.<sup>3</sup> A rapid read, the book contains a number of sections that cover the causes for change, the development of the "right-to-die" movement, the arguments of those opposing the movement, the legal battles, the arguments about PAS, and the authors' path for the future.

Each section, and indeed each chapter, is complete in itself, with little reference to preceding or following sections. This allows the reader either to read the book *seriatim*, or skip to sections of interest. As a teaching tool, the chapters or sections can stand alone for use in courses on death and dying. Those outside academia will find the book interesting as a lengthy discourse on the issues of this movement. The tone of the book is decidedly free choice, which is not at all unexpected considering Mr. Humphry's past works.<sup>4</sup>

## II. WHY NOW?

The authors start their discussion with the question "Why now?" They identify "[a] number of factors [that have] brought society to the point where a majority favors . . .

---

*See In re Quinlan*, 355 A.2d 647 (N.J. 1976), *cert. denied*, *Garger v. New Jersey*, 429 U.S. 922 (1976).

3. The authors use the word "freedom" in the title to their book. In this review, no distinction is drawn between "right" or "freedom."

4. Mr. Humphry is the founder of the Hemlock Society and the author of several books on issues regarding the end of life. The Hemlock society, a not-for-profit organization, was established by Mr. Humphry in 1980, making it "the oldest and largest right-to-die organization in the U.S." Hemlock Society, *About Hemlock*, (last visited January 24, 2000) <[http://www.hemlock.org/about\\_hemlock.htm](http://www.hemlock.org/about_hemlock.htm)>. The organization

believes that people who wish to retain their dignity and choice at the end of life should have the option of a peaceful, gentle, certain, and swift death in the company of their loved ones. The means to accomplish this is with legally prescribed medication as part of the continuum of care between a patient and a doctor.

*Id.*

5. DEREK HUMPHRY & MARY CLEMENT, *FREEDOM TO DIE: PEOPLE, POLITICS AND THE RIGHT-TO-DIE MOVEMENT* 5 (1998).

voluntary termination of life. . . .”<sup>6</sup> These factors include advances in medicine, the AIDS epidemic, financial aspects of providing health care, a breakdown of the relationship between doctor and patient, doctors’ inattention to the importance of controlling pain and providing palliative care, as well as “the expectations of entitlement and autonomy generated by the ‘rights culture’ of the [1960s].”<sup>7</sup> Even the “baby boomers” receive partial credit for the movement.<sup>8</sup>

Medical technology, maintaining “life” far beyond what could have been achieved thirty years ago, certainly contributes to individuals seeking to control their deaths. This technological improvement gives impetus to the issue of assistance in dying.<sup>9</sup> In the past, people died at home with little technology available to them. Now the majority of Americans are dying in institutions, with the “trajectory of illness” changed so that a person’s health may decline over a long period of time.<sup>10</sup>

This use of technology is facilitated by society’s view of death as the enemy, by the training of the medical profession, by cultural and consumer desires, by financial incentives, and by fear of liability.<sup>11</sup> Modern culture forgets that death is a part of life. Americans fight to prevent death, fail to discuss it, and believe that with the technology available, death is avoidable.<sup>12</sup>

In the authors’ view, the “right to die” is an idea still in formation. This concept represents the individual’s autonomy over making health care decisions, not delegating them to the former status quo of “doctor knowing best.” Instead, the individual’s authority controls over the doctor’s views, law, and religion.<sup>13</sup>

The decline of the doctor-patient relationship is seen as a catalyst for the right-to-die movement. Patients generally feel alienated. They lack confidence in the health care system and do not trust their doctors.<sup>14</sup> People endorse assisted

---

6. *Id.* at 14.

7. *Id.*

8. *See id.*

9. *See id.* at 14–15.

10. *See id.* at 15–16.

11. *See HUMPHRY & CLEMENT, supra* note 5, at 21.

12. *See id.* at 21–23.

13. *See id.* at 24.

14. *See id.* at 35–37.

death because they fear their needs will go unmet by health care providers.<sup>15</sup>

### III. OPPONENTS OF PHYSICIAN-AIDED DYING

The authors also discuss the role of religion, the medical profession, and health care providers in health care decision-making, viewing these groups as opponents to the movement and noting that “[e]ach . . . has its own agenda to promote, . . . its own territory to protect, and [that together] they have the economic and political power to shape minds and issues.”<sup>16</sup> In particular, the authors express concern that an alliance between Catholics and Evangelicals has created a powerful force.<sup>17</sup> The alliance’s clout comes from their financial resources, their political power, and the public’s approval of religious organizations’ involvement in political and social issues.<sup>18</sup> The authors find no definite agreement about assisted death among the faithful, but note that religious doctrines generally prohibit it.<sup>19</sup>

The authors believe that although many of the providers of health care oppose legalizing assistance in dying, some of these same health care providers support the practice. The authors explain this apparent contradiction by suggesting that opposing legalization does not mean that doctors are against helping a person die. Rather, doctors do not desire the regulation and concomitant loss of control brought by legalization, preferring to help their patients on their own terms.<sup>20</sup> The authors rationalize the views of physicians opposing aid in dying as based on religious views, a misunderstanding of the Hippocratic Oath, ignorance of the Geneva Oath, and their fearing loss of control.<sup>21</sup> The authors state that “a solid majority of practicing physicians believe in the need to alleviate pain and suffering under certain

---

15. *See id.* at 47.

16. *Id.* at 167.

17. *See* HUMPHRY & CLEMENT, *supra* note 5, at 184.

18. *See id.*

19. *See id.* at 184–85. The authors conclude that religious opposition to aid in dying appears impervious, due in part to these increased alliances with their finances and political power. They predict that this will lead to little chance of any uniform success for the movement. Despite this concern, overall the authors believe the movement will succeed slowly, state by state.

20. *See id.* at 195.

21. *See id.* at 197–200.

circumstances by hastening an approaching death," without citation to authority for their statement.<sup>22</sup> The authors conclude that eventually all fifty states will legalize physician-assisted dying despite the opposition of the American Medical Association.<sup>23</sup>

The authors view the government's opposition to aid in dying "as one more indicia of [a] dangerous trend in this country."<sup>24</sup> According to the authors, the government does not listen to its citizens, federalism is on the wane, and although more power rests with the states, it is not given to the people. Voter apathy is evident at the state and federal levels, and voters are fed up.<sup>25</sup> The Oregon initiative illustrates this point. In 1994, Oregon voters approved physician-aided dying. In 1997, after a challenge in federal court, the Oregon legislature sent the law back to the voters to ensure they really meant it the first time.<sup>26</sup> Not only did the Oregon voters approve the measure again, they did so by a greater margin the second time than they did the first time.

#### IV. ECONOMICS IN END-OF-LIFE CARE

In the final section of the book, the authors hypothesize that the driving force behind assisted suicide, which will ultimately make it an acceptable practice, is economics. Although individual liberty or autonomy plays a role, money controls whether this movement will succeed. As health care costs increase, people live longer, and a higher percentage of the population ages, "the pressures of cost containment provide [the] impetus, whether openly acknowledged or not, for the practicalities of an assisted death."<sup>27</sup> Of course, no one would be so tactless as to promote physician-aided dying as a cost-savings measure, but the connection is there.<sup>28</sup> Thus, "[p]hysician-assisted suicide is an idea whose time has come . . . [and w]hile the government [contemplates] these policy issues, the right-to-die movement is gaining momentum," responding to the financial, physical, and

---

22. *Id.* at 201.

23. See HUMPHRY & CLEMENT, *supra* note 5, at 200.

24. *Id.* at 207.

25. See *id.*

26. See *id.* at 208.

27. *Id.* at 313.

28. See *id.*

psychological expenses of dying on families, health care providers, the government, and the insurance companies.<sup>29</sup> America is headlong in a health care crisis, because as the number of elderly increase, America will be unable to continue to provide the level of benefits currently given to the elderly. To avoid the crisis worsening, America must consider ways to save costs. The authors believe that one way to save costs would be if advance directives were widely used.<sup>30</sup> Spurred by economics, the authors predict, mandatory execution of living wills will become a requirement for Medicare or other insurance coverage.<sup>31</sup>

Yet, it is important to recognize treatment that is viewed as futile still serves several functions. Treatment provides satisfaction to the family that everything possible was done, to the public that we did not give up (we still may be able to defy death), and to the country, underscoring the belief that all Americans deserve every possible hope of survival.<sup>32</sup> However, the practice of providing all health care at all costs, then sorting out payment later, is no longer a viable practice in this country. Fiscal problems force a reevaluation of how Americans pay for health care and what coverage is available, including end of life care.<sup>33</sup>

## V. CONCLUSION

Although the authors are generally optimistic about the movement, they offer no new suggestions on how the movement will prevail. The authors simply view physician-aided dying as the next step in a logical progression. This book provides information and statements by those involved in the movement, statements only available to someone intimately involved in the movement. However, in some instances, these statements have as attribution only the speaker's name. This may limit the book's utility in academia, but should not impact the casual reader who desires more information about the movement. While the authors present both sides of the argument, the opposing views are not presented in language as persuasive as the

---

29. HUMPHRY & CLEMENT, *supra* note 5, at 314.

30. *See id.* at 320-21.

31. *See id.* at 321.

32. *See id.* at 326.

33. *See id.* at 327.

views supporting the movement. As stated above, given the authors' long history of championing the movement the reader should expect the strong free choice tone of the book.<sup>34</sup>

For those seeking a chronology of the right-to-die movement and a review of the arguments supporting and opposing PAS, this book provides both in a cleanly organized fashion. This book is one of the most comprehensive chronologies of the development and existence of the movement. The authors provide the reader with legal, social, medical, and religious arguments, and introduce all of the players involved in the movement. There are no surprising revelations, but rather a vast quantity of information. The authors provide readers with *their* answers to the question of "Why now?"—a confluence of factors that serve as the driving force behind the creation and the eventual success of the movement.

---

34. See *supra* note 4 and accompanying text. Some readers may be put off by the tone of the book, or take exception to the language used in describing the opponents of the movement. The issue generates strong feelings on both sides—making it unusual to find an individual with no opinion.

\*\*\*