Leon Kass on
“Death with Dignity and the Sanctity of Life”

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When 76-year-old Dick Farris of Portland, Ore., was diagnosed with pancreatic cancer in February 2002, he knew what was coming. Both Farris' father and two brothers had succumbed to the illness. "As soon as he learned what it was or suspected, he told the doctor he wanted out," says Gloria, Farris' wife of 16 years.

Farris lost weight rapidly, developed sores in his mouth so he could not swallow, and had raging fevers at 105 degrees. "By the first weekend in March, I was shocked to see how he was a shadow of what he had been," Gloria Farris says.
As an Oregon resident, Farris was able to avail himself of the Oregon Death With Dignity Act to hasten his death. The 1994 law gives Oregon doctors the authority to prescribe controlled substances to mentally competent, terminally ill patients who are within six months of dying.

Surrounded by his wife and family, Farris took his last breaths. "I said, 'I'll see you in the morning,' " Gloria Farris recalls. "Then he said OK and drank the rest of [a liquid barbiturate]. It was so peaceful. He just went to sleep in my arms."
"I feel that if the people involved in [opposing physician-assisted suicide] really understood how careful the law is, they would view it differently," she says. "I can't believe anyone would view this as anything but humane and beautiful."

Marya Lucas

Legal Times

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Distinctions:
“Passive euthanasia”
- Refusing treatment
- Discontinuing treatment
- Extraordinary vs. Ordinary care:
  - Extraordinary: Ventilator
  - Ordinary: Antibiotics
- Sustenance: Food and water
- How to classify feeding tube?
- Treating pain, suffering (e.g. with morphine) even if it carries some risk of causing death.
Distinctions (continued):
“Active euthanasia”

- Physician Assisted Suicide (PAS): Doctor provides patient with medications to allow her to end her own life. E.g. Oregon’s “Death with Dignity” act

- Active euthanasia: Doctor gives medication that kills patient. E.g. Holland.

- Kevorkian.
Distinctions (continued): Voluntariness

- Voluntary: Mr. Farris.
- Involuntary: Nazis
- Non-voluntary (?): Dementia, Schiavo

Today we’ll only consider Voluntary acts, and focus on the debate over Physician Assisted Suicide (PAS), i.e. Oregon law.
Current American Law and Practice:
Two key US Supreme Court decisions:

• 1990: US Supreme Court: Cruzan: Every competent adult has the RIGHT to refuse or discontinue any treatment

• 1997: Quill v. Vacco (2nd Circ) and Washington v. Glucksberg (9th Circ) There is no Constitutional RIGHT to PAS.
  – But also it is not unconstitutional for a state to pass a law legalizing PAS.
Oregon “Death with Dignity” Act

1. A primary-care physician and a consulting physician must both agree that the patient has six months or less to live.

2. The patient must make two oral requests (at least forty-eight hours apart) for drugs to use to terminate his or her life.

3. The patient must wait at least fifteen days after the initial oral request, then make a written request to the physician.

(Munson, pp. 697-8)
Oregon “Death with Dignity” Act (continued), (Munson, pp. 697-8)

4. If either physician thinks the patient has a mental disorder or is suffering from impaired judgment from depression, they must recommend the patient for counseling.

5. The patient can terminate the request at any time during the process.

“…[A] physician is not permitted to assist a patient to die by any means more active than prescribing medication that can cause death and indicating the manner in which it can be used.”
“[Questions] emerge, insistently and urgently, from poignant human situations, occurring daily in hospitals and nursing homes, as patients and families and physicians are compelled to decide matters of life and death, often in the face only of unattractive, even horrible, alternatives. Shall I allow the doctors to put a feeding tube into my eighty-five-year-old mother, who is unable to swallow as a result of a stroke?” (Kass, p. 231)
“Now that it is inserted and she is not recovering, may I have it removed? When would it be right to remove a respirator, forego renal dialysis, bypass lifesaving surgery, or omit giving antibiotics for pneumonia? When in the course of my own progressive dementia will it be right for my children to put me into a home or for me to ask my doctor or my wife or my daughter for a lethal injection? When, if ever, should I as a physician or husband or son accede to ... such a request?” (p. 232)
Pro PAS based on consent:

“Blows struck in a boxing match or on the football field do not constitute assault; conversely, an unwelcome kiss from a stranger, because it is an unconsented touching, constitutes a battery, actionable at law.” (p. 237)
Pro PAS, based on consent (cont.):

“If consent excuses – or even justifies – these ‘attacks’ on the body of another, might not consent excuse – or justify – the ultimate, that is, lethal, attack and turn murder into merely (unwrongful) homicide? A person can be murdered only if he personally does not want to be dead.” (p. 238)
Against PAS, despite consent:

“Indeed, the most abominable practices, proscribed in virtually all societies, are not excused by consent. Incest, even between consenting adults, is still incest; cannibalism would not become merely *delicatessen* if the victim freely gave permission; ownership of human beings, voluntarily accepted, would still be slavery. The violation of the other is independent of the state of the will (in fact, of both victim and perpetrator).” (p. 238)
Against PAS, despite consent (cont.):

“Is the life of another human being to be respected only because that person (or society) deems or wills it respectable, or is it to be respected because it is in itself respectable?” (p. 238)
Against PAS, despite consent (cont.):

“This latter view squares best with our intuitions. According to our law, killing the willing, the unwilling and the nonwilling (for example, infants or the comatose) are all equally murder. Beneath the human will, indeed, the ground of human will, is something that commands respect and restraint, willy-nilly. We are to abstain from killing because of something respectable about human beings as such. But what is it?” (p. 238)
Two separate possible points:

1) Just because a person says that something is OK with him, and that person is sane (informed, competent, etc.) by all other measures, that doesn’t mean that it’s moral to do what he agrees to or asks. E.g. slavery, incest, and cannibalism.

2) PAS is like slavery, incest, and cannibalism in that it violates human dignity.
Point (1) seems right, but has he proven (2)?

Challenge: What supports (2), i.e. the claim that PAS violates human dignity?
Need to look more closely at what death with dignity might mean/involve.
First, is a rejection of medical interventions:

“[I]ntubated and electrified, with bizarre mechanical companions, confined and immobile, helpless and regimented, once proud and independent people find themselves cast in the roles of passive, obedient, highly disciplined children. Death with dignity means, in the first instance, the removal of these added indignities and dehumanizations of the end of life.” (p. 245)
Second: “…[N]ot all obstacles to dignity are artificial and externally imposed. Infirmity and incompetence, dementia and immobility – all of them of natural origin – greatly limit human possibility, and for many of us they will be sooner or later unavoidable, …” (p. 245)
Third: “... [T]here is nothing of human dignity in the process of dying itself, only in the way we face it. At its best, death with complete dignity will always be compromised by extinction of dignified humanity; it is, I suspect, a death-denying culture’s anger about dying and mortality that expresses itself in the partly oxymoronic and unreasonable demand for dignity in death.” (p. 245)
“A death with positive dignity – which may turn out to be something rare, like a life with dignity – entails more than the absence of external indignities. Dignity in the fact of death cannot be given or conferred from the outside; it requires a dignity of soul in the human being who faces it.” (p. 246)
His list (pp. 248-9)

• Be aware that you are dying
• Remain an “agent,” not just a “patient”
• Maintain professional, personal, social relationships
“It will, I hope, now be perfectly clear that death with dignity, understood as living dignifiedly in the face of death, is not a matter of pulling plugs or taking poison.” (p. 249).

Responses?
How about pluralism about dignity?
Withdrawal/ Refusal of treatment:

“About treatment for the actually dying, there is in principle no difficulty. … [C]onsiderations of the individual’s health, activity and state of mind must enter into decisions of whether and how vigorously to treat if the decision is indeed to be for the patient’s good.” (p. 250)

(continued, next slide)
“Ceasing treatment and allowing death to occur when (and if) it will, can, under some circumstances, be quite compatible with the respect that life itself commands for itself. For life can be revered not only in its preservation, but also in the manner in which we allow a given life to reach its terminus.” (p. 250)

Any questions raised by his saying this?
My question: Can he have this position along with his view of dignity and PAS?
I.e. Is giving up and “allowing death to occur” dignified?
I.e. Can he accept withdrawal of treatment as sufficiently dignified without opening the door to PAS?
Arguments AGAINST the idea that PAS is compatible with human dignity:

1) Violation of doctor’s creed: “Elsewhere I have argued at great length against the practice of euthanasia by physicians, partly on the grounds of bad social consequences, but mainly on the grounds that killing patients – even those who ask for death – violates the inner meaning of the art of healing.” (p. 250)
Arguments AGAINST the idea that PAS is compatible with human dignity:

2) “Is it really dignified to seek to escape from troubles for oneself? Is there, to repeat, not more dignity in courage than in its absence?” (p. 251)
Arguments AGAINST the idea that PAS is compatible with human dignity:

3) “Euthanasia for one’s own dignity is, at best, paradoxical, even self-contradictory: how can I honor myself by making myself nothing? Even if dignity were to consist solely in autonomy, is it not an embarrassment to claim that autonomy reaches its zenith precisely as it disappears?” (p. 251)
Arguments AGAINST the idea that PAS is compatible with human dignity:

4) “The choice for death is not one option among many, but an option to end all options. Socially, there will be great pressure on the aged and the vulnerable to exercise this option. Once there looms the legal alternative of euthanasia, it will plague and burden every decision made by any seriously ill elderly person – not to speak of their more powerful caretakers – even without the subtle hints and pressures applied to them by others.” (pp. 251-2)
Arguments AGAINST the idea that PAS is compatible with human dignity:

5) Who can we ask for help in dying?
   “Consider [this request’s] double meaning if made to a son or daughter: Do you love me so little as to force me to live on? Do you love me so little as to want me dead? What person in full possession of their own dignity would inflict such a duty on anyone they loved?” (p. 252)
“To turn the matter over to non-physicians, that is, to technically competent professional euthanizers, is, of course, to completely dehumanize the matter.” (p. 252)
Conclusion:

“I also know that when hearts break and people can stand it no longer, mercy killing will happen, and I think we should be prepared to excuse it – as we generally do – when it occurs in this way. But an excuse is not yet a justification, and very far from dignity.” (pp. 254-5)
Conclusion (continued):

“Thus, when the advocates for euthanasia press us with the most heartrending cases, we should be sympathetic but firm. Our response should be neither ‘Yes, for mercy’s sake’ nor ‘Murder! Unthinkable!’ but ‘Sorry. No.’” (p. 255)

Say this to Mrs. Farris…