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SLIPPERY-SLOPE OBJECTIONS TO LEGALIZING PHYSICIAN-ASSISTED SUICIDE AND VOLUNTARY EUTHANASIA

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In nearly every state in the U.S. today, it is a crime for a doctor either to help a terminally ill person in severe pain commit suicide (physician-assisted suicide, or PAS), or to accede to their request for a quick and painless death by administering a lethal injection (voluntary active euthanasia, or VAE). The one exception is Oregon, which permits PAS under certain conditions. Generally speaking, "conservatives" support a ban on both VAE and PAS; liberals who aren't libertarians support legalization, but with eligibility for a quick death limited to the "terminally ill," patients in a "persistent vegetative state"(PVS), and perhaps a few other groups; and libertarian liberals support legalization without such limits, the only requirement for eligibility being that one is a competent adult whose choice is uncoerced. This essay tentatively supports some version of the "nonlibertarian liberal" view, which of course must fend off objections from both conservatives—that it goes too far—and libertarians—that it doesn't go far enough. But rather than undertake the large project of defending that view against both sets of critics, my aim in this paper is more modest. This essay argues, primarily for the benefit of those who like the author are inclined to support some version of the legalization with limits view, that the reply we have to give to what is probably the most important conservative objection to legalization has some unnoticed and many might think unwelcome implications for the kind of reply that we must give to other objections that some conservatives press.

One of the conservative objections to legalization is that it would violate the "sanctity of life." This seems to be an absolute side-constraint that forbids the intentional taking of any "innocent" human life, except possibly in self defense, regardless of whether the person to be killed would be much better off dead, and regardless of whether he gives free and informed consent to being killed.[1] On the face of it, there is nothing religious about the sanctity-of-life principle so formulated; an atheist could consistently believe it. But it is often claimed that it is impossible to defend in the absence of some religious belief about God and his exclusive dominion over all life. (The same could be said of the judgment

that homosexuality is wrong because "unnatural"—it may not be religious on its face, but it surely rests on assumptions about God and his purposes.) If this claim is correct, then the objection to legalization that appeals to the principle is ultimately religious.[2]

Two other objections to legalization that are advanced by many conservatives raise worries about "slippery slopes." Slippery-slope worries come in two forms—"logical" and "practical"—and there is clearly nothing religious about the objections based on either of them.[3] Most defenders of legalization with limits favor a reply to the logical slippery-slope objection that rests on "soft" paternalism. My thesis is that the reply to the practical slippery-slope objection that they have to make precludes their giving that soft paternalist reply, forcing them instead to give one that relies on "hard" paternalism. Many defenders of legalization will be reluctant to agree with this, either because they judge *all* hard paternalism to be "elitist" and disrespectful of persons, or because they worry that it will prove impossible to identify a clear and consistent set of principles that make hard paternalism acceptable in some types of cases but unacceptable in others (a kind of logical slippery-slope worry). My own view is that hard paternalism does not have to be as elitist or as threatening to liberty as most liberals assume; a hard paternalism based on a liberal perfectionism can avoid these dangers. At the very end of this paper, I'll suggest that if defenders of legalization with limits must embrace hard paternalism, then that in turn has implications that many of them find unacceptable for the kind of reply to sanctity of life objection that they have to defend.

The Case for Legalization

Before we turn to the two slippery-slope objections, we should first nail down what the "legalization with limits" proposal amounts to and then outline the moral argument that supports it. Different people make different proposals, but the one I'll consider would legalize PAS and VAE for just two groups of patients. The first is those who are "terminally ill" (defined in Oregon's PAS law as a strong probability of death from illness within six months) and either they're competent now and request help in ending their lives, or they're incompetent now but when they were competent earlier authorized measures to ensure a quick death. The second group is PVS patients who can live for years if provided with "ordinary" care (and thus do not satisfy the definition of "terminally ill"), but who requested when competent (via a "living will" or the like) that such care be suspended should they ever become PVS. Two groups are ineligible, under this proposal. One is patients who suffer from various psychological and/or physical debilities, some quite severe (e.g., ALS—"Lou Gehrig's disease"), but are neither "terminally ill" nor in a PVS. Another is PVS patients who either were never competent (e.g., the severely mentally retarded), or were competent earlier but either never expressed

any wish one way or the other, or clearly expressed the wish that "ordinary" care continue till they die of "natural causes." This proposal goes further than Oregon's "Death With Dignity Act," which only permits doctors to prescribe lethal drugs to competent terminally ill patients and explicitly forbids doctors to administer them. But it does not go as far as the Netherlands' law, which allows doctors to provide a quick death to any patient who requests one because he faces "unremitting and unbearable suffering." Dutch law does not require that the suffering be physical or that the patient be terminally ill.[4]

The moral case for permitting PAS and VAE for the two groups included in the scope of the proposal appeals to two principles: autonomy and beneficence. According to the autonomy principle, people have the right to live their lives in accordance with their own metaphysical, theological, and ethical convictions. That implies not only that doctors may not force what they believe to be the best treatment on unwilling patients, but that they should not deceive their patients or withhold from them relevant information about different treatment options. The principle of autonomy explains why doctors have a duty to obtain the "informed consent" of their patients before treating them.

What does the principle say we should do with someone whose theological or ethical convictions tell him to violate others' rights (e.g., someone who believes that the true religion commands the faithful to kill all blasphemers)? There are two ways to handle such cases. One is to qualify the principle so that it applies only to "self-regarding" acts. In that case we don't violate the principle when we prevent conscientious fanatics from murdering others. The other is to leave the principle unqualified, but concede that when it conflicts with the principle that we should prevent serious rights violations when we can, that principle trumps it. Proceeding the first way allows one to uphold the autonomy principle as absolute, as it seems libertarians wish to do.

The following sort of case forces us to make another choice about how to construe the autonomy principle. Suppose I'm about to drink a cup of coffee that I believe I sweetened with sugar but actually poisoned with arsenic. Do you violate the principle if you knock the cup out of my hands, right before I drink from it? (Suppose that your attempts to warn me are of no avail, because you only speak Japanese and I don't understand Japanese.) You thwart my choice to take a drink from *that* cup, but of course I would consent to your interference if I were well informed of all relevant facts, because my choice runs counter to my own values and preferences. One alternative is to say that your interference violates my autonomy, but this is a case where beneficence overrides autonomy, so your violation of the autonomy principle isn't wrongful. I'll adopt the other alternative of interpreting the principle so that it isn't violated at all in cases like this. This is a case of "soft" paternalism, and soft paternalism never violates the autonomy principle, because it doesn't impose on the person interfered with any values or preferences that on reflection he rejects. "Hard" paternalism, by contrast, *always*

violates the autonomy principle. Hard paternalism is the practice of restricting a competent adult's liberty for his own good, where it is claimed that the adult in question either has a mistaken view about what's prudentially best for him, or has underestimated how important his own good is in relation to other values. In either case it imposes on him a set of values that on reflection he rejects. An example of hard paternalism is forcing a life-saving blood transfusion on an adult Jehovah's Witness who's convinced that transfusions violate God's law, for his own good. Someone might try to defend such coercion here, claiming that a principle of beneficence based on the correct objectivist account of the good supports it; the coercion violates autonomy, but beneficence overrides autonomy. This essay will assume that such a view is incorrect and that forcing the blood transfusion on the Jehovah's Witness is a paradigm example of a *wrongful* violation of the autonomy principle.[5] The Jehovah's Witness's choice might be foolish or misguided, but it is rightfully his to make. Of course, this is only one example of hard paternalism. It would be hasty to infer from it that hard paternalism is always wrong.

The other principle on which proponents of legalization base their case is the principle of beneficence. This principle says that we have a duty to do what's good for others and to prevent them from suffering great evils. (The duty here is a "positive" one, whereas the duty to respect others' autonomy is a "negative." A refusal to help others pursue their conception of the good might violate beneficence, but it does not violate autonomy.) In order to fulfill the duty of beneficence, we need to know what's "prudentially" best for people, what their real interests are, or what welfare or well-being consists in. That is, we need to know what the correct "theory of the good" is. One type of theory is "objectivist" or "perfectionist," and there are countless variants of it. Another sort of theory of the good is subjectivist, inasmuch as it identifies a person's good with the fulfillment of whatever "conception of the good" he subscribes to. A third type of theory is hedonistic, identifying a person's good with the experience of pleasant or enjoyable mental states and the avoidance of unpleasant ones. The principle of beneficence is compatible with all of these theories (just as utilitarianism and ethical egoism are); the version of the principle that we accept should be the one that incorporates the best, most defensible theory of the good.

Many proponents of legalization appeal to a principle of beneficence that might not be purely hedonistic, but still has a strong hedonistic component. It tells us to stop the *pain and suffering* of others, and it is enlisted by proponents of legalization who focus on the cases of terminally ill patients who suffer immensely because pain killing medications can't fully alleviate their pain. PAS and VAE are justified, they argue, because the practices would provide these patients a "quick and painless" death, as opposed to the slow, painful one they face if they have to wait for a natural death.[6] A principle of beneficence that rests on a "perfectionist" account of the good can also support a quick death for those in the final stages of terminal illness, but for another reason. The later stages of

terminal illness are usually accompanied not only by pain, but also by deterioration in those powers of rationality, deliberation, and agency in virtue of which Kant calls us "persons." Indeed, the very same medications that alleviate pain often accelerate that deterioration. A principle of beneficence that rests on a "Kantian perfectionism" seems to support helping a terminally ill patient who wants to end his life because he wants to avoid the indignity of undergoing that deterioration before succumbing to death. It also supports the belief held by nearly everyone that it is better to be dead than to survive for years as a living vegetable, as was the fate of Karen Ann Quinlan.[7]

A principle of beneficence based on a subjectivist theory of the good would seem to support the Netherlands' euthanasia practice, in particular, its refusal to make terminal illness or even physical pain a requirement of eligibility for euthanasia. According to the *Wall Street Journal*, "a former Dutch senator, Edward Brongersma, a man without physical or psychological illness, was helped to die by a doctor in 2000 because he believed he was living 'a pointless and empty existence.'"[8] If the senator's decision to end his life really was in accord with his "conception of the good"—perhaps one formulated after many nights' readings of Albert Camus novels—then a principle of beneficence based on a subjectivist theory of the good implies that the doctor acted rightly in helping him to commit suicide. Dutch law seems to defer to each person's own judgment about whether or not he is "suffering" and whether or not that suffering is "unbearable." Note that in spite of this talk of "suffering," the law cannot be defended by appeal to a hedonistic principle of beneficence, simply because a hedonistic account of the good leaves open the possibility that a person's judgment that his life is not worth living is mistaken. One can be mistaken about this, because one can be mistaken about what one's prospects for *future* pleasure and pain are. The Dutch law appears to be justifiable if *and only if* a principle of beneficence based on a subjectivist account of the good is correct.[9]

A blanket ban on PAS and VAE, say proponents of our proposal, wrongly violates *both* the principle of beneficence and the right to autonomy of terminally ill and PVS patients. If it is motivated by the conviction that one is always better off being alive than being dead, then it is a hard paternalism intended to protect patients with mistaken beliefs about the value of life from making a choice that's bad for them.[10] Proponents of the proposal can respond that *any* plausible version of the principle of beneficence (no matter which theory of good is conjoined to it) supports helping those terminally ill patients who want one to achieve a quick and painless death. And for PVS patients who've indicated earlier that they'd rather be dead, no plausible theory of the good implies that they're better off being kept alive. So there is no conflict between the principles of beneficence and autonomy in these cases. Both support legalizing PAS and VAE for the two groups that fall under the proposal.

The Practical Slippery-Slope Objection

Let's turn now to the practical slippery-slope objection. It alleges that legalization with limits will inevitably lead to consequences that proponents of such proposals themselves judge very bad: in particular, to PAS and VAE being practiced on individuals whom proponents agree should be ineligible for it. Some more melodramatic versions of the objection allege that the practices would so weaken our "respect for life" that we will end up believing that there's nothing wrong with PAS and VAE being practiced on these individuals. The practices might corrupt us to the point that, like the Nazis, we support "euthanasia" for epileptics, the mildly retarded, and the aged. Other, less hysterical versions of the objection worry that the practices will corrupt caregivers in subtler ways. While they may not be corrupted to the point that they force lethal injections on patients who are strapped down and pleading for their lives, caregivers could easily be corrupted in such a way that they see consent in cases where it hasn't really been given. They will start misinterpreting "I wish I were dead" to mean "I hereby authorize you to kill me." They will cave in more quickly to pressure from families to euthanise terminally ill incompetents and PVS's who never expressed a preference for a quick death when they were competent. Many doctors will accede to requests from competent patients to sign off on a prognosis that satisfies the definition of "terminally ill," when such a prognosis isn't supported by the medical evidence.

The practical objection also alleges that other sorts of abuses are likely—abuses that are not due to the extreme or subtle moral corruption of caregivers. Elderly, terminally ill patients will be pressured into requesting a quick death by family and the larger society, because their care is very expensive and they've been made to feel that it would be "selfish" to continue it. A related worry focuses on requests made by dying patients who suffer from clinical depression. The practice of VAE is supposed to allow euthanasia only in cases where the patient's request for a quick death is persistent and "voluntary," but legalization (even with limits) would inevitably lead to cases where a patient makes a request, it is not genuinely voluntary, but it is granted anyway. Proponents of legalization concede that all of these abuses are likely to occur, but insist that they can be minimized with the proper safeguards (hospital review committees, etc.). Opponents point to certain studies of legalized euthanasia in the Netherlands, which they claim document rampant abuse even with "safeguards," and infer that rampant abuse is likely in the U.S. too, if it follows the Netherlands.[11]

Conservatives who press the practical slippery-slope objection need not reject the principles of autonomy and beneficence. Indeed, they can enlist the two principles in support of their objection. Part of the reason why it would be a deplorable "abuse" if people who've requested a quick death but without genuinely free and informed consent are given one, they can say, is that it would violate the principle of autonomy. Similarly, part of the reason why it is an "abuse" to provide a quick

death to patients who want one even though they are not terminally ill is that it violates the principle of beneficence (assuming that a quick death is not really in their best interests). Hence, the practical slippery-slope objection can be interpreted as alleging that the very moral principles that proponents of legalization cite to justify their position really support a ban.

Before explaining what this author thinks is the best reply to the objection, let us describe a couple of replies that libertarians support but this author finds unpersuasive. Recall that in order to uphold the principle of autonomy as absolute, the libertarian qualifies it so that it applies only to self-regarding acts. While there's nothing wrong with that move, there is something wrong with the way the libertarian understands "self-regarding." For the libertarian, an act is self-regarding unless *it* causes harm to nonconsenting third parties. That means that the state may not ban PAS and VAE, even if legalization would result in the most horrific consequences alleged by the most melodramatic versions of the objection, because the competent, terminally ill patients whom legalization allows to choose a quick death would not be the cause of those horrific consequences. The people who would be responsible for them are the doctors, hospital review committee members, prosecutors, and judges who failed to administer and enforce the laws properly.

Defenders of legalization should concede that while that may be true, it is also beside the point. They should agree that if legalization would result in great harm to many vulnerable people, then the two groups covered by the proposal shouldn't have the legal right to choose a quick death, even though they're not the cause of the harm. Consider an example to which we'll return later, namely, our legal practice of refusing to recognize "consent of the victim" as a justification for homicide. Some defend the practice by appeal to the sanctity-of-life principle. But another way to defend it is by noting our worry that without it, there would probably be just as many cases of fraudulent victim consent as genuinely voluntary victim consent, and it would prove extremely difficult for juries to tell which ones are which. The likely result of accepting "consent of the victim" as a legal justification is an increase in the number of murders, as well as an increase in the number of murderers wrongly acquitted. If the libertarian's reply to the practical slippery-slope objection to legalizing PAS and VAE were correct, then by parity of reasoning we would have to say that our desire to avoid that result *couldn't possibly* justify our current legal practice: "after all, the people correctly acquitted under the law, because they did obtain the informed consent of the victim before killing him, are not the cause of the murders by those who forced their victims to give false consent, nor the cause of their mistaken acquittals."

Libertarians often make a second point in reply to the objection that might seem more telling. They point out that if the state bans PAS and VAE, then *it* violates the autonomy of terminally ill patients who autonomously choose a quick death, because *it* prevents them from having one. But if it legalizes the practices and

then due to imperfect enforcement of the law some terminally ill patients who are not competent request and are given a quick death, the state is not similarly guilty of violating their autonomy and their right to life. At most, it failed to protect their autonomy and right to life from violation by careless doctors and hospital review boards. That failure will be blameworthy if the violations could have been prevented by better enforcement or oversight mechanisms. But if the only way to prevent them is to ban PAS and VAE, as the objection alleges, then the failure is not blameworthy, because that means that the state can prevent them only by itself violating the autonomy of others. The state may not violate some of its citizens' rights, even as a means of protecting others of their rights. It may not, for example, indiscriminately eavesdrop on the general public's e-mail, in order to ferret out terrorist plots to murder innocent people. It may not enact a blanket ban on private gun ownership, even if one was very effective at keeping guns out of criminals' hands and thus reduced society's murder rate, because law-abiding citizens have the right to bear arms.

Defenders of the practical slippery-slope objection are rightly unconvinced by this reply. The first thing that they can say in response to it is that the violations of autonomy that would follow legalization would be much more serious wrongs than the ones due to a ban on PAS and VAE. They are more serious wrongs not because they more seriously violate the principle of autonomy, but because they violate other important moral principles that are not violated by a ban on the practices. The violations of autonomy due to legalization are also violations of the right to life, while the violations of autonomy due to a ban are at best also violations of a right to die—assuming such a right even exists. Killing someone against his wishes is a much more serious wrong than preventing someone from killing himself or receiving help to kill himself (against his wishes). True, the state itself would be committing the second wrong if it bans PAS and VAE, while it would only fail to prevent the first wrong, if the practices are legal. The second, more important point defenders of the objection can make in reply to the libertarian is that if the only way to prevent a large number of murders is to limit the autonomy of competent, terminally ill patients, then it is *not* really wrong at all. The moral principle that requires us to prevent a large number of serious rights violations, when we can, overrides the principle that we not directly violate anyone's autonomy ourselves.

The libertarian will find this response unsatisfactory, because he thinks that it countenances rights violations by the state. The libertarian holds that the right to end one's life is, like the right to freedom of religion and the right bear arms, "natural" and absolute. The state must recognize, honor, and protect our natural rights, even if by violating some itself it could prevent a larger number of such violations by others. "Rights consequentialism" holds that our goal should be to minimize the total number of rights violations by everyone, and so requires us to violate rights when that's the only way to prevent a larger number of violations

by others. The libertarian rejects rights consequentialism in favor of the view that respect for natural rights is an absolute side-constraint on morally permissible action by the state or any private citizen.[12] Since the right to end one's life is a natural one, and a ban on PAS and VAE would violate it, a ban can't be justified on the grounds that it would make society as whole happier, or that the majority support it, or even that it is the only way to protect many weak and vulnerable terminally illpatients from being exploited.

Opponents of legalization can respond that of course the rights to life, self-defense, and freedom of religion are absolute (or nearly absolute) natural rights, but the right to die (and maybe, too, the right to bear arms) do not have the same lofty status. Few of us think that there is a natural right to drive gas-guzzling SUVs. On the contrary, the question of whether society ought to recognize a legal right to drive such vehicles is properly decided on the basis of its consequences: the increased comfort and convenience such vehicles provide, their effects on air quality and our dependence of foreign oil, etc. Opponents of legalization will insist that the right to die belongs in the same category as the right to drive gas-guzzling SUV's. That doesn't mean that society should decide whether to recognize either of them as legal rights on the basis of narrowly utilitarian considerations. A utilitarian reckoning of the costs and benefits of legalized PAS and VAE would give undue weight to the savings in health care costs that the practices would achieve. But it does mean that society should decide whether to create legal rights here by considering the consequences of doing so, including the consequence (if it is one) that doing so would make it harder to protect other rights.

It seems to me that proponents of legalization can and should reject the libertarian position as I've described it here and concede that if the consequences of recognizing the right to die as a legal right were bad enough, then there should be no legal right to die. If there were a real danger that legalization would gradually transform us into Nazis, then *of course* PAS and VAE should remain illegal. But legalization has not produced consequences *that* dire even in the Netherlands. What we really need to know is whether the abuses that would accompany legalization in the U.S. would be numerous and grave enough to justify a ban on PAS and VAE, even if they wouldn't be as bad as the most melodramatic and implausible versions of the practical slippery-slope objection allege. Would they be as widespread as the objection claims they are in the Netherlands? Skepticism that they would be seems to me to be warranted. Even if abuses are rampant in the Netherlands, most of those abuses may be due to defects in its law that a better, more restrictive law could avoid. Dutch law does not limit euthanasia to the terminally ill. It permits it for anyone whose suffering is "unremitting and unbearable." Not only is its law overly permissive, but it also provides for no real safeguards to prevent abuses. All the law requires is that a doctor's judgment that a patient's suffering is intense be supported by another (any other) doctor. Proponents of legalization must concede that no feasible system of safeguards

will be one hundred per cent effective at preventing abuses. But they can and must contend that there is a feasible system that's *effective enough* at preventing the worst abuses. Hospital review committees can be trusted to identify and reject the vast majority of requests for a quick death that are not voluntary and informed.

This essay concedes that no one can now know for sure how numerous or grave the abuses would be if PAS and VAE are legalized in the U.S. The prediction that underlies the more sober versions of the practical slippery-slope objection *might* be true. This essay merely denies the experience of the Netherlands provides good evidence in support of that prediction. Some opponents of legalization maintain that even a small probability that abuse would be rampant is enough to defeat the case in favor of legalization. They see legalization as a reckless experiment in social engineering, one that we should be unwilling to conduct unless we can be *sure* that it is safe. As they see it, the "burden of proof" falls on proponents of legalization to prove that it certainly won't open the door to a large number of involuntary killings, rather than on the opponents of legalization to show that it is very probable that it will. This objection to legalization needn't rest on a Burkean conservatism, according to which there is a very strong presumption against tinkering with *any* long-standing social or legal practice. Instead, it can be based on a kind of expected moral value calculus, according to which even a small probability of a small number of murders that we could have prevented but didn't is worse (has more expected negative moral value) than many terminally ill patients being denied the help to achieve the quick death that they want.

Of course, the libertarian doesn't care how this expected moral calculus turns out. If it is no justification for violating some citizens' right to die that doing so will *certainly* prevent very bad consequences, then it can be no justification for violating them that it will *probably* prevent such consequences. But if we reject the libertarian's claim that there is a natural, absolute right to die, then we cannot answer the objection in this way. Nonlibertarian liberals have no alternative but to dispute that the calculus turns out the way the conservative thinks. They can maintain (quite reasonably, in my opinion) that in order for the calculus to oppose legalization, there would have to be not a small, but a rather high probability of a very large number of extreme abuses. And they can hold that feasible safeguards make the likelihood of such an outcome very small. But they ought to admit that it is impossible to prove this, and thus, that conservatives who believe otherwise are not demonstrably wrong. That's why the nonlibertarian liberal's support for legalization with limits should be more tentative and less passionate than the libertarian's support for legalization with no limits.

The Logical Slippery-Slope Objection

Let's turn now to the logical slippery-slope objection. Strictly speaking, it is not an objection to legalization with limits per se, but rather, an objection to the

argument for legalization with limits that appeals to the principles of autonomy and beneficence. (Hence, one could agree with the objection but still support legalization with limits, as long as one supported it not on the basis of these two principles, but other ones.) The objection is that if the argument that proponents of our proposal give in support of PAS and VAE for the two groups eligible under it were a good one, then it would also justify the practices for the two groups ineligible under it, as well as other practices that nearly everyone (except the libertarian) agrees are "beyond the pale" and *cannot* be justified. So, since the argument does *not* justify either legalization with no limits or these practices, it can't justify legalization with limits, either.

Consider first what the objection says about the principle of beneficence. If beneficence is why we should support euthanasia for competent, terminally ill patients who want it, what about incompetent terminally ill patients? Surely a mentally retarded man in the final stages of throat cancer suffers just as intensely as anyone else with the same illness. Or consider PVS patients who never expressed a wish one way or the other about whether "ordinary care" should be ended and/or a lethal injection administered should they ever become PVS. Since a permanent vegetative state is caused by higher brain death, they lack all capacity for consciousness and thus cannot experience pain. A hedonistic principle of beneficence therefore does not tell us to give them a quick death. But since their deterioration into "nonpersonhood" is already complete, a principle of beneficence based on "Kantian perfectionism" does support a quick death for them—even more than for someone who's in the last stages of a terminal illness, often delirious, but occasionally lucid.

Consider next what the objection says about the principle of autonomy. That principle implies that we ought to honor the voluntary and informed request for a quick death made by competent terminally ill patients. Doesn't it *also* imply that we should honor such requests from competent individuals who are *not* terminally ill? We've already noted that some people may wish to take their lives because they are anguished existentialists. Consider another example: an accomplished violinist who has suffered an injury that causes partial paralysis in one hand, making it impossible for her ever to play the violin again. Weeks later, after the shock of the accident has worn off, and following calm and careful deliberation that appears untainted by depression or emotional distress, she decides that since she will never achieve excellence in violin playing again, her life is no longer worth living and she should end it. If it is a wrongful violation of autonomy to thwart a terminally ill person's voluntary decision to die, then isn't it an equally wrongful violation of autonomy to thwart this violinist's decision?

Let us focus on the logical slippery-slope objection insofar as it targets the principle of autonomy and as it is developed by Daniel Callahan. As Callahan sees matters, the implications of the principle of autonomy are even more radical than assisted suicide for people like our violinist. The principle requires us to tolerate

voluntary slavery contracts and dueling between consenting adults. Irving Kristol once argued that in order to implement libertarian dogma fully and consistently, society would have to permit gladiatorial fights to the death between consenting, paid combatants before paying customers in Madison Square Garden.[13] Callahan would certainly agree with Kristol. As Callahan sees it, the autonomy argument for PAS and VAE justifies more than these practices. It justifies the legalization of "consenting adult killing," that is, "the killing of one person by another in the name of their mutual right to be killer and killed if they freely agree to play those roles."[14] Callahan probably also thinks (though he doesn't say it) that the principle requires legalizing prostitution and recreational hard drug use. The logical slippery-slope objection as Callahan defends it charges that the proponents of legalizing PAS and VAE who argue from the principle of autonomy but shrink away from these implications of it are being inconsistent.[15]

Since Callahan rejects what he thinks are unavoidable implications of the principle, we can infer that he rejects the principle itself. But does he really? Callahan certainly agrees that it would be wrong for doctors to force a blood transfusion on an unconsenting, adult Jehovah's Witness. This essay will assume he would also agree that it would be wrong for society to forbid vasectomies for men who wish to be able to engage in sex but have no desire to reproduce. Or that it would be wrong to forbid women who want to have "breast augmentation" surgery from undergoing it. On what grounds will he judge these restrictions on liberty wrong? It is not being claimed that it is impossible to provide an account of why these and similar restrictions are wrong that doesn't appeal to the principle of autonomy. But it seems likely that any attempt to avoid that principle will be ad hoc and unconvincing. Even those of us who are not extremist, doctrinaire libertarians are committed to a principle of autonomy.

Of course this reply to Callahan is merely ad hominem. To rebut his objection proponents of legalization with limits need to explain on what grounds *they* can consistently support legalized PAS for terminally ill patients who autonomously choose to end their lives, but oppose it for anguished existentialists and our violinist. It seems to me that they have two possible ways of proceeding, one of which uses soft paternalist reasoning, and the other, hard paternalist reasoning.

Before laying out the soft paternalist reply and explaining why it won't work, let us first make a stipulation about the conditions that a law has to satisfy to qualify as soft paternalism. Coercive laws target classes of people, and they restrict the liberty of individuals only by virtue of their membership in the classes targeted. This raises the question of whether *every* member of the targeted class has to consent to it (if fully rational and apprised of all relevant facts), for the law to qualify as an instance of soft paternalism. If unanimity were required, few if any laws would qualify. While it might be *possible* for a law to specify a group description such that every member of the group would consent to the coercion if fully informed, a law that did so is likely to be too difficult to administer and

enforce. For this reason let us assume that unanimity is not required, only a large majority. To illustrate this point, suppose that the vast majority of heroin users view their addiction as a curse that they wish they were free of, while a small minority view it favorably (e.g., bohemian artists who see it as a source of inspiration). If the law is going to ban recreational heroin use, it must ban its use by everyone; it would not be feasible to ban consumption only by nonautonomous users. My stipulation implies that a ban on recreational heroin use by everyone (autonomous users included) qualifies as soft paternalism, as long as a large majority of users would consent to it.

Now if this stipulation is granted, then it probably follows that Callahan is simply wrong when he claims that the principle of autonomy requires the legalization of dueling and acceptance of "consent of the victim" as a justification for homicide. He is mistaken because our current legal practices on these matters can be given a soft paternalist justification, and soft paternalism does not violate the principle of autonomy. When dueling was first banned in the eighteenth and nineteenth centuries, it seems likely that the reason was that the majority of gentlemen had come to prefer the state of affairs in which no one has the legal option of issuing or accepting a challenge to a duel to the state of affairs in which all gentlemen have that option.[16] And our earlier discussion of the "consent of the victim" defense of homicide provided the soft paternalist rationale why our legal system should reject it: it would prove too difficult to distinguish the probably few cases of consent that were genuinely voluntary from the probably many more cases of fraudulent consent.

Now those who defend legalization of PAS only for the terminally ill can try to make a similar case for why we should reject PAS eligibility for all competent adults who want help to end their lives. Apparently the vast majority of suicide attempts by people not terminally ill are due to clinical depression or other forms of mental illness. Only a small minority of such attempts are made autonomously by people like anguished existentialists or our violinist. But surely a law that only banned assistance to nonautonomous suicide decisions while permitting it to autonomous suicide decisions could not be effectively administered and enforced. The only feasible way for the state to protect the vast majority who nonautonomously decide to kill themselves is to ban assistance to everyone who decides to commit suicide but is not terminally ill. This reply to Callahan by the defenders of legalization with limits employs soft paternalism to resist the slide down his slippery slope.

But the reply is not available to the defenders of legalization. Why? Because as we saw earlier, in their reply to the practical slippery-slope objection they must make and defend the claim that hospital review committees will be effective enough at identifying and rejecting the nonautonomous requests for a quick death made by terminally ill patients. If such committees can do that, then surely they can be just as effective at evaluating requests for PAS from the nonterminally

ill. There is simply no plausible reason why it should be harder to evaluate how voluntary PAS requests from nonterminally ill people are, than to evaluate how voluntary PAS or VAE requests from terminally ill or PVS patients are.

What's Wrong with Hard Paternalism?

If that's right, then it has to be admitted that a legalization with limits that exclude anguished existentialists and our violinist from eligibility for PAS does violate the principle of autonomy. A defense of that exclusion has to identify another moral principle with which the principle of autonomy comes into conflict, and then explain why that principle overrides autonomy. A possible candidate for such a principle is the principle that we should prevent serious rights violations when we can. But it does not seem that that principle is relevant here, because it is hard to see how a policy of PAS for anyone who autonomously chooses to end his life would lead to any rights violations (assuming such a policy can be effectively administered). The principle that it seems more plausible to claim conflicts with and overrides autonomy here is the principle of beneficence. According to this view, PAS should not be available to anguished existentialists or our violinist, because it would be contrary to the principle of beneficence correctly understood. Their capacities for rational thought, social interaction, moral choice, and so forth are intact, so an objectivist theory of the good based on Kantian perfectionism tells us that the lives they wish to end are good ones, their beliefs to the contrary notwithstanding.[17] Indeed, even a hedonistic account of the good might condemn the violinist's decision to end her life as misguided. She may not enjoy her life now, but what if it is statistically probable that in cases like hers, people eventually become passionate about other things (romance, religion, social activism, teaching, etc.) and are glad that their earlier attempts at suicide failed? In any case defenders of legalization who resist the slide down Callahan's slippery slope in this way—by arguing that a principle of beneficence based on Kantian perfectionism, some other perfectionism, or hedonism overrides autonomy in these cases—will have embraced hard paternalism.

Whether or not a hard paternalist reply to Callahan is ultimately defensible, it seems at the very least to be consistent and coherent. That fact alone disposes of the logical slippery-slope objection. Right before he lays out his objection, Callahan says "the two motives [autonomy and beneficence] are typically spliced together and presented as a single justification. Yet if they are considered independently—and there is no inherent reason why they must be linked—they reveal serious problems."[18] Now Callahan is correct in claiming that there is no necessary connection between the two motives. Doctrinaire libertarians rest their case for legalization solely on an absolute principle of autonomy, while others base their case entirely on a principle of beneficence.[19] But while each of these ways of proceeding is possible, it can be argued that the best case for legalization

is made by those who do "splice" the two motives together. PAS and VAE for the two groups that fall under the proposal is supported by the two principles, and those two principles together override whatever principles opponents claim are violated by legalization. But while autonomy supports PAS for the violinist, beneficence opposes it. (And in the case of incompetent PVS patients who've never expressed a wish for or against a quick death, only beneficence supports VAE.) Callahan seems to assume that if one accepts the principle of autonomy, then one must accept it as absolute, or never overridden by other moral principles. But that assumption is clearly mistaken. You can lie to Nazis when they ask you if you know where any Jews are hiding, yet still accept the principle of honesty as one of the truths of morality.

Note that anyone who thinks that we have a duty to help the violinist commit suicide can't argue that if we refuse to help her, then we violate her autonomy. If you believe in either Kantian perfectionism or the sanctity of life doctrine, then your refusal to help her will be pursuant to your own ethical or religious convictions, and thus, a legitimate exercise of *your* autonomy. Anyone who thinks we should help the violinist will have to argue that failure to do so violates the principle of beneficence, properly understood. Failure to help her violates that principle because the proper way to understand it is by conjoining it to a subjectivist theory of good. Our refusal to help her harms her, simply because she believes after careful reflection that she is worse off alive than dead. The idea that we have a duty to help the violinist (or the Dutch senator) commit suicide is so deeply counterintuitive as to constitute a *reductio* of a subjectivist version of the principle of beneficence. Defenders of legalization need not and should not assume subjectivism about the good.[20]

The view defenders of legalization with limits are stuck with is one that claims not only that an objectivist version of the principle of beneficence is the correct one, but also that that principle sometimes overrides autonomy. It is the second claim that leads to hard paternalism.[21] The view is that not only should we not help people like our anguished existentialist and violinist commit suicide, but also the state should prohibit anyone who wants to from helping them, for their own good.

A defense of hard paternalism in this and like cases is beyond the scope of this paper. There are several objections to hard paternalism, but to my mind the most serious one is the logical slippery slope. If we accept hard paternalism for the violinist and anguished existentialist, where will we draw the line? If we think that PAS should not be legal for them, why not go further and claim that the state should try to thwart their *unassisted* suicide attempts if it can? Consider the case of the Buddhist monk who sets himself on fire to protest the Vietnam War, or the defeated samurai who commits suicide to avoid a life of dishonor. Is it right to thwart their suicide attempts, too, for their own good? If we say that coercive interference is permissible in any of these cases, how can we square that with our

emphatic rejection of it in cases like that of the Jehovah's Witness who refuses permission for the life-saving blood transfusion? This essay assumes too that even if we accept an objectivist principle of beneficence based on Kantian perfectionism, we agree that autonomy overrides beneficence in the case of the PVS patient who made it clear when she was competent that because of her conscientious belief in the sanctity of all human life, she would want to receive "ordinary care" indefinitely, should she ever become PVS. Is it possible to reconcile support for hard paternalism in some of these cases with rejection of it in others?[22]

Callahan might argue that it is not possible, and thus, that the logical slippery-slope objection turns out to be correct after all. But two points can be made in reply. First, the logical slippery-slope objections here are not just different, but opposites. Callahan's alleges the proponents of legalization must, if they're consistent, support *too much* freedom for people to end their lives. The logical slippery-slope objection described in the previous paragraph alleges that if they oppose legalized PAS for the violinist on grounds of hard paternalism and are consistent, then they will support *too little* of that freedom. Even if the second objection is (in the final analysis) a good one, that doesn't help Callahan's objection at all. Second, it seems at the very least to be hasty to assume that it is impossible to reconcile some of the different judgments mentioned in the previous paragraph about when hard paternalism is and is not permissible. Defenders of hard paternalism may have their work cut out for them, but there's no reason to think that the job is one that cannot possibly be satisfactorily completed.

Hard Paternalism, Neutrality, and Sanctity of Life

In conclusion, let us return to the sanctity of life objection to legalization and drawing out an implication of my argument for how to reply to it. This essay noted earlier that it is commonly thought that the sanctity-of-life principle is indefensible in the absence of assumptions about God and his exclusive dominion over all life. Hence, it is thought that the objection to legalization that appeals to it "rests on religion." What's wrong with that? A widely held liberal belief is that while the fact that the principle rests on religion does not make it false, it does disqualify it from serving as the basis of coercive legislation in a liberal democracy. A ban on VAE and PAS that rests ultimately on Judeo-Christian notions about the sanctity of all life is "reasonably rejected" by those groups in our society who reject them in favor of other notions about the meaning and value of their lives. It violates what many liberals believe to be a bedrock principle of liberal democracy, namely, "the principle of neutrality."

But if my argument is correct and defenders of legalizations with limits must embrace hard paternalism, then they cannot support this reply to the objection. For as defenders of hard paternalism, they support the state's taking a stand on what the correct theory of prudential value is. A state that practices hard paternalism

must reject the subjectivist account of the good and endorse either a hedonist or (more likely) some version of a perfectionist theory. But a state that does that will have violated the principle of neutrality no less than a state that bans PAS and VAE on the basis of the sanctity-of-life principle. Defenders of legalization with limits cannot dismiss the sanctity of life objection on the grounds that it violates a principle that they themselves have to reject. They have to find a different reply to the objection. There seems to be no alternative but for them to argue that the sanctity-of-life principle is simply false (and hence, that any religion that supports that principle is—at least insofar as it supports it—false). It is false, they must hold, because it conflicts with too many of our considered moral judgments about when the intentional taking of life is permissible.[23] Of course, a nonneutral state that rejects the principle as false can still see itself as bound to defer to the wishes of terminally ill people who believe in the sanctity of life, that they not be given a quick death under any circumstances. After all, failure to respect their wishes on this matter would violate the principle of autonomy, and a nonneutral state can see itself as bound to respect autonomy. What a nonneutral state that rejects the principle cannot do is enact a ban on PAS and VAE that applies to everyone, including those who (rightly in its view) reject the principle.

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NOTES

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1. "Except possibly" is needed to take care of Aquinas, who defends a sanctity-of-life principle that does not permit one to intend the death of one's attacker. For Aquinas the use of lethal force in self-defense is permissible only if the attacker's death is foreseen but not intended.

2. Ronald Dworkin appears to believe as much. See his "Assisted Suicide: The Philosophers' Brief," *New York Review of Books* (March 27, 1997), pp. 41–47. Dworkin also maintains that this objection is the only one that could possibly motivate a blanket ban.

3. John D. Arras, "Physician-Assisted Suicide: A Tragic View," *Journal of Contemporary Health Law and Policy*, vol. 13 (1997). pp. 361–389; Daniel Callahan, "When Self-Determination Runs Amok," *Hastings Center Report*, vol. 22 (1992), pp. 52–55.

4. See the website of the anti-euthanasia "International Task Force on Euthanasia and Assisted Suicide" at www.internationaltaskforce.org.

5. If he's brought into an emergency ward severely injured, in need of a transfusion, and unconscious, and the doctors don't know that he's a Jehovah's Witness, then giving him the transfusion is either wrong but blameless or neither wrong nor blameworthy.

After all, the vast majority of people don't share the Jehovah's Witness's conviction that transfusions are against God's law, and they would consent to one if conscious.

6. James Rachels argues this way in his famous essay in defense of active euthanasia. See James Rachels, "Active and Passive Euthanasia," *New England Journal of Medicine*, vol. 292 (1975), pp. 78–80.

7. Some opponents of legalization argue that improvements in hospice care and in medicine's ability to "manage" pain obviate the need for legalization. But even if all physical pain that accompanies terminal illness could be eliminated, that would not eliminate the evils of mental deterioration, total physical helplessness, and dependence and others, etc. Opponents of legalization who give this argument seem to assume a hedonist account of the good.

8. *Wall Street Journal* op-ed. page, April 25, 2001. According to this essay, the doctor was charged with assisting a suicide in a way not licensed by the Dutch law, but was acquitted.

9. Dan Brock is one proponent of legalization who seems to appeal to a subjectivist principle of beneficence. Brock says that "especially in the often severely compromised and debilitated states of many critically ill or dying patients, there is no objective standard, but only the competent patient's judgment of whether continued life is no longer a benefit." Dan Brock, "Voluntary Active Euthanasia," *Hastings Center Report*, vol. 22 (1992), pp. 10–12.

10. The very implausible value judgment that underlies such hard paternalism is different from and not entailed by the sanctity-of-life principle. After all, it is perfectly consistent to believe that some person would be better off dead than alive in his current state, but it remains wrong for others to kill him or for him to kill himself.

11. For example, see Ezekiel Emmanuel, "Whose Right to Die?" *Atlantic Monthly* (March 1997), pp 73–79; and "The End of Euthanasia? Death's Door," *The New Republic* (May 1999).

12. For discussion and criticism of a "consequentialism of rights" by a noted libertarian, see Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 30–33.

13. Irving Kristol, "Pornography, Obscenity, and the Case for Censorship," *The New York Times Magazine* (March 28, 1978).

14. Callahan, "When Self-Determination Runs Amok," p. 53.

15. Note that the libertarian agrees with Callahan about this. But the libertarian avoids the alleged inconsistency not by opposing legalization of PAS and VAE, as Callahan does, but accepting all of the alleged implications of the autonomy principle and arguing that they're not so unpalatable.

16. See Richard J. Arneson, "Mill vs. Paternalism," *Ethics*, vol. 90 (1980), pp. 470–480.

17. The violinist case is slightly different from the suicide case that Kant considers in section two of the *Groundwork*. That was suicide motivated by the belief that life isn't worth living if it won't supply more pleasure than pain. The violinist believes that her life is not worth living if she cannot achieve nonmoral excellence. Kant holds that both are mistaken for the same reason: what make our lives worth living are our capacities

for moral choice and deliberation, for free will and rationality. It is wrong to treat these capacities as "mere means" to achieving either pleasure or nonmoral merit.

18. Callahan, "When Self-Determination Runs Amok," p. 55.

19. It is a mistake to identify these "others" with utilitarians. The utilitarian who supports legalization does so partly on account of the good it would do the terminally ill. But the utilitarian must regard the good that it would do society as a whole, by reducing the cost of very expensive end of life treatment, to be an even stronger reason to legalize the practices.

20. Notice that if one accepts such a principle of beneficence, as well as the principle of autonomy as it was formulated above (so that the only paternalism that violates it is hard paternalism), then one ought to believe something that's very counterintuitive, namely, that it is impossible for the principle of beneficence ever to conflict with the principle of autonomy.

21. This point seems to me important and worth reiterating in different terms. A belief that some objectivist version of the principle of beneficence is true does not, by itself, commit one to supporting *any* hard paternalism. It is perfectly consistent to believe in an objectivist theory of the good, think that the beneficence and autonomy principles often conflict, but insist that autonomy *always* overrides beneficence in such cases: "Yes, the violinist is acting contrary to her true interests if she kills herself. But she still has the right to do so."

22. One possibly relevant difference between the Jehovah's Witness and Buddhist monk cases on the one hand, and the violinist and anguished existentialist cases on the other, is that the decisions in the former cases are motivated by religion, while the decisions in the latter cases are not. The thinking here need not be that religious beliefs are entitled to greater respect than nonreligious ones because religion is more valuable than nonreligion. It might be, rather, that religious groups, especially minority religious groups, have often been victims of discrimination and oppression in the past, and that is the reason why the law should now be especially reluctant to interfere with acts of religious conscience—especially ones that are largely "self-regarding."

23. One such judgment is that killing is permissible in the following sort of case: Twenty people are on a spaceship in which, owing to mechanical problems, oxygen is in short supply. Help is on the way but will not arrive in time. If the twenty do nothing, they will all die before it arrives. If they draw straws and kill two of their number, there will be just barely enough oxygen for the remaining eighteen to survive till the help arrives. All of them are agreed that drawing straws is fair, and the two who draw the short straws agree that it is fair that they be killed immediately. Surely it cannot be wrong to kill them, given that they consent, that they will soon die anyway if they are not killed now, *and* that killing them is necessary to save the other eighteen.