Andrew Fergusson evaluates the Oregon model of PAS

Hexham GP David Moor was acquitted at a euthanasia trial in 1997.

GOING WEST?

Should Britian introduce physician-assisted suicide?

key points

Lord Joffe plans to reintroduce his bill legalising physician assisted suicide (PAS) in England and Wales this autumn; following the Oregon model. PAS is ethically no different from euthanasia, as in both cases the intention is to end the life of the patient. Furthermore legalising PAS effectively legalises voluntary euthanasia; as some patients are too incapacitated to take their own lives, and because some PAS is unsuccessful requiring the doctor to 'step in'. So far 171 people have died under the Oregon law in six years but there appears to be substantial underreporting of deaths. Of reasons given for requesting PAS, 85% cited loss of autonomy, 22% reported inadequate pain control and 35% that they feared being a burden. The legalisation of PAS must be resisted here.

'Gone west' is a quaint description of death - the setting sun 'goes west' and then sinks below the horizon and expires. The phrase may now acquire new meaning as some in Britain look to the US west coast state of Oregon and seek physician-assisted suicide (PAS) here.

Lord Joffe's 2004 *Assisted Dying for the Terminally Ill Bill* sought to legalise 'for people who are terminally ill, who are mentally competent and who are suffering unbearably, medical assistance with suicide or, in cases where the person concerned would be physically incapable of taking the final action to end his or her life, voluntary euthanasia'.[1] It ran out of time in the last session of Parliament but Lord Joffe has promised to reintroduce a similar bill, restricting it this time to England and Wales. Northern Ireland was always excluded but leaving Scotland out is almost certainly a political manoeuvre by the euthanasia movement, as Liberal Democrat MSP Jeremy Purvis is promising to introduce for discussion a similar bill into the Scottish Parliament.

Both Parliamentary approaches begin with PAS rather than voluntary euthanasia (VE) and both look to the experience of Oregon to justify their public policy claim that PAS with VE backup can be policed adequately. With the end-of-life debate in Britain set to run and run, we must examine these issues carefully.

Definitions

CMF defines euthanasia as 'the intentional killing, by act or omission, of a person whose life is felt not to be worth living'.[2] The doctor both prescribes and administers a lethal dose of medication.

In PAS the doctor prescribes a lethal medication but the person administers the dose himself or herself.

The international experience of PAS

The Select Committee considering Lord Joffe's Bill reviewed the four jurisdictions which currently permit PAS and/or VE:

- Oregon, USA - has permitted PAS but not VE since 1997.
- The Netherlands - codified 30 years of practice in 2002 and allows both PAS and VE.
- Belgium - legalised VE but not PAS in 2002.
- Switzerland - finally legalised assisted suicide federally in 1942. Interestingly, and partly because the historic root was to facilitate duelling, assistance does not have to involve a doctor. Any citizen may help someone commit suicide provided they are acting from 'non-selfish motives'.[3]

Based on reported statistics from these countries, the Lords Committee concluded[4] 'there is a strong link between the scope of legislation in this area and its take-up by terminally ill people. In particular, where legislation is limited to

Photo: Epics

assistance with suicide, the take-up rate is dramatically less than in places where voluntary euthanasia is also legalised. If therefore a new bill should be brought forward, it should distinguish clearly between assisted suicide and voluntary euthanasia and thereby give the House the opportunity to address these two courses of action separately.'

They calculated [5] that legalising PAS alone in Britain would mean about 650 deaths a year while legalising PAS and VE would lead to about 13,000. Is this an invitation that society might find PAS more acceptable politically than VE? Given also that some doctors might feel less 'hands-on' involved, PAS could seem so much more acceptable than VE that it could be legalised.

Is PAS significantly different from VE?

1. Principles

The key concept is intention. In both, what the doctor means to do is to bring about the death of the patient. He or she is the moral agent without whom the death could not happen. Although some see philosophical counter arguments, PAS is simply 'euthanasia one step back'.

2. Practice

Three issues arise:

- **Incapacity**. Lord Joffe's Bill acknowledged that because some patients would be physically incapable of ending their own lives (eg through paralysis) VE back-up would be required.
- **Failure rates**. Even with a prescription, PAS has a failure rate. Some patients vomit, while others through tolerance acquired from previous medication fail to die despite large doses of drugs. In these situations, a doctor will always be required for the *coup de grâce*.
- **Incremental extension**. Lord Joffe has said [6] 'I believe that this Bill initially should be limited, although I would prefer it to be of much wider application, but it is a new field and I think we should be cautious'. What might begin with accepting 650 PAS deaths a year could lead to VE with 13,000 deaths a year.

In principle, PAS is merely euthanasia one step back and in practice, legalising it effectively legalises VE too. PAS must be opposed for all the reasons CMF has long argued. [7]

What is the Oregon experience?

The *Death with Dignity Act* was a citizens' initiative first passed in 1994 by 51-49% . Implementation was delayed by a federal injunction, but in 1997 Oregon's voters reinstated it, this time by 60-40%. (Many people who were opposed to PAS nevertheless voted for it in 1997 to protest at having their autonomy overturned.) The law allows a 'capable' adult patient who is a resident of Oregon and has less than six months to live to request voluntarily a prescription for lethal drugs.

The case of Kate Cheney [11]

Kate Cheney died in Oregon of PAS aged 85 in 1999 even though she was reportedly suffering from early dementia. Her own physician refused to prescribe, a psychiatrist counselling her to determine her capacity concluded she was not explicitly pushing for PAS and that her daughter was coaching her to do so, a psychologist believed she was competent but possibly under the influence of her daughter who was 'somewhat coercive', and it was finally the managed care ethicist overseeing her case who determined she was qualified so that the lethal dose was prescribed.

Information has to be collected and presented in an annual report. At first glance the statistics do indeed appear reassuring: numbers are low and have reached a plateau. There were 42 reported PAS deaths in 2003 out of about 30,000 in the state, and 37 in 2004. It is of course always dangerous to make deductions in the face of low figures, but we might justifiably be concerned that psychiatric evaluations are taking place in only 5% of patients on whom PAS is performed, that 22% of these report inadequate pain control, and that 35% of patients fear being a burden. We probably won't be surprised that 85% state fear of losing their autonomy as a main reason for requesting PAS. [8]

It is also dangerous to argue from silence, but we need to know that all this data is derived solely from those doctors who admit prescribing lethal drug doses. There are no penalties for non-reporting, and the Oregon Health Division (OHD) has no regulatory authority or resources to ensure compliance with reporting requirements. There are no checks and in any case reports can be anonymous. The OHD has said of doctors' reports, [9] 'the entire account could have been a cock-and-bull story. We assume, however, that physicians were their usual careful and accurate selves.' But we know from the Netherlands, where one of the reasons for finally legalising voluntary euthanasia was so that physicians would always report VE and PAS, that only 54% of cases are reported. [10] Under-reporting in Oregon seems certain.

What is the Oregon experience? The experience is that there is no reliable experience and we should not be hoodwinked through ignorance into accepting bland assurances that Oregon proves PAS can be policed.

Conclusion

Both the principled and practical arguments confirm that PAS must be resisted and the experience from Oregon provides no reliable reassurance whatsoever. Let's not go west.

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Photo: Epics

Diane Pretty sought assisted suicide unsuccessfully.

We should not be hoodwinked through ignorance into accepting bland assurances that Oregon proves PAS can be policed

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