

## Robert Latimer and the Principles of Punishment

*Latimer's application for day parole will be heard on 5<sup>th</sup> December. It should succeed.*

Arthur Schafer

Robert Latimer killed his daughter Tracy on 24<sup>th</sup> October, 1993. He was charged with murder and, after a series of appeals and a re-trial, he was convicted of second degree murder.

The jury found that he had been motivated by love and concern for the suffering of his daughter. They recommended unanimously that he receive a sentence of only one year in prison. They were unaware that in Canada a conviction for murder carries a mandatory sentence of life imprisonment. For second degree murder there is no parole eligibility for at least ten years. When the jurors discovered this, some wept.

Judge Ted Noble agreed with the jurors' recommendation and ruled that life imprisonment, in this case, would constitute cruel and unusual punishment. Accordingly, Noble sentenced Latimer to one year in prison and one year on his farm.

The Supreme Court over-ruled Noble, but offered strong hints that the government should rethink its policy on mandatory minimum sentences: "Where the courts are unable to provide an appropriate remedy in cases that the executive sees as unjust imprisonment, the executive is permitted to dispense mercy, and order the release of the offender." The Government of Canada did not take the hint.

That same day, January 18<sup>th</sup>, 2001, Latimer turned himself in to authorities and began serving his sentence.

Critics of Latimer, including some disability rights activists, repeatedly describe his killing of Tracy as a hate crime against the disabled. They refer to Latimer as a "remorseless killer", and argue that had he not received a harsh punishment society would have declared "open season on the disabled".

Technically, "remorseless killer" is an accurate description. Latimer did kill his daughter and he feels no remorse for what he did. But, though technically accurate,

the description is profoundly misleading. He feels no remorse because he believes it was his moral duty to save his daughter from a life of unbearable pain. Many Canadians agree with him, at least to the extent of thinking that if they were in Tracy's position they would want Robert as their father. Even those who worry about the wider social implications of compassionate homicide feel sympathy for the family's tragic plight.

Both judge and jury rejected the view that Latimer killed his daughter because of her disability. Tracy suffered from the most severe kind of cerebral palsy, but there was no evidence whatsoever that Latimer was motivated by her disability. On the contrary, as summarized by Judge Noble, "all of the evidence points to his concern for the pain which he saw flowing from her illness". The Supreme Court, though it rejected Latimer's appeal on legal grounds, nevertheless agreed that this was a crime of compassion.

Interestingly, Robert Latimer is the only person in Canadian history to spend even a single day in prison for a mercy killing. That's partly because prosecutors often exercise their discretion to charge the accused with an offence other than murder. Conviction on a lesser charge, such as manslaughter or "administering a noxious substance", allows the court flexibility to make the punishment fit the criminal as well as the crime.

Another significant factor: Canadian juries have generally been reluctant to convict those who kill in order to bring an end to unbearable suffering. To illustrate. In 1941, an Alberta couple asphyxiated their young son with exhaust from their car. He had been suffering unremitting pain from cancer. The prosecution proved that the parents were guilty of premeditated murder; nevertheless, the jury voted to acquit. Legally, it *was* murder. But common humanity led the jury to recognize that neither hanging nor lengthy incarceration was a morally appropriate response. In essentials, the Latimer case is identical. Robert killed Tracy with exhaust from his truck. She, too, was suffering from pain which could not be relieved, or so the Latimers were told by Tracy's doctors. Death seemed to be a merciful release.

Tracy's situation is, fortunately, rare, and it is implausible to suggest that parents of disabled children will kill their children unless deterred by the threat of a heavy sentence. There was, after all, no wave of such killings prior to the Latimer sentencing. Very few people think that Latimer deserves a harsh sentence – he clearly doesn't - and even fewer favour public denunciation of what he did. The best way to defend and protect the disabled is to provide adequate funding for the services and care they need.

The injustice of Robert Latimer's lengthy sentence will not be eliminated by allowing him to receive day parole. But it's a good first step. Law reform is needed, however, if we are to avoid such injustice in the future.

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