Physician-assisted suicide: the great debate

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Friday’s decision by the British Columbia Supreme Court was a victory for Ms. Gloria Taylor, a dying 63 year old ALS patient. Ms. Taylor won her right to physician assisted suicide [PAS] at a time of her choosing. But, just as important, the decision is a victory for civil liberties in Canada and for the rights of the disabled. The case is certain to be appealed by the Crown, however, so ultimately it will be the Supreme Court of Canada [SCC] which resolves the legal issues. I will mostly address the moral issues.

For more than 20 years Canadians have been telling pollsters that we favour a change to the Criminal Code which would make it legally permissible for patients suffering from incurable physical illness to opt for PAS. Just before Ms. Taylor began her legal challenge to the Canadian law prohibiting physician-assisted suicide, a Forum Research poll showed that more than two-thirds of Canadians favour PAS. In Quebec, support was eighty percent. In Alberta, 60 percent. Forum’s President commented: “You don’t often find that many Canadians agreeing on anything”.

The reason why most Canadians will cheer this B.C. court decision is that individual autonomy is a core value of our society. The right of competent adults to make fundamentally important decisions for ourselves – including life and death decisions – and the state’s duty to protect this right, is part of what defines us as Canadians. Autonomy is a cornerstone of Canadian culture as it is of other liberal democratic societies. It is also one of the core values of the Canadian Charter of Rights and Freedoms.

You and I have both a moral and a legal right to make important personal choices based upon our own beliefs about the good life. This is not to say, however, that the right to autonomy is absolute. When the SCC decided (1993), by a five to four vote, to deny Sue Rodriguez’s challenge to the Criminal Code prohibition of PAS, they acknowledged that the prohibition violates her right to autonomy. But the majority argued that this violation was justified because, without a complete prohibition, there was a danger of mistake and abuse. In particular, they feared that the most vulnerable members of society – the disabled, the sick, the elderly, the poor, racial minorities – might be victimized by a more permissive law.

In 1993, when the SCC decided Rodriguez, PAS had not yet been legalized anywhere in the world. In consequence, it was at least plausible to claim that decriminalization might lead to a slippery slope in which the most vulnerable members of society would suffer victimization. Today, however, we don’t need to speculate since we now have empirical evidence from the jurisdictions where PAS has been decriminalized.
After reviewing all the evidence presented by both sides, including evidence from Oregon and the Netherlands, the B.C. Supreme Court concluded that none of it supports fears that mistake and abuse are more likely in a permissive but regulated regime. Mistake and abuse can and do occur presently in Canada as well as in Oregon. But in Canada there are virtually no safeguards around end of life decision-making, e.g., the decision about when to “pull the plug” or when to put a patient into “terminal sedation”. In Oregon, by contrast, decisions take place in the light rather than in dark, they are regulated and monitored and there is public accountability. Arguably, the disabled are much better protected in Oregon than at present in Canada.

None of the dire predictions of PAS critics has come about. It was predicted that palliative care would suffer because it would be cheaper to hasten people’s deaths rather than to relieve their suffering. But the opposite happened. Palliative care in Oregon and the Netherlands is excellent. Indeed, it improved because of decriminalization. It was predicted that the doctor-patient relationship would suffer. No evidence exists that there has been such deterioration. Indeed, there is evidence that patients in Oregon feel alienated from physicians who oppose PAS rather than the other way round.

Nor is there any empirical evidence that respect for the value of life has diminished in Oregon or the other states/nations that have opted for safeguards rather than a total ban. Respect for the religious doctrine of “the sanctity of life” may be waning, as an increasing number of people favour individual liberty, but respect for quality of life (and for the right of each individual to decide when life has become more burdensome than beneficial) has increased.

As the B.C. Supreme Court notes, Ms. Taylor’s right to life is protected rather than imperilled by decriminalization because she is now able to wait until she’s ready to die instead of killing herself prematurely, in order to do so without assistance.

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