

# BIOETHICS MATTERS ENJEUX BIOÉTHIQUES

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## **Evangelization and PAS/Euthanasia**

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The Year of Faith, begun on the 50<sup>th</sup> anniversary of the Second Vatican Council, calls Catholics to re-root ourselves ever more firmly in the vine—the vine representing Our Lord, while we are the branches. The idea is that we must first be nourished by him in the Eucharist especially—the Fruit of the Vine—and then we must go out into the multiple vineyards of the world to proclaim the Word through our witness to the good News. Pope Benedict is calling us all to this new evangelization, which means we ourselves must be formed before we are able to give the message of good News to others in the way it deserves.

This evangelization is also a task for bioethics, an area where there are many disagreements and many different political approaches to life issues, ranging from reproductive technologies with new ways of bringing life into the world to abortion, euthanasia and physician-assisted suicide which deliberately end life, as opposed to natural death. What sorts of ideas can we bring to our society to help people reflect on the importance of each human life, made in the image of God and deserving of protection from conception until natural death, as we are told in *Evangelium vitae*:

Nothing and no one can in any way permit the killing of an innocent human being, whether a fetus or an embryo, an infant or an adult, an old person, or one suffering from an incurable disease, or a person who is dying. Furthermore, no one is permitted to ask for this act of killing, either for himself or herself or for another person entrusted to his or her care, nor can he or she consent to it, either explicitly or implicitly. Nor can any authority legitimately recommend or permit such an action.<sup>1</sup>

If we try to help others reconsider their opinion, that will count as evangelization, not by proselytizing, but by trying to show that true human dignity is built on an appreciation of God the Creator of all, “who made heaven and earth.” At the same time, we must use rational argument to show that there are inherent dangers to human beings in some pragmatic approaches to the taking of life, approaches which do not adequately respect individual dignity.

CCBI has been concentrating for some time on discussing the availability of good palliative care for everyone who needs it in this country. It is of prime importance that we come to the assistance of everyone, to help make end-of-life experiences as physically comfortable and spiritually fruitful as possible. In his *Letter to the Elderly*, Pope John Paul II exhorted us to “live life to the end,” as a positive way of anticipating the next stage of life with our Creator.<sup>2</sup>

He talked about “living life to the end” rather than referring to “end of life,” and although both these concepts deal with the same reality, the positive and life-giving slant he placed on the process gives the Christian, and indeed others, food for thought about that last stage of the journey which every one of us inevitably must make. We are fortunate if we can see that our faith can transform the meaning of that journey, recognizing, of course, that each journey will have different characteristics. Palliative care will be needed by most of us at the end of life, and we recognize this as a universal human need. When we talk to our political representatives we must remind them of the universality of this need: this is not a religious issue, per se, but a human and social issue, and, therefore, inevitably political.

Some trends in the public square have been pushing the boundaries at the end of life towards allowing euthanasia and physician-assisted suicide, both still illegal in Canada and, in fact, in nearly every other country, with the exception of The Netherlands,

Belgium, Luxembourg, Switzerland (PAS only, not euthanasia), and, in the US, Oregon and Washington. There has been increasing demand by groups and individuals in Canada for legalization of these practices, and many of us are aware that one small change made to our existing laws could bring about a complete turnaround, legalizing either PAS (more likely) or euthanasia, or perhaps both. We know this is now a reality, in light of the situation in British Columbia where a judge decided to allow Gloria Taylor physician-assisted suicide as an exception, assuring her she and her physician would be granted an exemption from prosecution.<sup>3</sup>

Ms Taylor had been diagnosed with Lou Gehrig's disease (ALS) and was among the plaintiffs in a case claiming that the Charter of Rights implies the right to choose the time of one's death. The B.C. Supreme Court then struck down Canada's ban on physician-assisted suicide as unconstitutional, but Judge Lynn Smith suspended her judgement until after the appeal. Ms Taylor, however, was given a personal exemption from the law, making her the only person in Canada allowed to have recourse to doctor-assisted suicide. The federal government appealed the decision and asked the Appeal Court to revoke the exemption until the case was heard. Justice Jo-Ann Prowse ruled that taking away Ms Taylor's exemption would cause her irreparable harm, outweighing the interests of the federal government and the public in preventing a single case of doctor-assisted suicide. She noted in her decision that, "...I do not find that it is necessary for the individual to be sacrificed to a concept of the 'greater good,' which may, or may not, be fully informed."<sup>4</sup>

Ms Taylor, however, died of natural causes before being able to exercise the exemption. Her death has not stopped the case from proceeding through the courts, as there are two other plaintiffs, Lee Carter and Hollis Johnson. In 2009 they escorted Ms Carter's elderly mother to Switzerland to die at a *Dignitas* clinic, although they knew they could be prosecuted in Canada for assisting a suicide. The judgment has not yet been given.

The danger is that this decision could be called into play as a type of precedent in similar situations. It is surely problematic if an issue as serious as PAS might

be settled in an incremental way because of one decision then used as a precedent.

The Canadian Parliament does not appear willing to act on this issue, which at least means that euthanasia and PAS remain illegal in this country. While this is helpful for those of us who are completely opposed to these practices, the major concern remains that the matter may yet be short-circuited by court decisions.

#### CASES OF ASSISTED SUICIDE IN THE UK

Meanwhile, in the UK, in a very similar legal system, judgments in two recent cases of assisted-suicide show a less lenient approach than Canadian judgments. The director of public prosecutions in England and Wales published an assisted suicide policy in 2010. Although the policy does not decriminalize the offence, it states that prosecutors will examine each case on its merits and decide whether there is a public interest in beginning a prosecution.

Two recent cases in the UK illustrate a different approach from the Canadian decisions. The first was an appeal to the courts by Tony Nicklinson, suffering from locked-in syndrome, to be allowed to die. The appeal was unsuccessful, and Mr. Nicklinson in fact died of pneumonia shortly after the verdict, thus not needing induced death in any event. The second and similar case was that of a man known simply as "Martin," also suffering from locked-in syndrome and asking for help in dying.

In a summary of the ruling, Lord Justice Toulson concluded:

... A decision to allow their claims would have consequences far beyond the present cases. To do as Tony wants, the court would be making a major change in the law. To do as Martin wants, the court would be compelling the DPP (Director of Public Prosecutions) to go beyond his established legal role. **These are not things which the court should do. It is not for the court to decide whether the law about assisted dying should be changed and, if so, what safeguards should be put in place. Under our system of government these are matters for Parliament to decide,** representing society as a whole, after Parliamentary scrutiny, and not for

the court on the facts of an individual case or cases. For those reasons I would refuse these applications for judicial review.<sup>5</sup> (Emphasis added)

Mr Justice Royce added:

I agree with the analysis, reasoning and conclusions of Toulson, LJ. I add only this... Each case gives rise to most profound ethical, moral, religious and social issues. Some will say the Judges must step in to change the law. Some may be sorely tempted to do so. But the short answer is that to do so here would be to usurp the function of Parliament in this classically sensitive area. **Any change would need the most carefully structured safeguards which only Parliament can deliver.**<sup>6</sup>

Mrs Justice Macur added:

**The issues raised by Tony and Martin's case are conspicuously matters which must be adjudicated upon by Parliament and not Judges or the DPP as unelected officers of state.**<sup>7</sup>

All three Justices were clear that such serious matters must be dealt with by legislators. Reaction to the decision was mixed. The general secretary of the group Society for the Protection of the Unborn Child said regarding people with disabilities:

We urge those around them to rise to the challenge of helping them realise their value and overcome their sense of hopelessness. We trust that today's judgment will help end the insidious campaign in the British courts to change the law on assisted suicide and euthanasia.<sup>8</sup>

Dr Andrew Fergusson, for the organization Care Not Killing, said:

The judgment strongly rejected the notion that voluntary euthanasia should be a defence in murder cases, saying this was not compatible with English Law, and the prohibition on assisted suicide in the UK is not contrary to Article 8 of the European Convention.<sup>9</sup>

These are significant points not just for UK courts but also for Canada, where judges seem inclined to force or at least pre-empt legislation.

#### DIFFERENT VIEWS ON THE ROLE OF THE JUDICIARY

What comes to light in these decisions and statements is the role of the judiciary. The UK judges clearly recognize that changing the law is for Parliament alone. Their current law exists to protect those without a voice: the disabled, terminally ill and elderly, who might sometimes feel pressure to end their lives. Andrew Ferguson noted that the UK Court examined in great detail "... the merits of the arguments for changing the law, drawing on the substantial volume of statute law, UK and European court rulings, debates in Parliament, the European Convention on Human Rights, evidence from advocates on both sides of the debate, and expert advice from professional regulatory organisations like the General Medical Council and Solicitors Regulation Authority."<sup>10</sup> We may ask: has the same extensive research and consultation been done in Canadian courts?

#### MOVES TOWARDS LEGALIZATION OF PAS/EUTHANASIA IN CANADA

One such consultation resulted in the publication of a report by the *Dying with Dignity Commission* of the Quebec National Assembly, which investigated the state of palliative care and the possibility of physician-assisted suicide in Quebec.<sup>11</sup> The report concluded in favour of moving towards legalizing assisted suicide, but also gave some pause for thought, noting that:

... the act of assisting death would need to move from the context of being criminal to being part of the continuum of end-of-life care. Many physicians and patients will find this a shocking prospect to consider. If their views are to prevail, they will need to argue why there should be limits to a person's autonomy. Human dignity may imply certain rights and freedoms, but conflicts among people's rights are hard to resolve. Frail, dependent patients often feel a burden to their families or caregivers, and the unspoken possibility of a quick resolution to their predicament may complicate an already stressful situation. Removing the legal barrier to ending another's life may ensure the self-dignity of those

who wish to die, but may distress and remove the self-dignity of more people who wish to live.<sup>12</sup>

The Commission noted further that:

Proponents of euthanasia cannot assume that the practice will be restricted to extreme cases of untreatable suffering; they should be prepared to accept the implications of unrestricted choice, or a patient's "right to die." For example, in Belgium, where euthanasia has been legal since 2002 half of all non-sudden deaths are the result of some decision to hasten the end of life; 4% of these deaths are defined as euthanasia, and 11% involve continuous deep sedation or rendering the person unconscious until he or she dies.<sup>13</sup>

It is important to note that the authors of the report are clear that public consultation in Quebec is only the first step, and that a change to the criminal code will need national dialogue and action from federal lawmakers. In a reference to the BC verdict granting an exemption to Ms. Taylor, the report emphasizes that **"Change should not be the result of one provincial Supreme Court decision."** (Emphasis added)

#### EVANGELIZATION IN THIS AREA

As Catholics who respect life, one of the ways we can play a role in evangelization is to make the distinctions noted above known to families, friends, colleagues and to our political representatives when the topic of PAS/euthanasia arises, as it increasingly will. The Catholic Church has been consistent in upholding the dignity and worth of every human being, and rejecting any thought of deliberately ending life. We can insist that there can be no law drafted in this area broad enough to ensure that the lives of some of our frail or disadvantaged members of society will not be endangered. More than that, we can object to the possible erosion of our legal system by individual judgments in this area, instead of by our elected legislators. This would be a constructive approach to the matter: we cannot stand by and allow changes which could prove dangerous for so many people.

We can approach the questions of PAS and euthanasia from many fronts: politically, socially, morally and spiritually. All four are part of the evangelization to which we are called. All four are needed in today's

world if we truly uphold life as deserving of protection from conception until natural death. ■

***Moir***

<sup>1</sup> Pope John Paul II, *Evangelium vitae*, N. 57, 1993. Referring to the Congregation for the Doctrine of the Faith's *Declaration on Euthanasia, (Iura et Bona)* (5 May 1980), II: AAS 72 (1980), 546.

<sup>2</sup> Pope John Paul II. *Letter to the Elderly*, 1999.

<sup>3</sup> Justice L. Smith's judgment at: <http://bccla.org/wp-content/uploads/2012/06/Carter-v-Canada-AG-2012-BCSC-886.pdf>. Accessed October 30, 2012.

<sup>4</sup> Justice Prowse's judgment at: <http://www.courts.gov.bc.ca/jdb-txt/CA/12/03/2012BCCA0336.htm>. Accessed October 30, 2012

<sup>5</sup> Summary to Assist the Media, Para 150. Tony Nicklinson v Ministry of Justice, AM v Director of Public Prosecutions and others: High Court (Administrative Court) 16 August 2012, <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/nicklinson-summary-16082012.pdf>. Accessed October 28, 2012

<sup>6</sup> *Ibid.*, Para 151

<sup>7</sup> *Ibid.*, Para 152

<sup>8</sup> <http://www.spuc.org.uk/news/releases/2012/august16>

<sup>9</sup> <http://www.carenotkilling.org.uk/press-releases/cnk-welcomes-high-court-ruling/>

<sup>10</sup> *Ibid.*

<sup>11</sup> Assemblée Nationale Québec. *Mourir dans la dignité*. Québec (QC): 2012. Available: [www.assnat.qc.ca/fr/actualites-salle-presse/nouvelle/actualite-25939.html](http://www.assnat.qc.ca/fr/actualites-salle-presse/nouvelle/actualite-25939.html). Accessed October 29, 2012.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*