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The case against physician-assisted dying

Written by Tristan Bronca on June 1, 2016

Discussed: The 'wedge' cases, the language of the debate, the moral culpability of the doctor, and the question of pure autonomy

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Dr. Will Johnston

The Euthanasia Prevention Coalition was officially founded in 1998 in response to rising public support for physician-assisted dying. It's made up of about 2,000 donors—both members and organizations—who began to come together in about 1993 during the Sue Rodriguez case. One of those members is Dr. Will Johnston.

Now the chair of the B.C. chapter of the coalition, the family physician took a strong stance against euthanasia about 22 years ago, when he began writing about it and speaking to high school students and church groups. Dr. Johnston spoke with the *Medical Post* about his concerns with the legislation recently passed through the house of commons, the laws around the world, and why he feels Canada is about to make a dangerous mistake.

Q: Explain the impetus for a coalition of bodies who are opposed to physician-assisted dying.

The bodies that are involved in the euthanasia prevention coalition might not agree on any other issue but they share in common a sense of the huge societal mistake that is being made in euthanasia and assisted suicide. We realize that there is some strength in numbers. Obviously not enough strength to stop the freight train that ended with the Supreme Court being unanimous in its decision—which I think is a troubling sign of the shallowness of the Supreme Court's reasoning—but nonetheless more power than we would have as individual activists.

Q: Which elements of the proposed federal legislation do you personally find most troubling?

The legislation doesn't yet allow the euthanasia of children, psychiatric patients, or mentally incapable patients long after they consent, but the preamble to the legislation promises to explore those areas further, which is deeply troubling.

The activists who won in the Supreme Court won in part because they assured Canadians that they weren't talking about those three groups. They were only talking about competent adults at the end of their lives who were able to give consent at the time they were killed.

Q: So you see the expansion of the legislation to include these other groups as problematic?

Absolutely. It seems clear that this no longer has anything to do with dying. This legislation has left open the door for assistance for people who want to commit suicide but don't want to do it themselves, while it was originally marketed as helping terminally ill people in terrible pain to die sooner than they would have otherwise died. The latter was used as the cloak to wrap the agenda inside.

When the real agenda is to allow anyone who is dissatisfied with their life to be killed with the endorsement and assistance of the national medical system, it makes sense to hide those intentions behind the story of a person about to die who was having difficulty controlling physical symptoms.

Q: My understanding is that the reason why this legislation may be extended to psychiatric patients and to mature minors is because the legal experts didn't feel that exempting those two groups would stand up to a charter challenge. It would be discriminatory to bar them from access to the service that is now being talked about as a universal human right.

You're absolutely right and, in fact, I was making that point exactly as you have just made it back in the days when we were in court with Gloria Taylor and the Carters. You could never contain it to just these terminally ill patients but in court that's all they claimed they were asking for: Terminally ill, capable adults who were suffering intolerably at the end of their lives and who consented and were capable of consent to be killed. That was the story on which the Carter case was won. . . .

These judicial activists were happy to pass the Carter case through on the narrow grounds *knowing* that it would be expanded later. They were happy to make an incremental change that they knew could not withstand a further charter challenge because of section 15 equality rights and so-forth.

Q: So, legally, there's a slippery slope?

I don't talk about slippery slopes because that doesn't mean very much anymore. I just point out that the hardest palliative care cases at the end of life were used as a wedge to open the door and the same clever legal maneuvering that managed to twist the words of the charter to allow intentionally killing out of a right to life will easily stop criminal prosecution in other situations, which might make Canadians uncomfortable.

Q: Can you give examples of some of these other situations?

We only have to look to Belgium and the Netherlands: Older people who are euthanized because they say they are tired of living; couples who die with one another because they don't want to live without their spouse (which happened recently in Belgium); providing euthanasia for sex-change operation recipients who are unhappy with the results. There's almost no life situation which will not prove to be intolerable to some applicant for assisted suicide or euthanasia.

Q: But the "intolerable suffering" criterion isn't going to be the only requirement under the new legislation.

The criteria under the new legislation only has to be challenged in court to be expanded. For instance, the idea that your death is foreseeable. What does that mean? As young as you may be your death is foreseeable. The legislation seems to be written to apply to those who are at the end of their lives by any reasonable person's expectations. But then reasonable people would have thought that the Charter Right to life, liberty and security as a person was to defend you against the state, not to give you a lever to coerce your own destruction out of the state.

Q: You refer to so-called wedge cases that cracked open the legislation, people like Gloria Taylor and Sue Rodriguez. There are others enduring similar suffering. Is it the position of your organization that these patients don't have a right to…

First of all, it's important to dispel the common misperception that a "right" is being created. There is no legal right to have the government kill you. What the government has created is a system whereby your killer can be exempted from criminal prosecution if certain steps are followed.

Q: Aren't there situations where the criteria are met beyond questioning?

No. We've been warning that people who fill all of those criteria are actually in suicidal depression because they see no hope for the future and they see no meaning in going on existing. We find it instructive that of the 600

people who die of ALS every year, pretty well all of them die peaceful deaths with good palliative care and we think that should be what is offered and available to everyone.

Q: Is there a way to close loopholes in order to deliver a service that is consistent with what the patient wants?

We simply don't think it's a good thing at all that intentional killing be introduced as an integral act of the healthcare system. It's inevitably going to result in wrongful deaths. Criminal trials can drag on for years with witnesses challenging the facts of the case and even then there were wrongful convictions and wrongful executions. How are any two doctors who are willing to sign off on an assisted suicide—given the fact that we can't really know what's going on inside the suicidal person's mind—going to prevent wrongful death? On the face of it, it seems obvious that wrongful deaths will occur.

Q: What do you make of the polls that show the public is supportive of assisted-suicide legislation? Isn't the government required to follow suit?

The public can be overwhelmingly wrong about something and then it's seen as a tragedy when the government follows suit. For instance, there was overwhelming sentiment against Chinese immigration in the 1920s and the government followed suit and published shameful Chinese exclusion laws. The fact of the matter is that under the scrutiny of the parliamentary process, with all of the time available to a normal process, this kind of legislation has been rejected many times over the past couple of decades. Parliament is there to provide the careful inquiry that is not provided by snap polls of an under-informed public.

Q: How is the public under-informed?

When people are asked about end-of-life issues, such as withdrawing ventilators and so forth, they often confuse that with assisted suicide. In reality, it is just the withdrawal of futile care. We need thoughtful representatives who have a chance to explore issues in much greater detail than members of the general public. I doubt that anyone would have any respect for a system where the general public voted on what interest rates should be set by the Bank of Canada.

Q: But this issue revolves around questions of personal autonomy: what one like to have happen to oneself *. . .*

The debate has been successfully framed as a pure autonomy question.

(But) to call it a pure autonomy question suggests that setting up a system where people can be intentionally killed affects no one but the people who declare that they want to be killed; that it doesn't affect anyone around them, that there are no conscience issues involved, that no one could ever be wrongfully killed, that no one could ever have heirs or beneficiaries who want them to die influencing the decision. If the system allows, for instance, you saying years ahead of time that you would like to die if you ever become demented, that means if you ever get to the point where you can't communicate your wishes but you've changed your mind, you would be killed against your wishes. It would be the most destructive thing that your autonomy could ever undergo; that is the removal of you as an existing being. So the idea that this is pure autonomy and that everybody's idea of autonomy has triumphed here is an illusion, I would suggest.

Q. You seem to be using words like "killing" and "euthanasia" deliberately but in recent years there's been a shift towards words like "dignity." I'm just wondering to what degree your choice of words here is intentional and what the desired effect is?

It's interesting you would say that. The debate has been cleverly reframed using euphemisms like "physician-assisted dying" and so forth. Unfortunately reality cannot be imagined away by changing the terminology. When you inject that poison into the person's vein, you are killing the person. If we lose sight of the fact that the doctor is killing the patient and if we allow ourselves to believe that this isn't really killing then unfortunately we are committing a kind of intellectual suicide as well as an ethical suicide.

Q. Take a doctor who has zero compunction about providing this service. Say they feel they have a moral responsibility to abide by these patients' wishes and these patients meet the criteria set under the law. Do you feel the physician has a responsibility to opt out despite their beliefs?

It's been seen in other jurisdictions that there is a real psychological toll on doctors who have killed patients.

They may feel ideologically in support of the concept of physician-assisted suicide or euthanasia but there's a deep moral intuition that it is wrong to do this, especially when we have never before in history had a better alternative in the form of good palliative care. Good palliative sedation can remove all of the patient's suffering and yet is not irrevocable.

Q. But people have said that measures for palliative care have fallen miserably short and some view physician-assisted death as a solution for those looking for a way out. How do you dispel that mode of thinking?

It would help if we had the same clever manipulators of public opinion. If only they could provide similar support for a law that mandated the availability of palliative care. Where is that law? Palliative care is a state of mind, it's not a building; it's a body of knowledge that is easily passed along to enthusiastic care providers. They want the tools, they need the tools, why don't we just get on with doing it? Instead we hear this fretting about whether suicide and euthanasia will be available in every hamlet in the country.

Q. Hypothetically, if things were to get exactly to where you believe palliative care should be, do you believe there would be the same demand for physician-assisted dying?

According to the people who practice palliative care there's an overwhelming trend towards dropping requests for hastened death when symptoms are dealt with properly. Some of those symptoms can be hopelessness. For instance, dignity therapy, pioneered by the Winnipeg psychiatrist who chaired the external review panel that the Harper government set up, gives people a chance to find meaning in their life by story telling at the end of their lives. There's so much psychological as well as physical care that we could be delivering that currently isn't happening.

Q. When physician-assisted death becomes legal how does the mandate of your organization change?

We've entered into full harm-reduction mode. Canadians may think they've won a new right but in reality important protections have been removed. We see that when society has made bad changes or wrong turns in the past it's taken decades to reverse. So we take the long view that the general public can be deeply mistaken and it's our job to keep pointing out what we think to be the truth and hopefully, eventually, public opinion will change. It's interesting that there's starting to be a bit of pushback in Belgium and the Netherlands even from people who were activists for euthanasia a few decades ago. One example would be Dr. Theo Boer who used to be an advocate of euthanasia in the Netherlands. He thinks the whole thing is going too far…

Q. One final question: what role has religion played in the coalition?

I was wondering when you would get to that! That's how the other side makes their biggest points with the public. In Washington State they managed to get assisted-suicide passed on a referendum (it never went through the legislature) and basically they were appealing to raw, anti-religious bigotry. The message was essentially 'do you want some priest telling you what to do at the end of your life?' People really didn't want to be bossed around by somebody else's religion. I think that the problems with assisted suicide and euthanasia really stand on their own. Yet, arguments that have been presented in a completely secular and straightforward way are smeared by suggesting that their source is an obscure religious agenda. People have to assume that everybody has come to their conclusions for altruistic reasons. A lot of people have seen a relative suffer a badly managed set of symptoms at the end of life and that provides a lot of horsepower for the right-to-die movement. I don't doubt these people's altruism I just think that there's a better way.

Edited for length and clarity