

THE CASE OF ROBERT AND TRACY LATIMER

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The Case of Robert and Tracy Latimer

Tracy Latimer was born in North Battleford, Saskatchewan, in 1980. She died painlessly at the hands of her father from carbon monoxide poisoning on October 24, 1993. These are the obituary facts. Behind them lies a story of two persons, one of whom, Tracy, was victimized by her biology, the other, Robert, her father, who was punished by a judicial system for loving his daughter more than he feared it.

A damaged brain at birth foretold a life of utter dependency. Tracy's mind never developed. She could not sit up, talk, or feed herself. Cerebral palsy had strangled her movements and twisted her body. Surgeons fought back, snipping muscles and wiring her spine straight.

At four months, Tracy began having seizures every minute she was awake....Doctors, after experimenting with a variety of anticonvulsants -- phenobarbital, Depakene, Dilantin, Tegretol -- finally put her on Rivotril, a drug similar to Valium, with sedative effects. Tracy's seizures eventually dropped to five or six each day. While she could roll over, her reflexes were not responsive and she showed no signs of learning to crawl.

Tracy wore diapers and often needed suppositories to unplug her bowels. Feeding her took about half an hour. She had trouble swallowing....Vomiting was a problem throughout her life.

Tracy had her first operation when she was four. It was now clear that she had a severe case of cerebral palsy, that she was what is known as a totally body-involved, spastic quad. Her damaged brain was sending abnormal signals to all parts of her body, triggering spastic muscle responses that, combined with her seizures, wrenched her frame into twisted, frozen positions. To help relieve tension at her hips and keep them from dislocating ... orthopaedic surgeons in Saskatoon cut the abductor muscles at the top of Tracy's legs....[As a result] she lost the ability to kick her legs.

The seizures continued.... Doctors decided to cut the muscles in her toes, on the outside of her knees, and again at the top of her legs, and put her in a plaster body cast for six weeks in an attempt to keep her body straight. About seventy-five per cent of "totally involved" children develop an abnormal curvature in the spine, called scoliosis. Another seventy-five per cent develop either a partially or a fully dislocated hip. Tracy had developed both.... By 1989, her back was curved to the right at a fifty-degree angle, into a C shape. This put pressure on her lungs, forcing liquid inside and causing frequent bronchial infections.

Tracy's spine had reached a seventy-three-degree angle in the months leading up to her fourth and final operation in August, 1992. [Anne] Dzus, [a paediatric orthopaedic surgeon in Saskatoon] opened up her back, placed two long stainless steel rods one on either side of her backbone, and drilled them into place at the pelvis. Steel cable was wrapped around each vertebra and then pulled around the rods and tied.

The operation was a qualified success.... But the steel rods and cables left her "like a board," says Laura, [her mother] "She was never the same again." sleeping became a problem. Her left side developed angry bedsores so the Latimers had to shift Tracy to her other side at regular intervals, which was painful as her right hip was fully dislocated.

On October 12, Laura took Tracy to Saskatoon for the last time.... Dzus felt strongly that the hip required surgery....Even if they went ahead and fixed the Tracy's hip, Dzus had cautioned that the procedure could leave her in "incredible" pain.... There was nothing to prevent the other hip from dislocating later on, and in the meantime something else could go wrong. "They said they were just treating the symptoms, they weren't treating her problems," recalled Laura.... "There was no end to the surgeries that Tracy was going to have to have." They both felt trapped....Five days later Tracy was dead. [1]

Robert Latimer did the right thing and for the right reason. In the circumstances, he did what every rational and compassionate person would do and ought to do. The alternative, namely, to continue to subject Tracy to a never ending schedule of treatment that could do nothing to commute the merciless sentence her biology imposed on her -- as both the current law and moral fundamentalists would have her father do -- would be to subject her to cruel and unusual punishment. [2] And that is morally reprehensible and barbaric.

The law disagrees. But that is not surprising. Legal justice and moral justice do not always coincide. Sometimes the law is morally blind -- as this case tragically demonstrates -- and when it is, it needs to be changed. **It is not because justice matters**

that we care, rather, it is because we care that justice matters. Just when and how the law should be changed is a moral, not a legal, matter. It is not the law that determines what is morally right; it is what is morally right that determines what the law should be and how it should be interpreted and applied. This is why blind obedience to the law is morally objectionable.

The foregoing is not the only reason why it is a mistake to think that following the law will ensure that justice is done. Another is that the legal system arbitrarily insists on being its own judge and jury with respect to the question of whether its own laws are just. Juries, for example, have the moral right, and the de facto power, to ignore the law if they think it is unjust. But according to the legal system as it is presently constituted, it is illegal for the judge to disclose this crucial fact to the jury. This is not a minor point for it shows there is a built-in injustice in the justice system that precludes the jury from making a morally responsible decision. The end result of this sort of deceit is that the very elements essential in making morally just decisions -- love and compassion -- the very kind of evidence that differentiates what Robert Latimer did from what Susan Smith did in South Carolina, are all inexcusably excluded from the court's deliberations. In Latimer's case this meant he could not be legally acquitted even if every member of the jury agreed that what he did was morally justified! Hard cases, they say, make bad laws; what is conveniently ignored is that bad laws make hard cases more difficult and tragic than they need be.

It is no wonder the vast majority of Canadians are morally outraged by the verdict. And rightly so. Not everyone, however, agrees.

The Question of Punishment

The reaction of some has been ambivalent. For reasons discussed below, many have been reluctant to commit themselves one way or the other on the question of whether Robert Latimer did the right thing. Uneasy about approving of what he did and at the same time reluctant to categorically condemn his action, they have fastened instead on the question of the appropriateness of the severity of the court's sentence. Their concern in this regard is understandable for in comparison with the charges brought against others in similar cases, and in light of their subsequent suspended sentences, Latimer's sentence of life imprisonment (without eligibility for parole for 10 years) for second degree murder is clearly more vengeful than just.

On May 15, 1993, Michael W. Power (35) and Cheryl M. Meyers (36) killed Cheryl's 67 year-old father who was dying of terminal brain and lung cancer. Not wanting to undergo the undignified and painful suffering that his wife Rita had undergone before she died of cancer in August 1991, he repeatedly requested that they not let him suffer the way his wife had. Finally, with apparently only a few hours to live, they smothered him with a

pillow. Charged originally with second degree murder, they eventually pleaded guilty to manslaughter. On December 23, 1994, a Nova Scotia Supreme Court judge, Justice Felix Cacchione, found that the common-law couple had "acted out of compassion, mercy and love" and gave them a suspended sentence. They were placed on three years probation and ordered to put in 150 hours of community service. [3]

On March 2, 1995, 81 year-old Jean Brush, the survivor of a failed double-suicide pact, pleaded guilty to the lesser charge of manslaughter after admitting she had stabbed to death her ailing husband of 58 years. Judge Bernd Zabel of the Ontario Court's Provincial Division gave her a suspended sentence and placed her on probation for 18 months. [4]

Although both judges are empowered by the law to impose the maximum sentence of life imprisonment for manslaughter, neither did. Neither was blinded by 'the letter of the law' to the 'spirit of the law'. Both recognized the exceptional circumstances in which the defendants found themselves, both recognized the defendants acted out of mercy, love and compassion, both acknowledged that incarceration would not serve the ends of justice, and both acknowledged that the defendants' ineradicable knowledge of what they had done left them with a greater loss than any legal punishment the courts might impose could extract. The same judicial enlightenment was notably absent in the judicial proceedings in Latimer's case. Unlike his Eastern colleagues, Randy Kirkham, the prosecutor in the Latimer case, deliberately followed 'the letter of the law' to the letter, ignored the exceptional circumstances of the case, and charged Latimer with first-degree murder. After the trial, with the inflated righteousness of a legal zealot, and despite all the evidence to the contrary presented during the trial, he steadfastly continued to describe Latimer as a "callous, cold, calculated and heartless" murderer who had taken it upon himself to play God in order "to make his own life easier." [5] As this unfounded and prejudicial characterization of Latimer demonstrates, Kirkham, unlike the God he invoked, was obviously not willing to see justice tempered with mercy. When tempering justice with mercy is viewed as tantamount to tampering with justice, it is not surprising that Latimer was treated unjustly. [6]

Although Latimer's inequitable treatment before the law is a matter of legitimate and serious concern, it ought not to deflect attention from the central issue which is whether Robert Latimer was morally justified, in the circumstances, in killing his severely disabled 12 year-old daughter, Tracy. The question of whether he deserves to be punished arises only if what he did was in fact immoral. If he was morally justified in ending his daughter's ineradicable pointless pain and suffering, he deserves neither to be punished nor rebuked. The claim that he ought to be punished, but not as severely as the law demands, makes no sense if what he did was morally justified. It is equivalent to arguing that someone can be justifiably legally punished for doing what is morally right! But this is absurd. And yet this is precisely what has happened in this case and why the majority of Canadians are condemning the jury's verdict as a travesty of justice.

Society cannot have it both ways. If what he did was wrong, he deserves to be punished. If he did what was right, he deserves to be lauded for his moral courage and not punished for it. There is no in-between.

The Matter of Consent

Those who condemn Latimer are quick to point out that although there are obvious surface similarities between his case and those cited above and the more widely publicized case of Sue Rodriguez with which it is often compared, there is a significant difference between them. The difference is that the severity of Tracy's cerebral palsy was such that she had neither the intellectual ability to comprehend the alternatives of life or death nor the ability to give vocal or written consent to have her life ended. Even sympathetic supporters of Latimer admit to being bothered by the fact she was unable to give consent to having her father kill her. But they ought not to be. For while the matter of consent is of crucial import in the aforementioned cases, in Tracy's case it is simply irrelevant. The worry about the absence of consent on her part only makes sense if she had been capable of giving consent and had refused to do so. But of course she could do neither. This does not mean her father and/or mother were not justified in deciding for her what was in her best interest. They had made this decision for her every day of her life.

To insist, as some do, that, in the absence of consent on her part, her parents had no right to make decisions on her behalf, is both irrational and morally perverse. For it is to say that because Tracy was never able to consent to treatment -- never able to say "yes" -- that her parents, knowing her cerebral palsy could never be 'cured,' were wrong in consenting on her behalf to all the medications, drugs, treatments and operations that kept her alive for 12 years. Yet, these are the very same people who, while condemning Robert for acting without Tracy's consent, are absolutely convinced that the right thing to have done would have been to continue to pump her full of drugs and to subject her to a series of decreasingly effective salvage operations as long as these assaults on her body kept her alive, despite the fact Tracy was unable to refuse to give consent -- unable to say "no"!

The same twisted logic surfaces amongst those who claim that when Latimer took it upon himself to decide what was in the best interests of Tracy he was 'playing God.' While they do not think Latimer is qualified to play the role of God, they have no doubt about their own qualifications and ability to play the part of the Almighty. One might well ask: How is it all those who so confidently insist it is impossible for Robert Latimer to know what is in the best interests of Tracy, are so certain they do know what is in her best interests? Their unbounded self-righteous conceit does a disservice to us all. It is a thinly disguised attempt to absolve us from the moral responsibility that is ours alone. We have to play God; there is no alternative, for we are the only gods there are.

Armed with the insight of hindsight, some have succumbed to the temptation to blame the medical profession for the predicament Latimer eventually found himself in. Had the attending physician not resuscitated Tracy in her infancy, had he 'let her die,' the ensuing tragic series of events that led to her death would never have occurred. There is no doubt that for some, like Tracy, the only thing better than an early death is not to have been

born at all. But she was born and unfortunately there was no way of telling at birth she would be one of the unfortunate 10% at the extreme end of the spectrum of those afflicted with cerebral palsy, that she would suffer the deprivations of severe mental retardation, the painful involuntary contraction of all the muscles in her body, and be subject to recurring seizures. Blaming the medical profession for what happened 12 years later may help in venting one's anger at Nature's indifference to Tracy's plight but it is a pointless and irrational exercise. The only villains in this case are those who, despite the present day knowledge of the everyday horrors of Tracy's life, heartlessly insist that Tracy should have been forced to live out her tortured life to the bitter end.

It is not always easy to live and it is not always easy to die either. Sometimes people need help to live and sometimes they need help to die. Tracy needed both. She could not live without help and she could not die without help either. Tracy was fortunate she had loving, caring, and compassionate parents who unselfishly gave her the help she needed to both live and die.

The Abuse of the Disabled

The prosecutor's claim that a verdict of "not guilty" would signal "open season on the disabled" is not only absurd but demeans and insults us all. It is a cheap shot. It implies the able-bodied, unlike the disabled, are all closet Nazis held in check only by the law!

Tracy's cerebral palsy was not, and is not, the issue. Tracy and her parents had lived with that fact twenty-four hours a day for twelve years. During that time they could have abandoned her, neglected her, or mistreated her. But they did none of these things. Nor did they make life easier for themselves by putting their daughter into an institution and letting others look after her. Instead, they accepted her for whom and what she was, kept her and tended to her every need knowing full well that their countless daily sacrifices and tender loving care could not overturn the merciless sentence Tracy's biology had imposed upon her.

But in the end it was the pain -- the unmanageable, unbearable, and unredeeming pain -- that neither they nor Tracy could live with. It was because the relentless pain she was suffering was pointless, that no good would come from it, that her father mercifully ended her life. There is nothing strange about this. Nor is it difficult to understand. People will consent to painful procedures and treatment if that is indeed the only way they can achieve a desirable good such as health or the birth of a baby. But no one in their right mind would consent to being subjected to painful and crippling procedures out of which no good could come. The fact that Tracy was neither intellectually nor vocally equipped to express this axiom of commonsense is no reason to think Tracy was any different from anyone else in this regard. Nor was this severe disability of hers an excuse to treat her as a human guinea pig.

That the disabled who see Tracy's death as a threat to their own survival are prepared to countenance and, indeed, to vociferously insist, that Tracy's parents and society should sanction and enforce the continuation of this kind of inhuman medical experimentation on Tracy, speaks volumes about the cruel selfishness that passes for compassion by those who would have us refrain from ending Tracy's senseless suffering. They are the ones who are the real villains in this drama. The very care and compassion they insist they have a right to expect from others, they themselves are not prepared to extend to others! Sadly, the only compassion they are interested in is that which is directed at themselves. [7]

Afraid that they themselves will be unwillingly put to death, the disabled demand that no one who wants to end their life should be allowed to do so and that such persons should be compelled instead to live out their lives to the bitter end. But this fear on the part of the disabled is a red-herring in the euthanasia debate. No one is arguing that it is morally justified to end a life worth living. Nor is anyone arguing that the disabled be killed regardless of whether they want to continue to live. That would be absurd. However, to compel someone who wishes to die, to continue to live, is just as absurd, barbaric, and unjustified.

The self-centred rhetoric of spokespersons for the disabled is itself a form of abuse; it politicalizes what is a universal problem. Abuse is not a problem that only affects the disabled. To talk as if it were, makes about as much sense as the claim that racial discrimination is a Jewish issue -- namely, none! Despite all the rhetoric one hears to the contrary, racism is not a skin disease; it is not some sort of inbred racial defect of a particular race; nor is it a peculiar affliction inherent in a particular economic class; and neither is it some sort of genetic disorder. It is none of these things. It is rather a universal human failing born of moral weakness and ignorance of oneself, others, and the world in which we live. The same is true, *mutatis mutandis*, of all forms of unjust discrimination. Unlike justice, injustice is blind; it is ageless, colour-blind, gender neutral, and racially and biologically indifferent; it is indifferent to the differences between men and women, young and old, heterosexuals and homosexuals, theists and atheists, blacks and whites, the disabled and the able-bodied, the intelligent and the not-so-intelligent, the poor and the rich, and so on. Moreover, the perpetrators of unjust discrimination are no more identifiable by their biological characteristics and/or their membership in some socially constructed category than are its victims. This is why unjust discrimination is the multifaceted universal problem it is and why it is a problem that concerns us all.

Abusive discrimination, in whatever form it surfaces, is a wrong that needs to be righted. Spokespersons for organizations for the disabled have uniformly expressed their relief that Latimer was prosecuted and found guilty -- if not of first degree murder at least of murder in the second degree. Underlying their relief is their conviction that the only satisfactory or acceptable safeguard against abuse is the rigid enforcement of some system of sanctions that would admit of no exceptions and that would thereby eliminate even the possibility of abuse. This is the same sort of muddled reasoning that guides those who would have us solve abuses of Medicare or unemployment insurance programs, for example, by abolishing such programs. Such drastic measures would

certainly be effective -- one cannot abuse what does not exist. However, it would also effectively punish everyone for the misdeeds of a few -- a form of abuse worse than that which it is intended to rectify! The same holds true for euthanasia. Categorically condemning euthanasia, regardless of a person's condition, wishes, or circumstances, punishes us all for the possible abuses of a few. This stretches our common sense of justice beyond recognition.

The Rhetoric of Slippery-Slope Arguments

What the disabled and others fear is that if Latimer is not punished, if the killing of his daughter is exempted from the general condemnation of the killing of innocent persons, then the lives of all of us are at risk. We will have begun to descend a slippery slope which will inevitably land us in moral chaos. This is the fear and the rhetorical means by which many have tried to justify their heartless and unforgiving condemnation of Latimer.

Slippery-slope arguments are notoriously slippery arguments. They can have a positive or a negative function. Their positive function is to persuade people that the step they are contemplating taking is both rational and morally permissible. The thrust of positive slippery-slope arguments is to bring about needed moral reforms and change the status quo. Alternatively, negative slippery-slope arguments are designed to maintain the status quo by dissuading people from taking a step in a certain direction on the grounds that the proposed change would only make things worse than they already are.

The standard use of slippery-slope arguments is the negative one of 'painting the Devil on the wall.' As such they are easy to formulate but difficult to substantiate. The following is typical:

Once a single brick is removed from the dam protecting the sanctity of all life, the entire dam is liable to collapse and every life is at risk.... From the killing of a malformed infant, it is only one slippery step to the elimination of cripples or senile people in advanced stages of degeneration. From there it is only one further step to the destruction of other 'undesirables' burdening society. [8]

The prosecutor's claim that a "not guilty" verdict in the Latimer case would signal "open season on the disabled" is a variation on the same theme. In both cases the claim is that one thing leads to another and before we know it we will find ourselves in a state of moral anarchy.

What makes such slippery-slope arguments particularly slippery is that it is easy to slip into thinking that because the moral anarchy depicted in the argument is a logical possibility it is therefore a real possibility. But these, however, are two distinct claims. It is one thing to argue that once we begin to descend the slope the possibility exists that we will continue to slide until the bottom is reached but quite another to argue that, as a

matter of fact, no foothold can be carved out on the slope and that sliding to the bottom is inevitable. Showing that something might happen does not prove that it must or will happen.

It is not up to others to show that what might happen could not happen. The onus is on the prosecutor, the spokespersons for the disabled, and others of the same persuasion, to demonstrate that what might happen will happen. In light of the absence of such evidence their appeal to the slippery-slope is nothing more than empty rhetoric -- not that that matters to them. Their bluster knows no end. With an arrogance born of ignorance, they shamelessly continue to insist that the rest of us -- unlike themselves! -- lack the requisite intelligence, knowledge, and moral character to know when, where, and how, to carve out a foothold on the slope. Suffice it to say, their lack of confidence in the ability of the rest of us to make morally discriminating judgments is based less on fact than it is on their own apparent incompetency in this regard. Most people with moral commonsense have no difficulty in carving out a foothold on the slope, of drawing a line between the Latimers and Susan Smiths of this world.

Drawing The Line

Perplexed and bothered by the complexities involved in drawing the line at one point rather than another, the question invariably raised is: "Where are we to draw the line?" One common response to this question is that no line ought to be drawn at all. But this is not the solution to the problem many think it is. It is not a solution because it is impossible not to draw a line at some point or other. Refusing to draw a line just means the line is being drawn at one or the other extreme ends of the spectrum rather than at some disputed point in-between.

Refusing to draw a line does not solve our problems. It simply ignores them. However, ignoring a problem is no solution. If anything, it makes matters worse. Not the least of the problems this kind of pseudo-solution creates is that it compromises our moral integrity. Worse, the pretence that such decisions are not made is both unrealistic and hypocritical. The harsh realities of life force us to make decisions of one kind or another - - to make 'quality of life' decisions -- whether we want to or not. Such decisions are made all the time in medicine. As well, political decisions regarding health care are 'quality of life' decisions even though they are not explicitly described as such. Nevertheless that is what they are. The pretence that such decisions are not made is a strained denial of reality.

The choice, then, that confronts us, is not whether we ought to make 'quality of life' decisions, but whether we ought to make unfounded and/or unsympathetic decisions, or whether we ought to make the most rational and compassionate 'quality of life' decisions we can in the circumstances.

Whenever we make 'quality of life' decisions -- wherever we decide to draw the line -- we have no guarantee we are drawing the line in the right place. Without the 20-20 vision of hindsight, it is impossible to be absolutely certain beforehand that our decision is the correct decision. Without the foresight of hindsight perfection is impossible. Only after the decision is made and acted upon will we know for certain whether we made the right decision. But this is no excuse for shirking our moral responsibility and not doing the best we can. The alternative is to refrain from making a decision but this, to repeat, is to make a decision by default. In particular, it is to opt for a continuation of the status-quo state of affairs that generated our moral uneasiness and concern in the first place.

'Quality of Life' Decisions

There is no abstract, impersonal, mechanical, decision procedure by means of which we can determine someone's 'quality of life.' But that is not to say that we cannot make 'quality of life' decisions. We make them all the time -- in medicine and in politics. And we make them on a comparative basis -- on the basis of the wisdom of our common life-experiences and observations.

The 'quality of one's life' is a matter of degree. That is, the 'quality of one's life' depends upon the degree to which one can realize the physical and mental capabilities that are characteristic of our species. Understood in this sense, judgments about the quality of one's life are an objective matter.

The 'politically correct' would have us believe otherwise. Ms Priti Shah, a lawyer with the Canadian Disability Rights Council, for example, would have us believe that the marked difference between the public's anger and unmitigated condemnation of Susan Smith's cold-blooded murder of her two young sons and the public's sympathy for Robert Latimer is indicative of a widespread prejudice in society against the disabled. "Who are we," she asks rhetorically, "to say that because the Smith boys were able-bodied that their lives were better than Tracy's? This is a classic imposition of a stereotype." [9] Shah's confused comment -- and it is not uncommon -- is counter-productive to what is in the best interests of the disabled. It is precisely because the disabled are disabled, are vulnerable, that the need for ensuring their welfare arises. And yet when their differences and vulnerability are tellingly described, these descriptive truths are resentfully dismissed as oppressive!

Ms Shah and the disabled she represents are understandably sensitive to 'quality of life' decisions. But the fact that the disabled are disabled is not a prejudice but a physical fact. The simple fact is that on a comparative 'quality of life' scale, the greater one's disability, the less the objective quality of one's life. This is an unalterable fact of life. The disabled may not like it but it is a fact they have to live with. Nothing they can say or do can change the fact of their disability and the diminished quality of life it entails.

However, the question of the quality of life that one objectively has is distinct from the question of whether the quality of life one has is worth living. Whereas the former is an objective judgment, the latter is an individual subjective judgment. Whether a life of a certain quality is worth living, will vary depending upon whose life it is and what price the individual is prepared to pay to live it. As well, those whose lives are inextricably interwoven with the lives of those who, like Tracy, are incapable of making this decision for themselves, also have to pay a price and it too has to be factored into the decision-making process. Religious fanatics and rule-bound moralists may not like it but moral commonsense clearly recognizes that life at any price is not worth the cost. Those who object conveniently forget that no price is too high to pay for those who do not have to pay it nor is anything impossible for those who do not have to do it.

The Role of Emotions

Morality is not a game that one can choose to play or not play. We can play it well or play it poorly but play it we must. It is, if you will, a game within the game of life -- which is why we are life-long participants in it whether we like it or not. It is what differentiates us from non-human animals.

It is not a simple or easy game to play. To play it well requires both intelligence and emotional maturity. The importance of the latter cannot be overemphasized. If we did not care, if we were emotional eunuchs -- unmoved by the pain and suffering of others -- and if moral reasoning was simply an intellectual exercise in logical thinking, the consequences of our actions would still count but none would 'matter' in the ways in which they do. As it is, we are not the sort of one-dimensional rational androids that moral absolutists with their rigid principles would have us be. We both think and feel and the commonsense moral judgments that people with commonsense ordinarily make realistically reflects this duality of our nature. The more morally mature and astute recognize that if it were not for our ability to reason, the actual and potential consequences of our actions would be unintelligible to us but they also recognize that if we were not the sentient, compassionate and caring beings we are, the moral significance of these consequences would be equally incomprehensible. Both characteristics are an integral part of what it is to be moral. In the absence of either morality is impossible.

It is in recognition of this fact that our ordinary moral judgments are infused with intelligence and compassion in a way that reflects the dynamic and flexible interplay that exists between reason and emotion in our daily lives. At their best, our commonsense moral judgments are a rational expression of our emotional concerns. At their worst, they signal the difficulty involved in achieving the requisite equilibrium between feeling and thought, between the spirit and the letter of what it means to be a responsible moral human being.

Serving on a jury does not mean one has been granted 'time out' from playing the moral game. There are no 'time outs' in playing the moral game even when one is serving on a

jury. If anything, members of a jury have a special moral duty to see to it that justice and not just 'the law' is served. In the Latimer case members of the jury did just the opposite. In following the judge's orders not to let their emotions play a part in their deliberations and in agreeing to be guided solely by reason and the law, the members of the jury morally castrated and dehumanized themselves in the process.

The demand that we disown our emotions, that we pretend we have ice-water in our veins, that we act as if we were nothing more than thinking computers, is a moral death-wish. It is reason that enables us to correctly identify the moisture on Tracy's cheeks as drops of salt water but the recognition that these droplets of salt water are tears, or more, that they are tears of pain or sadness rather than tears of laughter or joy, is an insight of the heart and not the head.

Thoughts without feelings are like lamps without oil -- useless. This is why we do not turn to computers, no matter how advanced they may be, for moral guidance. A computer may recount a joke, but it fails to see the joke's humour. And that is the problem -- computers are devoid of emotion, they cannot laugh or cry and hence are incapable of sympathy and compassion. Without reason the facts are senseless and without compassion they are barren. In the absence of either morality is impossible.

In bringing in a guilty verdict the jury members demonstrated a lack of moral courage -- the very sort of moral courage that Robert Latimer displayed when he did what he was morally obligated to do despite its illegality. It is no defence to protest: "We were only following orders -- legal orders that were given by a legally authorized authority, namely, the presiding judge." This is just another example of The Eichmann Defence, the defence Adolf Eichmann gave when tried as a war criminal for his part in the Holocaust. But Eichmann's defence, "I was just following orders" did not morally excuse him from what he did and neither does it morally excuse the jury from the injustice they have inflicted upon Robert Latimer and his family.

Misplaced Duty and Compassion

Obsessed with what will (or might) happen if we do certain things, little thought is being given to what will (or might) happen if we don't do certain things. It is time we did. To know what will happen we need only look at what is already happening. For unless the laws governing euthanasia are changed, the future will resemble the present only more so.

If something is not done to help the dying die, more and more people will be faced with the situation of a loved one being kept alive long after any hope of recovery is possible. In a recent letter to the editor of The Globe and Mail, Cyril Kalin describes how twice in her life family members were mistreated because of some medical personnel's misguided sense of duty to their patient. "My father," she writes,

was 86 years old and in the last stages of lung cancer when a religious nurse in the Los Angeles hospital where he was a patient took it upon herself to defy his doctor's prescription for four-hourly administering of a painkiller. This was on the grounds that if continued it could lead to his death. It took actual threats to the hospital on my part to have the doctor's instructions reinstated.

The second case was my 39-year-old daughter, this time in the Columbia-Presbyterian Hospital in New York City.

She had had a flat brain trace for a week and when I arrived there I found that the attending doctor had prescribed, and she had been given, antibiotics to fight her infection. Again I had to resort to violent protest before anyone had the guts and intelligence to let the girl die.

This particular doctor actually admitted that "these people here are paranoid about pulling the plug. [10]

Physicians have a duty to do for their patients what needs to be done. But this is no excuse for a physician to insist on aggressive treatment far beyond the point when the patient can hope to benefit. There are times when nothing should be done. And there are times, as in Tracy's case, when patients should be given the treatment that ends all treatment.

If we do not legally help those who wish to die, the Sue Rodriguezs of this world, to say nothing of those with Aids, will seek and receive the help they need outside the law. If the law is not changed, caregivers will continue to find themselves in guilt-ridden no-win situations. Jane Doe (a pseudonym) spoke for many when she wrote of her own conflicting feelings in keeping her daughter alive.

I consider myself a conscientious parent. I wake up every morning at 6 a.m. to help my daughter to get ready for the day. She has a degenerative neurological disease. So, I have to change her diapers, dress her, get her up, feed her breakfast and offer her liquids. She is virtually helpless, and I hate to think about how she feels lying there in bed, waiting for me to come.

I don't know really know how she feels because I'm not able to have conversations with her. She can no longer speak....

Most kids with her disability are dead by her age. I believe she is still alive because of the care I've given her. When she has pneumonia [and she has had it countless times], I sleep by her bed on the floor, so I can get up to turn her over every half-hour. If I have to, I'll clap her back to break up the congestion, and sometimes I'll use an eyedropper to give her water....

It seems like I pull her through one illness only to face another. I'm the one who resolutely keeps her alive....

Of course, I know that if I even once withheld antibiotics from her, or wasn't so ever-vigilant, she would die. But I can't stand to see her suffer. Yet I can honestly admit that if there was a pill or a shot -- and no legal strings attached to its use -- she would have received it long ago.

I keep on thinking about our old dog that we put to sleep last year when her cancer, arthritis and heart condition all caught up with her. I patted her head and looked deep into her eyes as the shot the vet gave her took effect. This dog and I were pals, and I still miss her, but I don't regret the choice that was made

For my daughter, the situation is more problematic, legally and morally. So I go on....

Now my daughter is on the waiting list for a group home....I know that I can't go on any longer after so many years or rally the specialized help she needs forever....I feel I'm imposing a death sentence on her by sending her there, but society supports this kind of decision....

I can easily understand what Robert Latimer was thinking the day his daughter died. [11]

In the end, Jane's misplaced compassion for her daughter will betray them both. Her daughter will die in an institution. Uprooted from her home, from her familiar surroundings, deprived of the ever ready sound, sight, and touch of her mother, she will die -- alone -- amidst a sea of strangers. And Jane will bear the nagging guilt of knowing she did not do what she knows she should and would have done had it not been for the law. Her lack of moral courage in this regard is understandable. It is also regrettable.

A Parliamentary `Free Vote' -- A Matter of Individual Conscience

Under our parliamentary system the political solution to seemingly insoluble moral issues is to allow members of parliament a `free vote' whenever, if ever, legislation on such matters is brought before the House of Commons for a vote. A 'free vote' means members are no longer constrained by Party affiliation and can vote according to the dictates of their own individual consciences. There are several problems with this approach, not the least of which are the following.

First, if Robert Latimer's conscience is dismissed as an illegitimate moral authority, what reason is there to believe that the conscience of a member of parliament is any more morally reliable? If anything, Latimer's conscience, given his unique, intimate, knowledge and care of Tracy, is better informed than the conscience of any member of parliament could possibly be.

Second, the claim that the collective consciences of members of parliament ought to be accepted as morally authoritative is just a reformulation of the undergraduate myth that

what is morally right is whatever is accepted or approved of by the majority. Despite its widespread popularity, this view of right and wrong is false for it entails the self-defeating presupposition that the truth in moral matters is just a matter of opinion; it conflates the distinction between belief and knowledge; it renders the fact of moral disagreements and the idea of moral progress unintelligible, it tolerates acts of intolerable intolerance; it makes cross-cultural moral judgments impossible, and it attributes to the majority a moral infallibility that is belied by the historical facts. The aforementioned inconsistencies and absurdities also bedevil the 'subjectivist' interpretation of moral judgments according to which the approval of the majority is replaced by a moral standard of every individual's own making.

Third, once parliamentarians are free of party discipline and free of the responsibility of having to represent the predominate view of their constituents, once they are free to vote as they personally see fit, Parliament's vote is a crapshoot. [12] It ought not to be; moral truth is not a popularity contest. Moral judgments, like scientific judgments, are only as sound as the evidence and arguments on which they rest.

Conclusion

Those who have condemned Latimer have done so on the basis of reasons and arguments that cannot be sustained. Their reasons and arguments lack both intellectual merit and genuine compassion. I do not deny the problems that abuse presents, nor the slipperiness of the slopes on which we constantly find ourselves, nor the difficulty in drawing lines fairly, nor the agony of the finality of quality of life decisions, nor the fallibility of both our thoughts and feelings. What I do deny is the legitimacy of these concerns in the case of Robert and Tracy Latimer.

Being moral is not easy; it is fraught with risk and ambivalent decisions, with ignorance and unfounded convictions, with imperfect knowledge, misguided compassion and frayed courage. More needs to be said and done, [13] but in the meantime we would do well to remember the following:

While moral common sense is unnecessary in heaven and pointless in hell, it is indispensable in life.

NOTES:

1 - Bruce Hutchinson, "Latimer's Choice," Saturday Night, March, 1995, pp. 37-43. This is the most detailed, accurate, account in print (that I am aware of) of the history of Tracy's medical condition and of what she and her family went through during the 12 years of her life. In light of the facts recounted by Hutchinson, it defies comprehension

that another journalist, Linda Goyette, an editorial writer with the Edmonton Journal, could write without any sense of wrongdoing:

It's odd that we vilify a South Carolina woman for the murder of two sons while we offer infinite sympathy to a Saskatchewan father who committed the same crime....What was the difference between Michael and Alexander Smith and Tracy Latimer? Not humanity. Only human intelligence. [Quoted in "Reactions." The Globe and Mail, November 25, 1994.]

Goyette's comment, based as it is on an appalling ignorance of the most basic facts distinguishing the two cases, deserves to be dismissed for the asinine comment it is. Unfortunately, she is not alone in her ignorance.

2 - A moral fundamentalist is one who believes (a) that to be moral is to be rational, (b) that to be rational is to be a person of principle, (c) that moral principles are absolute and universally valid, and (d) that moral principles, as edicts of reason, always 'trump' the dictates of the heart. "Do good and avoid evil" is an indisputable moral axiom and should not to be confused with, for example, the moral principle: "The intentional killing of an innocent person is always wrong." Unlike the former, the latter is disputable. It is, for the reasons given in the text, indisputably false.

3 - The Daily News, December 24, 1994; The Chronicle-Herald, December, 1994.

4 - The Globe and Mail, March 3, 1995.

5 - The Star Phoenix, November 16, 1994.

6 - Evidence has now surfaced that Kirkham, with the aid of the RCMP, had no moral qualms about tampering with justice when it served his own legal ends! "Cpl. Nick Hartle `collaborated' with Kirkham in preparing [a] questionnaire used to gather information on prospective jurors' religion, their position on abortion and mercy killing, and whether they had any family members or `close associates' with disabilities." This information was not disclosed "to the sheriff, the trial justice or the defence." [The Star Phoenix, October 31, 1995.] The Justice Department is conducting an internal investigation. In the meantime, Kirkham has been suspended with pay!

7 - Not every disabled person is as embittered by their disability, or is as cynical about the motivation of their care givers and/or the general public's commitment to their welfare, as the statements of spokespersons for organizations on their behalf suggest. The words of Valerie Baker express a very different attitude:

People ask me if I feel threatened by what he did to his daughter. Like Tracy, I too have cerebral palsy, but any comparison made between the two of us would be like comparing apples and oranges. I live independently, holding a master's degree and am capable of making my own way in the world.

I feel sorry for disabled people who condemn Latimer. It's difficult to understand why they feel threatened by this act of compassion. No one is advocating the killing of anyone simply because they have a disability.

However, we do need to have deep compassion which will allow us to do what is right for our fellow humans.

I only pray that if I become profoundly disabled, there would be a Latimer with me. [The Province, February 26, 1995. From the Kitchener-Waterloo Record.]

8 - Immanuel Jacobovits, "Jewish Views on Infanticide," in Marvin Kohl, ed. *Infanticide and the Value of Life* (Buffalo, New York: Prometheus Books, 1978), p. 28.

9 - The Star Phoenix, November 22, 1994.

10 - The Globe and Mail, Saturday, December 3, 1994.

11 - The Globe and Mail, Tuesday, November 22, 1994, my italics.

12 - A striking illustration of the dangers of relying on the political process to provide moral insight and leadership on the issues of euthanasia and assisted suicide is found in *Of Life and Death: Report of the Special Senate Committee on Euthanasia and Assisted Suicide* (June, 1995.) The majority of the seven member Senate committee basically recommended maintaining the status quo even though national opinion polls have repeatedly shown that 70% (and in British Columbia and Quebec, 80%) of Canadians favour changing the current federal law's prohibition of euthanasia and assisted suicide. But as John Hofsess, executive director of The Right to Die Society of Canada, pointedly notes:

The committee's witnesses ... inverted these ratios. Of the 250 who appeared before the senators, roughly seven in 10 opposed any change of the law. Thus we have, at best, 30 per cent of the witnesses representing 70 to 80 per cent of Canadians, and 70 per cent of the witnesses representing 17 to 20 per cent of the population. [The Globe and Mail, May 4, 1995.]

The significance of these numbers becomes quickly apparent when one reads the report and discovers that it consists of a series of often repetitive alternative summary statements of 'on the one hand' but 'on the other hand' types of 'argument,' with no reasons being given for accepting the arguments of those who opposed change other than the fact that their submissions outnumbered those in favour of changing the status quo.

13 - More is said and done in a book I am currently writing, *Moral Sanity (Why Ethics Ought Not To Be Taught As It Is)*, in which I articulate and defend what I call, "A Caring Theory of Justice: An Ethic of Informed Commonsense."

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Addendum: [Nov. 26/96] to footnote #6: 30 out of 198 prospective jurors were questioned by the RCMP about their religious beliefs and their beliefs about abortion and euthanasia. Of the 30 people interviewed, 5 ended up as members of the jury. [This information was given by Mr. A. Gold, a lawyer, in the course of an interview with Pamela Wallin on her T.V. program on the evening of Nov. 25/96.]

Addendum # 1

After the trial, Mark Brayford, the defence lawyer, appealed to the Saskatchewan Court of Appeal and presented a "defence of necessity." The Court dismissed the appeal in a two to one decision. The dissenting judge argued that the punishment in this case constituted "cruel and unusual punishment." Shortly thereafter it was discovered that 5 of the jurors had been questioned by the RCMP about their religious beliefs and their beliefs about abortion and euthanasia. The case then went to the Supreme Court of Canada. Many hoped that the Court would dismiss the case and that Latimer would be free. The Court, however, ruled that Latimer be tried again but this time for second degree murder.

On November 5, 1997, after a week long trial, the jury returned a verdict of guilty but this time with a unanimous recommendation -- for which there is no basis in law -- that Latimer be sentenced to one year in prison. During their deliberations the jury asked the judge what the sentence would be if Latimer was found guilty of second degree murder. Judge Noble, after considerable discussion with the prosecutor and the defence lawyer, ruled that this information should be withheld from the jurors on the grounds that "it might unduly influence their decision." The rationale given is odd, to say the least, since if Latimer were tried by judge rather than jury it is doubtful that the judge would be prepared to admit that his decision, whatever it might be, was "unduly influenced" by his knowledge of the mandatory punishment required by the law. That the judiciary are endowed with an impartiality that is above and beyond the capability of ordinary people smacks more of arrogance than commonsense!

Some of the jurors have since publicly admitted that had they known the mandatory punishment for second degree murder they would not have voted as they did. Given their puzzling and troubling ignorance of this basic fact, it is not surprising they were also unaware they had the de facto power to disregard the law if they deemed the law unjust given the exceptional circumstances of this particular case. It seems that they were

appallingly ignorant of the fact that this is precisely what had happened when jurors refused to convict and punish Morgenthauer for performing what were then illegal abortions.

In addition to the foregoing, the judge made a point of telling the jury that the defence's argument from necessity was legally unacceptable because Tracy's death was "avoidable." Certainly it is true that if Robert had not killed Tracy on October 23, 1993, she would not have died on that day. In that sense her death was "avoidable." It was "avoidable," however, only if one was prepared to continue to subject Tracy to further pointless surgery and ineradicable and pointless pain. If, however, she was to be spared further crippling surgery and unending pain then her death was unavoidable. In this sense her death was not "avoidable." In contrast to the sterility of the law's merciless justice, Robert Latimer's deep sense of merciful justice shines as a light in the dark.

Before imposing sentence, Judge Noble agreed to listen to arguments from the prosecutor and the defence. The defence, in arguing for leniency, appealed again to the defence of necessity and argued for a "constitutional exception" on the basis of the Appeal Court's earlier dissenting judgment that a sentence of life imprisonment with no parole for ten years would "constitute cruel and unusual punishment." Judge Noble's decision will be handed down on December 1, 1997. In the meantime Latimer is free but confined to his farm.

It is ironic that at the same time, in Halifax, Dr. Nancy Morrison, a respirologist, who was originally charged with the first degree murder of a terminally ill patient has had the charge against her reduced to second degree murder. Despite objections from the Halifax Regional Police, the Crown prosecutor reduced the charge on the grounds that "it would not be in the public interest for her to face a mandatory life sentence if convicted of killing cancer patient, Paul Mills." The discrepancy between the way the law is being applied to a physician in Halifax and to a farmer in Wilkie, Saskatchewan, suggests that in the latter case a mandatory life sentence is in the public interest! This not only appears to be unjust, it is unjust.

Abused, discriminated against and unjustly condemned by the legal system, the case of Robert and Tracy Latimer is tragic in more ways than one.

Addendum # 2

The Globe and Mail: Letter to the Editor (Published: Saturday, December 6, 1997)

Trust a professional philosopher to turn commonsense upside down and argue that it is in the best interests of every rational person that Tracy Latimer should have been compelled to continue to live until her twisted tortured body collapsed on its own accord. Elmar J. Kremer argues that "if someone kills an innocent person without the victim's consent [as Robert Latimer did], by an act for which the killer is fully responsible [as Robert acknowledges without regret or repentance], then the fact that he did what he thought best for his victim is not a good reason for withholding the ordinary penalty for the crime."

The fallaciousness of Kremer's argument is due not just to his ignorance of the fact that Tracy was intellectually incapable of giving informed consent to any form of treatment, life-preserving or otherwise, or to his inability to recognize that deliberately subjecting Tracy to continuing experimental and crippling surgery, to ineradicable and pointless pain, is to inflict cruel and unusual punishment on an innocent and defenceless person, or to his erroneous assimilation of the law with morality, or to his unsupported implicit allegation that Tracy's father was mistaken about what he thought was best for Tracy, or to the unjustified arrogance of Kremer's assumption that he, a complete stranger, knows better than Tracy's lifelong caregivers what was in Tracy's best interest. Like his students, he ought to be aware of the fallaciousness of sweeping generalizations, of the fact that the specifics of a particular case rightfully make a difference. The more morally mature and astute recognize there is more to being moral than being rational and that thoughtful emotions and emotional thoughts are essential components in making moral judgments. Like all moral fundamentalists who are prepared to sacrifice the welfare of individuals for abstract principles, Kremer has yet to grasp this axiom of moral commonsense. Were he able to do so, he would recognize that, in the circumstances, Robert Latimer did the right thing for the right reason.

Addendum # 3

News Flash Dec. 17 CBC News @ 10:00am : The Crown Prosecutor's office is filing an appeal with the Saskatchewan Court of Appeal regarding Judge Noble's granting Latimer a 'constitutional exception' from the mandatory sentence of life imprisonment (without parole for 10 years) for 2nd degree murder.

Addendum # 4

Those who argue that failure to uphold the law in Latimer's case jeopardizes the lives of the disabled would do well to remember that while assisted-suicide is presently disputably illegal, the same is not true of suicide. What many spokespersons for the disabled fail to grasp is that it is the law against assisted-suicide that unjustly discriminates against the disabled. It is discriminatory because whereas the able-bodied may legally and morally choose to commit suicide, the disabled, who wish to die but are unable to do so without assistance, are compelled to continue to live their lives out to the bitter end. Thus the law as it presently stands denies the severely disabled the same choice that the able-bodied have with regard to living or dying.

The tragic plight of Sue Rodriguez, who died on Feb. 12, 1994, is a case in point. She died as she wished but only by subverting the law with the assistance of an unknown physician. The subterfuge her disability forced her to resort to in order "to die with dignity" is in marked contrast to a 80 year old breast cancer patient in Oregon who died after taking a prescribed lethal dose of barbituates. The woman, who had been diagnosed with breast cancer 20 years ago, "had been having an increasingly difficult time breathing and recently was told by her doctor that she had less than two months to live."

Under Oregon's Death with Dignity Act, first passed in 1994 and reaffirmed in 1997, doctors are allowed "to prescribe lethal drugs at the request of terminally ill patients who

have less than six months to live." [Globe And Mail, March 26, 1998, my italics.] The law, however, does not allow doctors to administer the lethal dose. In this particular case the latter restriction was not a problem. In the company of family members and a physician the woman swallowed a lethal dose of "barbituates mixed with syrup and washed [it] down with a glass of brandy." [Ibid.] For others, however, the restriction is clearly discriminatory for it means that disabled persons, like Sue Rodriguez, who are unable to take a lethal dose on their own, are denied the choice and opportunity that able-bodied persons have in deciding whether or not to continue to live in the circumstances in which they find themselves. It is time the more severely disabled were aware of their 'enemies' within their own ranks.

Addendum # 5

Judgments are only as sound as the facts on which they are based. Moral judgments are no exception but one would not know it from some of the descriptions of Tracy's life and death that have appeared in print. A recent flagrant and morally irresponsible example of a description and analysis of the case of Robert and Tracy Latimer appears in Wesley J. Smith's book *Forced Exit: The Slippery Slope From Assisted Suicide To Legalized Murder* (New York: Times Books - Random House, 1997).

"Few events," according to Smith, illustrate the antidisability attitudes of society better than the reaction of much of Canada to the murder of twelve-year-old Tracy Latimer, who had a severe case of cerebral palsy. Tracy was killed by her father, Robert, one Sunday, when the rest of the Latimer family was at church. After the family had left, Latimer carried Tracy to the garage, put her inside the cab of the family pickup truck, turned on the engine, closed the garage door, and walked away, leaving his daughter to die alone, choking on carbon monoxide fumes. [my italics, p. 185.]

These are the facts as Smith recites them.

As demonstrated in my article, the facts behind Smith's carefully 'selected' facts tell a very different story -- a story without which no reasoned and empathetic moral judgment is possible. Not that that matters as far as Smith is concerned for his aim is clearly not to understand but to condemn. Thus, after noting -- but not understanding -- the national support accorded Robert Latimer, he proceeds to equate what Latimer did with Susan Smith's murder of her two sons. As he puts it:

Within months of Tracy's death, an American parent, Susan Smith, killed her two sons by pushing her car into a lake with the the boys firmly buckled into their car safety seats. Like Tracy, the Smith children died alone as their murderous parent watched from only a short distance away. But unlike in Tracy's case, the entire country leapt to the posthumous defense of the Smith boys. Susan Smith was branded a monster and had to be protected from an angry crowd, while Robert Latimer was widely hailed as a loving father. [Ibid.]

In light of the foregoing it is no wonder Smith gives short shrift to the relevant facts in the Latimer case. Had he honestly done so he would have recognized, as any person with

a modicum of moral competence would, that the two cases are factually and morally fundamentally different. But with this recognition his hidden agenda would have been thwarted at the outset. Just what his underlying agenda is in equating the two cases becomes immediately evident when, following the above quotation, he writes:

What is the difference? There is only one explanation: Smith's children were able-bodied and pleasant to look at, and therefore they had a right to live their lives. Tracy Latimer was disabled and unphotogenic, and therefore she was seen by many as better off dead. [Ibid.]

It is a sad commentary when conclusions are drawn that fly in the face of elementary rules of logic, when reason is supplanted by prejudice and morally relevant facts are unconscionably omitted, and when moral incompetence is fobbed off on unsuspecting readers by the publishers as "original reporting" based on "exhaustive research." Suffice it to say, the morally blind need therapy, not logic. Smith is no exception!

Addendum # 6

An abstract of my article is to be found in Abstracts of Note: The Bioethics Literature in CQ: Cambridge Quarterly of Healthcare Ethics, Volume 7, Number 3 Summer 1998, pp. 330-31.

Addendum # 7

News Bulletin - Sept. 17, 1998 Globe And Mail

Robert Latimer will appeal his conviction in the death of his disabled daughter next month.

Mr. Latimer will appear in the Saskatchewan Court of Appeal on Oct.19. The Saskatchewan farmer was convicted of second-degree murder for a second time last fall for killing his daughter Tracy, who suffered from cerebral palsy.

In an unprecedented decision handed down Dec. 1, Mr. Justice Ted Noble of the Court of Queen's Bench gave Mr. Latimer a two-year prison term. Second- degree murder normally carries an automatic life sentence with no parole for at least 10 years.

The Crown's appeal, to be heard at the same time, will centre on Judge Noble's sentence. In court documents, the Crown maintains the sentence was illegal and contrary to the Criminal Code. [CP]

Addendum # 8

Letter to the editor: Globe & Mail [published Nov. 28, 1998]

The convoluted and mind-boggling reasoning that characterizes the Saskatchewan Court of Appeal's ruling against Latimer was matched the following day in the Globe and Mail's editorial comment on the need for legislation on assisted suicide. [Latimer, Kevorkian and the law -- Nov. 24] Fearful that juries "practicing the black art of jury

nullification" may "act out their 'illegal' feelings" by failing to condemn those who illegally participate in assisting someone to commit suicide, the editorial urges the government to debate and pass "sensible legislation" so it would be clear to all that the Latimers of this world deserve "not fellow-feeling, but clear condemnation, as justice demands."

The editorial would have its readers believe that jury nullification -- the time-honoured way of permitting juries to leaven justice with mercy -- is a "black art," that justice tempered with mercy is tantamount to tampering with justice, and that ordinary citizens lack the necessary moral smarts to judge the law's justice. The truth is otherwise -- which is why the vast majority of ordinary citizens are morally outraged at the unjust imprisonment of Latimer.

And if the editorial insult to our moral intelligence were not enough, we are further expected to believe that although Latimer's conscience -- informed as it was through having cared for Tracy since birth -- is an illegitimate moral authority, the uninformed individual conscience of a member of Parliament is nevertheless a reliable moral authority! The truth is otherwise: Once parliamentarians are free of party discipline and free of the responsibility of having to represent the predominate view of their constituents, once they are free to vote as they personally see fit, Parliament's vote is a crapshoot. It ought not to be; moral truth is not a popularity contest. Like all judgments, moral judgments, are only as sound as the evidence and arguments on which they rest.

Sometimes the law is morally blind -- as the Latimer tragically demonstrates -- and when it is, it needs to be changed. Just when and how the law should be changed is a moral, not a legal, matter. It is not the law that determines what is morally right; it is what is morally right that determines what the law should be and how it should be interpreted and applied. This is why the editorial's blind obedience to the law is morally objectionable.

Addendum # 9

Letter to the editor: The National Post [published Dec.2, 1999]

Barnyard Ethics

Despite her self-proclaimed confused state of mind, [Commentary: No Suffering in Robert Latimer -- Nov. 28, National Post] Christie Blatchford clearly has no moral qualms in engaging in a public character assassination of Robert Latimer. In light of the overwhelming evidence to the contrary -- evidence that "establishes that he is a caring and responsible person and that his relationship with Tracy was that of a loving and caring parent" [Judge Noble] -- her suggestion that Latimer had no more compunction in killing Tracy than in killing a pig defies comprehension.

She mistakes Latimer's blunt honesty and moral courage in refusing to allow Tracy to continue to be pumped full of drugs and subjected to a never-ending series of decreasingly effective surgical operations like a human guinea pig as stoic indifference to her welfare. Nothing could be further from the truth. Sometimes people need help to live

and sometimes they need help to die. Tracy, victimized by her biology, needed and received both.

That Robert loved his daughter more than he feared the judicial system speaks to his moral courage -- a fact that, unlike Blatchford, the vast majority of Canadians have no difficulty in grasping. Blatchford's inability to grasp this simple truth discredits her, not Robert's character nor the justice of what he tragically had to do on Tracy's behalf.

Note: Latimer is not asking for mercy; he is asking for justice, for justice tempered with mercy

Note: As noted in my article, "**it is not the law that determines what is morally right; it is what is morally right that determines what the law should be and how it should be interpreted and applied.**" This is why blind obedience to the law is morally objectionable." Those who view `the law' as if it were something written in stone, unchanging and absolute, forget that the validity of `the law' lies in the morality of the people who created it, constantly revise it, and live by it.