

Justice denied
Latimer case exposes flaws in legal system

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Arthur Schafer

AFTER serving seven years of his life sentence, Robert Latimer was eligible to apply for day parole. The principal job of the National Parole Board is to judge whether the applicant poses a danger to the community. If the applicant is not likely to reoffend then the request for day parole should be granted.

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Since Latimer poses no conceivable danger to the community, agreeing to his request should have been a no-brainer. But Latimer refused to play "the parole game". He believes that he did the right thing and refuses to pretend otherwise. Latimer is a plain-speaking farmer from Wilkie, Sask. He does not do hypocrisy. The parole board, impressed with its own power and unimpressed by Latimer's independence, put this superiority in his place. Latimer will suffer for his refusal to grovel; but the reputation of the Canadian legal system will suffer equally.

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To make sense of what happened at the parole board of this story: On Oct. 24, 1993, Robert Latimer killed his daughter, Tracy. He was charged with murder and, after a series of appeals and a retrial, he was convicted of second-degree murder.

hearing, we need to revisit the beginning led his daughter, Tracy. He was charged with murder and, after a series of appeals and a retrial, he was convicted of second-degree murder.

The Saskatoon jury found that he had been motivated by love and concern for the suffering of his daughter. They recommended unanimously that he receive a sentence of only one year in prison. They were unaware that in Canada a conviction on for murder carries a mandatory sentence of life imprisonment. For second-degree murder, there is no parole eligibility for at least 10 years. When the jurors discovered this, so many wept.

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

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The Supreme Court overruled Noble, partly on legal grounds but partly because, so it claimed,

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the Latimer family had rejected effective pain con-
tube into her stomach. On this point the Supreme Co-
wrong. Tracy's orthopedic surgeon testified unequiv-
tube, Tracy could not tolerate the kind of medication
pain. Moreover, such a tube could be easily pulled
Latimer to add to Tracy's misery by wrapping her
restrained? That would have been topile misery and

It's noteworthy, however, that despite rejecting La-
strong hints that the government should rethink its
"Where the courts are unable to provide an appropri-
a unjust imprisonment, the executive is permitted
the offender." The government of Canada did not tak

That same day, Jan. 18, 2001, Latimer turned himsel
sentence.

Critics of Latimer, including some disability right
Tracy as a hate crime against the disabled. They re-
argue that had he not received a harsh punishment
on the disabled."

Technically, "remorseless killer" is an accurate de-
he feels no remorse for what he did. But, thought e
profoundly misleading. He feels no remorse because
his daughter from a life of unbearable pain. Many C
extent of thinking that if they were in Tracy's spos
Even those who worry about the wider social implica
the family's tragic plight.

Both judge and jury rejected the view that Latimer
disability. Tracy suffered from the most severe kin-
evidence whatsoever that Latimer was motivated by
summarized by Judge Noble, "all of the evidence poi-
saw flowing from her illness." The Supreme Court, t
grounds, nevertheless agreed that this was a crime

Interestingly, Robert Latimer is the only person in
in prison for a mercy killing. That's partly because
to charge the accused with an offence other than mu-
a manslaughter or "administering an oxious substan-
the punishment fit the criminal as well as the crim

Another significant factor: Canadian juries have ge-
kill in order to bring an end to unbearable sufferi-
asphyxiated their young son with exhaust from their

tro options for Tracy, including a feeding
urt seem to have got its facts drastically
ocally a trial that even with a feeding
on she would need to control her severe
out by an agitated child. Did the court want
so that her movements were totally
cruelty on top of pain and suffering.

timer's appeal, the Supreme Court offered
policy on mandatory minimum sentences:
a remedy in cases that the executive sees
to dispense mercy, and order the release of
e the hint.

into authorities and began serving his

s activists, repeatedly describe his killing of
ferto Latimer as a "remorseless killer", and
ociety would have declared "open season

scription. Latimer did kill his daughter and
chnically accurate, the description is
he believes it was his moral duty to save
anadians agree with him, at least to the
ition they would want Robert as their father.
tion of mercy killing feels sympathy for

killed his daughter because of her
do cerebral palsy, but there was no
er disability. On the contrary, as
nt to his concern for the pain which he
hough it rejected Latimer's appeal on legal
of compassion.

Canadian history to spend even a single day
e prosecutor often exercise their discretion
rder. Conviction on a lesser charge, such
ce", allows the court flexibility to make
e.

nerally been reluctant to convict those who
ng. To illustrate. In 1941, an Alberta couple
car. He had been suffering from gun remitting

pain from cancer. The prosecution proved that the parents were guilty of premeditated murder; nevertheless, the jury voted to acquit. Legally, it was murder. But common humanity led the jury to recognize that neither hanging nor lengthy incarceration was a morally appropriate response. In essentials, the Latimer case is identical. Robert killed Tracy with the exhaust from his truck. She, too, was suffering from pain that could not be relieved, or so the Latimers were told by Tracy's doctors. Death seemed to be a merciful release.

Tracy's situation is, fortunately, rare, and it is implausible to suggest that parents of disabled children will kill their children unless deterred by the threat of a heavy sentence. There was, after all, now a wave of such killings prior to the Latimer sentencing. Very few people think that Latimer deserves a harsh sentence--he clearly doesn't--and even fewer favour public denunciation of what he did. The best way to defend and protect the disabled is to provide adequate funding for the services and care they need.

As long ago as 1995, the Special Senate Committee on Euthanasia and Assisted Suicide recommended unanimously that Canada adopt a new category of homicide, to be called "compassionate homicide". Conviction would allow courts the sentencing discretion and flexibility of your current law of murder does not permit. Countries such as Sweden and Switzerland have adopted this sensible proposal. As the Latimer case proves, our current law could do nicely with an infusion of justice and humanity.

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director of the Centre for Professional and Applied Ethics at the University of Manitoba.