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Aiding suicide: a modern moral dilemma

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Introduction

Among the many current moral and legal dilemmas facing individuals in society is that of being called upon to assist a terminally-ill loved one end his or her own life. On the one hand is the emotional agony of watching suffering which can have only one outcome. On the other is the stern moral taboo buried deep inside each of us that suicide is a "sin", reinforced by laws which also make it a serious criminal offence to assist in an act of suicide by another.

Attempted Suicide

For obvious reasons, it is impossible to prosecute someone who has succeeded in suiciding. Nor is it currently fashionable to prosecute a person who unsuccessfully attempts it, and most legal codes and common law regimes have tactfully erased "attempted suicide" from the list of offences one can commit (see, e.g. Crimes Act, 1900 (NSW) s.31A, Crimes Act 1958 (Vic), S.6A and Crimes Act 1900 (ACT) s.16).

Taking part in a suicide

It is, however, a different story when it comes to "making an example" of those who played a part in another's successful suicide, and everywhere in Australia it is theoretically possible for anyone who crosses that moral line (be they a crusading physician or a loving friend or relative) to be prosecuted for doing so. In most cases, there is also the prospect of a lengthy jail term. There are, however, virtually no examples of such prosecutions ever having taken place. This may change shortly in Queensland.

The Case of Mrs Crick

In recent years, the issue has proved irresistible to the media on those occasions when it has presented itself. It has divided churchgoers, politicians, lawyers and legal academics, and has become a popular debating theme in school and university. Given the highly publicised death of a Mrs Crick on the Queensland Gold Coast early in 2002, allegedly surrounded by family members who were aware that she had opted to take her own life, it was also a "natural" as a hypothetical case scenario for the 2002 Grand Final of the Bond University High Schools' Mooting Competition, held on 10 August, 2002.

At the time of writing, no final decision has been made as to whether or not members of the Crick family are to be prosecuted. If they are, then it will be for the offence of "Aiding Suicide", contrary to Section 311(c) of the Criminal Code Act 1899 (Qld). There are similar offences in every state and territory in Australia, of which s.31C of the NSW Crimes Act, s.6B of its Victorian equivalent, s.17 of the ACT Act and s.288 of the Western Australia Criminal Code are clear examples.

The offence itself may be described as "aiding", "abetting", "inciting" or "counseling" suicide, depending upon which jurisdiction one is in. But in all of them, the challenge faced by prosecuting authorities is the same, namely that of

making what is essentially a humane, supportive and loving act fit the image of a crime, and finding precedents which come even remotely close to the case in hand.

It is relatively easy to understand - whatever one's moral stance - how actually supplying someone with the means to suicide, persuading them to do it, or actively participating in the act, could be classed as "aiding", "abetting" or "counseling" such an act. There are case examples from most states of depressed drug addicts injecting each other, resulting in the death of one of them. The survivors have hitherto been prosecuted either for homicide, or under some alternative statutory provision which catches survivors of suicide pacts.

There have been threatened prosecutions of doctors who actively advocate or assist in suicide, if ever the evidence can be obtained to link them sufficiently to the death, and once again one can understand the logic of such charges, even if one does not agree with their moral basis.

The daunting task which Crown Prosecutors will face, should they ever choose to proceed against the Crick family or others like them, will be that of persuading a jury that one can "aid" suicide simply by sitting by a bedside in a supportive role while the eventual deceased performs all the necessary physical actions (pressing a button attached to a specially prepared drip, swallowing a fatal dose or whatever).

Aiding or Abetting ?

The ultimate question for the jury will be "Can one be said to be encouraging someone to end their life simply by being there?" Although in such cases, one takes no positive step to assist, it is strongly arguable that the act would not have occurred without the moral support and encouragement supplied by the silent witnesses. In extreme cases, it is also arguable (as it was alleged in the Crick case) that, having set up an expectation that he or she would suicide, the deceased felt unable to resile from it, and therefore went ahead despite last-minute misgivings.

One elementary point at least has been clearly established under previous case-law. Before one may be said to either "aid" a criminal act, or "abet" it, one must be shown to have had knowledge of those basic background facts which constitute the act which one is alleged to have aided or abetted. For Common Law jurisdictions, that point was settled *vis-à-vis* "abetting" in *Giorgianni v The Queen* (1985) 156 CLR 473, while under the Queensland Code, the same principle was confirmed in respect of "aiding" in *Sherrington v Kuchler* [2001] QCA 105.

For example, the close relative who visits a dying person unaware that he or she is already hooked up to a fatal dose cannot be said to have either aided or abetted that act of suicide. Likewise if they innocently assist the person to take a draught of fatal medication. The "grey area" is entered when the accused can be proved to have sat silently by and watched what they knew to be an act of suicide take place. Have they, by their mere presence, provided such "support and encouragement" as might be sufficient to constitute

“aiding” or “abetting”?

In Queensland, the key word is “aiding”, and in Beck (1989) 43 A Crim R 135, this was confirmed as meaning “give support to ... help, assist”, its traditional dictionary definition. In fact, Beck is the clearest existing authority one can find under Queensland law regarding the “aiding” of an act by silent, supportive, knowing presence, and therefore the most authoritative in relation to the position of a person who sits by a suicide bed knowing full well what is about to happen. But that scenario, and the facts of Beck, could not be further apart, and it is almost with a sense of reluctant revulsion that one draws the necessary analogy. It certainly gave some fuel to the arguments of the embryonic counsel who tackled the issue in the Bond Moot Competition Final.

Application to Mooting Hypothetical Case

The hypothetical case they were set involved the prosecution of Peter Donaldson and Christine Kovic (his married daughter) on a charge under s.311(c) of the Queensland Criminal Code of aiding the suicide of Eric Donaldson, their respective father and grandfather, at his home on the Sunshine Coast. It was not in dispute that his death had been the result of a fatal dose of morphine knowingly taken by the deceased in the equally knowing presence of members of his family, including the two accused. But the roles which each had played in this final act differed significantly.

Christine Kovic, an enrolled nurse prior to her marriage, had persuaded the deceased’s GP to let her nurse her terminally ill grandfather at home, monitoring a morphine drip initially set up, and serviced daily, by one of the doctors in the practice. She had also arranged for Peter Donaldson to install computer equipment in the house, and by this means obtained, via the internet, a fatal dose of morphine which her grandfather could take by mouth.

Peter’s primary role was to contact each member of the family, using a pre-arranged “code word”, to advise them of the day chosen by Eric to end his life. All the family were initially horrified by his wish to commit suicide, but each in turn came round to respecting his wishes. As a result, they were all there on the afternoon of his death, sitting round his bed as he swallowed the fatal dose (prepared for him by Christine, and left within arm’s reach of where he lay propped up on his pillows), departing this world with the final words “Cheers, everyone”.

There could be little doubt that Christine Kovic had “aided” the suicide in a physical sense, by obtaining the fatal dose and placing it where her grandfather could reach it, or equally ignore it. The main argument against her guilt was a somewhat forlorn moral one, but with a secondary argument that she had not actively assisted in the taking of the dose (as she would have, for example, had she been obliged to put it to his lips at his request).

For Peter Donaldson, the defence argument was the more direct one that (leaving aside his knowledge of what the computer had been installed for, on which the facts of the scenario were deliberately left vague) he had done nothing other than gather the family together to sit in a supportive but passive role around the act of suicide. It was more than a little ironic that the main prosecution argument in favour of his conviction drew an analogy with one of the most infamous homicide trials Queensland has ever witnessed.

Valmae Beck was the de facto wife of one Watts. For rea-

sons that only she could properly understand, Beck had agreed to assist him in the abduction of a 12 year old school-girl, and her subsequent rape. Beck was prepared to plead guilty to these offences, but not to “aiding” the subsequent murder of the girl by Watts.

There were many factual issues arising during the trial, but the essential, undeniable fact was that Beck had remained in the vehicle with Watts while he killed the girl, knowing in advance (if only by a minute or so) that he intended to kill her. Putting the Crown’s case at its lowest, could she be said, by her mere presence in the car following her part in the rape, to have “aided” that murder?

The ultimate finding of the Queensland Court of Criminal Appeal was that she could. On her own admission, she had actively assisted in the earlier (sexual) offences, and once Watts indicated an intention to murder the girl as well, Beck became an “aider” of that murder as the result of what Derrington J (at p. 148) called “her failure to attempt to dissuade him by an express and forceful withdrawal of her past support”.

In the hypothetical moot example, of course, there was no previous activity preceding the act of suicide, and therefore no “past support” which could be withdrawn. However, in his judgment in the Beck case, Chief Justice McCrossan (at p.143) had confirmed, in seeking to lay down a broader principle for future cases, that “It is possible ... to aid someone in the commission of an [act]... while harbouring feelings of disapproval of the [act] and of the conduct involved in it. This form of aiding could occur because of the strong call of a bond felt by the aider with the principal actor who, for his part, ... s determined ... to attempt to commit the [act]”.

This, arguably, described precisely the behaviour of Peter Donaldson in attending his father’s bedside in full knowledge of what he intended to do, and in what the deceased may well have felt to be silent support. The same could be said of Christine Kovic, quite apart from her other actions. But was it not equally true of the other relatives gathered around at the fatal moment, and why were they not prosecuted if, as might seem to be the case, they did nothing less than the accused Peter Donaldson?

This point was seized upon by most of the participants who found themselves acting for the defence, while most prosecutors countered with the arguments (a) that the mere fact that A is not prosecuted for an offence committed along with B does not make B innocent of that offence, and (b) Peter Donaldson had done more than the others, quite apart from installing the computer. Surely, they argued, he was the one who contacted the others, thereby ensuring their attendance. This was more than mere reluctant presence at the death - it was the means by which the deceased received maximum family support for his actions.

At the end of the day, some of the best moot performances came from those allotted the defence role, and the task of distinguishing between their hypothetical case and the very real precedent set in Beck. It is almost inevitable, before much longer, that somewhere in Australia what thus far has been merely a moot scenario will become a real-life heavy-weight legal contest involving complex legal and moral issues, and a good deal of judicial soul-searching in a desire to accurately reflect contemporary societal expectations.

It was the legal philosopher Ehrlich who distinguished between “norms of conduct” (i.e. accepted behaviour in society) and “norms of decision” (what the law has to say

about such behaviour), noting that the latter always lags behind the former. When a case such as *R v Donaldson and Kovic* arises in real life, those called upon to pass judgment will carry a heavy moral burden.

Questions for Debate

Should persons who 'participate' in a suicide by a terminally ill person by standing by while that person takes their own life be deemed to aid and abet that suicide?

Would your answer change if the person taking their life was not terminally ill? Discuss your response.