*R. v. Latimer*



Introduction

The extraordinary history of the case of *R. v. Latimer* has been well documented in both the courts and the press. Throughout the trial, questions arose about several important issues, including the competence of the judge, the use of the defence of necessity, jury nullifica­tion, i.e., the right of the jury to refuse to impose the law, and whether, under the circum­stances, the sentence imposed could be considered "cruel and unusual punishment." Could the case of young Tracy Latimer set a dangerous precedent that would endanger the rights, and lives, of all disabled people?

Facts

Tracy Latimer was a 12-year-old girl afflicted from birth with a severe form of cerebral palsy. Quadriplegic and bedridden most of the time, Tracy had the mental capacity of a 4-month­-old baby and could communicate only through facial expressions, laughing, and crying. She was dependent on others for all her needs. It was thought that Tracy constantly experienced a lot of pain and she suffered five or six seizures daily. Doctors suggested that Tracy have a feeding tube inserted into her stomach since it was likely to provide her with more nutrients, leading to less weight loss, and possibly the administration of more effective pain medication. Her parents, however, chose to spoon-feed her, believing that the tube would be the first step toward artificially prolonging her life, which they rejected.

Despite her profound disabilities, Tracy appeared to enjoy music, being with her family, and going to the circus.

She was able to listen to the radio, which she could activate by push­ing a special button. She also loved to be rocked by her parents.

Tracy had undergone painful surgeries on her muscles and spine and, when she suffered a dislocated hip, doctors scheduled more surgery that would have removed a piece of her thigh bone and left the upper and lower portions of her leg connected only by muscle and other soft tissue. A recovery period of one year was expected. More surgery would be needed from time to time to deal with the pain Tracy suffered in her other joints. At about this time, Robert Latimer concluded that his daughter's life was not worth living and, one Sunday, while the rest of the family was at church, he ended Tracy's life by placing her in his truck and run­ning a hose from the exhaust pipe into the cab of the vehicle. At first, Mr. Latimer told the police that Tracy had passed away in her sleep; he later confessed to having killed her to end her life of pain.

Robert Latimer was tried for first-degree murder, but the jury found him guilty of second-degree murder. The judge sentenced him to the mandatory minimum sentence pro­vided by the *Criminal Code:* life in prison with no eligibility for parole for 10 years. However, on appeal, it was held that interference in the jury selection process by the Crown had resulted in an unfair trial, and a new one was ordered.

After a second jury trial, Mr. Latimer was once again found guilty of second-degree mur­der. However, the presiding judge granted him a constitutional exemption from the *Criminal Codes* minimum penalty provisions and sentenced him to one year in prison, to be served at his farm, followed by a year of probation. Mr. Latimer appealed his conviction, arguing that the trial judge had made two mistakes: first, by refusing to allow the jury to consider the defence of necessity (and not so ruling until *after* the defence had argued it in their closing argument) and, second, by misleading the jury into thinking that it would have some input regarding the sentence. The Saskatchewan Court of Appeal affirmed the conviction but reversed the sentence, replacing it with the *Codes* mandatory sentence of life imprisonment without eligibility for parole for ten years. Robert Latimer appealed both his conviction and "sentence to the Supreme Court of Canada.

To claim the defence of necessity, three elements must be present: (1) there must be an urgent situation of clear and imminent peril (danger/risk); (2) there must be no reasonable legal alternative; and (3) there must be proportionality between the harm inflicted and the harm avoided.

At the first trial, Justice Noble attempted to clarify the difference between mercy killing and premeditated murder, granting Latimer a constitutional exemption from the mini­mum sentence of 25 years with no chance of parole for 10 years. He explained that, for Latimer, imposing the minimum sentence would constitute cruel and unusual punish­ment. The law, he said, recognizes that the moral culpability or the moral blameworthi­ness of murder can vary from one convicted offender to another. In his opinion, the mur­der of Tracy Latimer was a rare act of homicide that was committed for caring, altruistic reasons. That is why, for lack of a better term, this is called compassionate homicide.

Could the case of young Tracy Latimer set a dangerous precedent that would endanger the rights and lives of all people?

Analysis Questions:

1. Discuss what you feel (morally) are the facts, the problems and finally the outcome from the Supreme Court of Canada.
2. Do you see a difference between mercy killing and premeditated murder? What are the significant differences? If there are differences what could be introduced to elevate some of the problems associated.
3. Why couldn’t Latimer claim the defence of necessity? Use the three clauses.
4. You are now a judge or a member of the Supreme Court of Canada on a new alternative sentencing that could be involved with these kind of cases. Chart your positives or negatives of each of your possible sentences.
5. How and why did the handicapped or disabled people voice their outrage after the initial sentence was passed down? Do they have any differences from you and I? Explain both sides of the situation.