EXAMINING THE FORESEEABLE: ASSISTED SUICIDE AS A HERALD OF CHANGING MORALITIES

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ABSTRACT

After her intense battle for the decriminalization of assisted suicide in the Supreme Court of Canada, Sue Rodriguez committed suicide with medical assistance in 1994. Following her suicide, government and law representatives remained silent and no criminal charges were ever brought against the person(s) who presumably assisted Ms Rodriguez in her death. This apparent non-intervention of criminal law is examined in view of the useful role that the *Rodriguez* event may have played in a possible shift in the dominant morality. It is argued that the *Rodriguez* assisted suicide may have been a useful 'crime' (in the Durkheimian sense) in that it brought to the fore the possibility that social conditions – which made the 'crime' possible – may no longer be in harmony with conventional morality. Similarly to Socrates' crime, the *Rodriguez* case can be seen as an anticipation of a new morality. It can be analysed as a prelude to alterations, as directly preparing the way for changes in the dominant morality. The role of criminal law as a preferred mode of moral regulation is also examined in relation to the moral demands and expectations that arose during as well as after the judicial saga.

INTRODUCTION

COMMON LAW countries and several European states are currently witnessing a resurgence in the public arena of issues related to euthanasia. So far, these issues have been predominantly problematized within juridical, medical or ethical frameworks (separately or in a combination thereof, e.g. bioethics). On the other hand, euthanasia issues have been largely understudied within sociologically oriented frameworks. The discipline of sociology has only recently produced a small number of studies on these questions, the majority of which are embedded in social history frameworks (Anderson, 1987; Cohen, 1988; MacDonald and Murphy,

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1990; Van Hooff, 1990; Marra and Orrù, 1991), in a sociology of law (Durand, 1985; Martel, 1998) or in a sociology of actors (Hoffman and Webb, 1981). However, sociological inquiries into euthanasia are warranted given that the present public debate surrounding it is linked to important current societal transformations, among which are biomedical breakthroughs that prolong human life, financial constraints in health care, the increasing disorientation and search for new social references as well as political and moral values, the affirmation of individualism, the redefinition of private and public spheres, and neoliberal trends. As a matter of fact, euthanasia is increasingly posing problems to a society which is becoming progressively more fragmented on an ethicopolitical level.

It is not surprising then to find that the term 'euthanasia' is often used rather indiscriminately or incorrectly in the literature. For a long time now, scholars in ethics have distinguished between two morally different forms of euthanasia. The first, passive euthanasia, involves allowing the death process to follow its natural course by omitting to dispense or by discontinuing life-sustaining medical treatment. The second form, active euthanasia, involves deliberately and painlessly accelerating the death of a person suffering from an incurable or terminal illness, with his or her consent, usually by administering a drug. Recently, another distinction has been added to the basic one above by medical ethics. It involves differentiating between voluntary euthanasia – upon the request and consent of a person – and involuntary euthanasia – without the person's request or informed consent (Doucet, 1990). This sophisticated semantic categorization is far from gathering consensus among scholars or among proponents and opponents to euthanasia. In actuality, it seriously clouds current debates.

Moreover, other conceptual derivatives, such as mercy killing, palliative care, medically assisted death or assisted suicide, have engendered even more misunderstandings or misinterpretations. Of particular importance to this article is the lack of consensus as to what terminology to use when certain negative connotations – often associated with the term euthanasia – may want to be avoided. One obvious example is the contested definition of assisted suicide, especially physician-assisted suicide. This act involves the provision, by a medical doctor, of a means to enable a patient to commit suicide. Physician-assisted suicide is usually perceived to be different from assisted suicide, which is often used to refer to the participation in a person's suicide of an individual other than a medical doctor. In current debates, euthanasia and assisted suicide are frequently regarded as being qualitatively different. Euthanasia is usually used to refer to the hastening of one's death by a third party while in assisted suicide the act of death is ultimately performed by the person who expressed a wish to commit suicide. In this article I refer to euthanasia and assisted suicide as separate entities in order to clearly demarcate the differences usually attributed to each of them in current debates.

In the last few years in Canada, euthanasia and assisted suicide have been socially constructed as 'social problems' that can be said to be the expression

of various public concerns. Some of those concerns are political (e.g. the political will to address these issues) or medical in nature (e.g. the role of biomedical technologies), while others are rather legal in nature (e.g. the decriminalization of physician-assisted suicide). But euthanasia and assisted suicide also raise important questions of morality that warrant sociological inquiry.

Through an analysis of a recent Canadian court case relating to assisted suicide, I will attempt to understand the relationship that morality and criminal law entertain with one another. Explicitly, the general question underlying my reflection is the following: what does the current judicial and legal debate surrounding the specific issue of assisted suicide allow us to learn about the morality and the criminal law of today? I will strive to show that there are good reasons to believe that moralities are in the process of changing in important ways. I will argue that the recent and publicized assisted suicide judicial case of Sue Rodriguez may be analysed as a herald of such significant changes in moralities in Canada. I will also argue that these changes may not be automatically (or even adequately) reconstructed in, and regulated through, law. When moralities (or transformations of it) are formalized by or in law – especially by or in criminal law – they become subjected to the modern penal rationality, and are acted upon primarily in terms of the two rationales that lay down the foundation of this modern penal rationality: deterrence and retribution. I contend that these rationales may be ill adapted and inadequate to regulate assisted suicide given the emerging changes in moralities.

Following a brief review of the diverse conceptualizations of morality in the sociological tradition, I will attempt to lay down a few prolegomena that will provide new theoretical leads to further our understanding of the relation between morality, suicide and law. Subsequently, several aspects of *the Rodriguez* judicial case will be analysed within this theoretical framework and conclusions will be drawn.

TOWARD A CONTEMPORARY SOCIOLOGY OF MORALITY

The scientific project to make morality an autonomous field of sociological inquiry was only formulated at the turn of the 20th century. Through their diagnostic of a generalized cultural crisis in the 19th century, some of the founders of sociology such as Saint-Simon, Comte, Proudhon and Marx were led to question the disorganization of values and the changes occurring in the mores and rules of conduct of that period. They brought to light existing value conflicts as well as the emergence, at that time, of new moral goals in a society that was renewing itself.

Hence, by the end of the 19th century the rudimentary components of a sociology of morality were established, but the field was not yet constructed as an independent realm of inquiry. It defined itself in good part through the writings of Durkheim, Lévy-Bruhl, Weber and Gurvitch. The explicit project of creating a sociology of morality is first expressed by Durkheim. In *Les règles de la méthode sociologique* (1894/1973), and later in *L'éducation*

morale (1905/1974), Durkheim suggested that the existence of a particular moral – or of 'moral facts' – is readily observable not only through pre-established rules (e.g. a repressive sanction) (1894/1973: 41), but also through individuals' attachments to the social groups to which they belong, as well as through their conscience of the reasons for their conduct (autonomy of will) (1905/1974, lessons 2–4–7). Consequently, Durkheim acknowledged the relativity of moralities and asserted that each society has its own moral.

In the same period, Lévy-Bruhl set out to discover, through ethnographic and sociological methods, the general rules underlying the development of social judgments, sentiments, rights and obligations (Lévy-Bruhl, 1903/1953). Weber, on the other hand, privileged a comprehensive approach to morals emphasizing actions and meanings when he set out to document the religious origins of puritan ethics and its passage from theology to morals (*The Protestant Ethic and The Spirit of Capitalism*, 1905/1976). Subsequent to these developments in the foundation of a sociology of morality, relatively few studies have addressed this topic in a significant way in the first half of the 20th century. A notable exception is Gurvitch's sociological reflection on moral life (1937, 1958). His work led to two major conclusions which ultimately became basic premises in the field of the sociology of morality: (1) the conflictual nature of moral life as observable in the existence of value conflicts or tensions in all realms of social life; and (2) the need for a transversal reflection on moralities that goes beyond the attitudinal and moral boundaries of social locales and institutions.

Since Gurvitch's work, only a relatively small number of studies have pursued a systematic reflection on moralities in sociological terms. However, increasingly there are calls in sociology literature for studies of moralities (e.g. Ansart, 1990). This interest stems, at least in part, from the deep changes currently occurring in the western world, which are fostering discussions and standpoints that are unquestionably moral in character. Among others, there are debates on various forms of violence, the commercialization of drugs, overt and institutionalized racism, human rights (e.g. rights of children, of disabled persons, of Aboriginal peoples), euthanasia and assisted suicide. One question that comes to mind is whether extant knowledge on morality is at all adapted to such contemporary moral issues. New questions need to be asked and new hypotheses need to be formulated. Similarly to Ansart (1990), I contend that in a time of increasingly fragmented moralities (Pavlich, 1996), a theoretical framework adapted to current moral questionings should focus not so much on the principles or the emergence of a definitive morality, but primarily on the multiple forms that current changes take in the realm of moral life:

> . . . new moral demands emerge, are rapidly expunged or impose themselves, demands appear as new although they revive old themes (rights of children), old principles thought to be taken for granted (human rights) take on a new intensity. . .All the shapes of changes appear possible. What's more, these different and changing shapes coexist . . . (Ansart, 1990: 35)

A sociological inquiry into morality should therefore acknowledge the coexistence of a multiplicity of foyers of moral experiences, each conforming to different logics. It should pay attention to the emergence of indignation, and should underline ruptures, innovations and discontinuities that are introduced through moral refusals and protests (individual or collective). It should also take into consideration the routinization and institutionalization of these ruptures or innovations, as well as their consequences. Finally, it should examine the processes of transformation of moral experiences into political discourses, and the way established centres of power (mis)appropriate these moral experiences. In other words, a framework leading to a rich and stimulating sociology of morality should be open to the uncovering of the fortuitous, of (dis)orders in moral and social life, thereby revealing the uncompleted and vulnerable character of social order. In view of the above, how, then, can we examine contemporary moralities pertaining to suicide issues in a broader sociological framework of analysis?

WHEN MORALITIES ARE INCORPORATED INTO LAW

The moralities of a society, that is the total sum of its moral values and beliefs, are often constructed, socially and politically, as a relatively uniform (shared by all) and dominant (one for all) integrated whole. Official discursive schemes tend to use this conception of the 'dominant morality' for political, social, religious or ideological purposes by inserting it into the abstract notion of the 'common good'. One crucial moment in the naturalization of this 'common good', and by ricochet of the dominant morality, is undoubtedly its formalization in law, i.e. its protection and perpetuation through the sovereign and symbolic character of juridical norms as postulated by civil society and modern law.

Law is considered to be a basic tenet of modern societies as well as a fundamental mode of social regulation and control. A social product of conflicting relations within society, Law represents a temporary compromise between interest-guided social demands. It also represents, at any point in time, an empirical statement about a particular reality produced by privileged knowledges in different and often unspecified centres of power. As such, Law is a tool for the defence of sentiments deemed 'worthy' of legal protection as well as a tool for formalizing change in these sentiments.

Moralities do not easily lend themselves to observation or measurement. To a large extent, Law has been considered historically to be one of the utmost visible symbols of morality, its tangible social embodiment, its living expression. The source of such a conception of the relationship between Law and morality goes back to the second half of the 18th century, when criminal law was reconstructed as a public sphere of law separate from the more private one of civil law. From then on, criminal law will pretend to express, alone, the deep core of natural law and morality. Although it can be argued that morality is expressed through many forms of law, criminal law – because

of the very particular intrusiveness and forcefulness of the sanctions it imposes on individuals – expresses that morality (and state morality in particular) more vigorously than most if not all other types of law. As Pirès (1998: 38) adequately summarized it, the 'muscled right of the state' to intervene in the social and moral lives of its subjects passes essentially through criminal law.

When moralities – more specifically behaviours to which a moral connotation is attached – are incorporated into criminal law, their interpretation and regulation become subjected to the philosophical underpinnings of the modern criminal rationality. It has been argued, indeed, that the modern philosophico-juridical discourse on crime and punishment is embedded in two parallel systems of thought, a utilitarian one (deterrence) and a retributive one (simple payback). In other words, the modes of conflict resolution deemed appropriate for situations generally oriented toward criminal law are considered and weighed from two angles only, that of deterrence and/or the obligation to pay one's debt to society, either separately or in conjunction with one another. Today, however, biotechnological breakthroughs, the transition to neoliberal strategies of governance, socioeconomic globalization and the generalized search for a new cultural/societal model are current social and philosophical stakes for most industrialized societies. In the midst of these changes, an escalating number of social demands are unprecedented in nature. Their unexampled character renders their integration within habitual modes of social regulation (e.g. religion, education, the family) increasingly difficult. The inadequacies and limits of these regulatory mechanisms are gradually brought to light and this tends to engender an interesting phenomenon: the redirection of such new social demands toward Law and the courts for the purpose of establishing boundaries for their social regulation (Martel, 1998). At the core of this observable reorientation of social demands toward the courts, one finds the inescapable legal obligation that judges have to hear every case brought forth in their court, and to make a decision about it. In this process, judges may be confronted with novel arguments – stemming directly from current conditions of existence – that find little or no resonance within pre-established interpretive and argumentative legal frameworks which, in criminal law, are based on deterrence and retribution.

In relation to crimes of assisted suicide, it is uncertain whether deterrence and/or retribution can provide suitable (or even workable) legal and philosophical boundaries within which to interpret such conflicts in light of their broader social implications. Because such crimes have rarely been prosecuted historically, and because existing criminal bans have not been challenged in the past, the courts are now left to interpret long-standing but seldom enforced legislation which reflects legislative and moral assumptions that may no longer be in keeping with contemporary social developments. Thus, today, acts of assisted suicide find themselves at a strategic junction, where Law and moralities collide. In view of their crucial position, a discussion of the relationship that such acts – and suicides more generally – entertain with morality is called for.

SOCIOLOGICAL INQUIRIES INTO SUICIDE

The most classic sociological work on suicide is indubitably that of Émile Durkheim (1897/1930). Still, today, this work remains a central and inescapable reference point for a sociology of suicide, and also for a sociology of morality. Although suicide has been studied within sociological frameworks by a few other authors (e.g. Bayet, 1922/1975; Maris, 1969; Giddens, 1971), Durkheim's seminal work gave a meticulous explanation of suicidal behaviours – although theoretically and methodologically limited – as significant social indicators of the development of individualism. Durkheim's objective was essentially to identify and understand attitudes toward individualism through an analysis of suicide statistics and, more particularly, to provide evidence of an underlying uneasiness toward the repressive exteriority of existing social and moral norms (see Rafie, 1981).

At the turn of the 20th century, when Durkheim wrote on this matter, suicide was being decriminalized in most western countries[1] as a new biopsychological explicatory model of suicide was gradually taking precedence over the long-standing legal interpretation of suicides as sins against God and the Crown. One jurist of that era expressed clearly this bifurcation from a legalistic explanation of suicide to a biopsychological one:

> [. . .] one who attempts suicide should be classed not as a criminal but as an unfortunate person amenable to temporary deprivation of liberty, that he or she should be made subject to restraint as a mentally ill person at the discretion of the magistrate, not exceeding a brief, definite period of time. (Larremore, 1904, quoted in Cohen, 1988: 187)

In essence, suicide was more and more perceived as a form of insanity resulting from physiological and somatic processes said to be triggered by the *moral weaknesses* of an individual (e.g. excessive behaviours, weakness of character, incorrigibility). The emergence of such an interpretation of suicide in terms of a 'deficiency' in one's personal morals can be conceived in the midst of the major social transformations of the period. Although the medical profession had been developing this new causal scheme of suicide since the 18th century, it really only took on a significant meaning in the second half of the 19th century, in the wake of the Victorian project to purge the moral fabric of society. In that context, suicide gradually became a different form of deviancy moving from a criminally deviant act to a morally deviant one.

In the midst of this new moral interpretation of suicide, the innovation of Durkheim's argument resided in his demonstration of the social, rather than moral, determination of suicidal actions. For him, suicides were very social acts whose forms and prevalence could be investigated as indications of the state of cohesiveness of the *conscience collective*, i.e. of the social morality of the time. For Durkheim, a strong conscience collective is one whose moral authority is acceptable to all, particularly when this authority is seen as relevant to individuals' 'real, material situation' (Taylor et al., 1973: 75).

However, the moral authority of the *conscience collective* may have little or no authority at all if it is not perceived to be meaningful to individuals caught in unprecedented, unaccustomed, and quickly altering social positions. According to Durkheim, the potentiality of suicide is more closely linked to such social factors than it is linked to an individual's organic or psychological pathologies, although he does not deny that, at a personal level, some individuals may have such ailments (*Le suicide*, 1897/1930: 81). He observed that a certain quantity of suicides may be considered 'normal' in society because unanimity toward the entirety of collective sentiments is impossible to achieve since physical environments, heredity and social influences vary from one individual to another, thus resulting in diversified consciences (*Les règles de la méthode sociologique*, 1894/1973: 162). Yet, if statistical counts of suicides reach or exceed certain thresholds, then suicides could be envisaged as socially pathological, as resulting from either egoism ('cult of the individual') or anomie (a lack of social regulation by the *conscience collective* or a lack of control over the unlimited appetites of individual consciences). Interestingly, Durkheim's reflection on suicide shows the fundamental harmony between the *conscience collective* and criminal law, as the turn-of-the-20th-century European *Intelligentsia* believed. It may be argued, however, that should one single form of suicide become more and more prevalent in a given society, it is unlikely that this phenomenon could be considered a 'pathological' social fact. Rather, it may be better conceived in terms of a transformation of the *conscience collective*.

Undoubtedly, one of Durhkeim's major contributions is that of having demonstrated that acts apparently as individual and personal as suicides can be conceived of as social facts, and be studied by sociology without any concession to the discipline of psychology. Apart from Durkheim's analysis of suicide, though, the sociological tradition has established very few analytical benchmarks in this domain. Therefore, any contemporary sociological analysis of suicide leaves one with the obligation to dismantle the somewhat individualist frame within which this phenomenon has historically been explicated. This is precisely where lies, in part, the strategic importance of the subject matter of this article. It resides in the displacement of the object of inquiry which ultimately leads to a reversal in the manner in which to treat suicide from a sociological point of view: from an explanation of suicidal behaviours to an explanation of the moral struggles around suicide that take place through criminal law.

When Durkheim set out to explain suicides in society, he hinted at an integrated framework for the joint analysis of morality and suicide, particularly the aspects of innovation and resistance. Following his arguments in this regard, and incorporating his earlier discussion on crime (*Les règles* . . . , 1894/1973: 158–68), we can begin to see how some of these ideas join together and become relevant to my argument. One of Durkheim's convictions was that crimes are regular and normal social facts in society. Along the same lines, he went as far as to suggest that crimes are useful and even necessary to social functioning (1894/1973: 160). In particular, Durkheim's idea that crime is

inextricably bound with morality – and that criminal law is the guardian of collective moral sentiments (p. 160) – is particularly central to the development of my argument about assisted suicide. To expose this argument in a clear fashion, I will turn to Taylor et al.'s (1973: 84–90) typology of the deviant believed to be present between the lines in Durkheim's writings.

According to these authors, Durkheim discussed crime in relation to three different types of criminals. The first type is the 'biopsychological misfit' who commits a crime as a result of either situational, genetic or hereditary factors (Taylor et al., 1973: 84). His or her act is regarded as deviant by a largely integrated and accepted *conscience collective* in a society characterized by a normal division of labour (Durkheim, 1894/1973: 162–3). The second type of criminal is the 'skewed' or dysfunctional criminal (Taylor et al., 1973: 85). This form of deviance is believed to stem from an individual's inappropriate socialization resulting from a 'pathological' division of labour in which individual desires are pursued unrestrictedly (Taylor et al., 1973: 87), or in which the *conscience collective* (Durkheim, *De la division du travail social*, 1893/1973) or the unlimited appetites of individual consciences are insufficiently regulated (*Le suicide*, 1897/1930).

Finally, the third type of criminal said to underlie Durkheim's conception of crime is that of the 'functional rebel' (Taylor et al., 1973: 84). Unlike the skewed criminal who is conceived as an inappropriately socialized individual, the functional rebel is rather seen as a 'normal' person reacting to a pathological society, rebelling against the existing and inapt division of labour, or against the inadequacy of the moral norms of the time. The functional rebel, then, acts out the ' "true" collective conscience as it is in the process of emerging' (Taylor et al., 1973: 84). His or her rebellion is functional to the extent that it brings to light and challenges the anachronistic state of the *conscience collective*, that is the lack of correspondence of the existing traditions and social/moral order with the 'reality' (conditions of existence) of one's society. Hence, crimes can become a form of 'resistance [that] may be justified when an individual comprehends the reality of his society better than most of its other members' (Richter, 1960/1964: 183). In such cases – and since criminal law is believed to protect collective moral sentiments – the criminal act may become a forerunner of a morality to come.

This is not to say, however, that criminal acts are always evidence of shifting moralities, although they are clearly evidence of individuals disagreeing with the existing social or moral arrangements. The 'moral functionality' of crimes (in the Durkheimian sense) is largely dependent on the sociopolitical context in which they occur, and on changes in the intensity of the social reaction which they incur in a given historical period. Certainly, the criminalization or decriminalization of conducts may be tributary to shifting moral values. It may also be a more direct result of the monetary interests, media coverage or political pressures of the time. Similarly to the creation or abrogation of crimes, the commission of crimes does not necessarily indicate changes in moralities either. It seems arduous to convincingly argue that the simple commission of aggravated assaults or bank robberies is evidence that

the moral assessment of these conducts is changing. However, the context within which certain crimes have recently been committed, such as assisted suicide or the public sale of marijuana to chronically or terminally ill individuals in Canada (to relieve their unremitting pain or help them bear the side effects of certain medication), lends itself better to such a suggestion that moralities may be shifting. The mixed reactions that such crimes have recently received in the public opinion as well as within the Canadian criminal justice apparatus suggest, indeed, that these 'crimes' may foresee social or moral changes in one's society and be a prelude to social or moral changes that may be becoming more and more necessary. Since the functional rebellion implies a critique of existing social arrangements, it directly prepares social changes and contributes to influence the shape they will take.

To illustrate the functionality of this particular type of criminal, Durkheim invokes the example of 'heretics' who were severely condemned throughout the Middle Ages, but who actually became precursors to the freedom of religion or philosophy that is enjoyed today in many contemporary nation states. He expands also on the example of Socrates whose crime provoked a social reaction because his behaviour – publicly voicing opinions opposite to those of his government – did not correspond to the values and beliefs of his time. Eventually, his crime proved useful to his society and to humanity by preparing the way for a new faith and morals; it proved to be a 'precursor of a morality in the making' (Durkheim, 1894/1973: 164). According to Durkheim, the freedom of thought that we enjoy today would not have been proclaimed if the rules that once proscribed it had not been violated at different moments throughout history, before being officially abrogated. As Durkheim reckons, 'Socrates expressed more clearly than his judges the morality suited to his time' (1894/1973: 164).

The 'functional rebel' is especially central to my argument. I argue that recent 'crimes' related to euthanasia or assisted suicide may be thought of, and investigated as, forerunners of significant changes in dominant moral norms. My contention is that there are good reasons to assume that, through the current judicial and legal debate surrounding the issue of assisted suicide, moralities are in the process of changing. Specifically, I will show how one judicial case brought to the fore the possibility that current social conditions, which made this 'crime' possible, may no longer be in harmony with conventional moralities in Canada. This one pivotal assisted suicide case in Canada is that of Sue Rodriguez.[2] Several reasons motivated the study of this case. First, the event was brought before the Canadian courts in a media frenzy that contributed to launching a public debate on assisted suicide in Canada. Second, this case challenged the criminal prohibition on assisted suicide for the very first time since its criminalization in 1878. Therefore, it was the first socially, politically and judicially organized expression of a disagreement with the long-standing and largely undisputed 'criminal' character of assisted suicide. Consequently, the *Rodriguez* case became the first social space where, in relation to assisted suicide, the intersection between morality and criminal law was put to a test. Although the *Rodriguez* case may

not be seen as the launching element, it nonetheless became a major turning point in a transformation of moralities. The case study was the preferred method of inquiry because, although every research project starts with a minimal theoretical construction of its object, the case study usually privileges a rather inductive theoretical process. In such cases, the intellectual process favours the construction of theoretical frameworks rather than the validation of existing theories. Hence, it usually organizes itself around general research questions as a starting point rather than around focused hypotheses.

The data collected comprised the totality of the documents submitted to the Supreme Court of Canada in this case. A reconstruction of the case files of the lower judicial instances (namely the Supreme Court of British Columbia as well as its Court of Appeal) was also completed in order to adequately grasp the overall complexity of the case. The amount of documentary material gathered approximated 2000 pages. An extensive thematic content analysis brought to light the underlying components of the *Rodriguez* case, mainly the intent of the different actors, the various interpretations of the event, the stakes of the case, the discussion, the search for a solution, and the implications of the solution itself. The following section relates the most enlightening conclusions of this analysis pertaining to the relationship between morality and criminal law.

THE AUGURAL ROLE OF THE *RODRIGUEZ* CASE IN THE SUPREME COURT OF CANADA

Sue Rodriguez was a 42-year-old British Columbian woman who suffered from amyotrophic lateral sclerosis, commonly known as Lou Gehrig's disease. In 1992, she was terminally ill and her condition was rapidly deteriorating. She had difficulty swallowing food and suffered from episodic choking. She needed help with her personal hygiene and knew that she would be eventually incapable of swallowing, speaking, walking and turning over in her bed without assistance. In the near future, she would require the permanent help of a respirator, and would need to be fed by gastrostomy. She was mentally cognizant of her condition, the progression of the disease and its tragic and inevitable outcome.

Aware that her life was gradually coming to an end, Sue Rodriguez wished to control the moment and the manner in which she would die. However, she feared that when the time came it would be physically impossible for her to commit suicide without assistance.[3] Facing a *Criminal code* prohibition against anyone helping another person to commit suicide (s. 241(b)), Sue Rodriguez asked the Supreme Court of British Columbia (provincial court) for a court order enabling a qualified physician to prepare the technological means by which, at the moment of her choice and on her own volition, she could put an end to her suffering. Her formal request to the courts, as observable in her discourse, was essentially personal and concerned her own situation only.

Following the provincial court's refusal to grant her request, Mrs Rodriguez appealed the decision to the Court of Appeal and was subsequently granted a hearing by the Supreme Court of Canada. Although the Supreme Court of Canada denied her request for medical assistance, Sue Rodriguez did ultimately commit suicide in February 1994 with the help of an anonymous physician. In doing so, she and the medical doctor knowingly went against a criminal prohibition to that effect. Criminal charges were never laid against the assisting physician.

In light of the above circumstances, Sue Rodriguez' suicide may be regarded as a 20th-century version of Socrates' crime. Durkheim contended that Socrates' crime, as a 'precursor of a morality in the making' is not an isolated case in history. Crimes that have such an effect on a society's moralities reappear periodically throughout history, especially in times when collective sentiments are in a state of malleability, when the intensity of sentiments decreases. Such malleability is often conducive to the transformation of these sentiments into new forms (Durkheim, 1894/1973: 164). Of course, when Durkheim came to this conclusion about Socrates' crime, he benefited from the necessary historical distance which allowed him to document a cultural transformation in the social perception of moral values as they were exemplified in Socrates' public demeanour and opinions. With Sue Rodriguez' crime, however, one does not benefit from a long historical distance essential to a strong empirical documentation of similar transformations in moral values. Nonetheless, I will attempt to demonstrate that there are convincing reasons to believe that the Supreme Court decision in the *Rodriguez* case – as well as the government's notable non-intervention in the prosecution of the assisted suicide that followed – were major stepping stones, and that they have played a precursory role to ulterior public expressions of changes in moralities in Canada.

In the *Rodriguez* case, a multitude of social actors were involved. In addition to the main players – Sue Rodriguez and the prosecution – several community groups chose to intervene in a court setting on this particular issue of assisted suicide. In a judicial system based on an accusatory and confrontational procedure, actors usually find themselves in one of two opposing camps. In the *Rodriguez* case, these adverse camps comprised, on the one side, actors who supported Sue Rodriguez' motion to decriminalize assisted suicide and, on the other side, those who opposed it. The group of supporters included two advocacy organizations for disabled people (the Coalition of Provincial Organizations for the Handicapped [COPOH] and the British Columbia Coalition of People with Disabilities) as well as two community groups concerned with right to die issues (Dying with Dignity: A Canadian Society concerned with the Quality of Dying and the Right to Die Society of Canada).

Apart from minor variations in their individual positions, the two advocacy groups for people with disabilities argued that the criminal nature of assisted suicide was discriminatory for it suppressed the otherwise legal option of suicide for persons with severe physical handicaps who, if they so

chose, would be unable to commit suicide without someone's assistance. These two groups sought to advance the promotion and recognition of the notion of 'full participation and equality of opportunities' for all disabled persons in society in general, and in law in particular. The two groups concerned with right to die issues also argued for the legal recognition of certain rights, but in this case the rights promoted were unprecedented. They centred mainly on the right to decide the moment and the manner in which to die, either for all individuals (e.g. Society for the Right to Die of Canada) or exclusively for terminally ill patients (e.g. Dying with Dignity). Interestingly, the two latter interest groups have emerged relatively recently in Canadian society, respectively in 1980 and 1991. In view of their advocacy of personal choices in one's quality of dying, the social emergence of both groups is indicative of a shift in social perceptions of death, especially of the control of death. In and of itself, the ascent of such interest groups reveals different foyers of moral experience, and the changing shape of coexisting moralities.

Although the demands and expectations of all four groups necessarily vary – as they are intricately linked to the specific concerns of their members – a common thread may be found. In relation to assisted suicide, they question the traditional involvement of criminal law as the predominant strategy for the social control of these sorts of actions. Their questioning goes as far as to request a disengagement on the part of criminal law by promoting either the decriminalization of assisted suicide (i.e. its simple abrogation from the criminal code) or its legalization through the implementation of a procedure to overview future requests for assisted suicide. In this regard, specifically, the groups differ in the type of procedure they seek to implement. One group proposes its own expertise in assisted suicide as well as its own internal criteria for assistance to be recognized as the national standard for all requests for assisted suicide.[4] Another group suggests that assisted suicide should be the sole prerogative of the medical profession,[5] while the two others seek the implementation in law – but outside criminal law specifically – of procedural guidelines and safeguards, a sort of legal-administrative process, a decisional and surveillance state mechanism over assisted suicide.[6]

Common to all, however, is the fact that every actor's discourse is essentially articulated in terms of value scale. They question the restrictive character of the values traditionally protected in criminal law, and plead for the legal recognition of new values in keeping with the realities of contemporary times. Specifically, they argue for a broadening of the concepts of quality of life and human dignity to include the ability to live one's last living moments according to one's will. These social demands are embedded, more generally, in issues of social justice, equality and a societal accommodation of a variety of beliefs.

Five different community groups opposed Sue Rodriguez' motion to decriminalize assisted suicide. They chose different strategic arguments to promote their views on assisted suicide as well as on the role of criminal law in its social regulation. These groups are People for Equal Participation (PEP) (an advocacy organization for disabled persons), Pro-Life, Pacific Physicians

for Life Society (a professional association of physicians), the Conference of Catholic Bishops of Canada and the Evangelical Fellowship of Canada (a national association of Protestant faiths).

PEP is the only community group whose main argument relates to severely disabled persons as being among society's most 'vulnerable individuals' in need of legal protection against assisted suicide. In the *Rodriguez* case, vulnerable individuals are understood by all to mean 'those persons who would be susceptible to being persuaded and assisted to commit suicide because of some particular aspect of their life experience, personality, emotional make-up [. . .] that would predispose a person towards suicide'.[7] Every other group predominantly embeds its discursive strategy in the idea that the sanctity of life has historically been, and is still today, a fundamental human and legal value sufficiently important to justify state intrusion into one's personal autonomy.[8] Secondary arguments promote other related values such as the protection of human life,[9] the promotion of a life ethics, and the supremacy of God, the last two values being defended by the Conference of Catholic Bishops of Canada and the Evangelical Fellowship of Canada. Thus, similarly to the proponents of assisted suicide, its opponents also articulate their respective position in terms of value scale. Contrary to the former, however, the majority of the latter structure their discourse within a more traditional value framework, arguing for the maintenance of the blanket protection that criminal law has offered for over 100 years. Hence, they do not question the traditional role that criminal law has played in the regulation of assisted suicide. Rather they ratify this role.

THE SMALL MAJORITY OF THE *RODRIGUEZ* DECISION: TOWARD NEW MORALITIES?

All nine judges sitting on the case agreed that Sue Rodriguez had a constitutional right to self-determination as well as the right to terminate her life. Yet, only four of them (the minority decision) believed that the Canadian Charter of Rights and Freedoms could help her in exercising these rights. The division within the decision is therefore great. On one side, the majority decision (five judges) reiterates the legislative status quo, and on the other side, four dissenting opinions argue in favour of decriminalizing assisted suicide. One of the more interesting aspects of the *Rodriguez* decision is, undoubtedly, the competing moral frameworks promoted as the basis of a socially adequate regulation of assisted suicide in contemporary times. The first moral framework endorses the paramountcy of the quantitative value of human life while the second promotes its qualitative value.

The first framework underlies the entire majority decision. Here, judges choose to reiterate the legal protection of human life as well as the protection of vulnerable individuals. Not only are they supporting the continuing legal protection of already existing legal categories – in this case human life and vulnerable persons – but they also restate the strict and narrow historical

interpretation of those categories. Essentially, their discourse centres on the protection of the quantitative value of human life (i.e. to live as long as God intended it) by invoking universal or transcendent moral references.

Indeed, founded on the principle of the sanctity of life, as well as on the prevention of potential abuse against individuals considered to be vulnerable, this ratification of the traditionally predominant value of these legal categories is best ensured, according to the majority, by maintaining the blanket prohibition against assisted suicide.[10] In this regard, criminal law appears to be fundamentally perceived by the majority as a tool for moral reinforcement and general deterrence. To a large extent, this conception corresponds to the conventional modern criminal rationality. But in the *Rodriguez* case this traditional conception is confronted with a novel interpretation of moral references, and of the role of criminal law in the regulation of moralities.

In the dissenting judges' opinions, law should not only be called upon to protect traditional legal and moral categories but, more importantly, it should play a role in the regulation of newer social and moral references, namely self-determination and the right to die in a manner of one's own choosing. Unlike the majority decision that supports the quantitative value of life, the dissenting judges essentially support its more qualitative value:

> The life of an individual must include dying. Dying is the final act in the drama of life. If, as we believe, dying is an integral part of living, then as a part of life it is entitled to [a] constitutional protection [. . .]. It follows that the right to die with dignity should be as well protected as is any other aspect of the right to life. State prohibitions that would force a dreadful, painful death on a rational but incapacitated terminally ill patient are an affront to human dignity.[11]

The minority judges believe that keeping assisted suicide a crime is an inappropriate solution to the societal dilemmas posed by the current biomedical and legal contexts (i.e. the advent of the Canadian Charter of Rights and Freedoms). Therefore, the criminal prohibition should be invalidated either because it is found to have a discriminatory effect on disabled individuals,[12] or because it restricts more than reasonably acceptable the individual right to make decisions about oneself.[13] Since they choose to abrogate section 241(b) of the *Criminal Code*, and not to replace it with another more adequate criminal norm, it is clear that, in their view, self-determination and the right to die would not be best protected by a prohibition of a criminal nature. However, according to Chief Justice Lamer, '[t]o create a right without a remedy is antithetical to one of the purposes of the *Charter*',[14] and the legal apparatus still remains best suited to offer procedural safeguards specifically designed to contain and regulate the risks of abuse that such a right could foster. What Lamer and the other dissenting judges have in mind is for such safeguards to guarantee individual consent as well as the respect of a person's choice in manner of dying.

In actuality, they are proposing a formalization in law – but not within criminal law – of guidelines for the evaluation of future requests for assisted

suicide. Such guidelines comprise, for example, a formal application to a superior court, the medical/psychiatric certification of the mental competency of the applicant, the applicant's inability to commit suicide unassisted as well as the free and voluntary character of his or her decision, the presence of a regional coroner at the time of the suicide, and a 31-day expiry limit[15] for such a constitutional exemption if granted by the superior court. Last, the act causing death must be that of the applicant him or herself and of no one else.

The drawing up of such guidelines, and especially their insertion in a new and relatively narrow legislative scheme, suggests that the dissenting judges support the implementation of a normalized juridical process as an adequate mode of social regulation for assisted suicide. Thus, the dissenting judges essentially view Law in a rather new light in this case. Far from narrowly considering the role of criminal law in its modern precepts of deterrence or retribution, they envisage it as a potential administrative mechanism to overview the application of safeguards against the potential abuse feared by several social groups. In other words, they primarily found their opinions on a broader logic of social prevention (of abuses) rather than on a narrower logic of retribution or deterrence (of a crime).

In sum, the narrow majority of the *Rodriguez* decision reveals a strong internal opposition among judges that stems from fundamentally different views of the morals deemed appropriate in the social realities of today, and of the feasible relationship between these morals and criminal law. However, it appears clear that at the heart and on both sides of this judicial debate, groups with conflicting interests have made attempts at the hegemonization of an ethical or moral discourse.

In a reflection essentially based on judicial cases, one must systematically keep in mind that such cases constitute a particular juridical *mise en forme* of a situation. The term '*mise en forme*' was coined by Acosta (1987) and refers to the constitution in the judiciary of a 'criminal' object for its treatment by the judicial apparatus. In the judicial intervention, the 'criminal' object is constructed through a series of operations aimed at truncating the circumstances surrounding an act, and reconstructing them according to a particular definitional framework. In criminal cases, this definitional framework is that which is offered by the modern criminal rationality. Similarly, the juridical *mise en forme* of the *Rodriguez* 'case' involved a truncation and reconstruction, by various actors, of the original social 'path' within which Sue Rodriguez' request emerged. This *mise en forme* conditioned the general terms of the debate, the demands and the expectations of the actors. It involved making strategic and advantageous choices on their part in terms of selecting arguments most likely to succeed in securing their interests in the court, and ultimately in Law. Thus, one must not take such arguments at face value, as necessarily corresponding precisely to the perception of each actor or group of actors. They may, at times, use arguments to which they do not adhere completely.

The judicial *mise en forme* that operated in the *Rodriguez* case led actors

to formulate their expectations in relation to the role that criminal law ought to play in assisted suicide. On one side, proponents to the decriminalization of assisted suicide (including judges) had expectations of disengagement on the part of criminal law, while opponents (also including judges) had expectations of preservation of criminal law's historical proscriptive role. The ratification of Law's traditional prohibition of assisted suicide may appear as the logical choice for one who perceives Law as the embodiment of moral rules and perceives their temporal stability to depend largely on the continuity of Law, i.e. its continued preparedness to impose sanctions in case of violation. Arguments brought forth against the decriminalization of assisted suicide suggest that opponents may, in fact, lean in that particular direction. Arguably, such arguments are founded on the opponents' belief in the normative behavioural expectations that Law is said to create, coordinate and generalize.

According to Luhmann (1972/1985), every society develops expectations in relation to the possible directions of behaviours. With time, these expectations become structurally established, for example through events (e.g. sports in the Olympics), concepts (e.g. the Canadian 'multiculturalism' as a figure of social stratification), symbols (e.g. the flag for national unity), values (e.g. the family as their core foundation) and norms (e.g. social etiquette, criminal laws as their main reference point). When violations or 'non-fulfilment' (1972/1985: 24) of these behavioural expectations occur, they engender uncertainty and 'disappointment' which must be contained through relatively 'disappointment-free stabilised expectancy structures' (p. 26). In other words, when someone acts unexpectedly – the way Sue Rodriguez did – his or her actions represent a disavowing of existing behavioural expectations, pertaining to life and death for example. In turn, this may produce a more or less general insecurity within a given society. To forestall potential rejections of expectations and prevent uncertainty, existing expectations must be embedded in stable social structures.

Luhmann contends that Law is precisely one such expectancy structure, and that its function is to generalize what one person expects of another, as well as the judgment of what one's own behaviour means to strangers. With its limiting characteristics, Law is seen as indicating the normatively accepted possibilities for future actions. However, when disappointments of expectations occur, Luhmann argues that two options are available to socially manage such disappointments. The first is to alter the disappointed expectation and to adapt it to social reality (e.g. the depsychiatrization of homosexuality). The second option is to maintain the original expectation and to 'carry on living in protest against' (1972/1985: 32) the social reality (e.g. the non-recognition in Canada of gay couples' right to adopt children). In Law, the anticipated handling of disappointments is the latter. Normative expectations are usually not rejected when someone acts against them. In fact, the discrepancy between the expectation and an act deemed to go against it is usually held against the actor. Nonetheless, the expectation will suffer in its social and moral legitimacy, thus symbolic processes of presentation of the

expectation (e.g. the symbol of the 'ought' or of the 'shall') will likely be invoked or used to ensure the quality (or relevance) of the expectation will not be brought into question, and thus will remain normed and expectable.

The opponents' discursive choices bring to light the perceived threat to an expectation's continuity. Here, Sue Rodriguez' request brings into focus the wide range of possibilities to act differently, it discredits the moral and legal history of experiences of assisted suicide, and threatens the stability-producing effect of the existing normative expectation (to the effect that individuals shall not wish to die prematurely). If, as implicitly argued by the opponents, the uncertainty that results from Sue Rodriguez' demands cannot be resolved by balancing the damages or benefits specific to this individual case (e.g. by granting her a constitutional exemption), then the problem needs another type of resolution. Their positions, though variable, suggest that the disappointed expectation needs to be reconstructed at a general level – hence in Law – by symbolic processes through which the expectation, and the treatment of the disappointing individual (i.e. Sue Rodriguez), will be presented in a particular manner to ensure the expectation's continuity. To this effect, opponents will put forth arguments embedded in superlative and metasocial moral references.

In sum, opponents to the decriminalization of assisted suicide believe in the expectations created by the normative apparatus of law in relation to assisted suicide. Traditional forces, as represented in the majority decision, chose to ignore the novelty of assisted suicide as a contemporary social problem posed by the recent progress of medicine. On the other hand, the proponents of assisted suicide rather opt for the adaptation of the disappointed expectation to the social reality brought to light in the *Rodriguez* case. Thus, they question the traditional role of Law as the keeper of the continuity of expectations. Conversely, the fact that the majority decision reiterates the criminal character of assisted suicide, and essentially bases its argumentative framework on universal and transcendent values, such as the sanctity of life, shows that criminal law resists these changes in moralities. It allows us to see the disjunction between morality and law.

CONCLUSION: TOWARD A SOCIOLOGY OF THE MORALITY OF LAW

The simple act of involving the judicial in orienting the social regulation of assisted suicide ultimately means that the regulation that will result from the courts' involvement – and its particular judicial *mise en forme* of the case – will be a materialization of a very particular doctrinal and social influence. This happened in the *Rodriguez* case where, due to a lack of updated 'normative knowledge' (Caillé, 1991) on assisted suicide, the Supreme Court of Canada embedded its decision in a pre-existing conceptual framework – that of deterrence. Retribution, the second rationale of the modern criminal rationality, was not considered an option at the time since no crime had been

committed (yet) at the time the Supreme Court of Canada heard the case. In short, the court's engagement determines the doctrinal orientation that will prevail with regard to the definition and regulation of assisted suicide in the near future in Canada.

As was made clear in this article, the judicialization of euthanasia and assisted suicide opens the door to a legal technicization of questions of justice fundamentally social in nature. All the while, it closes the door to individuals' social and collective responsibility to search for mutually acceptable solutions to problems that divide them. In fact, the *Rodriguez* case, and other euthanasia or assisted suicide cases that followed in Canada, bring to light the emergence of a representation of society as a conflicting and fortuitous meeting of right-bearing individuals or groups incapable of positioning themselves on the horizon of a collective belonging. In such a context, law is often mobilized in an opportunist and instrumental manner.

Beyond the individuality of the *Rodriguez* case and the community groups' claims, however, the 'true' upset suffered by normative expectations is usually most apparent in the vigour of the reaction (Luhmann, 1972/1985: 41). The more vigorous the reaction, the more shock the normative expectations are said to have suffered. Two reactions ensued from the *Rodriguez* case, and both are indicative of a less than vigorous reaction, thus of a possible shift in expectations. The first reaction is observable in the large dissenting decision in the Supreme Court of Canada. Given that four out of nine judges argue in favour of the decriminalization of medically assisted suicide, the dissenting opinions may be said to be the sign of a change in moralities. By arguing for a legal recognition of new values, and for a disengagement of criminal law in their regulation, the dissenting voices are clearly a sort of ethical thrust of the contemporary era.

The second significant reaction took place after Sue Rodriguez committed suicide with the assistance of an anonymous physician, thus directly defying the Supreme Court's decision. This 'crime' was never 'punished' by the Canadian government nor were criminal prosecutions ever undertaken toward either the physician or close friends or members of the Rodriguez family, several of whom were allegedly cognizant of Sue Rodriguez' intention to go ahead with her assisted suicide. The lack of repression on the part of criminal law in this case links itself well with the rather Kafkaesque circumstances described in Gabriel García Márquez' 1981 novel entitled *Chronicle of a Death Foretold*. This story is a prime example of a situation where the expectations of a society (a village in this particular case) are such that although everyone is aware a crime will be committed (the murder of Santiago Nasar by the Vicario brothers) there is ultimately total inaction on everyone's part in order to prevent it. Here, the contradictory sentiments of a population toward Nasar are partly responsible for this absence of reaction. In the *Rodriguez* case, similar contradictory sentiments toward assisted suicide in the Canadian society – especially in Sue Rodriguez' life circumstances – may have forced criminal law to remain silent. Sensitive to shifts in public opinion, to the political mood of the moment and to predominant values, criminal

courts may have felt compelled to answer such expectations and to forego repression in this case. The notable non-intervention of criminal law in such a predictable and highly mediatized crime as was Sue Rodriguez' assisted suicide, may very well be indicative of a shift not only in moralities but also in the traditional social judgment of the relevance of criminal law in assisted suicide matters.

However, for the most part Law is rarely an innovative enterprise in itself as the current situation in Canada has revealed. Apart from the notable exceptions of Germany, the Netherlands, Japan, Switzerland, Columbia and the state of Oregon in the USA, where physician-assisted suicide is legally allowed for restricted categories of patients and under rigorous guidelines (Scherer and Simon, 1999), Law is rarely innovative elsewhere. Rather, Law remains conservative while mostly ratifying social or moral practices that have long become widespread. In this sense, Law essentially reacts *after the fact* and rarely 'creates' new behavioural expectations. Such new expectations are more likely to stem not from Law – or from the upper echelons of political and legal authority – but from the bottom of the societal order. They are more likely to emerge from the masses, from the quotidian realities of the population. As Durkheim noted, the authority of a *conscience collective* – and I would add of the laws believed to uphold this 'collective' morality – loses much of its power of persuasion when it is no longer perceived to be in keeping with the daily realities that populations encounter. It is possible that the public support for euthanasia or assisted suicide, already acknowledged in many countries, may increase in the future as rapidly ageing populations come more frequently face to face with chronic diseases and medical technology excesses.

Social forces that support shifts in societal tolerance levels or in moralities, as well as those forces that resist such shifts, are currently engaged in legal and moral struggles in several countries around the world. Similarly to Canada, euthanasia and assisted suicide issues have been the object of much heated debate during the last two decades in the United Kingdom. Several judicial decisions have heightened the controversy when British courts reached compassionate albeit contentious decisions by granting removal of life-support equipment for patients in vegetative states[16] (Brahams, 1995: 368; Wall, 1995: 368) or by either acquitting alleged offenders or sentencing them to relatively light sentences for acts that the courts perceived as mercy killings.[17] Such judicial controversy coupled with an increasing public support for euthanasia or physician-assisted suicide has prompted several social groups to publicly and fervently voice their opposition to the legalization of euthanasia.[18] Thus, similarly to Canada, recent developments in the British public debate around these issues point to possible shifts in moralities and in social judgments regarding the relevance of the traditional legal boundaries established in a bygone sociolegal era for the regulation of euthanasia and physician-assisted suicide.

Such shifts take place elsewhere, in several middle eastern and eastern countries for example. In 1994 Israel abrogated criminal liability for medical

acts performed with a patient's lawfully provided consent, and recent public attitude surveys in China report more than 70 percent approval rates in support of euthanasia (Scherer and Simon, 1999: 99, 83). China is currently exploring end-of-life processes as part of its population control measures. Although it might be premature at this point to generalize about the incidence of the changes taking place, there is nonetheless considerable evidence suggesting that a certain stir is occurring in long-standing schemas of thought in many countries around the globe. A rethinking of moral frameworks by political, medical and legal authorities then becomes an increasingly pressing issue.

NOTES

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1. In Prussia, France and Germany, suicide was decriminalized in 1751, 1790 and 1796 respectively. In the 19th century, Bavaria (1813), Austria (1850), England (1873) and Russia (1903) followed suit (Marra & Orrù, 1991; Minois, 1995). Similarly, Canada decriminalized suicide in 1878 (Martel, 1998). In the same legislative amendment process whereby suicide was decriminalized in Canada, assisted suicide and attempted suicide were criminalized for the first time.
2. *Rodriguez* v *B.C. (Attorney General) and Attorney General of Canada* [1993] 3 S.C.R., 519.
3. Ibid., Appellant's Factum, pp. 1–2, Appeals Proceedings, pp. 8–13.
4. Ibid., Affidavit of John Hofsess for the Right to Die Society of Canada, para. 16.
5. Ibid., Factum of the intervenor Dying with Dignity, pp. 25 and 47 (appendix).
6. Ibid., Factums of Sue Rodriguez, p. 37 and oral testimony, p. 60; COPOH, pp. 15–17 and oral testimony, p. 102; *B.C. Coalition of People with Disabilities*, p. 19.
7. *Rodriguez* v *B.C. (A.G.)*, . . . Factum of the respondent, the Attorney General of British Columbia, p. 22; Factum of the intervenor PEP, pp. 1, 3 and 9.
8. Ibid., Factums of the intervenor Pro-Life/Pacific Physicians for Life Society, p. 3; Conference of Catholic Bishops of Canada/Evangelical Fellowship of Canada, p. 6 and oral testimony, pp. 180–8.
9. Pro-Life and Pacific Physicians for Life Society.
10. Ibid. Reasons of Justice Sopinka for the majority, p. 608.
11. Ibid. Reasons of Justice Cory, p. 630.
12. Ibid. Reasons of Chief Justice Lamer, p. 557.
13. Ibid. Reasons of Justice McLaghlin, p. 621 and reasons of Justice Cory, pp. 632–3.
14. Ibid. Reasons of Chief Justice Lamer, p. 571.
15. Justice McEachern believed that in order to guarantee that Sue Rodriguez would not change her mind about committing suicide after the psychiatric evaluation (to be done 24 hours before the installation of the technological means permitting her to commit suicide), no one was to offer her any assistance to commit suicide after the expiration of 31 days from the date the psychiatric

certificate was delivered. After this period, all arrangements were to be interrupted. *Rodriguez* v *B.C. (A.G.) and A.G. of Canada* [1993] 76 B.C.L.R. (2d) 145.

16. One of the most controversial court cases in this regard is the *Bland* decision in which the House of Lords granted a medical facility permission to remove the feeding tube from Anthony Bland, a young patient who had been in a vegetative state for three years (*Airedale NHS Trust* v *Bland* [1993] Fam. 473; [1993] 1 All E.R. 821 (H.L.)).
17. In the midst of immense public support, Dr Nigel Cox received a suspended sentence in 1992 after a guilty verdict for the attempted murder of one of his patients (McCall-Smith, 1999: 199). Paul Brady was found guilty in 1996 in Scotland of the mercy killing of his terminally ill brother and received no jail term (McCall-Smith, 1999: 198). In 1997, David Hainsworth received a two-year probation term for the attempted murder of his cancer-stricken 82-year-old father in Scotland (Scherer and Simon, 1999: 65). Dr David Moor, a Northumberland general practitioner was recently acquitted by a jury for the death of a cancer-stricken 85-year-old patient in 1998 (McCall-Smith, 1999: 199).
18. In its 1994 report, the House of Lords' Select Committee on Medical Ethics unanimously opposed any changes in the existing laws pertaining to intentional killing (e.g. murder and assisted suicide) (*Report of the House of Lords Select Committee on Medical Ethics* (1993–4)). British legal academics like John Keown (e.g. 1997, 1995) and John Finnis (e.g. 1995, 1998) have been vocal opponents to euthanasia and have played an instrumental role in the drafting of the recent Medical Treatment (Prevention of Euthanasia) Bill (2000), designed to prevent passive euthanasia in medical settings (Omer, 2000: 78).

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