

Homily - Our Lady of Kapiti Parish

26th Sunday in Ordinary time - Year A - 27/09/2020

In today's 2nd Reading from the letter to the Philippian Community, St Paul writes of encouraging each other in Christ and appeals to the values of caring, compassion and mercy. As we have just heard:

“Don't be jealous or proud but be humble and consider others more important than yourselves. Care about them as much as you care about yourselves and have in you the same attitude that is in Christ Jesus.”

We are just weeks away from a General Election that, for the first time in New Zealand history, includes a binding public referendum on the End of Life Choice Act. How might we “have the same attitude that is in Christ Jesus” on this issue?

I am not here to tell you how to vote. But I am hoping to help you be better informed about the End of Life Choice Act.

Firstly, though, I want to help you think about the concepts of justice, love, compassion, mercy and caring not merely on a spiritual or emotional or philosophical plane, but in a grounded way. What do I mean by that? I mean that in discerning humbly what is just, merciful, compassionate, caring and loving, we need to think about the social and cultural context in which this Act will operate should it come into force:

That is what I have to do all the time as a bioethicist – not just think about laws, principles, virtues or values on an esoteric, philosophical or academic level, but think about them in terms of the real world context we live in: a reality that is not always black and white; a reality that is messy; a reality defined by the challenges thrown up by our own weaknesses and the weaknesses of others, including the flawed institutions that we move in and out of and that sustain us; a reality perhaps defined by our personal fears, both real and imagined, which limit our vision and, like the second of the two brothers in today's Gospel parable, can cause us to renege on our 'YES' to what is good and life-giving.

A few facts about the social and cultural context in which we currently live that I believe are relevant to the introduction of assisted death in NZ?

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- It's a context in which more than 10% and rising of our elders are experiencing abuse, including physical and emotional neglect, mostly from their own family members. This despite the tightest of laws against such abuse – WHY?
- It's a context in which more and more people, our elders in particular, are feeling socially isolated – WHY?
- It's a context in which depression is on the rise while our mental health services are under stress.
- It's a context in which people who are elderly, disabled and dependant are increasingly feeling like they are unwelcome and a burden.
- It's a context in which our health system is under increasing financial pressure to provide the care people need in a fair and equitable way.
- It's a context defined by severe institutionalised racism because Maori and Pacifica people die on average 7 years earlier than the rest of us and are 2.5 times more likely to die of diseases or illnesses than the rest of us.
- It's a context in which quality palliative care is not equally accessible?

We need to ask: What sort of social and cultural dynamic will be created were we to enact the End of Life Choice Act in this context? I'm on record many times as saying that there has never been a more dangerous time to legalise assisted death as at this particular time in our New Zealand history and I stand by that.

What does it mean to care about others as much as ourselves in this context? Will providing assisted death address any of these issues in a caring ethical way? Will it resolve the inequity issues for Maori and Pacifica or worsen them? Will it address the social isolation of our elders or will it add to a sense of abandonment? Will it resolve the issues of increasing elder abuse or mask them? Will it address the inequitable access to palliative care or compound the current shortcomings?

Will it really be “good care” to introduce assisted death in this context?

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Notice that the questions I am posing are not questions about the rightness or wrongness *per se* of assisted suicide and/or euthanasia, which, by the way, our Church teaching is pretty clear about. But you know that already.

Actually, I suggest that the question about the contextual implications – which is essentially a justice question – poses an even more important question for us as voters than whether assisted death is morally right or wrong. Of course, the question about contextual implications cannot be separated from the question of morality, because judgements about a law's ability to protect the most vulnerable is intimately connected to whether something is just, and therefore whether it is moral or not.

This is precisely what the NZ Catholic Bishops are speaking about in their recently released Election Statement where they write:

An informed decision requires consideration of the economic, social, whanaungatanga-kinship and cultural factors that limit many people's freedom to choose. Well-intended laws can have significant negative repercussions because of matters not anticipated by the law or because we don't all have access to the same choices.

In coming to an informed decision, we advocate that voters embrace a perspective that gives priority to the impact a law change will have on others: 'How will such a law affect us as a community? Who will be most negatively affected by the law in question? What are the consequences for those who are most vulnerable?'

This, I suggest, is precisely what St Paul means when he challenges each of us to have the same attitude that is in Christ Jesus.

Now, I want it noted that I am not saying that this law won't work for some – the likes of Sir Michael Cullen, for example, who has been a vocal, articulate and very public supporter of the Act. **Sir Michael is not one of the people I worry about in terms of being vulnerable when it comes to this law.** He already has choices, lots of choices.

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He is articulate and well-connected. He clearly has a good understanding of what is involved in the law. Do I have a real fear that he will be coerced? NO. And there are many others in the same position as him – able to talk about accessing the best of palliative care until they want to take control over the last few days. For Sir Michael, and others like him, legalising assisted death will provide **another choice to ADD to the many choices for healthcare he already has.**

Neither am I particularly concerned about **MYSELF** being coerced into an assisted death. I am also articulate and in a position where my saying 'NO' comes out of a place of having a family who will care for me whatever; comes from a place of knowing that I also have the choice to access quality palliative care so that I don't have to endure pain in the event I have a terminal illness.

Both Sir Michael and I, and undoubtedly many of you here, are among those people capable of dying (or not dying) in a way that the Act allows ... more than capable of making a truly free choice that is not the result of being bullied or coerced.

So, NO, we don't have to deny that the law will work for some ... **but will it work for all and, in particular, will it work for the most vulnerable?** To draw again on the words of St Paul – **it's about caring for others as much as, and not less than, we care for ourselves.**

Taking on the same attitude of Christ Jesus is not to look at the Act from the perspective of the strong and articulate – those who have power and the luxury of choices – but rather to look at it from a perspective that considers the impact on the vulnerable – those who are disempowered and on the margins and who lack basic choices including access to good healthcare.

Let me conclude by saying something about the Act itself. My experience is that most people know very little about the actual law. My fear is that many, if not most, who decide to vote YES will decide to cast their vote based on their belief that some form of assisted death is a good idea – it's all about choice, right? – without any

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reference to either the context in which we live OR the robustness of the Act itself.

But we are not voting on the idea or concept of assisted death. We are voting in this referendum on a particular law – a law that differs in critical ways from other laws overseas because it lacks many of the safeguards present in those laws; a law I regard as poorly drafted and weak.

1. There is no mandatory stand-down period in the EOLC Act as there is in other countries - Under the proposed NZ law, a person could be dead less than 4 days after diagnosis. Hawaii has a 20-day stand down.
2. Unlike overseas laws, the EOLC Act does not require independent witnesses in the decision process. WHY NOT?
3. A person does not need to be competent at the point when they make the final decision to die, unlike overseas laws. WHY NOT?
4. The NZ Medical Association and the College of GPs have noted that there are no processes for effectively detecting pressure or coercion – a doctor simply has to ‘do their best’.
5. There is no screening for depression and no requirement to assess or provide mental health support? WHY NOT?
6. There is no specific test for competency required. WHY NOT? Rather, under the Act, the starting point for a doctor is that everyone is presumed to be competent unless it is obvious they are not – that is an extremely low threshold.
7. A person with a terminal illness does not need to be in pain to avail themselves of this law. **It is not an act of last resort** as many think. Up to 25,000 people will fall within the scope of this Act annually – in some ways, the structure of the Act makes **it more akin to an ‘opt out’ law rather than an ‘opt in’!**
8. A person with a terminal illness does not need to try palliative care first! WHY NOT?
9. The Act does not provide for a legal right to access palliative care – overseas, people are choosing assisted death because of a lack of other choices and it is well accepted that palliative care is not yet universally accessible in New Zealand.
10. It will not protect our elders who are being abused, mostly by their own families, from a premature death. Elder abuse affects 10% of our elders and continues to rise.

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11. Neither of the two doctors need to know or have met a patient previously.
12. Neither of the doctors has to be a specialist in the area of your life-limiting illness as is the case overseas or be a specialist in palliative care.
13. All eligible persons, 18 years plus, can end their life without telling a family member or significant other.

Finally, it's important to know that, if it passes, the Law will be enacted in its current form – it cannot be changed.

My own conclusion, and that of almost 200 lawyers who have signed up to a website called Lawyers for Vulnerable New Zealanders, is that the End of Life Choice Act is, from a legal and public policy perspective, poorly drafted and lacking in key safeguards found in other laws overseas. And some of these lawyers support the concept of assisted death!

Do we want a law at any cost? Because in my humble opinion, that is what this law would be. Good public policy does not provide choice for some – the privileged – at the cost of caring for and protecting the most vulnerable.

In contrast, having the same attitude of Christ means taking a preferential option for the disempowered and vulnerable.

It's not 'compassion' to vote for a dangerous law.

It's not mercy to vote for a dangerous law.

It's not caring to vote for a dangerous law.

It's not justice to vote for a dangerous law.

Even those who favour assisted death in some circumstances have many good reasons to VOTE NO to this Act.