



The Court of Pain:

Philosophy of life and death in Rodriguez v. B.C.(A.G.)

ADRIAN PAUL DENEGAR

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The Supreme Court of Canada's ruling in *Rodriguez v. B.C.(A.G.)* dismissed the appellant's submission that Sections 14 and 241 of the Criminal Code were unconstitutional. The appellant, Sue Rodriguez, was suffering from ALS, or Lou Gehrig's disease. She would have eventually died of this extremely painful terminal disease. Rodriguez argued that because of the physical-motor control restraints caused by ALS, the only way for her to go through with her suicide was to get the assistance of another individual. Unfortunately for Ms. Rodriguez, Sections 14 and 241 state that it is a federal offense for anyone to "counsel a person to commit suicide" or to aid and abet a person in suicide. Rodriguez argued that these sections effectively violated her Charter 7 right to "life, liberty and security of the person." For Ms. Rodriguez, the Supreme Court of law had become the supreme court of pain.

The Court's majority dismissed the appeal for reasons that were spurious and baseless. Their reasons were based solely on subjective, questionable, and highly unproven grounds. I will argue that the learned justices' premises supporting their ruling are false. Further, it will be argued that the reasoning the learned justices used in reaching their conclusion was false. Therefore, it will be concluded that the ruling was unsound and invalid, and was thus unacceptable.

Speaking for the majority, Mr. Justice Sopinka presented the following as reasons, or premises, for the Court's ruling:

1. Security of the person, by its nature, cannot encompass a right to take action that will end one's life as security of the person is *intrinsically* concerned with the well being of the living person.
2. [The Supreme Court's] argument focuses on the generally held and deeply rooted belief in our society that human life is *sacred and inviolable* ...to mean that human life is seen to have deep *intrinsic value* of its own.
3. [Since] a blanket prohibition on assisted suicide similar to that in s. 241 is the norm among Western democracies, and such a prohibition has never been judged to be unconstitutional or contrary to fundamental human rights [it therefore follows that it is not contrary to fundamental human rights].
4. I also place ...significance in the fact that the official position of various medical associations is against decriminalizing assisted suicide.

Premises one and two are false because of the acceptance that life is "sacred and inviolable." Premise three contains the words "fundamental human rights," which is closely related to the belief that life is somehow sacred and has intrinsic value. The Dismissal of premises one and two will result in eliminating premise three. Premise four is an irrelevant reason, because the justices are in no better position of moral judgment than anyone else.

The justices held that life has "intrinsic value." Something has INTRINSIC VALUE when it is valuable for its own sake, and not as a means to something else. The contrast is with INSTRUMENTAL VALUE. Something has instrumental value when it is valuable as a means to another end. For example, money usually has instrumental value: money is valued because it helps in obtaining something else. Some people, though, value money intrinsically. They value it for its own sake.

The problem here is that life cannot be seen to have intrinsic value. If "life" is a kind of quasi-Platonic form, then it is enough removed from us to remain ineffable. No value, or attribute, such as having intrinsic value, can ever be recognized or attributed to it. Money may have intrinsic value, but that value cannot be recognized without intrinsic verification and *creation* of that verification. That money has any value, for that matter, is not acknowledged until one actively decides to assign it value. For one to recognize that money has intrinsic value one must logically exist to be able to recognize money as such. To be able to truthfully say that life has intrinsic value would require one to step outside life. As far as we are aware, there are no reports from dead people that life has intrinsic value.

The unsoundness with recognizing life as having intrinsic value lies in what "life" really is. "Life" is the "general or universal condition of human existence" (OED). Recognizing life as having intrinsic value is only possible when one exists. Does that mean life is intrinsically valuable when one does not exist? Of course not. If one does not exist, then there is no life to have intrinsic value. Where there is no life, there can be no intrinsic value. It would be as ridiculous as saying: "that nonexistent man is a good man." If x has value y, then x must obviously first exist before y can be recognized. Since one must first exist, before any intrinsic value is placed upon their existence, that value is therefore extrinsic.

In fairness to the learned judges, what they might have been intending to say is that life is special. They indeed stated that life is "sacred." That is to say, life ought to be respected. Life is generally respected through passive acceptance of personal liberty being recognized by the state. Further, respect for life is recognized through allowing an individual to do what he or she pleases. Thus, life has instrumental value in that it serves instrumentally in reaching many ends, such as reproduction, pleasure, and rest.

The idea that life is "sacred" was first prominently argued by Josef Popper-Lynkeus. In Popper's *Das Individuum und die Bewertung menschlicher Existenzen*, he asserts that "the existence of a stupid peasant-boy is just as infinitely valuable as the existence of a Shakespeare or a Newton" (Edwards, 403). Yet, someone outside these lives must decide that both lives are infinitely sacred. Since life cannot be judged intrinsically, as we have seen, it must be judged instrumentally. And, the instrumental value of Newton's or Shakespeare's life is unarguably more valuable than the mentally-challenged peasant-person. It is not that the boy deserves death anymore than Newton, but simply that life is less valuable instrumentally speaking. Indeed, as the advocate of this ETHICAL

INDIVIDUALISM, Popper conceded that this infinite valuation of life "cannot be proved" (ibid.) Life cannot be proven to have intrinsic value.

If life were to have instrumental value, then the question must be asked: who has the right to decide what value is? Except for comatose patients and newborns, the individual most qualified to know what the instrumental value of a person's life is, is that individual. Morally we are all equal judges. The Supreme Court justices sit in legal judgment-they are not appointed because they possess some sort of elevated or transcendent knowledge and sense of moral righteousness. They are expected to be well-versed in the law, and in touch with the morality of today. They are not expected, even allowed, to sit in judgment of moral laws. Rulings such as in the Rodriguez case based on unsubstantiated moral grounds, are not acceptable.

The "deeply rooted belief" that Mr. Justice Sopinka spoke of is not based on evidence empirical or otherwise. It is a belief that is identical to faith. And, "faith" is nothing more than a "belief that is not based on proof" (OED). Therefore, if a premise cannot be somehow proven, then it must be discarded. An argument with a missing premise thus becomes invalid-as the argument here clearly is.

The justices' ruling "masquerading as value judgments are in fact nothing more than the expression of certain desires" (Edwards, 405). It is not what the justices desire that is important, but what the law requires.

A final rebuttal concerns premise four, in which the learned justices placed significance on the fact that the official positions of various medical associations were against decriminalization of assisted suicide. These associations do not sit at an ethically superior level any more than we do concerning morality. The medical associations of Nazi Germany held the official position that Jews ought to be castrated and humanely "shipped to the East." Nobody would accept this piece of nonsense simply because the position holders are doctors. Doctors are experts in medicine; they did not go to medical school to become experts in morality and morals. The argument is not that these associations are not entitled to hold an "official" position. Rather, it is that their positions are as equal in weight to anybody else's position.

The premises presented by the Supreme Court were completely unfounded, and false. Further, since certain premises must be discarded, the justices' argument-ruling becomes invalid due to illogical reasoning. Therefore, the ruling by the Supreme Court in Rodriguez is unsound and invalid. It is unacceptable that a court of law should become the court of pain.

Bibliography

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