Dying Justice: A Case for Decriminalizing Euthanasia and Assisted Suicide in Canada

Jocelyn Downie
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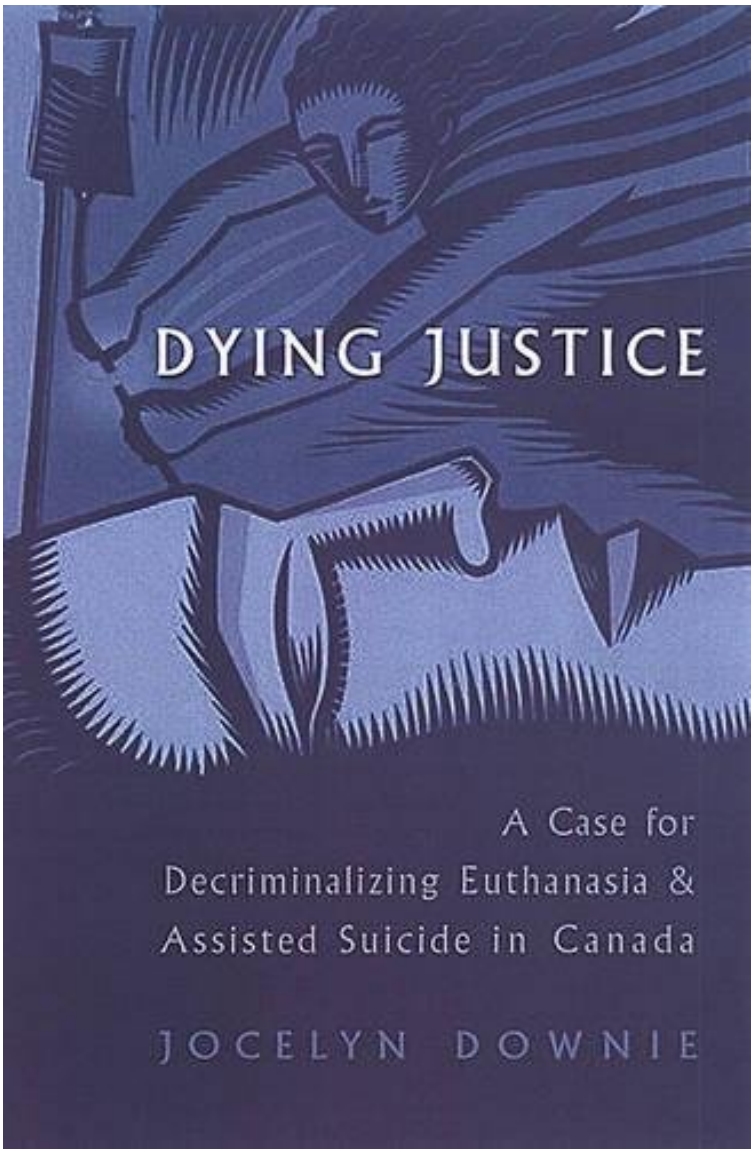

#6431188 in Books University of Toronto Press, Scholarly Publishing Division 2004-06-21Original language:EnglishPDF # 1 9.29 x .86 x 6.27l, 1.05 #File Name: 0802037607250 pages | File size: 48.Mb

Jocelyn Downie : Dying Justice: A Case for Decriminalizing Euthanasia and Assisted Suicide in Canada before purchasing it in order to gage whether or not it would be worth my time, and all praised Dying Justice: A Case for Decriminalizing Euthanasia and Assisted Suicide in Canada:

The legal status of assisted death in Canada is in urgent need of clarification and reform. If this is to take place, however, the process must be informed by a careful, thorough, and thoughtful analysis of the issues. In Dying Justice, Jocelyn Downie provides an up-to-date and comprehensive review of significant developments in the current legal status of assisted death in Canada. She then recasts the framework for analysis in terms of the nature of the decision for assisted death. Refusals of treatment and requests for assisted suicide and euthanasia, the author believes, should be respected if they are made voluntarily by informed and mentally competent individuals.No one has yet proposed a regime for Canada that is both less restrictive than the status quo with respect to assisted suicide and euthanasia and more restrictive with respect to the withholding and withdrawal of potentially life-sustaining treatment. On the basis of a thorough review of all of the major arguments made against permitting assisted suicide and euthanasia, Downie's regime permits some assisted suicide and euthanasia, but also sets out and insists upon a test that must be met before refusals of treatment would be respected.

From The New England Journal of MedicineJocelyn Downie, director of the Health Law Institute at Dalhousie University in Halifax, Nova Scotia, Canada, has written an advocate's brief favoring the legalization of euthanasia and physician-assisted suicide. Her primary target is the 1993 ruling of the Canadian Supreme Court, by a narrow five-to-four margin, that the right to physician-assisted suicide is not constitutionally guaranteed. But Downie's brief extends beyond her specific arguments about Canadian constitutional law. She sets out a broad ethical framework that would apply, she claims, in any culture that prizes individual autonomy. The distinctive aspect of Downie's ethical case is the rigor of her reliance on the idea of individual autonomy. She argues that no limitation whatsoever should be imposed on a mentally competent person's voluntary choice of euthanasia or assisted suicide. Thus, she rejects both the provision in Oregon's law that restricts physician-assisted suicide to people with terminal illnesses and the restriction in Dutch law that permits euthanasia or assisted suicide only for people with "lasting and unbearable suffering" as determined by two independent physicians. Downie correctly observes that these limitations are inconsistent with the underlying logic of the autonomy principle. This illogic in the Oregon and Dutch restrictions on individual choice seems likely to elicit an expansionist impetus toward the ultimate rejection of those restrictions in favor of the generalized right that Downie endorses. Although such a shift may be ethically justified, for the reasons she specifies, it suggests that the apparently limited first steps already taken in Oregon and the Netherlands will not be the last in a slippery slope toward the unlimited right to hastened death that Downie favors. Downie also clearly acknowledges one problem in the arguments for euthanasia and assisted suicide that other advocates have generally been reluctant to admit. Along with these advocates, Downie argues that no logical distinctions can be drawn between the withholding or withdrawal of life-sustaining treatment and physician-assisted death. But she admits that current medical practices involved in the implementation of patients' right to refuse life-sustaining treatment are not demonstrably adequate to ensure that such refusals are fully voluntary and informed. "Much more research must be done," she writes, "as the complexity of competency assessments . . . outstrips our understanding of effective tests for competency." Moreover, she observes, there are currently "no universal or formal agreements" within the medical profession about proper tests to determine decision-making competency, and there is inadequate attention to these issues in the medical school curriculum. This admission is refreshing and important, especially coming from a strong advocate for the legalization of euthanasia and assisted suicide. Unfortunately, however, Downie does not acknowledge that her well-founded uncertainty about the efficacy of current medical practice in the protection of patients' autonomy should temper her enthusiasm for extending the right to forgo life-prolonging treatments to encompass a right to physician-assisted death. At the least, Downie's own premises should have led her to withhold judgment on the advisability of this extension until we have met the need she identifies for more systematic knowledge about existing practices that she regards as indistinguishable from euthanasia and assisted suicide. Robert A. Burt, J.D.About the AuthorJocelyn Downie is the director of the Health Law Institute at Dalhousie University.