## Effective referral for euthanasia and assisted suicide

A Canadian parliamentary committee recently recommended that physicians unwilling to kill patients or help them commit suicide should be forced to make an "effective referral": forced to help find someone willing to do so.

## Effective referral, contested beliefs

These politicians seem to be following a trail blazed by the American College of Obstetrics and Gynecology (ACOG) Committee on Ethics in 2007. Committee members were puzzled by physicians who refuse to refer for or facilitate morally contested services like abortion.

"The logic of conscience, as a form of *self*-reflection on and judgement about whether one's *own* acts are obligatory or prohibited," states the Committee, "means that it would be odd or absurd to say, '*I* would have a guilty conscience if *she* did X.'"

The Canadian politicians and ACOG Committee members seem to think that someone who merely *arranges* for X - be it abortion or euthanasia - is absolved of moral responsibility, perhaps in the belief that only someone who actually *does* or *has* an abortion or *gives* or *receives* a lethal injection can be morally responsible for it. Alternatively, they may believe that responsibility arising from effective referral is morally insignificant. These are contested beliefs, not incontrovertible moral or ethical principles.

## Complicity in torture

*Newsweek* columnist Jonathan Alter took this position in the weeks following the terrorist attacks on the United States in September, 2001. Alter argued that it was time to think about torturing terrorist suspects who might know about plans for such horrendous crimes. He acknowledged that physical torture is "contrary to American values," but argued that it is sometimes appropriate. He proposed a novel 'compromise:' that the United States turn terrorist suspects over to "less squeamish allies," who would then do what Americans would not, without compromising American values.

Some months later, U.S. authorities detained, questioned and "rendered" Canadian citizen Maher Arar to Syria, where he was imprisoned, interrogated and tortured for almost a year. A commission of inquiry was later appointed to investigate "the actions of Canadian officials" in the case.

What was of concern to Mr. Arar, the Canadian public and the Canadian government was whether or not Canadian officials had caused or contributed to the imprisonment and torture of Mr. Arar. Even though he was deported by the United States and imprisoned and tortured by Syrian officials, the key issue was whether or not the actions of Canadian officials had made Canada indirectly complicit in torture.

The issue of complicity arose again in 2007 when a report in Toronto's *Globe and Mail* alleged that prisoners taken in Afghanistan by Canadian troops and turned over to Afghan authorities were being mistreated and tortured.

The problem of complicity does not relate only to government officials. *The Lancet*, among others, has asked, "How complicit are doctors in the abuse of detainees?" and other journal articles have explored the answer with some anxiety.

## Vicarious moral responsibility

The Arar Inquiry, the concerns raised by the *Globe and Mail* story about Afghan detainees and the alarm raised about physician complicity in torture make sense only upon the premise that one *can* be morally responsible - guilty, in fact- for acts actually committed by another person.

If one can be morally responsible for acts actually committed by another, there may be differences of opinion about what kind of action or omission incurs such responsibility.

These differences need not be thoroughly canvassed here. It is sufficient to ask if physicians who believe a procedure to be immoral can reasonably conclude that helping patients to obtain that procedure is morally significant participation that they should refuse.

## Physician complicity in executions & torture

### Physician participation in executions

The issue of culpable participation in a morally contested procedure is addressed by the American Medical Association (AMA) in its policy on capital punishment. It forbids physician "participation" in executions, defining participation as an action which

(1) would directly cause the death of the condemned;

(2) would assist, supervise, or contribute to the ability of another individual to directly cause the death of the condemned;

(3) could automatically cause an execution to be carried out on a condemned prisoner.

Among the actions identified by the AMA as "participation" in executions are prescribing or administering tranquillizers or other drugs as part of the procedure, directly or indirectly monitoring vital signs, rendering technical advice

or consulting with the executioners, and even (except at the request of the condemned, or in a nonprofessional capacity) attending or observing an execution.

The AMA policy on physician participation in executions is particularly instructive in discussion about compulsory referral for euthanasia, since the procedures and drugs used for execution by lethal injection are the same or essentially the same as those that are being used in Canada for euthanasia.

**Physician participation in torture**

The AMA also prohibits physician participation in torture. Participation is defined to include, but is not limited to, "providing or withholding any services, substances, or knowledge to facilitate the practice of torture."

The Canadian Medical Association (CMA), opposes physician involvement in the punishment or torture of prisoners. The CMA states that physicians "should refuse to allow their professional or research skills to be used *in any way*" for such purposes. (Emphasis added)

## Complicity and effective referral

While referral is not mentioned in the AMA policy on capital punishment, nor in the Canadian or American policies on torture, the *kind* of action involved in effective referral is the same *kind* of action that is understood in those policies as illicit participation.

This demonstrates that, in principle, at least, it is not unreasonable for physicians to refuse to provide effective referrals for patients for procedures to which they object for reasons of conscience, on the grounds that doing so would make them complicit in a wrongful act.

The point here, of course, is not that executions or torture are morally equivalent to euthanasia, abortion or assisted suicide. The point is that, when governments or professional associations are convinced that an act is seriously wrong - even if it is legal - they are willing to refuse all forms of direct and indirect participation in order to avoid moral complicity in the act.

This is precisely the position taken by many conscientious objectors in health care with respect to morally contested procedures.

**Sources cited:**


Parliament of Canada, *Medical Assistance in Dying: A Patient-Centred Approach. Report of the Special Joint Committee on Physician Assisted Dying* (February, 2016)

American College of Obstetrics and Gynecology, Committee on Ethics Opinion No. 385, *The Limits of Conscientious Refusal in Reproductive Medicine*

"Time to Think About Torture." *Newsweek*, 5 November, 2001

Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations*.

Smith, Graeme, "From Canadian custody into cruel hands." *Globe and Mail*, 23 April, 2007

Editorial, "The truth Canada did not wish to see." *Globe and Mail*, 2 April, 2007.

Miles, Steven H., "Abu Ghraib: its legacy for military medicine." *The Lancet*, Vol 364, August 21, 2004, p. 725-729; Lifton, Robert Jay, *Doctors and Torture*. N Engl J Med 351;5

American Medical Association Policy E-2.06: Capital Punishment

American Medical Association Policy E.2.067: Torture.

Canadian Medical Association Policy resolution BD80-03-99 - Treatment of prisoners.


This pamphlet may be downloaded from the Project website and copied for distribution.


**Protection of Conscience Project**

7120 Tofino St., Powell River,
British Columbia, Canada V8A 1G3
**Tel:** (604) 485-9765
**E-mail:** protection@consciencelaws.org



**[Revision Date 2016-03-15]**


## Talking About Ethics

# The Problem of Complicity

## Effective Referral and Physician Participation in Morally Contested Procedures

**Protection of Conscience Project**
***Service - not servitude.***
**www.consciencelaws.org**