

issue number twenty-nine
november 2009

ISSN 1175-3498

the nathaniel report

A PUBLICATION OF
THE NATHANIEL CENTRE
– THE NEW ZEALAND
CATHOLIC BIOETHICS CENTRE

in this issue

From the Heart – A Relative's Perspective
Changing Minds Conference 2009

Dr Michael McCabe

From the Heart – A Physician's Perspective
Changing Minds Conference 2009

Dr Sinead Donnelly

Euthanasia in Luxembourg –
An Interview with Professor Erny Gillen

“When Did You Last See Your Father?”
Understanding Family in New Zealand

Dr Michael McCabe

Reflections of a Pastor
Monsignor John Carde MBE

Interview with Professor Erny Gillen – Moral Theologian and Bioethicist from Luxembourg 25 August 2009

Professor Erny Gillen teaches Moral Theology and Bioethics at Luxembourg Seminary. He is Episcopal Vicar for Social Affairs and President of Caritas in Luxembourg. He is also President of Caritas Europa and Vice President of Caritas Internationalis in Rome. During August he visited Wellington where I was able to interview him for this issue of The Nathaniel Report.

Michael: Thank you for the opportunity to meet with you during your short stay in New Zealand. Specifically in this conversation we are going to talk about the recent legalisation of euthanasia in Luxembourg following the other Benelux countries Belgium and prior to that The Netherlands. What is the nature of the legislation passed this year?

Erny: We have passed two different Bills in Luxembourg – one Bill about palliative care and one Bill about euthanasia and assisted suicide. They were passed in Parliament on the same day but in two different votes so there are two different laws. The law on euthanasia and assisted suicide introduces the right for the medical doctor to perform euthanasia or assisted suicide if there is a demand from the patient and if that patient has fulfilled different conditions. The conditions you have to fulfil:

- You have to be a full aged person who is free, who knows what he or she is asking for.
- You should be in a situation where a positive outcome is not possible.
- You should suffer in a very severe way.

If those conditions are fulfilled then you can apply for euthanasia or assisted suicide. If you do apply then a medical doctor has to verify whether those conditions are fulfilled and he has to inform you about the possible relief given by palliative care. If then you are going to persist in your idea to ask for euthanasia there will be a second medical doctor who should enter into the process and verify whether the patient finds himself indeed in an incurable, heavy and continuous situation of an illness. If this is the case then you have to write a demand for euthanasia and assisted suicide and only then can euthanasia or assisted suicide be performed on you. Once that is done the medical doctor has to fill out a form and that form will have two different parts – an anonymous form and a personal data form which will only be opened if there is a suspicion voiced within the National Control Commission. The anonymous and technical form will go to the National Commission who will verify whether the conditions were fulfilled and if the National Commission had any doubts they can ask for the personal data and they can ask all the people involved in the process to see whether it was legally done or not.

Michael: So this National Commission is post-factum?

Erny: Yes.

Michael: So the legislation is very similar to The Netherlands then but with some variations. Would you like to comment on those?

Erny: There are no big differences between the actual law in Luxembourg and the law in The Netherlands. There is one difference. For example, you must be an adult 18 years old to apply. You cannot apply if you are younger than 18 and you cannot apply if you are not in control of your own faculties. So handicapped people, for example, who are protected by the law, cannot simply apply for euthanasia. Whether psychologically ill people can apply or not is at the moment an open question. We will see over time how that will evolve.

Michael: Does it differ in any way from Belgium's legislation?

Erny: For Belgium there are no real differences from an ethical point of view.

Michael: Could we talk about the Constitutional issues that were raised by the passing of this law in Luxembourg? The Grand Duke Henri refused to sign the legislation and by doing so forced the Chamber of Deputies to change the Constitution. He appealed to his conscience as the reason he would not endorse the legislation.

Erny: Yes. It was a very dramatic situation. There were more attempts to have legislation on euthanasia and it failed several times. What happened this time was that there was an unfortunate binding between the law on palliative care and euthanasia.

The Government was proposing a law on palliative care and two Parliamentarians were proposing a law on euthanasia. I think the political calculation was if we bind both laws (then) the euthanasia law will fail because the other law is proposed by the Government. And it was indeed a very narrow vote. The palliative care vote was 100% – all of the 60 Parliamentarians were in favour of the palliative care and only half plus one (31) were in favour of the euthanasia law. But all the Parliamentarians were told you have to vote from your own conscience so it was not the Socialists voting against or in favour but each Parliamentarian had to make his own personal vote.

Michael: So it was not what we would call in New Zealand a party vote but rather a conscience vote?

Erny: It was a conscience vote in the Parliament. Some people were surprised because they thought it wouldn't pass. Then our system foresees a second vote unless the Council of State – it's like a Second

Michael: The Church's role in influencing the debate? Clearly it was a strong counter cultural voice but that was not enough to stop this law being passed. Would you like to talk about that?

Erny: Indeed. The Catholic Church issued several statements. Our Bishop was very clear about the position of the Catholic Church and during the last vote in the Parliament, for example, the Bishop was quoted by all the different parliamentarians taking the floor. One saying, 'we are in favour of the arguments put forward by the Catholic Church; Others saying, 'it's not possible that the Catholic Church is interfering in the world of politics; But the Catholic Church was clearly, I would say, one of the leaders in that debate.... I think for the second time in history of Luxembourg – the abortion law in 1978 was also such a big issue – now the euthanasia issue has put the Church in a minority situation as well as the Christian Party was put in the minority situation....

Michael: Would you like to comment about the link in the legislation with palliative care? The reason I ask that is because in New Zealand proponents of euthanasia are planning to link palliative care with legalised euthanasia so clearly this is an international and an internet world. Lesley Martin one of the main advocates for this speaks of calling her hospice a "Haven" that would practice both palliative care and euthanasia. She is a trained intensive nurse, now studying psychology. She was also convicted in March 2004 for the attempted murder of her terminally ill mother, Joy, whom she was nursing. It was a much publicised case in New Zealand. In recent years she has been working towards introducing a Private Members Bill to Parliament to legalise euthanasia in New Zealand. What is notable is that she now links palliative care with assisted suicide which makes it possible to subvert ethical palliative care in the Hospice movement even though Hospice is currently very strong in New Zealand.

Erny: I think that what is good about the laws in Luxembourg is that we have two different laws and so the access to palliative care is now generalised access. Everybody has access to palliative care – that is the topic of that law and there should be organised training for nurses and medical doctors so that they are knowledgeable about palliative care because sometimes even in our country medical doctors and nurses don't know enough about the possibilities of palliative care. Having two laws makes it very clear that you should not mix up the situations of euthanasia with the situations of palliative care. Nevertheless there is a link in both laws: and in the law of euthanasia it is written that people should be informed about the possibilities of palliative care and the limits of palliative care and all means should be used in palliative care. In the law on euthanasia the means of palliative care are mentioned and you could say that they must be used – so in this regard there is a link between those laws. Some people are thinking if we would impose palliative sedation as part of the palliative care proposal there would be no longer any space for euthanasia.

Michael: Terminal sedation is a very big issue.

Erny: That is a very big issue. In the law of palliative care terminal sedation is mentioned but then you need informed consent of the person so you have a right to access palliative care but then if you want to go the whole way of palliative care, including palliative

Chamber (Upper House) will give a dispensation from the second vote. But the Council of State did not give a dispensation so there was a need for a second vote in the Parliament. Grand Duke Henri announced then that he would not sign the law if it was passed. This was in November 2008. The actual law was passed on 18 December 2008 and it was signed by the Grand Duke under a new reworded constitution in March 2009. It has been in force since....

In order to avoid a constitutional crisis all parties found, under the leadership of the Prime Minister, a way out within only days after the announcement of the Grand Duke that he wouldn't sign the law if it passes. Indeed at that time the Constitution foresaw that the Grand Duke would approve and promulgate the law.

To avoid the constitutional crisis it was proposed to the Grand Duke, and he accepted, that in the Constitution there would be a very small change added. That change would be to say, that the Grand Duke in the future, would only promulgate the laws without the necessity of having to approve the laws. Of course that's semantics. So legally speaking he was, after the 28 March, no longer in the situation to approve, but only to promulgate – so it was clear that he was promulgating a law which he personally would not and did not approve.

Michael: That showed enormous courage and leadership and I would think he would be rather unique in Europe thus far for the countries that have legalised euthanasia?

Erny: Yes! I think there was strong opposition in Luxembourg against that law – coming from the Catholic Church, and coming from a lot of people who are not necessarily linked to the Catholic Church, but who are people who think life should be protected in all circumstances. On the other hand it was a very ideological discussion and at the very end people thought that the personal freedom, the personal autonomy, should be ranked higher than the dignity of life. This balance made by those people who won the vote are not in contradiction to the respect of life according to their own mindset. For Catholic people or for people who argue from a natural law perspective that's a complete contradiction.

Michael: Tell me about the other Catholic politicians then – obviously this was not a constitutional crisis per se for them – but how did they address this vote of conscience?

Erny: Of the 24 parliamentarians who belong to the Christian Party 23 voted against and one person voted in favour. There was a big debate whether that person should be excluded from the Christian Party or not. And because it was a conscience vote the party leaders decided that it would be unfair to tell the people that you are allowed to vote according to your conscience, and then exclude a person if that person applied the rule and voted according to her conscience. Even so that's not the line of the Christian Party but on the other hand if you accept that the conscience is the last word a person can say, then you have to accept that contradiction as well as you accept that the Grand Duke can say "no, I will not sign". Then again in conscience another Christian could say for me it's reasonable because in my family I saw a situation which for me is enough to accept such a law.

sedation, then you need to sign that that is part of your will. So that is the imbroglia [confusion] between the laws as they exist today. But there is a movement of palliative care – of hospice movement, so to say – that Hospice movement was built by Caritas, by the Red Cross, by other Luxembourg organisations. There are six member organisations. These member organisations are convinced that within palliative care euthanasia is not possible. So euthanasia is not a prolongation of palliative care, because intellectually speaking, it is a different mind set. If you want to go to the very end of palliative care you cannot have euthanasia as a possible exit – you cannot take that exit of euthanasia before all the means of palliative care have been used. So I think that it is good to separate clearly euthanasia and palliative care and in the Hospice in Luxembourg euthanasia is clearly not allowed.

Michael: And the fundamental intent of palliative care and euthanasia or physician assisted suicide is quite distinct – clearly quite different and distinct.

In conclusion then, is hospice-palliative care a well developed system in Luxembourg or is it still embryonic relatively speaking?

Erny: I would say today in each hospital, in each clinic, you have palliative care units. There are big networks for homecare services and each of these networks house a big unit for palliative care at home. So I think palliative care is rather highly developed in Luxembourg for the time being. Of course, there is always scope for improvement – that's clear. Palliative care or the Hospice movement in Luxembourg began at the end of the eighties around 1989-1990.

Michael: So it's about 10 years behind New Zealand. The first three Hospices are 30 years old this year and they grew out of, although not exclusively, the Catholic Church.

Erny: We are certainly behind Britain or Canada or other parts of the world but it's not embryonic.

Michael: No it's not embryonic. Twenty years is quite developed. My understanding of euthanasia in The Netherlands is that it tolerated euthanasia 'de facto' speaking but euthanasia 'de jure' occurred much later – it was legalised several years later. This whole process clearly led to the under-development of palliative care. Is that still the case now?

Erny: It is still the case. Palliative care is less developed in The Netherlands than it is in Belgium or in Luxembourg.

Michael: Finally, would you like to say something about what you think philosophically speaking is beneath this drive to legalise euthanasia? You mentioned before that personal autonomy and the public perception of choice and freedom to choose is ranked higher than the dignity of life. We hear a lot about the perception that there is right to assisted suicide. What do you think philosophically is happening in society and how might Western society address the spiritual needs of the dying, the existential needs that are probably amongst the deepest needs of Western society?

Erny: First of all the law in Luxembourg is not giving a right to the patients for euthanasia. It is a right to ask for euthanasia. So the final decision still lies with the medical doctor. So people were trapped in the Parliament if I may say so, and in the public debate, because the argument was about the right to die and the right to euthanasia, but

if you are reading the law there is no right to euthanasia. The right is to ask for it.

So the autonomy of the patient is not greater today than it was before but the autonomy of medical doctors is greater and that is a big debate within the internal ethics of medical doctors because in the internal law for medical doctors euthanasia is still forbidden. So there is a contradiction in the internal ruling of the medical doctors and today's public law. There is still debate going on whether they should change now their internal rules, or whether the law is simply a higher instrument and the law will change, without saying, those internal rules. So the right to euthanasia was the major discussion issue but legally speaking we are not in that situation.

The concern of the Catholic Church was always about the needs of the dying people. If you are offering euthanasia to people that is a very delicate act because people might see that offer as an exit or invitation and society should not invite people to leave society but society should invite people to live with their full potential in our society. And I think offering palliative care to the whole population is essential. Palliative care includes the spiritual needs of people, and the spiritual needs are part of the legal offering as well, and, of course, the Church can enter that spiritual door as can other denominations. I think it is a very bad idea to offer euthanasia as a solution. Euthanasia is not a solution, euthanasia is a threat and, as a threat, it should not be offered to anyone.

Michael: No, not at all. At the end of life the real needs are spiritual, relational and existential if you prefer, but, in my experience, we come back again and again to questions of hope, questions of meaning, and to questions of forgiveness. Do you want to conclude by saying something about that?

Erny: I know. In my personal experience a dying person is a person who needs the most solidarity than they have ever needed before. So he or she will see that they are no longer in a position to control his own life, his own body. Then you need other persons being present to you and giving you the confidence in life and the confidence in your body, giving the confidence in your own thoughts, so that you are not threatened by your own thoughts, so that you are not threatened by your own body, so you are not threatened by your own imagination. And I think this presence of the society in vulnerable people is extremely important when it comes to the moment when you are feeling, I am completely alone with my weaknesses, I'm completely alone with my thoughts, I'm completely alone with all that went wrong with my life. The community is present to tell you, 'No, we are supporting you together with your weaknesses, and together with your thoughts.' And for people having a spiritual experience going beyond the community, accepting God, or as Christians, accepting a person as being present, I think that is an important message of relief that God will welcome that person beyond his life span on earth. In the community he or she will have heard that this God does not condemn people but welcomes people from whatever origin or from whatever experience they have come from...

Professor Gillen was interviewed by Michael McCabe, Director of The Nathaniel Centre
