PAUL KEATING IS RIGHT ABOUT EUTHANASIA'S SLIPPERY SLOPE

This week Victoria's law permitting physician-assisted suicide (PAS) and voluntary euthanasia (VE) comes into force. Other states, particularly Western Australia, may soon follow suit.

All Australians, whether legislators or voters, would do well to reflect on Paul Keating's wise warning in 2017 that VE is a threshold moment for Australia, and one the country should not cross.[1]

He cautioned that, once termination of life is allowed, pressure will mount for further liberalisation on the ground that the law discriminates against those denied PAS and VE. "The experience of overseas jurisdictions", he added, "suggests the pressures for further liberalisation are irresistible".

His article provoked a critical response from RMIT ABC "fact checkers", who concluded that in most jurisdictions where the law had been relaxed "little has changed regarding what practices are allowed or who can access assisted dying".[2]

They were wrong. My book *Euthanasia, Ethics and Public Policy*, published by Cambridge University

Press, shows that the evidence from abroad clearly confirms slippery slope concerns.

The slippery slope argument holds that PAS and VE should not be legalised because neither prescriptions for lethal drugs, nor lethal injections, can be effectively controlled by the law. This is for two reasons: practical and logical.

Practically, it is not feasible either to draft or to enforce criteria requiring a “voluntary” request, “terminal illness” or “unbearable suffering”.

Logically, the moral arguments for lethal prescriptions for the “terminally ill” are also arguments for lethal injections, and for patients who are chronically ill (and have longer to suffer).

Moreover, the moral case for lethal injections for competent patients is also a case for lethal injections for incompetent patients: the patient’s lack of autonomy does not cancel the doctor’s duty of beneficence. If some competent patients would be “better off dead” because of their suffering, so would some incompetent patients. There is, then, a *logical link* between voluntary and non-voluntary euthanasia.

The overseas experience illustrates the disturbing

force of these arguments. Permissive laws have failed to ensure effective control, whether in the Netherlands, Belgium and Canada that permit VE and PAS, or in those jurisdictions, most notably Oregon, that permit only PAS. Five points will show that the "fact checkers"' conclusion that "little has changed" is wide of the mark.

First, VE and PAS became lawful in the Netherlands in 1984 (not 2002 as the "fact checkers" state) through a ruling of the Dutch Supreme Court. In 1996, nicely illustrating the logical slope, the Dutch courts declared infanticide lawful. (The "fact checkers" rightly regard this as a liberalisation of the law, though they wrongly assert that infanticide "remains illegal".)

Second, the "fact checkers" interpret "further liberalisation" to mean that a government has taken steps to expand access or legally protected activities. But this ignores the reality that the *interpretation* of the law may become more permissive, even absent statutory amendment. And this is what has happened in the Netherlands (and Belgium).

For example, Professor Theo Boer, a former member of a Dutch euthanasia review committee, has changed his mind about the law. He points to a striking increase in numbers and significant bracket creep,

extending to patients with mental illness, disorders of old age, and dementia. Supply has stimulated demand, euthanasia has become normalised and there has been a paradigm shift. Some slopes, he now cautions, truly are slippery.

One may add that, since 1984, official Dutch surveys have shown that thousands of patients have been killed without an explicit request, and thousands of cases have not been reported by doctors to the review committees. (Victoria, remarkably, doesn't even have review committees.)

Boer's writing, and that of other eminent scholars critical of the Dutch experience such as Dr (now Justice) Neil Gorsuch, are not mentioned by the "fact checkers".

Also noteworthy is their failure to mention the Dutch government's proposal in 2016 to extend the law to allow elderly people who are simply "tired of life" to be given suicide pills by "death counsellors".

Third, they note that Belgium relaxed its law to allow children to access euthanasia and state that this was the only liberalisation. Not so. The Belgian legislation was deliberately limited to VE, yet the review commission has decided to approve cases of PAS.

And, like the Dutch committees, the commission has encouraged an increasingly elastic interpretation of the criteria.

Fourth, they write that the Canadian government, having legalised VE and PAS, commissioned studies in relation to access for mature minors, the mentally ill, and by advance directive, but that these are only "potential legislative changes". True, but why commission such studies unless you are considering extending the law? And the existing criteria are already being challenged in court as too restrictive.

Fifth, they attach importance to the fact that the Oregon-style laws in the US have not (yet) been extended to the chronically ill or to permit VE. However, they do not consider whether this may not simply be a case of political expediency.

It makes tactical sense for anyone seeking to make such a controversial change in the law, and whose opponents will raise slippery slope concerns, to get their foot in the door through relatively conservative proposals before prizing the door open wider. The former governor of Washington state, Booth Gardner, said he supported an Oregon-style law in his state as a first step that would weaken the nation's resistance and produce a cultural shift resulting in laxer laws.

As Professor Yale Kamisar wrote in his classic utilitarian essay against legalisation 60 years ago, the arguments against further liberalisation are weaker than the arguments against legalisation, which is itself an argument against legalisation.

Mr Keating's concerns are, then, amply supported by the experience overseas. Sadly, the "fact checkers" are not alone in misunderstanding that experience. So too did the superficial reports of the parliamentary committees in Victoria and Western Australia.

Any legislators who think they can avoid the slippery slope have learned little from other jurisdictions.

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[1]Paul Keating, "Voluntary euthanasia is a threshhold moment for Australia, and one we should not cross" *The Sydney Morning Herald*, 19 October 2017.

[2]RMIT ABC "Fact check: Has assisted dying been a legal slippery slope overseas?" https://www.abc.net.au/news/2017-11-10/fact-check-do-assisted-dying-laws-lead-to-a-slippery-slope/9116640 Updated 16 July 2018. (Accessed 29 May 2019.)