

Assisted Dying: From Hippocrates to the 21st century – a polished slippery slope?

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On the 11th November 2008 Westminster Hall in Parliament held a debate attended by MPs from all parties on Assisted Dying. This was the first time in ten years that this subject had been discussed in Parliament. It was an important debate coming soon after the ruling of the High Court in the case of Debbie Purdy (29th October 2008, who herself was present at this debate) who wished to clarify the position as to whether her husband would face prosecution should he help her travel abroad to a country where assisted suicide is lawful to end her life. The Court upheld the current law as espoused under the Suicide Act 1961 and rejected her claim for judicial review. A review of this debate provides an up-to-date perspective on an emotive subject that will continue no doubt to make media headlines – as seen recently in the sad high-profile case of the 23 year-old rugby player Daniel James, who became tetraplegic following an accident playing rugby, and was taken by his parents to Switzerland to end his life in a Dignitas clinic (coincidentally on the very same day as this debate the headline news was about the 13 year-old girl in Hereford who was making a capacious decision to decline a life-preserving operation).

The debate was secured and opened by Dr. Evan Harris (LibDem) who himself has been an elected member of the BMA ethics committee for many years. He noted the subject of assisted dying raised strong feelings across all parties, and in the media and among the public and he felt it vital that it be seen to be debated in Parliament. Mr. David Taylor (Lab/Co-op) wished to clarify that the majority of doctors were, when last asked, opposed to the legalisation of assisted suicide, and that all the medical royal colleges and the BMA have declared their opposition to it after extensive consultation with their members. He suggested that Dr. Harris was therefore actually in a minority of being for legislation making assisted dying lawful. Dr. Harris refuted this: “...it is far from clear that there is not majority support in the medical profession for giving people autonomy, with safeguards, of course, over end-of-life decisions.” He further noted the main issue of the debate was that in the UK currently if someone wishes to be actively helped to die, they cannot get that help in this country under the law, even when there is no doubt about their capacity. That was true even when it has been checked that there has been no coercion, when they are terminally ill and when they are suffering.

In response to this Mr. Andrew Smith (Lab) noted that there is an important difference between not intervening artificially to prolong life and actively intervening to shorten it. Dr. Harris accepted such a difference existed, but that it was “not so great that autonomy should be taken away completely in one situation and respected absolutely in the other. The end result is the same, and the wish is the same; it is only the activity or passivity that is different.” Dr. Harris opined that the current law in the form of the Suicide Act 1961 is in need of revision (Section 2(1) of the Act states: “A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.”). Mr. Smith felt that such a punishment of imprisonment would be inappropriate in the sort of case that under discussion. He made the interesting but vital conceptual observation that the debate concerned “Assisted dying.....for people who want to live, not for people who want to die, as with assisted suicide.” He had no difficulty with the current law criminalising assisted suicide when people are suicidal and are helped through websites or indirectly (despite this clarification on assisted dying the debate flip-flopped inevitably between physician-assisted dying and assisted suicide).

Dignitas

Dr. Harris noted that figures suggest that 16 British citizens travel to the Dignitas Clinic in Switzerland each year, and that the Home Office has identified about four cases of so-called mercy killings each year, which is probably a small fraction of the real number, as they often never reach the courts. He further described that annually a number of terminally ill people resort in desperation to violent and often botched suicides, and a number of people find that they have to refuse food and water to exercise control over their time and manner of death. Rather

disconcertingly, he suggested that more than 900 people a year receive assistance in dying from their doctor, on their explicit request.

The issue of the numbers of people convicted and imprisoned under the Suicide Act 1961 for assisting in suicides produced a polite spat or “quibble” about precise terminology with regard to ‘assisted suicide’, ‘assisted death’ or ‘assisted dying’ between Dr. Harris and Dr. Julian Lewis (Con)! Dr. Harris was seemingly reluctant to answer this point (surely knowing the answer having researched this topic) but was ably helped by the Parliamentary Under-Secretary of State for Justice (Maria Eagle) who pronounced that the number convicted was zero.

Oregon

The debate included global perspectives at several points during the debate. Dr. Harris observed that in jurisdictions where there is lawful assisted dying, there had been a concomitant increase in the provision of palliative care. In Oregon, USA, there is no perceived conflict between the two. Later in the debate it was noted that in Oregon the number of people who die in hospice care has doubled since the Death with Dignity Act came into operation in 1994 (341 people have used the Act to end their lives since its inception). Interestingly during the recent USA presidential elections, Washington state, with a large majority, voted for having the same provisions as in Oregon (although the states of California, Michigan and Maine did not vote similarly). Dr. Iddon (Lab) noted a vital, and worrying, issue arising from Oregon in that, according to recent research published in the *British Medical Journal* (Ganzini *et al.*, 2008; van der Lee, 2008), one in six Oregonians who have taken lethal drugs provided by their doctors were actually suffering from treatable depression, which the doctors had failed to diagnose. Mr. Blunt felt the most striking benefit from the change in the law in the state of Oregon, where 17 % of people who are dying take the opportunity to discuss the possibility of ending their life in circumstances over which they have some control with their family.

He noted that it was understood that 650 British citizens are members of Dignitas, and more than 100 have travelled to Switzerland to have an assisted death since October 2002 (an average of 16 people per year). The problem however facing British citizens who wish to end their life lawfully abroad is that they fear for the legal consequences and possible prosecution of their family and friends on their return to the UK. He felt that this “cruel” state of affairs could in some cases force people to undertake the journey abroad alone, and earlier than they would have liked, to die in a foreign country without their loved ones.

Mercy killing

Dr. Harris next addressed mercy killing – under current law anyone who ends the life of another can be convicted of murder and receive a life sentence, even if the act is a compassionate response to a dying person’s request for help to die—a so-called mercy killing. Despite this risk of a murder conviction, a number of people who resort to mercy killing regard it as the final act of love towards a loved one who is dying and requests help to die. Home Office records show a total of 57 suspected cases of homicide from 1990-01 to 2004-05 that could be described as mercy killings. This probably represents a small fraction of the true number. An (unreferenced) Home Office report stated that of the 57 suspects of the act of mercy killing, 21 committed suicide. He further noted authorities in Oregon are aware of 94 terminally ill people who were prevented from committing violent suicide because the option of assisted dying was available to them, and 50 of them went on to die a natural death.

He finally commented about doctors helping their patients to die and about the review of the murder laws - there were occurrences of involuntary euthanasia, where doctors help patients to die without their wish, and of voluntary euthanasia, which is the patient’s wish (Mr. Blunt (Con) later in the debate made the observation that “Medical professionals are now in a position in which they know that it is in the interests of their patient to administer the lethal morphine dose. However, that is cloaked by the law of dual effect, and□ they administer pain relief in the absolute knowledge that their patient will die”).

Dr. Harris quoted from a research paper by C. Seale, “National survey of end-of-life decisions made by UK medical practitioners”, in *Palliative Medicine* 2006 (volume 20, P 3-10) that “of all the deaths in the UK in 2004, 0.16 % were cases of doctors ending life following an explicit request from the patient”. This translates in broad terms to 936 deaths were a consequence of patients receiving assistance in dying from their doctor on their request. Such assistance is given outside any legal framework and without any safeguards. He opined that “we know that assisted dying is taking place at the moment and it would be far better, as has been done in other jurisdictions, to put it on a legal footing, with whatever safeguards the House feels are appropriate.” He considered the Law Commission’s recommendation to the Government that the law on murder should be changed to recognise either a defence or partial defence of mercy killing and if so, to what extent (he also noted the Government was considering a new definition of diminished responsibility).

Lord Joffe’s Assisted Dying for the Terminally Ill Bill (2005)

David Winnick (Lab) recalled Lord Joffe’s Bill was defeated in 2006. He also noted the interesting interpretation by the Leader of the House, when asked for an opportunity to debate this topic, who stated: “The criminal offence of assisting somebody’s suicide is unique as it is the only part of the criminal law where it is an offence to assist the commission of something that is itself not an offence.” Mr. Winnick was for assisted dying and accepted there needed to be the strictest safeguards against abuse but supported the measure in Lord Joffe’s Bill that would be limited and apply only to the terminally ill, where two independent doctors had examined the person. Provision would include a palliative care specialist, who would explain all the available alternatives. At every stage, the person would have the right to change his mind.

Dr. Brian Iddon, chairman of the national Care Not Killing alliance and a patron of ALERT (Against Legalised Euthanasia: Research and Teaching), noted that over a period of five years Lord Joffe made three attempts in the House of Lords to change the legislation in this policy area. Each time, he softened his approach. Dr. Iddon’s serious concern was that Lord Joffe’s intent was to soften his approach to gain ascent of the Bill, and then widen its application once it was made law. He feared this would open the door to all kinds of exploitation in future and that hence there would be a danger that some people will want to go beyond terminal illness and serious long-term conditions and go to younger people and those seriously suffering from mental illness as well. He noted with alarm that Baroness Warnock said in a recent article in *The Times* (4th October 2008): “If you’re demented, you’re wasting people’s lives, your family’s lives, and you’re wasting the resources of the NHS.” He exclaimed “What a statement for a peer of the realm to make! Let me remind hon. Members that some of the 700,000 Alzheimer’s patients in this country would follow the course set proposed by hon. Members if Baroness Warnock and her supporters had their way.”

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Dr. Iddon further quoted the Attorney General in 2005 who said it would be “inappropriate” for the Director of Public Prosecutions “to issue a policy the effect of which was to say that ‘I, the Director of Public Prosecutions, have decided to suspend or not to apply part of the law which Parliament has put in place and has not removed’” in respect of the use of the Suicide Act 1961. It is clear that the Courts cannot change the law in this area and only Parliament can. He also returned to the issue that the majority of doctors are opposed to physician-assisted suicide, as is the British Medical Association and all the royal medical colleges. He sensibly noted that in 2005, the House of Lords Select Committee recorded the view of the General Medical Council that a change in the law to allow physician-assisted suicide: “would have profound consequences for the role and responsibilities of doctors and their relationships with patients. Acting with the primary intention to hasten a patient’s death would be difficult to reconcile with the medical ethical principles of beneficence and non-maleficence.” He concurred and in the words of Lord Carlisle of Berriew: “The slippery slope is no fiction; it is already well-polished,” and furthermore did “not want physician-assisted suicide to become a treatment option” and reminded us of what Hippocrates said in 400 BC: “I will give no deadly medicine to anyone if asked, nor suggest any such counsel.” He suggested that how a society treats its dying patients is a litmus test for that

society.

Mr. Blunt commented that the reason why Lord Joffe was so persistent in trying to get an assisted dying bill passed, particularly with respect to the “fundamental principle of whether competent adults should be able to judge whether to end their lives if they are terminally ill,” was because that proposition is overwhelmingly supported by the public. Mr. Blunt understood that 85% of the public agreed with this basic proposition. He disagreed with Mr. Field (Con) who had made a case for the “grey area” with respect to the application of the Suicide Act 1961 (in essence continue the Act but turn a blind eye to offences under in most cases). Mr. Blunt reaffirmed the clear position of the judges from the Debbie Purdy case who felt it was time for Parliament to debate and change the law for assisted suicides. During the debate he was “concerned by the alacrity with which the Minister leapt to her feet to confirm.....that there have been no cases of imprisonment for assisted suicides.” i.e. that offences are actually committed but go unpunished to reflect the unique nature of the offence; indeed the Government appears sympathetic to such cases of assisted suicide in the sense that in over 50 years there have been no cases of imprisonment under the Act.

All-party group on compassion in dying

Chris McCafferty (Lab), the chair of the all-party group on compassion in dying, suggested figures used in the debate demonstrated that “the current status quo has an extremely negative impact on a sizeable proportion of terminally ill people.” She made it clear that Dignity in Dying campaigns for all terminally ill people to have access to excellent top-class palliative care services, regardless of age, disease, geographical location or any other factor.

She noted the House of Lords Select Committee on the Assisted Dying for the Terminally Ill Bill recognised that there are a group of patients whose demand for medically assisted dying will not be deflected by any circumstance, irrespective of the standard of palliative care. The National Council for Palliative Care, the British Medical Association and Macmillan Cancer Support have all acknowledged that to be the case. Dignity in Dying believes that mentally competent terminally ill adults should be allowed the option—it is an option, because it is a matter of personal choice—of an assisted death within strictly legal safeguards.

John Pugh (Lib Dem) produced a very erudite discourse about the core issue of assisted dying when he stated: “Assisted dying is a more inclusive, broader term than assisted suicide, with which it is conceptually confounded—it has been in the debate. It is clearly different from palliative care of the dying, suicide or a patient’s right to refuse treatment. Assisted dying proposals in all nations are designed to authorise and legitimate help given with the positive and primary aim of ending life swiftly—not generally, but subject to specific conditions. The grounds are invariably much the same. Either the individual believes something about their condition or the state believes something about their condition—that it is unbearable, hopeless, profoundly undignified or unnecessary or, as has been cited many times in the debate, lacking in autonomy.” He continued “Nearly all the proposals that we see these days insist that the individual must believe something and the state must do so, too. If just the state had a view of the □ individual’s condition, it would be involuntary euthanasia. If it was left entirely to the individual to judge their need of state euthanasia, we would have assisted suicide for depressives and the like. Both of those are unacceptable, so the only currently mooted proposals involve an individual regarding their life as intolerable, worthless, unbearable or lacking in human dignity and the state endorsing that choice.”

Mrs. Madeleine Moon (Lab) drew the member’s attention to a totally unregulated area that has entered modern life—the internet. On the internet, there is access to information about dying and how to take one’s life (suicide websites).

A pertinent point was made by Mr. Edward Garnier (Con) in that changes in law cannot come from the courts “albeit that the courts are—this may surprise the professional politicians among us—reasonably good at reflecting public opinion and expressing it in a coherent and rational

way.” The judgment in the Purdy case was explicitly clear that it was not about whether it should continue to be a criminal offence in this country to help another person, whatever the circumstances, to take their own life: that was a matter for Parliament and not the courts. Nor was it about whether someone could obtain, in advance, immunity from prosecution for helping another person to travel to another country where assisted suicide is lawful for the purpose of an assisted suicide (this had already been decided in the negative by the House of Lords in the case of Diane Pretty in 2001). Ms Purdy unsuccessfully argued that the Director of Public Prosecutions should provide guidance on the risks of people being convicted of assisting a suicide in a country where it is lawful.

Slippery slopes or safeguards?

In summing up the debate, Maria Eagle, The Parliamentary Under-Secretary of State for Justice observed the “debate was clearly between what I might call the slippery slope argument and the safeguards argument. One person’s slippery slope can be another person’s safeguard.” She also noted that section 2 of the Suicide Act 1961 deals with the highly unusually offences of aiding, abetting, counselling or procuring the suicide or attempted suicide of another – “It is not unique, but it is unusual because it criminalises something that is not itself an offence.” She further noted: “The crime of complicity in suicide—it is still a crime—covers a variety of situations. As we heard today, it covers situations of widely different moral culpability. There is a continuum, but Members would draw the line at different places. One merit of having a clear law is that it draws a clear line. However.....one must then consider how to enforce it. If one has a clear line and no enforcement, is the position any clearer? That question has been the nub of our debate.” She reiterated the government position that it intends to simplify and modernise the language of existing offences. It will be done when parliamentary time allows.

This debate provides a useful overview of diverse opinions in an important and difficult topic. It does also highlight the importance of a human rights based approach to the subject matter when considering the integral issues of autonomy and dignity. There certainly appears to be an increasing pressure for a review of assisted dying in the UK (whether or not that includes a change in the Suicide Act 1961 or production of new legislation) driven by a recent court judgment and in particular driven by recent, and inevitably more, emotive cases and stories making headline media news.

References

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