



Death and the Law

The campaign to achieve greater clarity for assisted suicide, in effect a right to death, has been admirable, but it would be wrong to legislate now

In 1961 Harold Macmillan sent a tetchy note to his Home Secretary questioning whether it was right to proceed with a government measure to legalise suicide. "I don't see the point of it," said the Prime Minister. "It is just to please a few cranky peers." He thought that voters would be unimpressed if the best that the Tories could boast, after ten years in office, was that people were allowed to kill themselves.

"Rab" Butler was irritated in turn. It was not just supported by a "handful of obsolescent peers" he replied. It enjoyed broad support. It would stop people who tried but failed to kill themselves from being prosecuted. "The present position is inhumane," said Butler, and his view prevailed.

Now the House of Lords, in the form of Lord Falconer of Thoroton, is to return to this piece of legislation. The original Act was clear that to assist the suicide of another person would remain a crime. And increasingly there have been questions over whether this provision is inhumane in the same way that criminalising suicide had been.

So is this the view of a few cranky peers? Or is reform necessary? The case for change has been made during arguments over a number of notably difficult cases in which desperately ill people have sought to gain greater control over ending

their lives. Arguably the most important was the litigation undertaken by Debbie Purdy, a multiple sclerosis sufferer. Ms Purdy sought to protect her husband from the threat of prosecution should he help her to die. She said that without such a guarantee, she could be tempted to kill herself before she was ready, merely to ensure that she could do so without involving him.

The courts saw her point. They believed that she had a right to greater clarity, and the Director of Public Prosecutions was instructed to publish his policy. After consultation, he did just that in February 2010, setting out criteria for the Crown Prosecution Service (CPS) to use when judging whether to proceed with a prosecution.

Lord Falconer with his new Bill now argues that this is not enough. He is seeking legal sanction for assisted suicide under agreed rules, rather than relying on the judgment of the CPS. Today *The Times* reveals that some doctors have written to the newspaper breaking with their profession's general opposition to assisted dying. They are offering support for legalisation.

The campaigners have done good work, forcing a debate on something that needed to be discussed. Greater clarity has been useful. Ms Purdy's achievement was an important one,

reinforced by the fact that the DPP, Keir Starmer, produced sensible guidelines.

But the law that Lord Falconer now wants is a step too far. One of the most prominent features of the debate on assisted dying has been the visits made to the Dignitas Clinic in Switzerland. Even though each story is distressing, the numbers going there are small, with a little more than 100 in total. And the numbers of prosecutions and even referrals to the Crown prosecutors have been tiny. The CPS, using its guidelines, has been able to cope with the difficult dilemmas presented by these cases.

There is a danger that a codified law that attempted to replace such difficult and nuanced judgments with statute would produce two problems. The first is a large increase in assisted suicides as it becomes more legally straightforward. This is the reason why many lobbyists for the disabled oppose the Bill, concerned that people will be put under pressure to end their lives.

The second danger is, oddly, an increase in prosecutions for assisting suicide, as the discretion of the old system is replaced by a more formulaic approach. This may be the reason why doctors are, in general, against a new law. And why they are right to be.