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MPs, not judges, should rule on life and death

Yesterday's Supreme Court decision shows the slippery slope unelected lawyers have set us on

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End-of-life issues pose some of the most difficult dilemmas in medical ethics. The Supreme Court confirmed yesterday that doctors can withdraw clinically assisted nutrition and hydration from a profoundly brain-damaged patient, if the family agrees, without permission from a court.

The case cuts straight to the increasingly contentious issue of whether people should be "allowed to die". Is this actually a euphemism for killing someone? Proponents say it is the right thing to do if a patient's life no longer corresponds to the idea of living. Who, though, is entitled to make such a judgment? And should it ever be made at all?

Last year, after a heart attack, a 52-year-old man fell into a condition called "prolonged disorder of consciousness". In other words, his doctors thought that he was unaware of anything and it was "highly improbable" he would ever recover consciousness.

With his family's agreement, they decided to withdraw his clinically assisted nutrition and hydration, as a result of which he would die.

The hospital applied to the High Court to be able to do this without obtaining a judge's permission. The High Court agreed. The Official Solicitor appealed against this ruling. Yesterday, the Supreme Court dismissed the appeal on the basis that there was no legal requirement to obtain such permission from a court.

The issue here, however, is far deeper and more troubling than the matter of what permission is needed in such tragic circumstances.

Family members facing this situation may be intensely distressed. Whatever they may be told to end their agony, however, procuring death through starvation and dehydration is not "allowing someone to die". It is to kill them.

This confusion dates back to 1993 and the seminal law lords' ruling in the case of Tony Bland, who was left in a persistent vegetative state after the 1989 Hillsborough football stadium disaster.

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lawful to remove his nutrition and hydration tubes. They believed that, since the doctors said Bland felt nothing at all and his brain had stopped functioning, his was a life no longer worth living.

Bland was not, however, dying. Withdrawing nutrition and fluids would therefore kill him, which would be murder. So, the Law Lords got round this by a ripe piece of sophistry.

Medical treatment could lawfully be withdrawn if it was deemed not to be in the patient's best interests. Therefore, the law lords ruled that administering nutrition and hydration through feeding tubes was medical treatment. Consequently, such patients could be starved and dehydrated to end lives deemed to be worthless.

Two of the judges in that unanimous ruling nevertheless revealed serious concerns about it. Lord Mustill said bluntly that it wasn't Bland's interests that were at stake but those of the family and the NHS. Both he and Lord Browne-Wilkinson said, in terms, that the purpose of withdrawing nutrition and hydration was to bring about the death of a patient who was not dying.

The battle over that principle was lost in 1993. Nevertheless the Official Solicitor, whose role is to safeguard a patient's interests, has taken about 100 such cases to the Court of Protection since the Bland judgment.

Given the difficulties over both diagnosis and prognosis for such patients, some of whom have recovered, at least to some extent, this is surely necessary.

The Supreme Court, however, has said it is not. Its reasoning is evasive and confused. It acknowledges that feeding a patient through a tube is seen as more basic than, say, artificial ventilation. Indeed: artificial ventilation keeps someone alive who otherwise would be dead.

By contrast, as the courts acknowledged, if food and fluids are withdrawn from a patient who, although apparently permanently unresponsive is not dying, such a move will cause that patient to die. Yet even while acknowledging the distinction, the court dismissed it because of the Bland ruling, which said clinically assisted nutrition and hydration constituted medical treatment.

So where next on this slippery slope? The judges say the court should still be involved in such cases if doctors and family disagree.

Well, it doesn't take much to imagine a cash-strapped hospital pressuring a distressed family to agree to withdraw nutrition and fluids to avoid the length and trauma of a court case. It doesn't take much to imagine a court ruling, somewhere down the line, that the family's wishes should count for little, or nothing at all.

Ending a life on compassionate grounds is euthanasia. The Bland judgment gave us euthanasia by another name. It is for parliament, though, not the judges, to decide on that issue. Surely, therefore, it's high time for parliament to revisit the Bland judgment and block that slippery slope before the courts send us down it even further.

Of course, given today's groundswell of support for euthanasia, the issue could go either way in parliament. That groundswell, however, has itself been created by the confusion and moral illiteracy of the Bland ruling.

The legal prohibition against intentional killing once served as the crucial line in the sand for the protection of all. It is that fundamental protection that was destroyed, not yesterday but a quarter of a century ago.