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Should judges decide on the right to die?

Sir, Baroness Mallalieu (letter, Oct 6) is right to resist Lord Sumption's assertion (The Brief, Oct 4) that it is for parliament, not the courts, to decide "political" issues such as assisted dying.

The central role of judges towards parliament and the executive is to keep them within the law. The consequences of court decisions that force parliament or the executive to change course are frequently highly political, for example, the Brexit or Northern Irish abortion cases. But that a decision may be politically controversial cannot possibly be a reason for a judge not determining whether the activity or inactivity of the state was lawful.

Of course there are things only parliament can do. But it is for the courts to determine the borders of what the no-go areas for them are. "Politics" is not one of the grid references for those borders.

In an era when the populist pressures on politicians grow ever stronger, it is unfortunate that a judge as eminent as Lord Sumption should provide ammunition for those populists who would wish to see the

protections provided by the rule of law to be as weak as possible.

LORD FALCONER OF THOROTON
House of Lords

Sir, Baroness Mallalieu argues that judges should intervene when a timorous parliament avoids making difficult decisions such as granting a right to "assisted dying". But the UK parliament has not avoided such a decision. It has deliberated on the issue many times in the past decade and only three years ago the Marris bill, which would have legalised assisted suicide, was overwhelmingly defeated by 330 votes to 118.

Deciding whether to invent a right to assisted suicide involves judgments about ethical issues and social effects. Judges, as experts in the law, have no special authority in either ethics or social prediction. They also necessarily suffer from forensic myopia, being able only to consider the evidence that litigating parties present. Unlike parliamentarians, they cannot commission comprehensive inquiries.

When parliament makes a controversial decision, dissenting citizens can forbear, knowing they

have a political opportunity to reverse it. But when such a decision is made by unelected judges, the dissenter will view it as an act of tyranny. The judicial presumptuousness that Baroness Mallalieu commends would be the surest way to import America's cultural civil war.

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Sir, Baroness Mallalieu is quite wrong. It is for parliament and certainly not for judges to resolve fundamental moral controversies. It is a matter for proper pride that abortion was legalised in this country following free votes in parliament (in the 1967 Abortion Act) and not, as in the United States, by the votes of nine judges in the supreme court (Roe v. Wade, 1973). I cannot think of anything more dangerous for the constitution than for courts to decide that parliamentary caution on the issue of assisted dying represents a "vacuum" for the judges to fill.

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