End of Life Assistance (Scotland) Bill

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Assisted Dying
Human Dignity v Autonomy

The potential for the precedence of the Sanctity of Life principle and its obstacles

This is a particularly poignant and emotive area of law, which encompasses a number of significant ethical issues. Death is not a biological issue. The principle, which lies at the epicentre of this debate that we ought to give respect to a person’s autonomy has perhaps descended from the Kantian tradition in ethics. The question to which this principle is being repeatedly applied is whether it is justifiable to legalize s. 2 of the Suicide Act 1961, rendering it legal for someone to aid or abet another person’s death, the implication being that the life has lost its value, and that the only way to regain dignity is through death. Nevertheless as John Keown and Luke Gormally argue: “Every human being, however immature or mentally impaired, possesses a fundamental worth and dignity which are not lost as long as he or she is alive.”

Perhaps it is consciousness which differentiates humans form machines; the capacity to make their own decisions and dictate their future. If it is considered that a being is a person as long as this exists would it not be an affront to said personhood to make a decision to terminate it, and the body which goes with it, of one’s own accord.

As Dworkin argues in Life’s Dominion “The life of a single human organism commands respect and protection, then, no matter in what form or shape, because of the complex creative investment it represents and because of our wonder at the divine or evolutionary processes that produce new lives from old ones, at the processes of nation and community and language through which a human being will come to absorb and continue hundreds of generations...” This statement, which was once the predominant opinion, has now been challenged by the recent adherence to the bioethical principle of autonomy. As Jonathon Glover highlights the argument that the direct wrongness of killing was wrong seemed incomplete. Whilst acknowledging the significance of autonomy he emphasises that “if someone wants to go on living, it may still be directly wrong to kill him even where there are good grounds for thinking his life is not worth living.”

Evidently a complete rejection of a person’s autonomy is not justifiable, as by merely existing a person has the capacity to make decisions. Indeed, it is possible to restrict their autonomy by putting in place mechanisms to prevent their decisions from legitimately having effect. However the person would need to have achieved


the relevant developmental condition to have capacity, whether legal or physical; possessing the knowledge and intellect to form opinions. By attempting to override a person’s autonomy the agent is confirming its existence.

Nevertheless there are circumstances in which a degree of paternalism has been shown to be necessary. There are several legal cases in which consent does not provide the legitimacy to the use of one’s body. The most noteworthy one being the Dwarf-tossing case. In 2002 the UN upheld a French decision to ban the obscure sport of dwarf-tossing. The issue concerned was whether a man of just one metre had the right to allow himself to be thrown. Mr. Manuel Wackenheim claimed he held the right to consent to this. However the UN did not concur with the above decision, arguing that he did not for the simple reason that it countered ‘considerations of human dignity’. Similarly, in 1981 a German high court ruled against the right of a woman to perform willingly in peep shows. Again, the key factor was not just the dignity of the woman but that of human dignity in general, and public interest. Dignity, the court decided, ‘reaches beyond the individual [and] must be protected even against the wishes of the woman concerned’. The question of consent thus appears to be in question: in the case of R v Brown⁴, in which the House of Lords decided that occasioning actual bodily harm during consensual sado-masochistic practices was an offence, Lords agreed that “proper” medical treatment does not constitute a criminal offence but it cannot derive solely from the patient’s consent. Another case in which the courts considered it prudent to override a person’s autonomy was one which attracted media attention when the surgeon performed single-leg amputations on two physically healthy individuals with psychiatric disorders, both of whom were suffering from body dismorphia in which the patient wished to be amputees. This was considered to be grievous bodily harm, despite their consent having been given (ref. S.18 Offences Against the Person Act 1861). Thus it is clear that dignity can trump autonomy when the agent’s consent is an affront to their personhood.

Returning to the present issue of assisted suicide; this appears a highly complex moral issue, where the boundaries are blurred between the grounds of taking one’s life and assisting someone in doing so. To argue that because the agent merely sets in motion the sequence of events, but does not complete them, thus eliding responsibility for the outcome is unconvincing; it would contravene the essence of Scots law. There is significance in the precedent which holds that if one person survives a suicide act they are guilty of Culpable Homicide. Perhaps, as Mason and Laurie advance there may be strong pragmatic reasons for the view that the medical profession simply should not involve itself in actions which confuse its role.⁵ Indeed, the absence of an opt-out clause for doctors in this bill is particularly concerning and to a certain extent could be said to be in contravention of Article 9 ECHR.

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⁴ [1994] 1 AC 212
⁵ Laurie, Mason and McCall Smith, Law and Medical Ethics, Oxford, Oxford University Press, 2006, Ch. 17
Having considered the above, it is evident that life has an intrinsic value, which eludes some people. It is necessary to emphasise the dignity of human life, which contradicts the utilitarian viewpoint held by Hume, that objects or events are only valuable when and because they serve someone’s or something’s interests. Human life, as Dworkin suggests is inviolable as its deliberate destruction would dishonour what ought to be honoured. It is perhaps possible, as Jonathon Glover indeed does, in *Causing Death and Saving Lives* to equate autonomy with utilitarianism. Surely a human life is worth more than what is dictated by its function and purpose in society. The human condition, recognized in Hamlet’s infamous soliloquy, *What is a man?* still holds true, that a person has worth merely by possessing their attributes. As Lord Bingham emphasises in *R on the Application of Diane Pretty v DPP* the risk of member states relaxing the prohibition on assisted suicide is one which cannot be lightly discounted. Indeed, assisted suicide would undermine the principle of intrinsic human dignity, which cannot be lost on which responsible societies are built.

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12 May 2010

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8 Act 4: IV
9 [2002] 1 AC 800 para. 29