End of Life Assistance (Scotland) Bill

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These comments come from a group of academic philosophers and lawyers working on a research project, Criminalization (funded by the Arts and Humanities Research Council), which deals with the proper scope and aims of the criminal law.

Do you agree a person should be able to request end of life assistance from a registered medical practitioner?

Yes, a person should be able to request end of life assistance; but for the reasons given below the final decision on the request should not lie with a medical practitioner.

Are you satisfied with the requirements for age and connection with Scotland as set out in the bill?

As to age, yes. As to connection with Scotland, the requirement is too strict – see below.

Are you satisfied with the two categories of people who would qualify to be assisted under the terms of the Bill?

Yes: there is a case for extending the categories wider, in particular to cover people who want to make ‘living wills’ or ‘advance directives’; but it is sensible to start with these two categories, as being the most obvious and least problematic.

The Bill outlines a several stage consent and verification process that would be required to be followed for an eligible person to receive end of life assistance. Are you satisfied with this process?

Yes, except that for the reasons given below the final decision should not lie with medical practitioners.

Do you consider the level and the nature of safeguards as set out in the Bill to be appropriate?

Yes: they might be thought to err on the side of over-caution, but that is sensible at this stage.

General Comments

We endorse the basic principle underlying the Bill – that it should sometimes be lawful to help another person to end his or her life. This principle could be grounded in any of a range of moral views about life and death and political views about the proper scope of the criminal law. One way to put the central,
and persuasive, argument is this. A person might rationally and reasonably come to the view that, given the nature and effects of his terminal illness of permanent incapacity, continued life is not in his own best interests; he might rationally and reasonably prefer death to the pain, distress, indignity and loss of what makes his life worth living that he otherwise faces. Others, given different moral or religious views, might think that he is wrong to take this view, and would be wrong to seek death: but in a liberal polity it is not for the criminal law to intervene in such a matter – which is why suicide is not a crime. Such a would-be suicide might not be able to carry out his decision to die without help from others, and others (friends, family members, a doctor) might want to help him, motivated by respect for his autonomy or his dignity, or by compassion for his present and prospective suffering. As the law now stands, even if assisting suicide is not in itself a crime in Scotland, they face the prospect of being charged with a homicide offence if they help him; but this is unreasonable. The law should respect both the would-be suicide’s decision to end his life (as it does in not making suicide a crime) and the decisions of others to help him do so when he earnestly requests such help – subject, of course, to stringent safeguards of the kind that the Bill provides.

Although we endorse the principle underlying the Bill, we have reservations about some of the particular provisions.

Section 1

It is striking that the Bill does not distinguish, as most of those who advocate reform of the law do distinguish, assisting suicide from euthanasia – providing the drugs for someone else to self-administer from actually administering them. It might be argued that there is no substantial moral distinction, and therefore should be no legal, distinction here: if it is morally permissible, for instance, to rig up the apparatus so that the would-be suicide need only press a button for him to die, knowing full well that he intends to do so, surely it is also permissible to press the button for him if he is incapable of doing it for himself. But the view is at best arguable, and is opposed by many. The Bill should either make it clearer that it is intended to permit euthanasia as well as assistance; or alternatively, if it is politically expedient (on the grounds that it is better to take a gradualist approach to an issue as controversial as this), be amended so that it only covers assistance.

Sections 2

The requirement for two formal requests (at least fifteen days apart) to be approved by a medical practitioner might seem unreasonably onerous to those seeking assistance: but some such requirement provides protection not only for would-be suicides, but also for those from whom assistance is sought; and it give the Bill more chance of passing.

One question, though, is whether it should always have to be a medical practitioner who approves the formal request: why should it not be e.g. a lawyer, or a social worker, or indeed a small panel of carefully selected and trained lay people who would deal with such requests? Medical expertise is
of course relevant to determining whether the person is terminally ill or permanently incapacitated – but that point could be met by requiring a medical certificate, just as a psychiatrist’s report is required. To require the approver to be a medical practitioner gives the wrong impression that the issue is in the end a medical one – which it is not.

Section 4

Again, one can see good political reasons for defining the criteria narrowly. But it is not clear why the permanent incapacity should have to be physical: someone facing permanent mental incapacity might still be well able (before its certain and final onset or in remission) to judge that it makes life intolerable. Nor is it clear why the Bill should deny assistance to those who want to come to Scotland precisely to secure assistance in dying – unless the fear is that the Bill would have an even smaller chance of passing without that restriction. If someone who comes to Scotland satisfies the other stringent criteria; and if providing such assistance is consistent with (indeed expressive of) a proper regard for the dignity and a proper concern for the suffering of the person seeking assistance, should it not also be available to others?

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