

Should we change the law for the terminally ill?

The assisted dying debate

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Raymond Tallis and **Elizabeth Butler-Sloss** debate the long-awaited report of the Commission on Assisted Dying

YES: Today's outstanding commission report makes a balanced and humane case, writes Raymond Tallis

Last month, Geraldine McClelland, a former TV producer with advanced lung cancer, travelled to a Dignitas clinic in Zurich where she was assisted to die. In a letter published after her death, she expressed her anger that “because of the cowardice of our politicians I can't die in the country I was born in, in my own home”.

Today, there is another challenge to the courage of politicians. The Commission on Assisted Dying, a group of 11 distinguished public servants, chaired by the former Lord Chancellor Charles Falconer, has published its findings. Its conclusions are clear-cut: “the current status of assisted dying is inadequate and incoherent” and “there is a strong case for providing the choice of assisted dying for terminally ill people”.

This was not a snap judgment. In more than 400 pages, the report takes into account 1,200 submissions; evidence from six public meetings at which nearly fifty experts gave testimony; and information gathered during visits to jurisdictions such as Oregon, in which some form of assisted dying is legal. The discussion of the ethics and challenges of creating a legal framework is exemplary, balancing individual autonomy and the welfare of society in formulating a law that is both workable and safe. Crucially, much space is given to the views of those who are opposed to assisted dying.

An overwhelming case for legalisation emerges. The positive case is easily stated: unbearable suffering, prolonged by medical care, and inflicted on a dying patient who wishes to die, is an unequivocal evil. The right to have one's choices supported by others, to determine one's own best interest when one is of sound mind, should be sovereign.

Death by self-starvation, botched suicides or dreadful journeys to die abroad reflect the appalling cruelty of the present law. Reformers who acknowledge the suffering caused by the criminalisation of assisted dying may still worry that legalisation could cause harm. The commission was thorough in its assessment of the factoids mobilised by opponents of reform. Its searching examination of international experience demolishes claims that a law allowing assisted dying would undermine palliative care (the reverse is true). Nor would it damage trust (the Netherlands has the highest level of trust between doctors and patients). And the assertion that it would lead to a “slippery slope”, with vulnerable people being pressurised to agree to assisted dying, is unsupported by any evidence from other countries.

Unelected bishops, medical bodies and others will dismiss the conclusions as the inevitable outcome of a biased inquiry. The composition of the commission disproves that slur: it includes a former head of the Metropolitan Police, a vice-president of the Alzheimer's Society, a former president of the General Medical Council and leading figures in palliative care — all individuals whom one might expect to approach the issue with considerable caution.

Sensing that the arguments and public opinion are moving against them, opponents will also redouble their efforts to instil fear of change. Now that the facts and arguments have been weighed, it is up to us, members of the public, to make sure that our politicians listen to the will of the vast majority of people they are supposed to represent.

Raymond Tallis is Chair of Healthcare Professionals for Assisted Dying and an emeritus professor of geriatric medicine

NO: Don't blur the frontiers of the law. It works well as it is, writes Elizabeth Butler-Sloss

There are two key tests to apply to Lord Falconer of Thoroton's report: does it present convincing evidence that the law we have now is in need of change? And, if it does, are the safeguards proposed adequate to protect vulnerable people? The evidence is not persuasive on either of these counts.

Keir Starmer, the Director of Public Prosecutions, for example, told Lord Falconer and his "commission" that the law we have "works well in practice". Asked how many cases of assisted suicide crossed his desk, Mr Starmer said there were fewer than 20 a year. This contrasts sharply with Oregon, where the number of assisted suicides has quadrupled since legalisation in 1997. If Oregon's current — and rising — death rate from this source were to be replicated in Britain, we would be looking at between 1,000 and 1,200 a year. Legalisation means normalisation. If assisted suicide is licensed, we cannot expect it to be the rare event it is now.

There are exceptional circumstances where one might understand why someone has broken the law — a parent who disregarded the speed limit to get a desperately sick child to hospital, a mother who stole to feed her starving children. But no one would seriously suggest we should have laws licensing dangerous driving or theft. We expect those laws to be maintained to protect the public and we look to see exceptional cases treated exceptionally.

And that is exactly what happens now in Britain, and in nearly every other country, with assisted suicide.

Those who want to see the law changed tell us their assisted suicide law would come with safeguards. But the group heard evidence that casts serious doubts on the effectiveness of these safeguards. Predicting how long a terminally ill patient has to live is "fraught with difficulty", according to Professor Sir Mike Richards, the National Clinical Director for Cancer and End of Life Care. Relying on one-off assessments to establish mental capacity was dismissed by Dr Matthew Hotopf, a professor of psychiatry, as just "a mechanistic safeguard". A consultant in old-age psychiatry warned that abuse and coercion can easily go undetected. "If you want to be devious about it you can be."

One advocate of assisted suicide suggested the sort of law needed was “something that will get through. Let’s get it through first and then maybe ... you water the safeguards down a bit”. This may not be the position of official campaigning bodies, but they have shifted their agenda in the face of parliamentary opposition.

Laws are like nation states. They are more secure when their boundaries rest on natural frontiers. The law we have rests on the principle that we do not involve ourselves in bringing about other people’s deaths. Once exceptions are introduced, based on arbitrary criteria such as terminal illness or unbearable suffering, those frontiers get blurred. They become no more than lines in the sand, hard to define and easily crossed.

No law is perfect or suits everyone, but the law we have reflects a widely held view that suicide is not something to be encouraged or assisted. It is robust enough to deter malicious assistance and it is applied with sensitivity where there are genuinely compassionate circumstances. It gives us the best of both worlds. We tinker with it at our peril.

Baroness Butler-Sloss is a former president of the Family Division of the High Court of Justice