‘ASSISTED DYING’:
An assessment

House of Lords
9 June 2014

1. The current law on assisted suicide
   - Suicide Act, 1961: attempted suicide deserves therapy rather than punishment; assistance in suicide remains a crime
   - 2010 publication by D.P.P., Keir Starmer, of criteria for judging whether prosecution in the public interest. This implies that instances of the crime of assistance that bear these features should not be prosecuted
   - This is one way for the law to accommodate hard cases, while continuing generally to discourage assistance in suicide and therefore suicide itself

2. Lord Falconer’s Commission and ‘Assisted Dying’ Bill
   - ‘assisted dying’ is a misnomer: we’re not talking about palliative care, but about assisting someone to kill themselves
   - Falconer Commission’s main objections to current legal arrangements:
     1. because assisted suicide remains a crime, those who would commit suicide must either travel to Switzerland or risk an amateur—and perhaps botched—attempt
     2. those who assist a suicide must endure the threat of prosecution
     3. the arrangements involve only checks after the fact of suicide, not safeguards against abuse beforehand
   - Therefore the Bill proposes that assisted suicide be made legal where the suicide is terminally ill and his choice is voluntary and informed

3. Critical commentary on the Bill
   - First, in restricting eligibility to the terminally ill, the bill would make no difference at all to most of the likes of Pratchett, Purdy, James, Nicklinson, and Downes
     - Good reasons for the restriction: avoids depreciating disabled life; ‘unbearable suffering’ too subjective; ‘individual autonomy’ would lead to assisted suicide on demand (e.g., by life-prisoners). But restriction unlikely to survive long, because merely a first tactical step (e.g., Lord Joffe)
     - Therefore, the UK more likely to follow the Dutch or Belgian model than the Oregon one
   - Second, the Commission’s “essential” safeguards against undue pressure are not in place (see pp. 24, 299): e.g., Julia Neuberger, Not Dead Yet: 500,000 elderly people being abused; Mid-Staffs Healthcare professionals lacking compassion
     - It is generally impossible to guarantee against the malevolent formation of someone else’s ‘autonomy’
   - Third, if the DPP’s guidelines are good enough for Alzheimers’ patients, quadraplegics, locked-in syndrome sufferers etc., why are they not good enough for the terminally ill?

4. Responses to the Falconer Commission’s objections
   1. Palliative medicine and care can manage physical suffering in the vast majority of cases. Existential distress (physical confinement, grief, loneliness, life-imprisonment) is not the responsibility of healthcare professionals
2. The legal arrangements proposed by the ‘Assisted Dying’ bill would spare an assistant in suicide anxiety about possible prosecution after the event. But it wouldn’t spare the would-be suicide the anxiety of uncertainty during the assessment of his application for assistance in killing himself. Nor would it save those assisting the suicide of the non-terminally ill anxiety about possible prosecution. Would, then, the total ‘quantity’ of anxiety spared really justify a change in the law, together with its attendant risks?

3. Third, current arrangements do make assistance in suicide illegal and subject to the threat of prosecution and, perhaps, punishment. The current system no doubt fails to prevent all law-breaking, but so will any alternative. It provides a safeguard, albeit not a guarantee

5. Christian reasons and their public propriety
   - Why Christian reasons are appropriate in public deliberation:
     - the British public is plural, not ‘secular’
     - in public discussion, everyone should speak their various minds, be they religious or non-religious, and negotiate overlapping consensus
     - what is characteristically Christian need not be exclusively so

6. Christian elements in this assessment of the Falconer Bill
   - There is a God-given, created moral reality, comprising objective goods or values (now Derek Parfit and Thomas Nagel versus Peter Singer)
   - Human flourishing consists, not simply in realising individual preferences, but mainly in investing our lives in objective goods, and so in meeting social obligations—e.g., to maintain a society whose members generally support each other to live well in adversity, and which is therefore characterized by care and trust
   - Compassion for the vulnerable is a Christian virtue.
   - But prudence is also a Christian virtue, and the heart of my argument against Lord Falconer’s bill is that it is imprudent. For in seeking to engineer a perfect legal solution to the undoubtedly hard cases of a few dozen or hundred fellow citizens, it risks weakening the general social taboo against suicide and the general social norm to support those in adversity to carry on living, thereby putting at risk a much larger number of vulnerable patients
   - Augustinian Christianity: we live in the saeculum or ‘secular’ age between the hopeful sign of perfection that is the Resurrection of Jesus and its fulfilment. Here and now, then, is the age of ambiguity, tragedy, and compromise, where every practicable solution involves inconsistencies, trails loose ends, entails unintended consequences, involves risks. Any proposal that purports to be perfect, offering guarantees and neglecting the risks, shouldn’t be trusted. One such is Lord Falconer’s current bill.
   - Once we become more frank about the persistent possibility of abuse and the unintended side-effects, we might be led to wonder just how improving, all things considered, the proposed improvement really is.

Further reading
..... “The Road to Death on Demand”, Standpoint, 20 (March 2010):
http://standpointmag.co.uk/node/2726/ful-

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