Assisted dying – MPs have given it the provisional go-ahead, but how might the creation of what the justice secretary criticised as the state offering death as "a service" change society's and the law's approach to death?

From Seneca to today, discussions of death and the right to end life have revolved around three broad moral poles: sanctity of life; personal autonomy; and protection of the vulnerable. Balancing them has never been a rational task, as these are values that we hold almost instinctively – to paraphrase David Hume, this is a matter where reason follows passion. The law should not shy away from this passion. It must, after all, continue to reflect social mores – no less so than in the question of death.

To assess how the Assisted Dying Bill (the "Bill") will change the law's approach to death, we should first take stock of what it is now. In its most basic form, English law provides a qualified right for a person to decide when and how their life should end, under Article 8 of the European Convention of Human Rights ("ECHR").[1] However, English law by no means endorses death as an option: though suicide has been long decriminalised, this is because criminalisation was an ineffective deterrent and an inhumane punishment.[2]

The most immediate impact of the Bill is, therefore, for the law to openly embrace and offer death. In offering it to a narrow selection of people, the Bill will undermine the 'sanctity of life'. This concept is amorphous and hard to define. As a result, it has been much criticised for being 'moralistic', or too indebted to a religious tradition that no longer reflects secular modernity.[3] But, as Lord Hoffman wrote in *Bland*, 'in one form or another, [it forms] part of

[1] *Haas v. Switzerland* [2011] ECHR 2422; *R (Nicklinson) v Ministry of Justice* [2014] UKSC 38, Kerr [329].
[2] Elizabeth Wicks, 'Positive and Negative Obligations under the Right to Life in English Medical Law: Letting Patients Die' in Jon Yorke (ed.) *The Right to Life and the Value of Life* (Ashgate, 2010).
[3] Miriam Cohen, 'A Human Rights Approach to End of Life? Recent Developments at the European Court of Human Rights' [2018] 17/18 *Revista do Instituto Brasileiro de Direitos Humanos* 193-210.

almost everyone's intuitive values' regardless of faith and underpins English law, including the ECHR.[4] The Bill is, to be sure, a major shift away from this.

But does English law not already act as an instrument of death? Has it not already moved away from prioritising the right to life at all costs in *Bland* and *Re A*[5]? In some ways, it has. These cases ruled that the law can be used to end life when it relies on artificial interference, or when ending one life saves another. *R v Adams*' decision[6], which allows doctors to hasten death if it is a 'side-effect' of relieving pain, also demonstrates that English law recognises that with 'sufficiently compelling justification … the legal protection for life can be overridden'.[7] It could, therefore, be argued that the Bill merely provides a new justification: terminal illness, severe pain, and the prospect of death in the next six months.

This underplays the impact of the Bill. None of the cases mentioned show the law openly accepting death as something that the state should provide to those who request it, even just in limited cases. *Bland* and *Adams* show the law struggling to accept that it is an instrument in ending life. It accepts it only furtively and only if it can hide behind a protection of some kind – life being 'artificial', or pain relief being the 'main effect'. The Bill means the law provides death an option on the 'menu' of end-of-life care: for the first time, it is out in the open.

This openness is, to some degree, needed. Over the past century, death in the West has become a hidden, medicalised event. Ivan Ilich has criticised us for making prolonging life a 'civic right'.[8] While this is harsh – wanting to extend your own life is a justified instinct – it is true that overtreatment at the end of life is an issue.[9] We avoid the 'difficult' conversation and

[4] *Airedale NHS Trust v Bland* [1993] AC 789.
[5] *Re A (conjoined twins)* [2001] 2 WLR 480.
[6] *R v Adams* [1957] Crim LR 365.
[7] Wicks, no 2.
[8] Libby Sallnow et al, 'Report of the *Lancet* Commission on the Value of Death: bringing death back into life' [2022] 399 *The Lancet* 837-884.
[9] *ibid*.

we struggle to accept death as a part of life, instead choosing treatments that often are not in our best interests. The law embracing death as an option can help society at large have better conversations about it, and help re-familiarise ourselves with an emotionally valuable event.

If death is an option the state provides, however, then it will mean that some people will use this openness to coerce relatives (or patients) to choose it. This is what the Bill's safeguards are supposed to prevent. Clauses 7(2)(g) and 8(2)(e) provide that doctors must, as part of their assessment, ascertain whether the individual made 'the declaration voluntarily and has not been coerced or pressured by any other person into making it.'[10] However, no clear investigatory powers are provided, and the burden of proof is merely the balance of probabilities. The now-amended Clause 12, the 'judicial' safeguard, also did not clearly allow for much of an investigation; details of the 'judge-plus' panel, meanwhile, are lacking.[11] Given the finality of the decision, you would expect that coercion would be investigated more thoroughly, at least to the point of its absence being beyond reasonable doubt.

There is also the more morally complex issue of being considered a 'burden'. Once death is provided by the state, will the terminally ill feel pressured to choose it, even if no doctor or member of the family requests it? Social care costs can bankrupt families, and there is constant economic pressure on hospitals. Will the Bill mean that, over time, death becomes an increasingly financial decision, and the terminally ill will feel forced to choose it once their life becomes – financially – unvaluable and not worth living? This prospect likely makes us uneasy, at least at first, as it clashes with our feeling that life should be protected. Yet, evidence from other jurisdictions suggests that people do choose assisted dying because they feel a burden on their loved ones or society[12], and there are no safeguards that can reasonably prevent

[10] Terminally Ill Adults (End of Life) Bill, House of Commons Bill, 2024-25, 12.
[11] Harry Farley, 'Replacing judge with experts strengthens assisted dying bill, MP says', *BBC News* (London, 10 February 2025) < https://www.bbc.co.uk/news/articles/c2egl17pvldo> accessed 10 February 2025.
[12] Oregon Death with Dignity Act Annual Reports <https://www.oregon.gov/oha/ph/providerpartnerresources/evaluationresearch/deathwithdignityact/pages/ar-index.aspx> accessed 12 February 2025.

this from happening. It will be here, therefore, that the Bill's biggest impact on society will be felt.

So, perhaps, it is time to be honest. Do we want the law to prize personal autonomy and familial decision-making, and so accept this kind of 'economisation' of death? Many, including Lady Hale, think so.[13] Or does this undervalue life, especially that of the disabled and ill, to an unsatisfactory extent? Should this Bill pass, I expect our answer to change significantly in the coming years.

999 words.

[13] Brenda Hale and Rowan Williams, '"You wouldn't let a dog suffer like this": should assisted dying be legal?' *Prospect Magazine* (19 October 2024), <https://www.prospectmagazine.co.uk/ideas/law/68266/you-wouldnt-let-a-dog-suffer-like-this-should-assisted-dying-be-legal> accessed 11 February 2025.