Written evidence submitted by Dr Alan Howarth (ADY0239)

In the course of my professional career I have taught political philosophy at all levels, from undergraduate to post graduate. I have written a number of books on the subject, and I am the author of numerous articles. I am entering this submission to the Health Committee's assisted dying inquiry on behalf of Humanism UK's campaign for a change in the law. As I see it, the main points to consider are as follows. I will summarise them as briefly as I can. I shall begin with a rather general observation concerning the role of law within modern society.

1. Diversity of value and the role of law:

I take it that, within a modern society such as our own, there are great differences between individuals in the values they hold and the plans they consequently pursue. That is a plain and obvious fact. It is equally obvious that, within modern society, the role of any government seeking to treat its diversely motivated citizens with equal respect must be to regulate the relationships between them as each pursues his or her individually chosen projects and plans of life. To put it crudely, while full autonomy for all may be an unachievable objective, the state must recognise that we, each of us, must be free – insofar as possible – to live our own lives in our own way. The conclusion that there should be a legal right to an assisted death follows quite straightforwardly from such obvious considerations, or so it seems to me. That is because the right to live one's own life in one's own way must include the right to have a say, if one can, in determining the conditions under which one dies.

Straightforward and obvious though the foregoing argument may be however, certain points of clarification are in order here, the first being that the claim at issue - that each person has his or her own life to lead in his or her own way, in the sense of that expression just outlined - is not equivalent to the claim that there is intrinsic value in life itself. An example of the latter is the claim, sometimes advanced by religious people, that life is sacred, so sacred that only God can take it away. To appreciate the difference, take the case of someone about to die - who is perhaps comatose. Having passed the point at which project formation is possible, this person would not have a life of his or her own to lead, not in the sense at issue. Of course, it will also be true that, being alive, this person 'has a life', and if you are religious that is a consideration which might carry some weight for you. However, it is less likely to persuade those who do not share your religious perspective and it is, in any case, a consideration which can be discounted so far as my present argument is concerned.

A second observation worth making here is that the strategy of seeking to regulate the relationships between diversely motivated individuals – to act as a 'traffic policeman' as it were - is not the only policy open to governments faced with such diversity. An alternative is to seek to impose a specific

system of morality upon the populace at large. In Europe, this would have been the norm prior to the closing years of the Reformation, and it remains the policy of authoritarian and totalitarian regimes everywhere. It merits the comment that it is hard to see how moral uniformity can be imposed while maintaining equal respect for all citizens as they each seek to pursue their various plans and ambitions. On that score consider, too, the asymmetry which accompanies the fact that assisted dying is presently illegal. It means that individuals who have no moral objection to the practice have no legally sanctioned opportunity to avail themselves of it. By contrast, were the practice legal, those who find it morally objectionable would not have to avail themselves of it. Nobody would be forcing them to. Were the only reason for the ban a moral preference – a preference for the belief that life is sacred, for example – that would seem to be unfair.

The origins of the argument between those who hold that governments should, insofar as possible, leave individuals to their own devices and those who seek to impose more rigid moral limits upon our behaviour can, of course, be traced back at least as far as the nineteenth century. Here though, it's worth mentioning a relatively recent example, namely Patrick Devlin's disagreement with the argument of H.L.A.Hart's *Law, Liberty, and Morality*. The latter, published in 1963, is a defence of John Stuart Mill's principle that, 'The only purpose for which power can rightfully be exercised over any member of a civilised community against his will is to prevent harm to other'. (In other words, it was Mill's view that, as I have put it, the role of the state should be confined to that of 'traffic policeman'). Against this, Devlin, in *The Enforcement of Morals* (1965) argued that morality is an essential component of society's structure. As he put it at one point, the structure of every society is made up both of politics and morals', the clear implication being that, if morality goes, then society falls with it. Accordingly, Devlin's closing paragraph contains the following rhetorical question: ' If the principle [that there is a realm of private morality which is none of the law's business] …. What parts of the existing criminal law will be carried away as well? Incest? Abortion? Bestiality?'

Now, my reason for referring to Devlin's argument here is that, with hindsight it turns out to have been an over-reaction – an example of a somewhat hysterical moral panic. In fact, the context for his disagreement with Hart was the publication of the Wolfenden report in 1957. This recommended that homosexual behaviour conducted in private between consenting adults should no longer be a criminal offence and, as I am sure members of the Health Committee will know, homosexual behaviour was finally decriminalised (in England and Wales) in 1967. Since then, and quite unsurprisingly, the fundamental structure of society has remained intact. There has been no general collapse. (Since Devlin mentions the subject himself, it's worth remarking too that there has been no noticeable increase in bestiality.) So, my suggestion is that many of the arguments currently

levelled at the idea that assisted dying should be legalised exemplify a similar over-reaction. I shall come to some examples shortly.

2. The relevance of choice.

Now, the argument for the legalisation of assisted dying I spelt out earlier – 'the argument from autonomy' as I might as well call it – states a *prima facie* case. To recap, it states that, since each person has a right to live his or her own life in his or her own way, it follows directly that persons ought to have a legal right to choose an assisted death. But the point about *prima facie* cases is that they stand to be defeated. In other words, there is a possibility that circumstances might arise, such that the arguments upon which they rest are defeated and their conclusions nullified. In the case of the argument under discussion, then, it follows that we must ask what those circumstances might be.

The question is, perhaps, especially pressing in the case of assisted dying, the reason being that the type of case to which the argument applies in a clear and direct way is relatively rare. I mean the type of case in which the person choosing an assisted death is perfectly conscious and of sound mind when making that choice and, further, equally conscious and of sound mind if given the opportunity to exercise it. The examples of Paul Lamb, who was paralysed from the neck down, and Tony Nicklinson, who suffered from locked-in syndrome, both of whom formed the subject of campaigns by Humanists UK are cases in point. There is *no question* that those were individuals who should have been granted the right to an assisted death. There is equally no question that the denial of that right was, in each case, an act of extreme cruelty. The more usual case, however, is that of the mentally competent person who, at one point in time, expresses a wish to be helped to die at some future time when he or she may no longer be rational or capable of expressing that wish. But in these cases, it seems to me that a 'living will' or 'statement of advanced decision' that life-sustaining treatment should be withheld in specified circumstances must surely carry weight sufficient to influence of any reasonably empathetic doctor. I'll come back to the point.

More problematic difficulties arise thanks to the possibility of coercion or illicit persuasion. The point is that a person who is coerced does not make a genuine choice. (As in the movie, you might be told, 'Either your signature goes on that contract or your brains do'. You have a choice, but it isn't really much of a choice.) Can't it happen that individuals who claim to have chosen an assisted death have sometimes been coerced into doing so? Again, can't it happen that those who 'don't want to be a burden' are browbeaten into choosing death, by relatives anxious to get their hands on an inheritance for example? Of course it can, but I would be persuaded that therein lies a reason for

rejecting the legalisation of assisted dying only if similar issues did not arise elsewhere in areas to which the law applies. But they do. The question of how to distinguish a coerced choice from a genuinely free choice arises in the case of sexual relations for example – not just in the obvious case where rape is said to have taken place, but in the case where coercive control is said to have pervaded relationships within a marriage. They must arise in the case of industrial relations as well, the question of whether an 'offer' is really no more than 'an offer you can't refuse' being genuine enough. Even so , none of this adds up to a reason for criminalising marriage or business deals. Likewise, nor does the possibility of persons making coerced choices constitute a reason for criminalising assisted dying.

Finally on the subject of choice, philosophers who discuss euthanasia sometimes distinguish 'voluntary euthanasia' from 'involuntary euthanasia 'and 'non-voluntary euthanasia'. My argument from autonomy only applies in the first case; that is, it justifies euthanasia only in cases where it is the person whose life is actually at stake who has chosen to be put to death. It has no relevance to the practice of involuntary euthanasia; that is, the euthanasia of individuals who have expressed no such choice and who would, in most cases, strongly prefer not to be put to death. For examples of involuntary euthanasia, one need look no further than the United States, where convicted criminals are routinely put to death by lethal injection. For another, one might take Hitler's 'euthanasia programme', the mass murder of the physically disabled, the mentally disordered, and others deemed 'unworthy of life'. It is difficult to confuse the two forms of euthanasia, although I emphasise the point in order to counter the charge, often made, that the legalisation of assisted dying would lead to a general diminution in the respect in which life is held. In fact, there is no such 'slippery slope' any more than there is a reason for seriously entertaining Devlin's contention that the legalisation of homosexuality will lead to the total moral collapse of society. On the contrary, most ordinary people are perfectly capable of recognising the difference between easing the suffering of a dying person and, say, executing a criminal or engaging in mass murder. Of course, there are reasons for and against capital punishment, but they have no relevance to the practice of assisted dying at issue here. As for non-voluntary euthanasia, the euthanasia of those who are incapable of having a say in the matter – the killing of severely disabled new-born infants might be a case in point – my argument has, likewise, no relevance to such practices.

In conclusion, and as I have myself made a 'living will' or 'statement of advanced decision' let me just say this. I realise that, at present, such statements carry no legal force. Even so, I would certainly expect any doctor with knowledge of my own statement to take its contents into account should the

relevant circumstances arise. In such circumstances it may, of course, only be necessary to withhold treatment which might otherwise have been administered. In any case, that would be the natural and decent thing to do. Moreover, I would not expect this doctor to fret overmuch over precisely where to draw the line between letting someone die and actually killing that person. Nor do I think that the toleration of this type of situation would represent 'a fundamental alteration in the relationship between doctor and patient by giving doctors the power to kill as well as cure' - a charge which has been levelled against advocates of assisted dying by some critics. On the contrary, it seems to me to be a type of situation which is becoming increasingly common, and one in which doctors should not have to worry over exactly where they might be in danger of violating legal prohibitions.

I hope these remarks are of some help.

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