



Exploring the Law

Right to Die

Opening sequence:

“The truth, the whole truth and nothing but...How does the defendant plead? Not guilty! What you’re going to get is all sorts of killings which are more to do with clearing away inconvenient old people. Why shouldn’t a person decide when they want to die? It makes sense to have a right to life, but not to have a right to die. There can’t be a more basic human right! Guilty!”

Gary Slapper:

Hello! I’m Gary Slapper, Professor of Law at the Open University and with me is Frances Gibb, Legal Editor of The Times.

In 1961, the Suicide Act made suicide legal, but it retained as a crime assisting or encouraging someone else to commit suicide. In 2010 guidelines were issued clarifying when prosecutions for this crime would be brought. Those guidelines were triggered by the case of Debbie Purdy. Frances, you covered that case, can you explain the background to what happened.

Frances Gibb:

Yes Gary, Debbie Purdy’s case was a really heartrending case. She suffers from multiple sclerosis and she fought this case all the way through the courts up to the House of Lords. And what she wanted was clarification on whether if her husband at some point in the future helped her to commit suicide, arguably by going abroad to the clinic in Switzerland, whether he would be prosecuted. She didn’t want immunity from prosecution, she just wanted that clarity. And the Director of Public Prosecutions had argued, no, we can’t say this in advance. He lost the battle, the House of Lords told him he must issue guidelines and that’s how we got to where we are now.

Gary Slapper:

From the point of view of the Director of Public Prosecutions, it’s quite easy to see why it would be difficult to say in advance the circumstances in which someone would be prosecuted. Because you’d be having to write out in minute detail things which really need to be looked at with a discretion as and when they happen. And I think his original argument was that he didn’t want in effect to be seen to be giving carte blanche for someone to kill someone else. That was his original stance.

Frances Gibb:

That I think also, as a matter of public policy, the DPP can’t really fetter his discretion in advance of someone committing an act. And that was actually what happened. Before Debbie’s case there was the equally very sad case of Diane Pretty. She sadly died before ever hearing about what happened with Debbie Purdy, but what she wanted was immunity from prosecution for her husband, and of course there was never going to be any question of that.

Gary Slapper:

So a good way through this then was to have to issue guidelines explaining in what circumstances the prosecution would be more likely to favour a prosecution and the

circumstances in which it would be more likely to disfavour a prosecution as an indication to the public at large about the sorts of things that the DPP would be considering in the event of having to make these sort of difficult decisions. What do you think of the idea of lists like that?

Frances Gibb:

Well it's very interesting. I think the big issue first of all is whether this amounts to a change in the law in effect, and you can argue it both ways. I mean the DPP went out of his way to say no, he was just clarifying his policy on prosecution. But a lot of people, including for example Lord Falconer the previous Lord Chancellor, said - it's unquestionably a change in the law. And it does appear to be in some ways, because the DPP is actually saying, if you fulfil these criteria, such as for example that the person you helped had a clear and settled intention to die and that had been stated, etc. There was no pressure put on them. All this, a few factors like that. Then they won't prosecute. Well that's never been spelt out before. So it does seem to be the nearest to a change in the law you can get without legislation from parliament.

Gary Slapper:

Yes, Some might see that, although it could work well with discretion as a rather arch compromise between an outright change in the law and then outright refusal to change the law. To say that the law stands as it is, that anyone that assists or encourages a suicide, can be prosecuted. But to say that there are all sorts of circumstances like the ones you've mentioned where factors would be produced deterring a prosecution, where there had been a clear and settled intention, where the suspect was wholly motivated by a compassion and was doing this at the behest of the person who wanted to be killed. The suspect had sought to dissuade what they call the victim, from going ahead with it and had been unsuccessful. And where the suspect had fully co-operated with the police and reported things to them, there would be less likelihood of a prosecution. I suppose that the 'cop out', if that's an acceptable expression, would be that these don't absolutely bind the Director of Public Prosecutions.

Frances Gibb:

No, that's right. He always retains the option of not prosecuting in those cases, although having spelt it out, by virtue of having set out these very detailed factors, he is in a sense binding himself more than he previously had been. But I think one interesting thing about the guidelines is that it looks not at the person who is suffering if you like, not their illness, not their state, not the kind of illness they've got, how near to death they are, whether they're paralysed or anything like that. It looks instead at the state of mind of the person who helps them, that's what it really focuses on, and whether they were compassionate. That's a very key factor.

Gary Slapper:

I think the DPP has always been at pains to clearly differentiate between mercy killings and assisted suicide. So if there were circumstances in which the suspect killed someone else because they thought that the person would be put out of their misery, and they're doing this mercy killing - then that still is clearly within the purview of the criminal law. It's prosecutable as murder or manslaughter, and that's distinct from an assisted suicide, where all of the other factors obtain, where you're doing this consensually at the behest of the other person. And you're doing this wholly motivated through compassion. Quite a lot of the detail in the guidelines has resulted from a very wide consultation hasn't it? With about 5,000 people.

Frances Gibb:

It has. And although generally I think the DPP has steered a very, very careful line down this difficult and delicate route, not everybody favours these guidelines at all and I think the debate is still kind of simmering on as to whether we should have legislation ultimately. A lot of people who favour a right to die, to just use that shorthand, would like to see legislation. But

equally there's a very vociferous lobby against. And I think that debate will come back, because this only really takes it so far. I think a lot of people may think it takes it too far, but there are other cases that are not covered by this and one that strikes me particularly is what about people, and I'm not advocating that they should be included in the current bracket, but what about people for example who have a clear and settled wish to die and maybe they have some terminal disease, and then they lose their mind. So a couple of years down the line they're no longer able to say, right, I'd like to go now. What about those people?

Gary Slapper:

That's an agonisingly difficult situation for the law to have to address. I think you have some personal experience which bears on this matter.

Frances Gibb:

Well I do, because my mother had Alzheimer's for about 10 years and she was in a home for nearly 6 years. And really not able to express her wishes for at least the last 4 years of that say. And this is a personal view now, I don't want to impose my view on other people, but I wouldn't have wanted for us as relatives to suddenly say, right, I'm sure she'd like to die, so we'll arrange it. I just think that would have been horrific. And I think that is, to my mind that is overstepping the line, to mercy killing. And I think it's a very dangerous route. Having said that, you can argue, and I'm sure people would, why should people in that position who have lost their mind if you like, not be deprived of the rights that are now afforded to people like Debbie Purdy.

Gary Slapper:

I suppose in cases where there is a clear and settled intention and where the person is lucid right up until the moment where they're asking for assistance to be given that they're outside the guidelines at the moment and probably almost certainly wouldn't be prosecuted. But it's just where they have expressed an intention which then becomes clouded by something and you're not quite sure which way the person's will would go.

Frances Gibb:

And also, even if you were to write it down, a sort of living will and you were to say, if I reach this point, I want to die. Who is going to be the one to decide you've reached the point that, right, that's it. And who's going to effect the taking away of life, if you like. Baroness Warnock is all in favour and I think she recently said something almost along the lines of, well we should you know bump off a few of these elderly people. But I think a lot of people would be horrified about that!

Gary Slapper:

They made some concessions between the earlier versions of the guidelines and the ones which became the final guidelines, some changes were made weren't they? That's to say that the idea that a spouse or a life partner was the person who did the killing was originally listed as something which would count against the prosecution being made because the assumption was that there would be an enduring love between those two people and that this would therefore militate against the prosecution until representations were made.

Frances Gibb:

Might be the very opposite of the case.

Gary Slapper:

Might be exactly the opposite. And also there was a sensitivity towards people who are in the category of terminally ill, or who had some particularly distressing and incurable conditions that it would be unfortunate to put those in a default position of being people who if a suicide

was assisted would be assumed to have wanted it. So there's no reference in the final guidelines, to people with those particular conditions. Because it's not a condition focused set of guidelines. It's more to do with the motivation, the perceived motivations of the person.

Frances Gibb:

That's right. Well it's too soon to say I think how they're going to operate. We need to see a few cases going through now to see how it works in practice.

Gary Slapper:

So much of law the original paper law doesn't mean very much until the cases come through the courts. That's been an intriguing discussion. Thank you so much for that Frances.

Closing Announcement:

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