Title: The role of religion and secularism in the legalisation of assisted suicide in multicultural English society

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A thesis submitted for the degree of Doctor of Philosophy

Law School – Newcastle University

September 2017

Abstract

Religion has been the most important phenomenon that has influenced and even controlled the culture, customs, law, and governmental and judicial activities of multicultural English society and continues to play an important role in this country. This thesis examines the role and degree to which religion – particularly the Church of England and Islam – and secularism have historically impacted, and continue to influence, the assisted suicide debate. The significance of this examination lies in the fact that a decision to seek an assisted suicide is greatly influenced by the ideology that person identifies with. Furthermore, the ideology, whether religious or secular, that the government and judiciary espouse has a significant influence on the law on assisted suicide, and, thus, has a considerable impact on the lives of every citizen that falls under the remit of the law. Therefore, as this thesis argues, it is vital that the beliefs and viewpoints of both religious and secular communities be included in this debate. This thesis establishes that even though the Christian faith, which has always opposed assisted suicide in order to protect the doctrine of sanctity of life, has deep-seated ties with English society; the dominant culture of the country is now secular, which seeks a reform of the law. The thesis concludes that the criminal embargo on assisted suicide is morally and legally is flawed, unreasonable and untenable. Whilst arguing that it should be decriminalised in England on the basis that every individual has the right to self-determination, which allows them to choose the time and manner of their death, under human rights law; this thesis deduces that there is a diminishing inclusion and influence of religious beliefs in the debate on assisted suicide, which is now predominantly guided by secular values such as autonomy and the need to protect vulnerable individuals.

Dedications

I dedicate this to my best friend and husband, Daniel Thomas Matthews, for his love, support and understanding especially in the final years of my study. Thank you for loving me, believing in me, and being proud of me.

And to my amazing Grandfather for being a constant source of strength and inspiration.

Acknowledgments

I would like to thank everyone at the Law School and HASS Faculty, who supported me during my time at Newcastle University as a doctoral student, especially my supervisors Dr Elena Katselli and Prof Richard Collier for their insightful comments on earlier drafts of my thesis. I would also like to say a special thank you to my family: my parents, Dr Ashok Madan and Dr Maria Arora, for their love, support and guidance. My brother, Dr Asher Madan, for his constant encouragement and tireless efforts in proof-reading my drafts. And my aunties, Dr Anjela Madan and Anila Madan, and my favourite uncle, Col Anil Madan, for their love and encouragement throughout the years.

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Chapter 1. Overview, Purpose and Research Methodology

1.1 Introduction

This thesis examines the role of faith and secularism in assisted suicide policy making. Both opponents and advocates of reform raise ethical, philosophical and religious issues when debating this area of the law. The issue of whether and how to reform the law has been the subject of intermittent political attention and societal debates in England since 1935.[1] However, controversy exists on whether or not reform should eventuate. The arguments made in favour of reform are generally underpinned by secular values. For example, the notions of dignity and autonomy – which are grounded in human rights law and on which a reform of the law can be based – are driving the debate on this area of the law in a new direction. Proponents of assisted suicide tend to emphasise the need to provide compassionate assistance to terminate an undignified life as it respects a patient's autonomous decision to end their pain and suffering.[2] On the other hand, arguments made against allowing assisted suicide have been historically rooted in religious ideology, even though they are now shifting and transforming to become increasingly secular. For example, opponents tend to emphasise the risk that allowing assisted suicide will lead to the erosion of the respect for human life.[3] In their view, not allowing an assisted suicide protects the religious sanctity, or non-religious intrinsic value, of human life.[4] Central to all the legislative attempts to reform the law has been a consideration of these competing

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[1] Sheila McLean, *Assisted Dying: Reflections on the Need for Law Reform* (Routledge-Cavendish 2007) 3-4

[2] Lawrence Gostin, 'Drawing a Line Between Killing and Letting Die: The Law, and Law Reform, on Medically Assisted Dying' (1993) 21 J L Med & Ethics 94, 98; David Thomasma, 'An Analysis of Arguments For and Against Euthanasia and Assisted Suicide: Part One' (1996) 5 Camb Q Healthc Ethics 62, 73; Subcommittee on Health and Environment of the Committee on Commerce House of Representatives 150th Congress 1st Session (SHECCHR), *Assisted Suicide: Legal, Medical, Ethical and Social Issues* (1997) Serial No 105-7 135; and Craig Paterson, *The Contribution of Natural Law Theory to Moral and Legal Debate Concerning Suicide, Assisted Suicide and Voluntary Euthanasia* (Universal Publishers 2010) 364

[3] Dan Brock, 'Physician-Assisted Suicide – The Worry About Abuse' in Loretta Kopelman and Kenneth DeVille (eds), *Physician-Assisted Suicide: What are the Issues?* (Kluwer 2001) 72

[4] Jess McMahan, *The Ethics of Killing: Problems at the Margins of Life* (Oxford University Press (OUP) 2002) 332. There are other objections to allowing assisted suicide – such as the need to protect vulnerable people, changing the doctor-patient relationship etc – which are traced in ch 6.

values and principles that inform the debate on this area of the law; namely, the need to preserve the value of life,[5] and the notion of autonomy that allows an individual to choose the time and manner of ending their undignified life.[6] These values and principles emanate from religious and non-religious ideologies, which indubitably have had a significant effect on the law of suicide and assisted suicide. With the recent momentum for reforming the law on assisted suicide, society and its representatives are compelled to decide which values should guide the law in this area.[7]

As Worchel and Gearing establish in an empirical study that depending on the ideology an individual adopts, whether religious or secular, it influences their decision to commit suicide: "degree of religiosity is directly related to degree of suicidality, with greater religiosity predicting decreased risk of suicidal behaviour".[8] This thesis argues that the relationship between "degree of religiousity and suicidality" can be extended to include instances of assisted suicide. More importantly, the ideology that the government or judiciary adopt on assisted suicide impacts the law, policies and case-law in this area and has a serious effect on all individuals and communities who fall under the remit of the law. Thus, this thesis argues that even though a significant majority of governmental activities, particularly policy-making, tend to adopt a secular approach, they should not be unconcerned with religion. Both religious and non-religious beliefs and principles should be included in societal debates on this issue as it has a direct impact on the lives of every citizen within society. Therefore, it is essential to include the opinions of both religious and non-religious groups. It should be noted here that this thesis argues that a change in the law would be based on the societal and cultural shift that now has a favourable approach towards assisted suicide; and not dictated by religious values, which have historically influenced the law in this area. Thus, in a liberal democracy, where the viewpoints and beliefs of both non-religious and religious groups are taken into consideration, a change in the law and the inclusion of various ideologies is no longer mutually exclusive.

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[5] For greater discussion on the need to protect life: Brock (n 3) 72; and McMahan (n 4) 332.
[6] For a detailed discussion on autonomy: Gostin (n 2); Thomasma (n 2); SHECCHR (n 2); and Paterson, *Contribution of Natural Law* (n 2).
[7] John Barry Mitchell, *Understanding Assisted Suicide: Nine Issues to Consider* (University of Michigan Press 2007) 6
[8] D Worchel and RE Gearing, *Suicide Assessment and Treatment: Empirical and Evidence-Based Practices* (Springer 2012) 76-77

There is significant literature on the law on assisted suicide. For example, this thesis does not seek to argue whether and how reform can be achieved, To this end, various studies have been conducted such as Margaret Otlowski's 1997 study that critically reviews the common law jurisdictions that allow the practice of assisted suicide or euthanasia, such as the Netherlands, and analyses its effects on patients, doctors and the legal and social landscape of those countries.[9] Other academics, such as Sheila McLean and John Keown, extensively critique the arguments both in favour and against reform and the values that are taken into consideration in the academic debates and legislative attempts to reform the law.[10] There is even extensive literature on the Christian perspective on this issue, in the medical ethics context, such as Elizabeth Wicks' 2009 article;[11] the position of the Christian faith, namely the Catholic Church, on the issue of assisted suicide in Peter De Cruz's 2003 article;[12] and even an examination of the competing religious values such as preserving the sanctity of life and providing compassion for those who are suffering an undignified life by Robin Griffith-Jones to name a few.[13]

However, there is very limited academic literature that traces the opposition of the Christian and Islamic faiths through their Holy Books and texts on the issues of suicide and assisted dying, and examines why there is a need to include their views in the law in a multicultural English liberal democratic setting. The majority of the literature – such as A Majid Katme's 2015 response article[14] and Sophie Strickland 2012 article,[15] examine the views of medical

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[9] *Voluntary Euthanasia and the Common Law* (Clarendon 1997)
[10] For example: Mc Lean (n 1); and John Keown, *Euthanasia, Ethics and Public Policy: An Argument Against Legislation* (Cambridge University Press (CUP) 2002)
[11] 'Religion, law and medicine: legislating on birth and death in a Christian state' (2009) 17(3) Med L Rev 410-437
[12] 'Assisted suicide, Christian theology and the law' (2003) 150 Law & Just 51-66
[13] 'To ease the passing?' 2016 Jan Counsel 28-30. For literature on the Christian perspective: Nigel Biggar, *Aiming to Kill: The Ethics of Suicide and Euthanasia* (Pilgrim Press 2004); Paul Badham, *Is there a Christian Case for Assisted Dying: Voluntary Euthanasia Reassessed* (Society for Promoting Christian Knowledge 2009); Timothy J Demy and Gary Stewart, *Suicide: A Christian Response: Crucial Considerations for Choosing Life* (Kregel 1998); and Kieran Beville, *Dying to Kill: A Christian Perspective on Euthanasia and Assisted Suicide* (Christian Publishing House 2014).
[14] A Majid Katme's reponse to Fiona Godlee, 'Assisted dying – time for a full and fair debate' [2015] h4517 BMJ 351
[15] Sophie Strickland, 'Conscientious objection in medical students' (2012) 38(1) J Med Ethics 22, 23. Also see: Amer Aldeen, 'The Muslim ethical tradition and emergent medical

students in various universities in England and Wales to determine their attitude towards assisted suicide. However, these articles have a medical undertone and are predominantly directed at healthcare professionals, medical students and patients. Furthermore, there is some literature that examines the role of Islamic law in Western societies, particularly European countries, and its compatibility with the European Convention on Human Rights such as Katerina Dalacoura's 2007 study[16] and Dominic McGoldrick's 2013 publication.[17] However, there is negligible literature on the effect of Islamic cultures in a multicultural liberal democracy, such as England, and why, in an increasingly secular society, there is a need for inclusion of religious values – traced back to religious texts, namely the Bible and the Quran – in Parliamentary debates.[18] There is very little literature that examines the religious viewpoints on assisted suicide and the extent of their inclusion in Parliamentary debates. One such example is Ekaterina Kolpinskaya's conference paper, titled, 'Playing roulette with the human life: Religion and parliamentary debate on assisted dying and euthanasia, 1997-2012'.[19] However, this paper explores the religious background of MPs, particularly those of the Catholic and Jewish faiths, and the impact their association with religion has on the amount of contribution and their voting styles in Parliamentary debates. In contrast, this thesis seeks to fill that gap in knowledge by establishing the viewpoint of the Islamic and Christian religion – by examining their core religious texts – and contrasts their beliefs with the secular principles on these issues in order to determine which religious and non-religious values drive the contemporary debate on assisted suicide in multicultural English society.

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care: an uneasy fit' (2007) 14(3) Acad Emerg Med 277-278; and Taher Foggo, 'Muslim medical students get picky' *Sunday Times* (7 October 2007)

[16] Katerina Dalacoura*, Islam, Liberalism and Human Rights: Implications for International Relations* (3rd edn, I B Tauris 2007)

[17] 'The compatibility of an Islamic/shari'a law system or shari'a rules with European Convention on Human Rights (ECHR)' in Robin Griffith-Jones (ed), *Islam and English Law: Rights, Responsibilities and the Place of Shari'a* (CUP 2013)

[18] For example, Daniel Price, *Islamic Political Culture, Democracy, and Human Rights: A Comparative Study* (Praeger 1999) attempts to study the impact of Islam on a democratic setting and human rights law and practices, primarily in Middle Eastern countries; and Peter Danchin, 'Islam in the Secular Nomos of the European Court of Human Rights' (2011) 32 Michigan Journal of International Law 663 explores the case-law in the Strasbourg Court relating to the freedom of belief in an Islamic context.

[19] (PSA Annual Conference, Sheffield, March 2015)

It is worth noting at this juncture that the views and principles of the Church of England, Islam and secularism are discussed in equal measure throughout the thesis: evaluating their beliefs and doctrines – in order to determine why their views should be included in societal debates – forms part of the original contribution to knowledge.[20] For example, this thesis establishes that the doctrine of sanctity of life, which is a significant principle that informs the debate on assisted suicide by opposing the idea of reforming the law in this area, is grounded in both Christianity and Islam. This opposition, based on the doctrine of sanctity of life, has been significantly impacted by the introduction of secularism in English society, which has led to this doctrine being transformed into a non-religious principle that attaches an intrinsic value, rather than a religious sanctity or holiness, to life; and more recently, takes on quality of life considerations. This thesis remedies the gap in knowledge by providing the first in-depth doctrinal, socio-legal study of the gradually changing nature and understanding of the principles and values that inform the debate on assisted suicide and their relationship with the law on this area by examining the discursive shift in language of religious and non-religious bodies and their representatives.

This thesis also examines the significant impact human rights law has had on furthering reform of the law of assisted suicide. This area of the law is well-trodden,[21] with a number of publications, such as Sapiro and Ungoed-Thomas' 2001 article that examine the impact of the Human Rights Act of 1998 on healthcare law and the compatibility of human rights provisions with the law on assisted suicide and euthanasia in England.[22] Other academics have analysed the role human rights provisions, in the context of assisted suicide law, have played in domestic judicial decisions such as Dickinson's 2013 study,[23] and the McCarthy et al 2011 study that examines a range of values and principles that academics and experts have identified that are taken into consideration, in the human rights context, during end-of-

[20] Some literature can also be found on the various secular schools of thought on this issue: Kevin Yuill, *Assisted Suicide: The Liberal, Humanist Case Against Legalization* (Palgrave-Macmillan 2013); and Craig Paterson, *Assisted Suicide and Euthanasia: A Natural Law Ethics Approach* (Ashgate 2008).
[21] Howard Davis, *Human Rights Law: Directions* (OUP 2007)
[22] Jeff Sapiro and Angie Ungoed-Thomas, 'Euthanasia and the Human Rights Act 1998' in Austen Garwood-Gowers et al (eds), *Healthcare Law: Impact of the Human Rights Act 1998* (Cavendish 2001) 273-294
[23] Brice Dickson, *Human Rights and the UK Supreme Court* (OUP 2013) 114-118

life decision making.[24] However, as this thesis argues, not all human rights provisions, under the European Convention on Human Rights, have had an influence on the momentum for reform, especially Articles 3, 9 and 14, which have a very restrictive scope. There is negligible literature on why the freedom of thought, conscience and religion ought to cover an individual's belief in assisted suicide. Similarly, there is very little literature on the impact on the rights and freedoms of citizens due to the failure of the Strasbourg Court to allow Article 14 to be used independently and to extend it to cover situations of indirect, indistinct and obscure forms of discrimination. One notable exception is McClogan's 2000 article that examines the various forms of discrimination against women and Article 14's failure to protect them due to it not being a freestanding Convention right.[25] This thesis extends these arguments, by examining them in the context of assisted suicide debates and forms part of the original contribution to knowledge by contending that Article 9 ought to protect an individual's belief in assisted suicide for themselves; and the scope of Article 14 ought to be extended to transform it into an independent Convention right to allow disabled individuals the same freedom, by providing them with a lawful option to end their lives, as is enjoyed by able-bodied individuals. Lastly, this thesis also examines the idea of dignity, which is arguably grounded in religion particularly the Christian faith, as demonstrated by John Frederic Kilner et al in their 1996 publication, but has evolved into a non-religious idea that provides individuals with the inherent quality of being worthy of honour and respect and is protected by Article 3.[26]

To encapsulate, this thesis attempts to fill the gap in knowledge by examining three unexplored objectives. Firstly, it examines the extent to which secularism and religion, particularly Christianity and Islam, have shaped, and continue to shape, the debate and the law on assisted suicide in multicultural English society. Secondly, it evaluates the shifting nature of these debates and what this shift signifies about the legal approach to religion and secularism in this context. Lastly, it explores the impact of human rights law on reforming

[24] Joan McCarthy, Mary Donnelly and Dolores Dooley, *End-of-life Care: Ethics and Law* (Cork University Press 2011). Also see: Stefania Negri, *Self-Determination, Dignity and End-of-Life Care: Regulating Advance Directives in International and Comparative Perspective* (Martinus Nijhoff Publishers (MNP) 2012)
[25] Aileen McColgan, 'Women and the Human Rights Act' (2000) 51 (3) NILQ 417, 433
[26] John Kilner et al, *The Center for Bioethics and Human Dignity Presents Dignity and Dying: A Christian Appraisal* (Wm B Eerdmans (WBE) 1996) 112-113

the law on assisted suicide in a pluralistic, liberal democracy such as England. To develop these discussions, a set of research questions have been formulated, which are discussed in this chapter, along with an explanation of the methodology used and how the chapters are structured in a manner that resolves the aims and objectives of this thesis.

1.2 Research questions

The three research questions addressed in this thesis are as follows:

1. What role is there for faith in policy-making on assisted suicide in multicultural and increasingly secular English society?

This thesis argues that there is a liberal momentum towards permitting, or at least not acting against, assisted suicide. It analyses how this momentum can accommodate the non-Western beliefs and needs of multicultural Britain and why there is a need for such an accommodation. To develop this discussion, this thesis examines the historic and present influence of religion on the legal regulation of assisted suicide in England and the extent of inclusion of religious and non-religious values in contemporary policy-making, particularly Bills on assisted suicide (which are compared to the amount of inclusion given to these values in debate on euthanasia).

2. What impact have human rights provisions had on reforming the law on assisted suicide in England?

This thesis argues that human rights law has had the most significant effect on the movement to reform the law on assisted suicide. It examines whether human rights law protects and defends different beliefs and non-religious viewpoints under the movement towards accepting assisted suicide. In developing this discussion, it examines the movement to reform the law, in a human rights context, which has led to the Director of Public Prosecutions (DPP) drafting "interim guidelines" to include a new, offence specific policy about when to prosecute people who provide assistance in another person's suicide. Paradoxically, the Parliament, to tighten up policy, implemented and changed section 59 of the Coroners and Justice Act 2009 and amendments to section 2 of the Suicide Act 1961, to

include "encouragement" of suicide. This thesis examines why these contradictory and paradoxical policies and laws are being simultaneously created.

3. Is there a discursive shift in language, over time, which demonstrates the changing relationship of law and religion in assisted suicide policy implementation?

This thesis analyses the shifting nature of the debate on assisted suicide and critically reviews what this shift demonstrates in relation to the legal approach to religion in this debate. To develop this discussion, the shift in language is traced – with special reference to non-religious and religious terminology – in historic and modern governmental activities, such as Parliamentary debates and statements from religious and non-religious groups and institutions. Religion is an integral element to the discursive shift in language and even though the terminology largely remains the same, the understanding of certain terms, such as the sanctity of life, has changed over time from a religious to non-religious notion.

1.3 Definitions

It is worth addressing at this juncture what meaning is being attributed to the terms that are used throughout this thesis. Other academics and experts may attribute different meanings to the terms examined in this section, however, as this thesis argues, especially in Chapter Six, the reasons behind the failure of the Bills that sought to change the law is a lack of distinction between the ideas of assisted suicide and euthanasia. Thus, these definitions attempt to classify the role played by a third party in the death of another person. Contemporary understandings of the term "euthanasia" imply another person bringing about a painless death to patients who are in constant mental or physical suffering due to their disease or disability.[27] The House of Lords Select Committee on Medical Ethics 1993, defined euthanasia as "a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering".[28] Euthanasia is where an individual helps another to die, by directly administering lethal means such as medication:[29] it is the individual who takes the final action that brings about the death of another person. In

[27] Hazel Biggs, *Euthanasia, Death with Dignity and the Law* (Hart 2001) 12
[28] Select Committee, *Report of the Select Committee on Medical Ethics* (HL Paper 1993-94, 21-I) para 20
[29] Paterson, *Assisted Suicide and Euthanasia* (n 20) 174

contrast, assisted suicide is where an individual assists another person to commit suicide; for example, by setting up equipment or picking up a lethal prescription.[30] However, the person seeking the assistance always performs the final action that ends life. When a doctor assists a person to end life, particularly a patient, in this manner, in a professional capacity, then it is called physician-assisted suicide.[31] The definition of "encouraging suicide" should be noted here. A defendant's intention is the determining factor of whether or not they are guilty of that offence. According to Smith and Hogan:

> Encouraging suicide involved urging or supporting another to commit suicide. The offence is committed if a person encourages someone to commit suicide, whether or not they actually do so. To be guilty of the offence, the defendant must intend to encourage another to commit, or to attempt to commit, suicide. So the writer of a novel who describes a suicide in a way that helps someone to commit suicide will not be guilty of the offence because (presumably) the writer did not intend to assist or encourage a suicide.[32]

Euthanasia can be effectuated either through active or passive means. Active euthanasia occurs when active steps are taken to end the life of an individual, for example, a direct administration of a lethal injection.[33] An example of a doctor ending the life of a patient through active steps is the *Cox* case.[34] Dr Nigel Cox was charged with attempted murder for injecting potassium chloride into the vein of his patient of 13 years, Lillian Boyes, a 70-year-old woman who was in constant pain and suffering due to her rheumatoid arthritis and begged Dr Cox to end her life. Ognall J summed up the case to the jury as follows:

> …a doctor's life-long professional duty… [is] to save and not to take life… he did so only because he was prompted by deep distress at Lillian Boyes' condition; by a belief that she was totally beyond recall and by an intense compassion for her

[30] The umbrella term "assisted dying" is used to refer to euthanasia and assisted suicide.
[31] Stephen Smith, *End-of-Life Decisions in Medical Care: Principles and Policies for Regulating the Dying Process* (CUP 2012) 12-13
[32] Jonathan Herring, *Medical Law and Ethics* (5th edn, OUP 2014) 490
[33] Gail Tulloch, *Euthanasia: Choice and Death* (Edinburgh University Press (EUP) 2005) 33
[34] *R v Cox* (1992) 12 BMLR 38

> fearful suffering. Nonetheless… if he injected her with potassium chloride for the primary purpose of killing her, or hastening her death, he is guilty of the offence charged.[35]

Dr Cox was convicted, as his intention was proved because he used potassium chloride, which has no pain relieving effects, and is not an opiate.[36] However, since her body was cremated, the charge – and subsequent 12-month suspended sentence – was only attempted murder (and not murder) as there was no evidence to definitively confirm that it was the potassium chloride that had caused Mrs Boyes death (other than Dr Cox's notes detailing his actions).[37] It is concluded that, under English law, any form of "active euthanasia" is regarded as intentional killing of a person, which amounts to murder.[38]

In contrast, "passive euthanasia" occurs when an individual's death takes place without taking active steps, for example, a doctor withholding life support treatment or medical care such as antibiotics or food and hydration. These actions are called "omission"; as the term "passive euthanasia" is not recognised by English law.[39] The *Tony Bland* case should be noted here; which was the first of its kind and concerned a petition – from a persistent vegetative state (PVS) patient Anthony Bland's doctors – to withdraw artificial food and water.[40] Submissions, made in support of withdrawal, explained that the case:

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[35] ibid

[36] Ann Orme-Smith and John Spicer, *Ethics in General Practice: A Practical Handbook for Personal Development* (Radcliffe Medical Press 2001) 204

[37] ibid 204. The *Cox* case must be distinguished from *R v Bodkin Adams* [1957] Crim LR 365, which is an example of "double effect", a doctrine that judicially entitles a physician "…to do all that is proper and necessary to relieve pain and suffering, even if the measures he takes may incidentally shorten life". See: Patrick Devlin, *Easing the Passing* (The Bodley Head 1985) 171. Double effect is outside the scope of this thesis and will not be discussed in greater detail.

[38] Keown, *Euthanasia, Ethics and Public Policy* (n 10) 11. Also see: Hazel Biggs and Caroline Jones, 'Tourism: A Matter of Life and Death in the UK' in I Glenn Cohan (ed), *The Globalization of Health Care: Legal and Ethical Issues* (OUP 2013) 166 ("Euthanasia is prohibited under the common law of homicide in the UK").

[39] Tulloch (n 33) 33

[40] *Airedale NHS Trust v Bland* [1993] AC 789

> …seems to require the court to reject the vital principle of sanctity of life in favour of value judgments as to the quality of the further artificial prolongation of the life of Anthony Bland… however… there is no inherent conflict between having regards to the quality of life and respecting the sanctity of life; on the contrary, they are complementary; the principle of sanctity of life embraces the need for full respect to be accorded to the dignity and memory of the individual human being. The meaning and criteria of quality of life should focus on benefit to the patient.[41]

In light of these submissions, the House of Lords made an exception into the doctrine of sanctity of life and held that "there is no therapeutic, medical or other benefit to Anthony Bland in continuing to maintain his ventilation, nutrition and hydration by artificial means".[42] The doctors were allowed to discontinue all treatment to enable him "to end his life and to die peacefully with the greatest dignity and the least distress".[43] To encapsulate, under English law, a mentally competent patient can refuse medical treatment.[44] On the other hand, a mentally incompetent patient, such as an individual in a persistent vegetative state, would need the court to adjudicate whether their artificial food and water can be withdrawn (especially in instances where this withdrawl would lead to death).[45] Euthanasia can be further characterised as voluntary, non-voluntary and involuntary.[46] Voluntary euthanasia occurs when an individual freely requests assistance in their death. Non-voluntary euthanasia occurs when an individual's death is brought about without their choice or consent as they lack the mental competency to make such a choice.[47] Such a person could be a child, an unconscious adult, someone with a mental or psychotic

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[41] ibid [802]
[42] ibid [805]
[43] ibid [805]. For greater discussion on the concept of omission: Biggs (n 27) 51-54
[44] As decided in *Re B (Consent to Treatment: Capacity)* [2002] 1 FLR 1090; and *Re T (Adult: Refusal of Treatment)* [1993] Fam 95
[45] Robin Howard, 'Coma and Stupor' in Gordon Bryan Young and Eelco Wijdicks (eds), *Disorders of Consciousness* (3rd series, Elsevier 2008) 73
[46] Tulloch (n 33) 33; and Frank Lewins, *Bioethics for Health Professionals: An Introduction and Critical Approach* (Macmillian 1996) 114
[47] Lawrence Hinman, 'Euthanasia: An Introduction to the Moral Issues' in Nancy Loucks et al (eds), *Why We Kill: Understanding Violence Across Cultures and Disciplines* (Middlesex University Press 2009) 103

disorder, or even temporarily discomposed due to certain medication they may be taking.[48] Finally, involuntary euthanasia occurs when the individual's death is brought about against that person's choice and wishes; or without the consent of a competent individual whose contrary wishes were known or could have been known.[49] The notion of slippery slope should be noted here. This idea, which is frequently used against allowing the legalisation of euthanasia, dictates that even if euthanasia was morally acceptable, it will inevitably lead to practices that are not allowable,[50] such as vulnerable individuals and patients being exploited or coerced into an unwanted death.[51] For example, if voluntary euthanasia is allowed, it is only a matter of time before non-voluntary and involuntary euthanasia will be carried out. This is called the "slippery slope" effect.[52]

To reiterate, the following definitions will be used most frequently throughout the thesis: "assisted suicide" is when an individual (a medical or non-medical professional, such as a family, friend or even an unknown individual) makes a means of suicide available; for example, picking up a lethal prescription or setting up equipment for another person to utilise who may or may not be physically capable of ending their life themselves.[53] "Physician assisted suicide" is when a doctor makes those means of suicide available to the patient. However, in both instances, the patient must commit the final act that ultimately ends their life in order to ensure that the suicide is voluntary.[54] On the other hand, "suicide" has been defined as "the termination of an individual's life resulting directly from a positive or negative act of the victims themselves which they know will produce a fatal result".[55] In

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[48] Lewins (n 46) 114
[49] Hinman (n 47) 103; Lewins (n 46) 114; and Biggs (n 27) 12
[50] John Griffiths, Alex Bood and Heleen Weyers, *Euthanasia and Law in the Netherlands* (Amsterdam University Press 1998) 177
[51] Willem Landman, 'A Proposal for Legalizing Assisted Suicide and Euthanasia in South Africa' in Kopelman and DeVille (n 3) 215
[52] The slippery slope argument is outside the scope of this thesis and will not be looked at in detail. See: John Keown, 'Euthanasia in the Netherlands: sliding down the slippery slope?' in John Keown (ed), *Euthanasia Examined: Ethical, Clinical and Legal Perspectives* (CUP 1997) 261-263
[53] James Young, 'A Coroner's View Regarding the 'Right to Die' Debate' in Antoon Leenaars et al, *Suicide in Canada* (University of Toronto Press 1998) 438
[54] ibid 438
[55] J M Williams, *Suicide and Attempted Suicide: Understanding the Cry of Pain* (2nd edn, Penguin 2001) 18

contrast, an “attempted suicide” is when an individual, whether physically capable or not, tries to end their life but does not succeed.

1.4 Structure of Thesis

This thesis comprises of seven chapters, which are described as follows.

Chapter One introduces the main aims and objectives of this thesis along with how it forms an original contribution to research on this area of the law. The chief objective of this thesis is to analyse the extent to which the phenomena of religion and secularism have historically shaped, and continue to influence, the debate, policy-making and the law on assisted suicide in multicultural, pluralistic English society. It also sets out the research questions and methodology adopted to answer them along with a list of definitions for the recurrent terminology used throughout this thesis.

Chapter Two sets out the Christian, Islamic and secular viewpoints, in equal measure, on the issues of suicide and assisted suicide to determine how they have affected the movement and development of the law in this area; and whether their views should be included in societal debates, which forms part of the original contribution to knowledge. This Chapter examines whether the religious doctrine, of both faiths, has changed over the years and establishes that the principle of sanctity of life is the main value – which is deep-seated in both Christianity and Islam – on which an opposition to reforming the law is based. It then contrasts these religious beliefs with the secular perspective on these issues and establishes that the values, which inform the modern debate, are autonomy, dignity and the intrinsic value of life.

Chapter Three provides a theoretical background of the current societal landscape of the country. It establishes that English society contains various religious and non-religious groups within it that have amassed via immigration and have significantly contributed to society becoming diverse and multicultural. It investigates the benefits and disadvantages of multiculturalism and examines the role of minority subcultures, particularly the Islamic community, in English society, along with governmental and judicial activity that has attempted to accommodate and integrate these subcultures into English society. It even

examines whether religion, particularly the beliefs of the Islamic faith, run counter to the historical and contemporary culture of English society. This Chapter differentiates the way of life of minority subcultures from the dominant culture, which was historically influenced by the Christian faith but has now become predominantly secular. It should be noted here that this thesis is first and foremost a legal analysis, and, thus, the sociological evaluation of the historic and current political and societal landscape of the country is set out in a succinct, curtailed and compact manner. For example, the history of colonialism, neoliberal global politics, identity politics, new political formations in nation states and setting out the connection of the research questions within a liberal democracy setting have been reduced and curtailed. Furthermore, even though the notion of secularism is not a single or uniform idea (instead it is multidimensional), it is used in this thesis to denote a non-religious, temporal stance and approach towards the Parliamentary, judicial and societal debates on assisted suicide.

Chapter Four examines the history of the movement to reform the law on suicide and assisted suicide, particularly section 2(1) Suicide Act 1961, and the recent update to it, in the form of section 59(2) of the Coroners and Justice Act 2009, which changes the wording of the 1961 Act and has been enacted to protect vulnerable individuals from the influence of modern technology, namely the Internet. It considers the religious and secular influences affecting these laws, by examining the Parliamentary debates, and establishes that this legislation does not change the law on assisted suicide. Chapter Four evaluates the DPP's policy in respect of cases of encouraging or assisting suicide that was created in accordance with the House of Lords' decision in *Purdy*[56] and argues that this policy effectively allows assisted suicide if the individual who provides the assistance has benevolent, compassionate motives. It also gauges the reactions of various religious groups on the publication of this policy and concludes that even though governmental and judicial representatives claim that the *Purdy* case and the subsequent DPP Policy have not changed the law on assisted suicide, they have created considerable impetus to reforming the law on this area.

[56] *R (on the application of Debbie Purdy) (Appellant) v DPP (Respondent) & Omar Puente (Interested Party) & Society for the Protection of Unborn Children [HL]* [2009] UKHL 45

Chapter Five analyses the impact that human rights law has had on reforming the law on assisted suicide in England. It examines certain human rights provisions, which have been invoked in assisted suicide cases, how they function and operate and the Strasbourg jurisprudence around them. Significant emphasis has been placed on evaluating the intrinsic link between these provisions and the religious and non-religious values they are grounded in, particularly the doctrine of sanctity of life (and its association with Article 2, which protects the right to life) and the notion of individual autonomy (which is grounded in Article 8); and the Strasbourg and domestic courts' application of these values and provisions. The *Pretty*[57] case has been examined in significant detail – as it was the first English case of its kind to reach the Strasbourg Court and has been applied to subsequent domestic cases such as *Purdy* and *Nicklinson*[58] – to determine the affect it has had on the law on assisted suicide in England. This chapter also answers a series of questions, in a human rights context, for example, does not providing a lawful option of assisted suicide breach an individual's inherent human dignity (which is grounded in Article 3 and provides a right against ill-treatment and torture). Does the lack of Article 14, which prohibits discrimination, existing as a free-standing provision infringe the rights of those who need assistance to end their lives as this freedom is available to able-bodied individuals? It also analyses whether Article 9, which provides every individual with the freedom of thought, conscience and religion, ought to protect their belief in assisted suicide for themselves.

Chapter Six, firstly, examines the extent to which religious and non-religious values receive inclusion in the historic and contemporary debate on assisted suicide and contrasts them with the values and principles that drive the debates on euthanasia to determine why allowing assisted suicide, instead of euthanasia, would be a more beneficial and safeguarded option. It evaluates the historical attempts, which began in 1935, to make euthanasia lawful and continued through the subsequent decades, with the Voluntary Euthanasia Bill 1969 having the greatest chance to be enacted in light of the fact that

[57] *R v Director of Public Prosecutions (Respondent), ex parte Diane Pretty (Appellant) & Secretary of State for the Home Department (Interested Party)* [2001] UKHL 61; and *Pretty v UK* App no 2346/02 (ECtHR, 29 April 2002)

[58] *R (Nicklinson and Lamb) v Ministry of Justice, R (AM) v Director of Public Prosecutions* [2014] UKSC 38. Note that this claim went to the European Court of Human Rights (*Nicklinson and Lamb v UK* App nos 2478/15 and 1787/15 (ECtHR, 16 July 2015)) and the application was unanimously declared as inadmissible.

Parliament had decriminalised suicide.[59] This Chapter establishes that the movement to reform the law diminished after the defeat of the 1969 Bill and was revived by cases such as *Bland*,[60] *Pretty* and *Re B*,[61] which led to Lord Joffe introducing a series of Bills from 2003 to 2005 to legalise euthanasia and physician-assisted suicide. All these Bills are critically reviewed, by conducting archival and historical research of Parliamentary debates and comparing those with the modern debates on assisted dying, to establish the role of faith and secularism in policy-making and determine the religious and non-religious values that influence these debates along with the discursive shift in language, particularly by contrasting the debates around the Joffe Bills to those in 1936, 1969 and recently in 2015. This Chapter also demonstrates that in the contemporary debate on assisted dying, there is more inclusion of the beliefs of minority religious communities and the viewpoints of non-religious groups, especially compared to the historic debate on these issues, which is a result of the societal shift discussed in Chapter Three. Secondly, given the focus of this thesis is assisted suicide, this chapter takes a snapshot approach in examining the Parliamentary debates around abortion and same-sex marriage in order to determine the amount of inclusion the Christian religion and Islamic faith receive within these debates, establishes the role of faith in policy making in England and compares it to the extent of inclusion and the role religion plays within the assisted suicide debate. Lastly, this Chapter examines the aims and objectives of the Commission on Assisted Dying, which was set up to establish whether the current law on assisted dying is satisfactory, and the religious and non-religious viewpoints it considered when creating its final report. It also analyses the Assisted Dying Bill 2014-2015, which the Chair of the Commission, Lord Falconer, subsequently introduced in Parliament and the Parliamentary debates on it to establish that there has always been a significant amount of inclusion of religion in the debate on euthanasia, however, there is a decreasing amount of inclusion of religious values and principles in the debate on assisted suicide.[62]

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[59] Discussed in ch 4
[60] *Bland* (n 40)
[61] *Re B (Adult, Refusal of Medical Treatment)* [2002] 2 All ER 449
[62] Note: A new "Assisted Dying Bill", which would "enable competent adults who are terminally ill to be provided at their request with specified assistance to end their own life" was introduced by Lord Hayward on 9 June 2016 (HL Deb 9 June 2016 Vol 773); but has not had a second reading (as of 18 May 2017).

Chapter Seven encapsulates the issues and analysis set across this thesis. It examines whether the aims and objectives of this thesis along with the research questions, set out in Chapter One, have been met and answered. It reiterates the historic and present role of religion and secularism in multicultural English society, particularly in the debate on assisted suicide, why there is a need to include both viewpoints in the debate and which values influence this debate. It concludes that even though the debate on assisted suicide is now influenced by secular values; society, the law, and the policy-making process should not exclude the views and beliefs of various religious groups on this issue in order to maintain equality, fairness, objectivity and harmony in society. However, a change in the law and inclusion of faith are not mutually exclusive. Thus, this chapter concludes whether or not, given the individual nature of assisted suicide affecting only the person requesting it, assisted suicide ought to be a lawful option.

1.5 Research Methodology

Salter and Mason argue that it is not necessary:

> …to decide between either a single disciplinary approach of a purely black-letter analysis, or an entirely interdisciplinary/multidisciplinary orientation. This is because there are numerous degrees of interdisciplinarity and multidisciplinarity within a broad spectrum of possibilities.[63]

Thus, an inter-disciplinary, mixed methods approach is taken to answer the research questions set out in Section 1.2. The main method of research adopted in this thesis is a socio-legal technique, which is supplemented by a doctrinal approach, archival and historical research and a brief comparative law analysis, which are all examined in turn.

1.5.1 Comparative Law

The comparative law analysis is only briefly conducted in order to understand the legal structure, regulations and approach of other legal systems and the societal and cultural

[63] Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson 2007) 134-135

landscape they operate in.[64] However, this aspect was excluded because the comparative law approach has a significant weakness. The historical, religious, cultural, social and legal terrain of every country is different and unique.[65] The sui generis nature of the history, religious and philosophical traditions, heritage, customs and culture of every country has a significant impact on its governmental, judicial and legal systems.[66] Thus, the only reason a comparative law approach was taken is to identify common themes on assisted suicide laws, determine the religious and non-religious values that inform this area of the law in other jurisdictions. To this end, Tallon explains that the objective of conducting a comparative law analysis:

> …is not to find a foreign institution which could be easily copied, but to acquire ideas from a careful survey of similar foreign institutions and to make a reasonable transportation of those which may be retained, according to local conditions.[67]

Due to the limitations and weaknesses of this method, the research conducted on the legal and judicial landscape of the United States of America, which is a secular country – cases such as *Baxter v Montana*,[68] Death with Dignity Act enacted in Oregon in 1997, the public attention brought to the issue of assisted suicide by Jack Kevorkian, an American pathologist and right-to-die activist who assisted approximately 130 patients to end their lives, and the Terri Schiavo saga – has been excluded from this thesis. Similarly, the research conducted on the legal and societal landscape of Pakistan, which is a Muslim country, to establish the values that drive judicical and governmental decisions have also been excluded (along with the research conducted on the criminal, societal and medical landscape of Pakistan, in order to establish a comparative timeline with the events in England). Also, the research conducted on the reasons behind Switzerland being able to provide a lawful option of assisted suicide, and why England cannot do the same, which are

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[64] Alan Watson, 'Comparative Law and Legal Change' (1978) 37 Cambridge LJ 313, 317; and Tamara Hervey et al, *Research Methodologies in EU and International Law* (Hart 2011) 28
[65] Peter DeCruz, *Comparative Law in a Changing World* (Cavendish 1995) 211
[66] Timothy Stoltzfus Jost, 'Comparative and International Health Law' (2003) 14 Health Matrix 141
[67] Denis Tallon, 'Comparative Law: Expanding Horizons' (1969) 10 J Soc Pub T L 265, 266
[68] MT DA 09-0051, 2009 MT 449

primarily grounded in the varying political, religious and social perspectives has been excluded along with the examination of the law in Scotland and Ireland, due to the relationship between the Church and the States being so significantly different because of the very dissimilar political and societal landscape of each territory from England.

1.5.2 Doctrinal Approach

Another auxillary research method applied in this thesis is the doctrinal approach. The most important element of the doctrinal approach is that the material and content used for evaluation and investigation are predominantly primary sources, in order to understand the conceptual reasoning behind the case law, legislation and legal principles and policies on assisted suicide.[69] To this end, Hutchinson explains that in this approach:

> …the essential features of the legislation and case law are examined critically and then all relevant elements are combined or synthesized to establish an arguably correct and complete statement of the law on the matter in hand.[70]

This approach is often described as the study of case law and legal texts, which is why it is often, informally, referred to as "black-latter law".[71] To this end, McConville and Chui explain that: "…the black-latter law approach or doctrinal research relies extensively on using court judgments and statutes to explain law".[72] They go on to explain that "black-letter research aims to synthesise, rectify and clarify the law on a particular topic by a distinctive mode of analysis to authoritative texts that consists of primary and secondary sources".[73]

This approach also lies at the heart of this thesis as it has been used to identify, evaluate, condense and critically review the content and material of the law – predominantly primary sources, such as policies and legislations (for example the Suicide Act 1961, the Coroner

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[69] Terry Hutchinson, 'Doctrinal research: researching the jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2013) 10
[70] ibid 9-10
[71] Paul Chynoweth, 'Legal research' in Andrew Knight and Les Ruddock (eds), *Advanced Research Methods in the Built Environment* (Blackwell 2008) 28, 29
[72] Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (EUP 2007) 3
[73] ibid 4

and Justice Act 2009 and the DPP's Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide), governmental activities, policy-making (for example the Assisted Dying for the Terminally Ill Bill 2014-2015) and case law (such as the *Pretty*, *Purdy* and *Nicklinson* cases) along with secondary sources to gather the commentary and views of academics and experts (in the form of legal dictionaries, textbooks, journal and newspaper articles to name a few) – on assisted suicide. Most of these resources were accessed from online sources, such as official websites, Westlaw, Lexis Nexis, and HeinOnline, along with books from University libraries. All the primary resources were read fully in order to ensure the originality, validity, reliableness of the sources and the subsequent analysis. Secondary resources were considered to provide background information, to ensure this thesis' research is focused and original and to gather the opinions and views of various academic and experts.

The doctrinal approach is "library-based" and focuses on the reading and analysis of primary and secondary sources of the law.[74] A doctrinal approach is in stark contrast to empirical research. King and Epstein argue that purely theoretical, library-based research is never empirical and go on to explain that:[75]

> What makes research empirical is that it is based on observations of the world, in other words, fata, which is just a term for facts about the world. These facts may be historical or contemporary, or based on legislation or case law, the results of interviews or surveys, or the outcomes of secondary archival research or primary data collection… As long as the facts have something to do with the world, they are data, and as long as research involves data that is observed or desired, it is empirical.[76]

Due to the limitations of the empirical method as it tends to be "the most time-consuming part of the investigation" (along with the arduous procedure to receive ethical approval),[77]

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[74] Wing Hong Chui, 'Quantitative Legal Research' in McConville and Chui (n 72) 47
[75] Lee Epstein and Gary King, 'Empirical Research and the goals of Legal Scholarship: The Rules of Inference' (2002) 69 University of Chicago Law Review I, 3
[76] ibid 2-3
[77] Hilla Brink et al, *Fundamentals of Research Methodology for Health Care Professionals* (2nd edn, Juta and Co 2006) 54

the empirical research that sought to interview terminally-ill patients and their family and friends on whether or not they would want an assisted suicide for themselves or their loved ones, the religious or non-religious values that fuelled their decision, and their potential reaction if assisted suicide was hypothetically decriminalised and an available option to them was not conducted. Also, a media-analysis of newspapers, to gauge how the issues of suicide and assisted suicide are reported, depicted and represented in the news media in Pakistan (an Islamic country) and England (a Christian country, with a predominantly secular culture) was also performed and excluded from this thesis. The news media's representation is significant to fuel a case of reform, to examine if it has impacted the momentum for reform of assisted suicide, the religious and non-religious values that are included in the reports and articles and analyse the reporting style of Pakistani and English newspapers to scope out the difference in reporting of the same issues, namely suicide and assisted suicide. However, as mentioned before, the empirical element in relation to this research has either not been conducted or excluded from this thesis, which also forms a limitation to this thesis.[78]

1.5.3 Archival and Historical Research

This thesis does conduct a significant amount of archival and historical research. Wesseling explains that the benefits of historical research is that, "A historic viewpoint… renders it possible to identify and analyse more carefully the factors which have affected, and which may still affect, the decisions made within the system".[79] Archival research is "the back-bone of the traditional legal research".[80] In order to trace the discursive shift in language, archival material – particularly Parliamentary debates and statements from various representative bodies and members of faith groups such as the Church of England – as a historical resource forms the basis of this research methodology.

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[78] Note: Research was conducted on the "conscientious objection clause", in order to determine whether such a clause could sufficiently protect the religious and non-religious beliefs of individuals (if assisted suicide is allowed), which has been excluded but can form the basis for further research and development of this thesis.

[79] Rein Wesseling, *The Modernisation of EC Antitrust Law* (Hart 2000) 4

[80] Naorem Sanajaoba, *Law and Society: Strategy for Public Choice 2001* (Mittal Publications 1991) 89

Archival research, which is a qualitative method of research, allows for the examination of the archival and historical materials, particularly primary resources in the form of historical Hansard. These are then contrasted with contemporary Parliamentary debates, which then provides for a detailed understanding of the changing conceptions of the values that drive the debate on assisted suicide, such as the doctrine of sanctity of life and individual autonomy. It also allows the shift in language, over time, to be traced; which establishes the changing relationship between religious and non-religious values and the law in assisted suicide policy implementation. Jackson notes the advantages and limitations of the archival method:

> …involves describing data that existed before the time of the study… One of the biggest advantages of archival research is that the problem of reactivity is minimized because the data have already been collected and the researcher does not have to interact with the subjects in any way… [However] This second-hand collection means that the researchers can never be sure whether the data are reliable or valid. In addition, they cannot be sure that what is currently in the archive represents everything that was originally collected. Some data may have been purged at some time, and researchers will not know this… Thus as a research method archival research typically provides a lot of flexibility in terms of what is studied but no control in terms of who was studied or how they were studied.[81]

This limitation only partially applies to this thesis. Some of the secondary resources –such as historic statements from faith groups, their members, clergymen and institutions – fall within this limitation. However, the significant majority of historical resources that have been examined are primary sources in the form of historic Hansard, which is contrasted with modern Parliamentary debates, and are accessible in their entirety without any parts being eradicated or expunged.

[81] Sherri L Jackson, *Research Methods: A Modular Approach* (3rd edn, Engage Learning 2015) 105

1.5.4 Socio-Legal Evaluation

A socio-legal evaluation, which is the main approach adopted in this thesis, allows of analysing the law and is directly linked to the examination of the social situation to which the law applies.[82] Tamanaha argues that:

> The label socio-legal studies has gradually become a general term encompassing a group of disciplines that applies a social scientific perspective to the study of law, including the sociology of law, legal anthropology, legal history, psychology and the law, political science studies of courts, and science-oritented comparativists.[83]

This thesis investigates how governmental, judicial and social institutions interact with each other and society and its citizens, particularly in relation to their extent of involvement on the area of assisted suicide (for example, the inclusion of the views of various religious and non-religious groups on assisted suicide in the policy-making process, which Chapter Six demonstrates). This approach is adopted to enable for a much wider analysis of the legal, religious, moral and ethical arguments and influences on the law on assisted suicide. This approach allows for the examination of the social, religious and secular influences that currently and have historically affected the debate on assisted suicide in England. According to Wheeler and Thomas, this approach represents "an interface with a context within which law exists".[84] The relationship between religion and law has historically been examined via two models. The first being the relationships between the Church and State model and the second between the State and the Individual. However, this thesis also analyses the relationship between the law and religion in the context of a third model: the connection between the individuals and various religious and non-religious communities present in multicultural English society.[85]

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[82] David Schiff, 'Socio-Legal Theory: Social Structure and Law' (1976) 39 MLR 287, 287
[83] Brian Z Tamanaha, *Realistic Socio-legal Theory: Pragmatism and a Social Theory of Law* (OUP 1997) 2
[84] Sally Wheeler and Phil Thomas, 'Socio-legal studies' in David Hayton (ed), *Law's Future(s): British Legal Developments in the 21st Century* (Hart 2000) 271
[85] A similar study was conducted in Peter Edge and Graham Harvey, *Law and Religion in Contemporary Society: Communities, Individualism and the State* (Ashgate 2000).

Banakar explains that "socio-legal research… offers an added value to both law and sociology by highlighting issues that neither law nor sociology can articulate or study alone".[86] This is demonstrated in Chapter Three of this thesis, which examines the phenomena of pluralism, multiculturalism and globalisation and how their relationship with the law on assisted suicide. It is necessary to take this approach because, as Banakar explains:

> Today, legal problems increasingly transcend the traditional national boundaries and jurisdictions of sovereign states begging for a new understanding of the role of law in society and a new approach to regulatory challenges… which is in tune with the new reality of the global society in which we live.[87]

This thesis attempts to effectively coordinate and examine the relationship between the sociological landscape of globalised England along with the religious and secular values and beliefs in its multicultural and pluralistic society, with the doctrines and principles that guide the legal, judicial and governmental activities on the area of assisted suicide.[88] The socio-legal approach described in this section guides the examination of the social, religious and ethical influences that have historically and continue to affect the debate on the legalisation of assisted suicide in multicultural England.

All the research was continuously updated and is valid up until the 9th of June 2017.

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[86] Reza Banakar, *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity* (Springer 2015) 38

[87] ibid 28

[88] Bhrigu Nath Pandey, *Socio-legal Study of Cultural and Educational Rights of the Minorities* (APH Publishing 2000) 14. For greater discussion on the relationship between law and politics, see: Mauro Zamboni, *The Policy of Law: A Legal Theoretical Framework* (Hart 2007) 29; and A Hunt, 'The Politics of Law and the Law of Politics' in K Tuori et al (eds), *Law and Power: Critical and Socio-Legal Essays* (Deborah Charles Publications 1997) 51-53; and M Granovetter, 'Economic Action and Social Structure: the Problem of Embeddedness' 91 (1985) American Journal of Sociology 495.

Chapter 2. Christian, Islamic and Secular Perspectives on Suicide and Assisted Suicide

2.1 Introduction

This chapter sets out the theoretical background of the Christian and Islamic faiths by directly looking at religious texts, such as the Bible and the Quran, to determine their viewpoint on the issues of suicide and assisted suicide, which informs the remainder of this thesis. These two religions are chosen because they are the largest faiths in England and Wales. Particular importance is placed on the doctrine of sanctity of life, which is the main value, grounded in both religions, on which opposition to a reform in the law is based.

The consistent opposition of the Christian faith, particularly the Church of England, is traced over the years along with the discursive shift in language of official bodies and their members to demonstrate how the meaning of sanctity of life has transformed over the years but the main principle, which attaches great value to human life and is always sought to be preserved by opponents of assisted suicide, remains the same. This shift, in both the understanding of the sanctity of life and secularism gaining ground, has led to this doctrine now being used in favour of reform on the basis that it is subjective and takes on quality of life considerations to ensure that individuals do not needlessly suffer and continue living in an undignified and deplorable state due to their illness.

To develop this argument further, the position of the Church of England is contrasted with that of the Catholic Church, due to the historical ties of England with Catholicism before the Reformation period,[89] and still continues to be a significant minority subculture in modern English society. It establishes that both the Church of England and Catholic Church maintain the same stance on this issue except Catholic clergy and official bodies continue to make significant religious references.

[89] For a detail discussion on Catholicism in the context of the Reformation: Lucy EC Wooding, *Rethinking Catholicism in Reformation England* (OUP 2003); Peter Marshall, *Religious Identities in Henry VIII's England* (Ashgate 2006); Anthony Milton, *Catholic and Reformed: The Roman and Protestant Churches in English Thought 1600-1640* (CUP 1995); and G W Bernard, *The King's Reformation: Henry VIII and the Remaking of the English Church* (Yale University Press 2005).

The position of the largest religion, Christianity, is compared with the views of the second largest religion, and the largest religious minority group, in England and Wales. It traces the views of the Islamic faith using religious texts to establish that the sanctity of life is also a deep-seated principle in the Islamic faith and is the main value against suicide and assisted suicide.

Finally, this chapter contrasts these religious beliefs with the views of secularism on assisted suicide. This includes the influence secularism has had on the current understanding of the doctrine of sanctity of life, along with the secular values that influence this debate, such as the notion of autonomy, which is the most important value in favour of reform, as it provides every individual with the freedom to choose the time and manner of their death and the idea of human dignity that is used by both opponents and advocates of reform that seeks to preserve the ban on assisted suicide to protect the inherent dignity attached to life and is grounded in religion, especially the Christian faith. Opponents, particularly those whose objections are grounded in religious doctrine, argue that this inherent dignity is indestructible even if that life is diseased or debilitated and allowing assisted suicide is viewed as an attack on this human dignity. On the other hand, proponents, who predominantly identify with a secular school of thought, argue that allowing a lawful option of assisted suicide by respecting the autonomous decision of an individual to end life cherishes what they perceive to be an ignominious, demeaning and humiliating life.

2.2 Christian understanding of suicide and assisted suicide

Around one-third of the world's population identifies with Christianity as their religion.[90] It is the largest religion in England and Wales with 33.2 million followers.[91] However, these followers do not actively practice it, with an average of less than 800,000 worshippers

[90] Central Intelligence Agency (CIA), 'The World Factbook' (29 February 2016) <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/xx.html> accessed 21 May 2017

[91] Office of National Statistics (ONS), 'Religion in England and Wales 2011' (11 December 2012) <http://www.ons.gov.uk/ons/dcp171776_290510.pdf> accessed 21 May 2017

attending a Church of England service every Sunday.[92] Even with this dramatic decline in Church attendance in Britain, its teachings have shaped and influenced the law in England for centuries and continue to do so since not practicing a religion does not undermine the strength of an individual's or community's religious beliefs.[93]

The primary source of all religious doctrines for most Christians is the Bible.[94] The Bible names six specific persons who committed suicide.[95] Samson who committed murder-suicide,[96] Judas[97] and Achitophael[98] who hanged themselves, Zimri the King who burned his palace and died in the fire,[99] Saul[100] and Saul's armour-bearer[101] who died by falling on their own swords. The Bible even provides us with an example of an assisted suicide. Abimelech, who ordered his armour-bearer to run a sword through him.[102] Toscano explains that:

> Abimelech was killed during the siege of Thebez. His forces broke through the city defences. All that was left was the fort inside the city. As he was preparing to burn the fort, a woman on the roof threw down a millstone. The stone landed on Abimelech's head, crushing it. Abimelech tells his young armour-bearer [to kill

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[92] Steve Doughty, 'Just 800,000 worshippers attend a Church of England service on the average Sunday' *Daily Mail* (22 March 2014) <http://www.dailymail.co.uk/news/article-2586596/Just-800-000-worshipers-attend-Church-England-service-average-Sunday.html> accessed 21 May 2017

[93] Callum Brown, *The Death of Christian Britain* (Routledge 2013) 16

[94] Norman Doe, 'The apostolic constitution Anglicanorum Coetibus: an Anglican juridical perspective' (2010) 12(3) Ecc LJ 304, 316; Vicki Black and Peter Wenner, *Welcome to the Bible* (Continuum International Publishing 2007) 14; Bernard Vincent Brady, *The Moral Bond of Community: Justice and Discourse in Christian Morality* (Georgetown University Press 1998) 16; David Bauer and Robert Traina, *Inductive Bible Study* (Baker Academic 2011); and Millard Erickson, *Introducing Christian Doctrine* (2nd edn, Baker Academic 2006) 21

[95] Nila Retterstol, *Suicide: A European Perspective* (CUP 1993) 16; and Donal O'Mathuna, 'But the Bible Doesn't Say They Were Wrong to Commit Suicide, Does It?' in Demy and Stewart (n 13) 349

[96] The Holy Bible (King James Version) Judges 16:26-30

[97] ibid Matthew 27:5

[98] ibid 2 Samuel 17:23

[99] ibid 1 Kings 16:18

[100] ibid 1 Samuel 31:4

[101] ibid 1 Samuel 31:4-6

[102] ibid Judges 9:54

him]… So, here we have a case of assisted suicide. Abimelech was going to die anyway, so he might as well die like a warrior and eliminate the agony.[103]

The Bible has not ratified a direct injunction against suicide or assisted suicide.[104] It has been interpreted by its followers as providing support for the sanctity of life doctrine,[105] which, for most Christians, is based on the notion that human life is sacred: God gives life and only He can take it away.[106] Even though this doctrine is not absolute neither does it seek to be preserved at all costs, it does form the foundation for the Christian religion's generally held belief against suicide and assisted suicide.[107]

Even though there are different interpretations by various denominations, most Christian denominations argue that the Bible expresses an embargo on suicide in Ecclesiastes 3:1-3. It provides that, "There is a time for everything. A time to be born and a time to die". Many followers believe even the worst pain and suffering does not justify ending life.[108] Certain denominations of Christianity, especially the Church of England and the Roman Catholic Church, believe that God has created human beings in His image.[109] For example, Genesis

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[103] Thomas Toscano, *You Are Evil* (iUniverse 2006) 41. Also see: William Cutrer et al, *Basic Questions on Suicide & Euthanasia: Are They Ever Right?* (Kregel 1998) 35

[104] Kathryn Greene-McCreight, 'Receiving Communion: Euthanasia, Suicide and Letting Die' in Stanley Hauerwas and Samuel Wells (eds), *The Blackwell Companion to Christian Ethics* (2nd edn, Blackwell 2011) 433; and Margaret Pabst Battin, *Ethical Issues in Suicide* (Prentice Hall 1995) 67

[105] James Keenan, 'The Concept of Sanctity of Life and Its Use in Contemporary Bioethical Discussion' in Kurt Bayertz (ed), *Sanctity of Life and Human Dignity* (Kluwer 1996) 3-4

[106] Bible, 1 Corinthians 6:19 and Romans 14:7-8. For greater discussion on sanctity of life in a Christian perspective: Jillel C Gray, 'Foreign Features in Jewish Law: How Christian and Secular Moral Discourses Permeate Halakhah' (DPhil thesis, University of Chicago 2009) 130-142. Also see: David Smith and Timothy Sedwick, 'Theological Perspectives' in David Smith and Cynthia Cohen (eds), *A Christian Response to the New Genetics: Religious, Ethical and Social Issues* (Rowman and Littlefield (R&L) 2003) 4; and Lynn Bridgers, *Contemporary Varieties of Religious Experience* (R&L 2005) 181-182

[107] Mary Rowell, 'Christian Perspectives on End-of-Life Decision Making: Faith in a Community' in Kathryn L Braun, James H Pietsch, and Patricia L Blanchette (eds), *Cultural Issues in End-of-Life Decision Making* (Sage Publications 2000) 158

[108] Edmund Pellegrino, 'Euthanasia and Assisted Suicide' in Kilner et al (n 26) 105-109

[109] Richard Scott Thorton, *Inclusive Christianity: A Progressive Look at Faith* (Hope Publishing House 2009) 162; James Noland, 'Reframing the Abortion Question' in Jeremy Evans and Daniel Heimbach (eds), *Taking Christian Moral Thought Seriously: The*

1:27 provides that, "So God created people in His own image; God patterned them after Himself; male and female He created them". Life is sacred because it is created in God's image and should be preserved. It is belief in this doctrine of sanctity of life that leads devotees to acknowledge that it is unacceptable to end your own life or to end the life of another.[110] It is accepted that ending the life of another is a sin and also implies that ending your own life by committing suicide is "self murder",[111] which is also a sin, against the sanctity of life doctrine and against the teachings of God.

Various philosophers who identify with the Christian faith have based their ideas and theories on Christian doctrine. For example, St Thomas Aquinas, a thirteenth century Christian theologian, opposed suicide on the teachings of Christianity and the reasoning of pagan philosophers such as Aristotle and Plato;[112] because suicide is contrary to natural law, or nature, which wants humans to survive, flourish and preserve life.[113] In his book, Summa Theologica, he argues, firstly, that human life is the property of God and only His to destroy.[114] Secondly, suicide is wrong as it is against the natural purpose of human life.[115] Lastly, suicide causes a significant degree of societal harm hence is unjustifiable.[116]

Legitimacy of Religious Beliefs in the Marketplace of Ideas (B&H Publishing Group 2011) 121; and Kim Gaines Eckert, *Stronger Than You Think* (InterVarsity Press 2007) 122

[110] Norman Geisler, *Christian Ethics: Contemporary Issues and Options* (2nd edn, Baker Academic Publishing 2010) 187

[111] Greene-McCreight (n 104); and H Tristram Engelhardt Jr, 'Physician-Assisted Suicide: An Orthodox Perspective' in Mark Carr (ed), *Physician-Assisted Suicide: Religious Perspectives on Death with Dignity* (Loma Linda University Press 2009) 74

[112] St Thomas Aquinas, *Summa Theologica Volumes 1-5* (Reprint, Cosimo Classics 2013); Judith Stillion and Eugene McDowell, *Suicide Across the Life Span* (2nd edn, Taylor and Francis (T&F) 1996) 8; and William Barclay, *The Ten Commandments* (Westminster John Knox Press 1998) 67

[113] Michael Cholbi, *Suicide: The Philosophical Dimensions* (Broadview Press 2011) 42; and Manuel Velasquez, *Philosophy: A Text with Readings* (12th edn, Wadsworth 2014) 479-480. For a detailed discussion on natural law and morality: Raymond Wacks, *Understanding Jurisprudence: An Introduction to Legal Theory* (4th edn, OUP 2015) 14-67. For a detailed discussion the link between natural law and assisted suicide: Paterson, *Assisted Suicide and Euthanasia* (n 20) 1-7, 15-47 and 167-172; and Paterson, *Contribution of Natural Law* (n 2) 137-330.

[114] Stillion and McDowell (n 112) 8; and Barclay (n 112) 67

[115] The notion of natural law, which seeks to preserve life, is relevant here; however, the original element of this research is to look at the role of religion (and not natural law) within the debate on assisted suicide. For a detailed discussion on the Natural Law Theory on Assisted Suicide: Paterson, *Assisted Suicide and Euthanasia* (n 20)

Leget argues that:

> Aquinas' threefold argumentation became incredibly successful in the history of thought. It became one of the classical arguments against suicide. Developing his line of reasoning according to the pattern of the triple structure of the sin, Aquinas' line of reasoning was not original. The structure he used is an ancient one: it was commonly used by the Stoics. It can even be tracked back to Plato's argument against suicide.[117]

However, Leget does not acknowledge that Plato's arguments were based on pagan understanding. In contrast, for Aquinas, the ultimate goal of followers of the Christian faith was to theologically and spiritually grow.[118] Suicide was an act against God. It breached an individual's obligations and duties to their community. Individuals and society have a natural inclination to preserve innocent human life. Thus, they should not violate it by ending life.[119]

The Church of England teaches that the commandment "Thou Shalt Not Kill"[120] prohibits taking the life of another or committing self-murder. The Church of England teaches the inviolability of the doctrine of sanctity of life and is incontrovertibly against the idea of a change in the law on assisted suicide in England.[121] To this end, the Chair of the Church of England's group on Mission and Public Affairs, Philip Fletcher, stated "…the Church's opposition… to a change in the law on assisted suicide, has been clearly, consistently and repeatedly stated."[122] Even though Christian doctrine has remained the same on this issue, there is a shift in language used by the Church to express its opposition. For example, in

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[116] Stillion and McDowell (n 112) 8; and Barclay (n 112) 67
[117] Paul van Geest et al (eds), *Aquinas as Authority: A Collection of Studies Presented at the Second Conference of the Thomas Instituut Te Utrecht, December 14-16, 2000* (Peeters Publishers 2002) 280
[118] Robert Barry, 'The Catholic Condemnation of Rational Suicide' in James Werth (ed), *Contemporary Perspectives on Rational Suicide* (T&F 2013) 32
[119] ibid 32
[120] Bible 1 Exodus 20:13
[121] Mark Friedman, *Assisted Suicide* (Raintree 2012) 36; and Edward Dowler, *Theological Ethics* (SCM Press 2011) 14
[122] Church of England, 'General Synod – November Group of Sessions' (16 February 2015) vol 45(3) Report of Proceedings 2014 1, 80

2015, Justin Welby, the Archbishop of Canterbury – who is the senior bishop and principal leader of the Church of England, the symbolic head of the worldwide Anglican Communion and the diocesan bishop of the Diocese of Canterbury – explained that:

> …respect for the lives of others goes to the heart of both our criminal and human rights laws and ought not to be abandoned… To change the law, however, to give individuals access to medically prescribed lethal drugs risks replacing the type of personal compassion that is forged in a lifetime relationship for a "process" marked by clinical and judicial detachment… the legal understanding of the "right to life" would have to be fundamentally rewritten and for no good effect... Once a law permitting assisted suicide is in place there can be no effective safeguard against this worry, never mind the much more insidious pressure that could come from a very small minority of unsupportive relatives who wish not to be burdened… the current law is not "broken". There is no need to fix it.[123]

Archbishop Welby's explains that in order to preserve the sanctity of life, assisted suicide is prohibited by the Church of England, which is against a change in law on the basis that the notion of 'right to life' would fundamentally change, which would alter the moral fabric of society and ultimately lead to terminally ill, weak and elderly patients being pressured into a premature death.[124] The manner in which Archbishop Welby explains the current position of the Church of England on assisted suicide is significantly different to the Geoffrey

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[123] Justin Welby, 'Why I believe assisting people to die would dehumanise our society for ever' (*The Guardian*, 5 September 2015) <www.theguardian.com/commentisfree/2015/sep/05/assisted-dying-suicide-bill-justin-welby-archbishop-canterbury> accessed 21 May 2017. Note: In 2010, the former Archbishop of Canterbury, Rowan Williams, addressed the General Synod of the Church of England, stating that allowing assisted suicide (and autonomy to supersede the doctrine of sanctity of life) would lead to terminally ill patients and elderly individuals being pressured into a premature death. See: Rowan Williams, *Archbishop's Presidential Address to the General Synod of the Church of England* (9 February 2010) <http://rowanwilliams.archbishopofcanterbury.org/articles.php/590/the-archbishops-presidential-address-general-synod-february-2010> accessed 21 May 2017

[124] For a detailed discussion on the reasons behind this opposition: Church of England, 'Protecting life – opposing assisted suicide' <https://www.churchofengland.org/our-views/medical-ethics-health-social-care-policy/assisted-suicide/protecting-life-opposing-assisted-suicide.aspx> accessed 21 May 2017

Fisher, who was the Archbishop of Canterbury from 1945 to 1961, when he emphasised the doctrine of sanctity of life by stating that:

> Christian belief is that human life is to be treated as a sacred thing, as a trust from God, and not, save in utmost need, to be wittingly ended by man. That belief is being assaulted from many different directions… It must be asserted against suicide; it must be asserted against ideas for legalising euthanasia".[125]

It is submitted here that the two statements demonstrate a clear shift in language and approach to the doctrine of sanctity of life. Justin Welby does not use any religious terminology or reference to the tenets of the Christian faith. In contrast, Geoffrey Fisher discusses the beliefs of the Christian faith in relation to end-of-life issues. Even though this doctrine was never an absolute one, it was grounded in the Christian religion and had subsequently deeply embedded itself in English society by dictating that taking the life of another human being is wrong. For example, this doctrine was reflected in the criminal embargo on suicide, which was lifted in 1961, and it is still retained by the criminality attached to assisted suicide. However, the preeminence of this doctrine has weakened over time in line with the constantly changing and evolving moral, societal, political and cultural landscape of society, which is discussed in greater detail throughout the next chapter. In a western liberal democracy, such as England, where the dominant culture is now predominantly secular, the doctrine of sanctity of life is not stringently applied and has been separated from Christian tenets and religious traditions, which is reflected in the current Archbishop's statement.

In recent years, notable members of the Church of England clergy have changed their stance on the issue, which further demonstrates the shifting stance of the Christian religious community.[126] In July 2014, former Archbishop of Canterbury and Life Peer in the House of Lords, George Carey, spoke out in favour of reforming the law. Lord Carey stated that:

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[125] HL Deb 1 June 1948 vol 156 col 48 (Discussing the Criminal Justice Bill)
[126] Archbishop Desmond Tutu, 'When my time comes, I want the option of an assisted death' <https://www.washingtonpost.com/opinions/global-opinions/archbishop-desmond-tutu-when-my-time-comes-i-want-the-option-of-an-assisted-death/2016/10/06/97c804f2-8a81-11e6-b24f-a7f89eb68887_story.html?utm_term=.e2b910a77b1d> accessed 21 May 2017

> The fact is that I have changed my mind. The old philosophical certainties have collapsed in the face of the reality of needless suffering… It was the case of Tony Nicklinson that exerted the deepest influence on me… Had I been putting doctrine before compassion, dogma before human dignity... In strictly observing accepted teaching about the sanctity of life, the church could actually be sanctioning anguish and pain.[127]

Lord Carey's momentous change in opinion – which is at odds with the official position of the Church of England – was based on the idea that upholding the doctrine of sanctity of life without any regard for the suffering and poor quality of life of individuals is against Christian teaching and that dignity in death, mercy and compassion should be enshrined in law.[128] According to Lord Carey's statement, the values that inform the debate on this issue have shifted from religious principles to quality of life considerations. The notion of quality of life encompasses the idea of autonomy (to allow individuals the freedom to choose the time and manner of their death) and the notion of preserving human dignity (to ensure that individuals do not needlessly suffer),[129] and the idea of administering compassion by ending the life of an individual who is undergoing mental or physical pain and suffering.[130]

However, the Church of England remains opposed to assisted suicide even if it is based on compassion for an individual going through pain and suffering and respecting their autonomous decision to end an undignified life. In 2012, the Church issued a statement supporting the current law on assisted suicide:

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[127] Nicholas Watt, 'Former archbishop lends his support to campaign to legalise right to die' *The Guardian* (12 July 2014) <http://www.theguardian.com/society/2014/jul/12/archbishop-canterbury-carey-support-assisted-dying-proposal> accessed 21 May 2017. Note: For a detailed discussion on the *Nicklinson* case, refer to ch 5.

[128] John Bingham, 'Lord Carey: I support assisted dying' *The Telegraph* (11 July 2014) <www.telegraph.co.uk/news/religion/10963195/Lord-Carey-I-support-assisted-dying.html> accessed 21 May 2017

[129] Discussed in ch 2

[130] Discussed in ch 6

> For the good of society and individuals, it is essential that both the law and medical practice embrace a presumption in favour of life... no one ought to be permitted actively to end another person's life… every human being is of intrinsic value… eroding this principle would have a marked, detrimental effect on many aspects of the law, health and social care and on community cohesion… It is understandable that some people might wish to bring their lives to an end for a variety of reasons and the Church would wish to extend empathy and compassion to them, but this does not mean that the law ought to be changed to facilitate their wishes… The wishes and aspirations of individuals are important, but it is not possible to view these in isolation from the effects that they might have on other individuals and on society in general.[131]

The entire statement demonstrates the clear shift in language that this thesis seeks to trace. It excludes any reference to Biblical or traditional religious views. The Church of England is increasingly using religious neutral language in order to convey their stance on assisted suicide. The Church is adapting to the changing society and basing its stance on secular values rather than religious tenets. The Church recognises the right to self-determine the time and manner of death as the central value in favour of allowing assisted suicide. However, the Church identifies other non-religious values – such as the need to protect the intrinsic value of human life, along with the need to protect vulnerable individuals from abuse and the rights of individuals and communities who do not support assisted suicide – which forms the basis for not allowing assisted suicide in a pluralistic society. This may be an attempt to relate to and preserve the beliefs of not only Christian denominations but also non-religious individuals and other religious groups in a pluralistic society who are opposed to allowing assisted suicide.[132]

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[131] Revd Dr Brendan McCarthy, 'Why the Church of England Supports the Current Law on Assisted Suicide' <http://www.churchofengland.org/media/1747118/assistedsuicide.pdf> accessed 21 May 2017

[132] Note: A shift such as this has not been seen and is highly unlikely to occur in other faiths, particularly Islam, which, as discussed in ch 2 has a fixed and rigid structure (Sebastian Poulter, 'Cultural Pluralism and its Limits: A Legal Perspective' (Report of a Seminar, London, 1990) 1-3; and accepted by The Strasbourg Court (that Shari'ah law is invariable, non-negotiable and unchangeable) in the *Case of Refah Partisi (The Welfare Party) and others v Turkey* App nos 41340/98, 41342/98 and 41344/98 (ECtHR, 31 July

2.2.1 The Catholic Church's understanding of suicide and assisted suicide

Like the Church of England, the primary source of all Catholic doctrines and teachings is the Bible. The paramount difference between the two Churches is that the Pope has supreme ecclesiastical authority in Catholicism.[133] The Pope uses "encyclical letters" as a means to address Catholic bishops around the world.[134] These letters deal with doctrinal or moral matters, exhortations, warnings or recommendations and provide counseling, guidance and shed greater light on points of religious doctrine.[135]

Pope John Paul II issued an encyclical letter, on the 25th of March 1995, dubbing the practice of assisted suicide as a "tragedy" and described suicide and assisted suicide as a threat to every Christian's life.[136] The Pope decreed that, "Suicide is always as morally objectionable as murder. The Church's tradition has always rejected it as a gravely evil choice… In its deepest reality, suicide represents a rejection of God's absolute sovereignty over life and death".[137] The Pope interchanges the term "assisted suicide" with "euthanasia". He declares:

> To concur with the intention of another person to commit suicide and to help in carrying it out through so-called assisted suicide means to cooperate in, and at times to be the actual perpetrator of, an injustice which can never be excused, even if it is requested… euthanasia appears all the more perverse if it is carried out by those, like relatives, who are supposed to treat a family member with patience and love, or by

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2001) para 72.

[133] James Coriden, *An Introduction to Canon Law* (Paulist Press 1991) 67; Walter Veith, *Truth Matters* (Amazing Discoveries 2007) 161; and Mandell Creighton, *A History of the Papacy During the Period of the Reformation* (CUP 2012) 12. Also see: Norman Tanner, 'How novel was Vatican II?' (2013) 15(2) Ecc LJ 175, 180; Timothy Byrnes, *Transitional Catholicism in Postcommunist Europe* (R&L 2001) 12; and Christopher Hill, 'Rome, Canterbury and the Law' (1991) 2(8) Ecc LJ 164

[134] Michael Walsh, *Roman Catholicism: The Basics* (Routledge 2005) 14; and Robert Ombres, 'Canon law and theology' (2012) 14(2) Ecc LJ 164, 168

[135] Rodger Charles, *Christian Social Witness & Teach: Volume 2* (Fowler Wright Books 1998) 12. Also see: Leo Stelten, *Dictionary of Ecclesiastical Latin* (Hendrickson 1995) 305

[136] Pope John Paul II, 'Evangelium Vitae: The Gospel of Life, Encyclical letter 'On the Value and Inviolability of Human Life' (The Vatican Documents, 25 March 1995) <http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html> accessed 21 May 2017

[137] ibid

> those, such as doctors, who by virtue of their specific profession are supposed to care for the sick person even in the most painful terminal stages.[138]

The Pope goes on to state that "The height of arbitrariness and injustice is reached when certain people, such as physicians or legislators, arrogate to themselves the power to decide who ought to live and who ought to die".[139] The Pope warns that the civilised world would be adopting a "culture of death" by allowing assisted suicide.[140] According to the Pope, every individual is a creation of God and created in His image.[141] God's image is inviolable ergo so is human life.[142] Every follower has the responsibility to preserve the doctrine of sanctity of life and should always choose life over death. The Pope uses religious terminology along with very fervid language. The use of such powerful terms and phrases – such as equating the decriminalisation of assisted suicide as the adoption of a "culture of death" – occurs as a consequence of being in a social vacuum created by a staunch belief and conservation of religious tenets and not considering the views of those who tend to support the notion of assisted suicide.

Like the Church of England, the Catholic Church believes in preserving the sanctity of life from its conception to its natural end.[143] In Pope John Paul II's encyclical letter, religious terminology and the argument that the doctrine of sanctity of life should always be preserved takes centre stage.[144] The Catholic Church categorically prohibits suicide and

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[138] ibid. Note: Catholic Church allows killing in certain circumstances, such as self-defence: The Vatican, 'Catechism of the Catholic Church: Part Three – Life in Christ' <www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a5.htm> accessed 21 May 2017
[139] John Paul II (n 136)
[140] Ted Peters et al, *Sacred Cells? Why Christians Should Support Stem Cell Research* (R&L 2008) 51; George Dunn, *Roman Catholic Church Versus 2nd Vatican Council Reformation* (Xlibris 2011); and James Childress, 'Religious Viewpoints' in Linda Emanuel (ed), *Regulating How We Die? The Ethical, Medical and Legal Issues Surrounding Physician-Assisted Suicide* (Harvard University Press (Harvard) 1998) 128
[141] Simon Chesterman, 'Last rights: euthanasia, the sanctity of life, and the law in the Netherlands and the Northern Territory of Australia' (1998) 47(2) ICLQ 362, 364
[142] James Keenan, 'The Moral Argumentation of Evangelium Vitae' in Kevin William Wildes and Alan Mitchell (eds), *Choosing Life: A Dialogue on Evangelium Vitae* (Georgetown University Press 1997) 53. Also see: Peter Smith, 'Engaging with the state for the common good: some reflections on the role of the church' (2009) 11(2) Ecc LJ 169, 179
[143] Smith (n 142) 177
[144] Keenan (n 142)

assisted suicide.[145] As the law currently stands, it is in line with the viewpoint of the Christian faith and prohibits assisted suicide. However, the highly conservative and traditional views of the Catholic Church on assisted suicide are not in harmony with the viewpoint of the dominant, secular culture of multicultural English society, which seeks to reform the law on assisted suicide, and display the concerns and trepidation that Catholic citizens have about a change in the law on assisted suicide.[146] The official position of the Catholic Church is arguably different to that of individuals who identify with Catholicism as their faith. A YouGov survey of 4500 people revealed that 75% of Catholics who took part in the survey supported a change in the law on the basis that individuals should have the right to choose when and how they end their lives.[147] The remaining Catholics cited the need to protect vulnerable individuals as the main reason to retain the criminal embargo on assisted suicide.[148] It is submitted that identifying with a religion that opposes assisted suicide and seeking to change the law on assisted suicide are no longer mutually exclusive. Individuals who support a change in the law may belong to a non-religious school of thought or may identify with a religion. Similarly, individuals who do not support a reform of the law may identify with either religion or secularism. Thus, as this thesis argues, both religious beliefs and non-religious viewpoints ought to be included in the debate; and the law on assisted suicide can be changed under the current liberal democratic, secular societal and cultural landscape of England, which is discussed in the next chapter.

It can be concluded that the Catholic view seems to prioritise the preservation of life over the need to end the physical or mental suffering of a patient. However, doctors, for example, who assist their patient to end their life are wholly motivated by compassion and choose to respect the autonomous decision of the patient and may not view it as a breach of

[145] DeCruz (n 12) 51, 55; and Childress (n 140).
[146] For greater discussion on the secular viewpoint on assisted suicide, refer to ch 2. Note: Many Catholics, whether practicing or not, may support the notion of assisted suicide.
[147] Andrew Brown, 'Assisted suicide poll shows support among majority of religious people' *The Guardian* (30 April 2013) <https://www.theguardian.com/society/2013/apr/30/assisted-suicide-poll-religious> accessed 21 May 2017
[148] ibid

the doctrine of sanctity of life and committing a cardinal sin.[149] Every individual is the author of their own life, through the principle of individual autonomy, and has the inherent prerogative to choose the time and manner of their death.[150] However, the Catholic Church refuses to acknowledge this inherent prerogative of every human being to make autonomous decisions and have full control of their life; thus they seek to maintain the criminal embargo on assisted suicide.[151]

2.3 Islamic Tenets on Suicide and Assisted Suicide

This section compares the tenets of the Christian faith with those of the second largest religious group in England and Wales, namely Islam, on suicide and assisted suicide. The teachings of Islam are the more lucid, consistent and transparent, compared to the views of the largest religion in the country, Church of England, on both issues; with a wealth of information in its Holy Books along with comments and explanations from Islamic scholars, who share the same viewpoint on these issues.[152] With 22.74% of the entire world population[153] (and 2.7 million people in England and Wales)[154] following it, Islam is the second largest of all religions. Islamic law is called "Shari'ah", which loosely translates to "the right path".[155] The two primary sources of Shari'ah law are the Quran and the Sunna.[156] The Quran is the most important source of Shari'ah law;[157] and is invariable and

[149] Anthony Fisher, 'Why do Unresponsive Patients Still Matter?' in Christopher Tollefsen (ed), *Artificial Nutrition and Hydration: The New Catholic Debate* (Springer 2008) 31; and Melanie Williams, 'Death rites: assisted suicide and existential rights' (2005) Int J L C 183
[150] Joseph Raz, *The Morality of Freedom* (Clarendon 1986) 369
[151] Catholic Bishops' Conference of England and Wales, *The Common Good and the Catholic Church's Teaching* (1996) para 36. Also see: Michael Manning, *Euthanasia and Physician-Assisted Suicide: Killing or Care?* (Paulist Press 1998) 30
[152] Christian Joppke, *Veil: Mirror of Identity* (Polity Press 2009) 9; and Manni Crone, 'Shari'a and Secularism in France' in Jorgen Nielsen and Lisbet Christoffersen (eds), *Shari'a as Discourse: Legal Traditions and the Encounter with Europe* (Ashgate 2010) 141
[153] CIA (n 90)
[154] ONS, 'Religion in England and Wales 2011' (n 91)
[155] Mohammad Hashim Kamali, 'Law and Society: The Interplay of Revelation and Reason in the Shariah' in John Esposito (ed), *The Oxford History of Islam* (OUP 1999) 108; and Bill Warner, *Sharia Law for the Non-Muslim* (Centre for the Study of Political Islam 2010)
[156] Kamali (n 155); and Shaheen Sardar Ali, 'The Twain Doth Meet! A preliminary exploration of the theory and practice of As-Siyar and international law in the contemporary world' in Javaid Rehman and Susan Breau (eds), *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (MNP 2007) 82. Note: A third source of Shari'ah law is commentaries by Islamic experts and jurists, over

unchangeable.[158] Ahdar and Leigh note that in global terms, one of the most "dynamic religious movements" is Islam, which is "a more traditional, conservative and reactionary" faith as it has "not tried to adapt [itself] to the requirements of a scientific, secularized worldview" and, thus, has survived and flourished.[159] Muslims, regardless of their denomination believe that the Quran was sent directly by Allah, through Angel Gabriel, to Prophet Mohammed over a span of 23 years.[160] The Quran is primarily a religious text;[161] and it also provides extensive guidance on criminal and evidence law matters, receiving interest on monies and contract formation issues as in commercial law, and family law concerns such as marriage, divorce, and succession.[162] In contrast, the Sunna, which is an Arabic word for "practice of the Prophet",[163] records the words, stories and activities of the Prophet and his companions and confidantes.[164] Each individual story, that includes the

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the centuries, who have tried to explain, interpret and analyse the Quran. Also see: Francois Facchini, 'Religion, law and development: Islam and Christianity – why is it in Occident and not in the Orient that man invented the institutions of freedom?' (2010) EJL&E 103, 119

[157] World Muslim Congress, *The Muslim World: Volumes 2-3* (University of Michigan 1964) 218; and Robert Harper, *Saudi Arabia* (2nd edn, Infobase Publishing 2007) 13

[158] Joppke (n 152) 9; and Crone (n 152) 141; and Phil Parshall, *The Cross and the Crescent: Understanding the Muslim Heart and Mind* (Authentic Media 2002) 64

[159] Rex Ahdar and Ian Leigh, Religious Freedom in the Liberal State (2nd edn, OUP 2013) 2

[160] Saeed Malik, *A Perspective on the Signs of Al-Quran: Through the Prism of the Heart* (2nd edn, BookSurge Publishing 2010) 63; Halim Rae, *Islam and Contemporary Civilisation: Evolving Ideas, Transforming Relations* (Melbourne University Press 2010) 17; Zahid Aziz, *English Translation of the Holy Quran with Explanatory Notes* (Ahmadiyya Anjuman Lahore Publications 2010) 36; and Ejaz Naqvi, *The Quran: With or Against the Bible?* (iUniverse 2012) 3

[161] Abdelmadjid Charfi, *Islam: Between Message and History* (EUP 2003) 66; Anil Chandra Banerjee, *Two Nations: The Philosophy of Muslim Nationalism* (Concept Publishing Company 1981) 196; and Kathleen McHarvey, *Muslim and Christian Women in Dialogue: The Case of Northern Nigeria* (Peter Lang 2009) 45

[162] Faiz Mohammad Soomro, *Cultural History of Sind* (National Book Foundation 1977) 31; Sachin Sen, *The Birth of Pakistan* (Book Traders 1955) 79; and Charfi (n 161)

[163] Roy Mottahedeh, 'The Foundation of State and Society' in Marjorie Kelly (ed), *Islam: The Religious and Political Life of a World Community* (Greenwood Publishing 1984) 57; Sharron Gu, *The Boundaries of Meaning & Formation of Law: A comparative study of legal concepts & reasoning* (McGill-Queen's University Press 2006) 62; and Gerhard Bowering et al, *The Princeton Encyclopedia of Islamic Political Thought* (Princeton University Press 2013) 534

[164] Shamim Akhter, *Faith & Philosophy of Islam* (Kalpaz Publications 2009) 94; and Virginia Henry-Blackenmore, *Voices of Islam: Voices of life, family, home and society – Volume 3* (Praeger 2007) 93. (Note: Prophet's companions are known as "Sahaba").

sayings of the Prophet, is known as a "Hadith".[165] These were recorded by the Prophet's companions and passed down through generations.[166]

The sanctity of life doctrine is a deep-rooted concept in Islam.[167] Muslims believe that Allah has created and owns all life.[168] Allah has fixed the time of birth and death of every follower.[169] Chapter 22, Verse 66 of the Quran explains, "It is He, who gave you life, and then will cause you to die". Thus, life is sacred and only Allah can end life through death.[170] No human must intervene in this process. Muslims believe that Allah decides the length and quality of a person's life, and only He can grant or end it. This credo forms the notion of sanctity of life under Islamic tenets and is reiterated throughout the Quran.[171]

Committing suicide is explicitly forbidden in various Hadiths and throughout the Quran. Sahih-Al-Bukhari records that, "The Prophet said, '… And whoever commits suicide with piece of iron will be punished with the same piece of iron in the Hell Fire'".[172] It is taught that life is the greatest gift from Allah to every follower and it should be cherished, celebrated and protected at all times.[173] The Quran confirms, "And do not kill or destroy

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[165] The unchangeable Hadith consists of two parts: the text and the name of the narrator supporting that text. For a discussion on Hadith: Hamza Yusuf Hanson, 'The Sunna: The way of the Prophet Muhammad' in Vincent Cornell and Omid Safi (eds), *Voices of Islam* (Praeger 2007) 125-146. Note: Unlike the Quran – which has been translated into over 115 languages – only a handful of Hadiths have been translated into English.

[166] Scott Lucas, *Constructive Critics, Hadith Literature, and the Articulation of Sunni Islam: The Legacy of the Generation of Ibn Sa'd, Ibn Ma'in, and Ibn Hanbal* (Koninklijke Brill NV 2004) 36

[167] Ina Taylor, *Religion and Life with Christianity and Islam* (Heinemann 2005) 36-37; and Cornell (n 165) 243

[168] Charles Corr et al, *Death and Dying: Life and Living* (7th edn, Wadsworth 2013) 596; and SSR Al-Mubarakpuri, *Tafsir Ibn Kathir: Volume 9* (2nd edn, Darussalam Publishers 2003) 466

[169] Mahbub Ilahi, *The Living Message of Muhammad* (Ferozsons 1969) 98

[170] The Holy Quran Chapter 6, Verse 151

[171] For example, Surah Al-Imran 3:145 (No. 5700, Narrated Thabit ibn Dahhak (Reconfirmed in Hadith No: 6232), Narrated Thabit bin Ad-Dahhak) confirms this tenet, "All life is a gift from God, and only God can take life. And whoever ends his own life, will be punished on the Day of Resurrection".

[172] Narrated Thabit bin Ad-Dahhak in the Sahih-Al-Bukhari. Also see: Quran: Surah Al-Nisaa Ayah 29 and Chapter 4, Verse 29

[173] Rosalyn Kendrick, 'The Sanctity of Life' in William Owen Cole (ed), *Moral Issues in Six Religions* (Heinemann 1991) 118

yourselves. Surely, Allah is Most Merciful to you".[174] Furthermore, Prophet Mohammed declared that, "He who commits suicide by throttling shall keep on throttling himself in the Hell Fire forever, and he who commits suicide by stabbing himself shall keep on stabbing himself in the Hell Fire".[175] The Prophet is reported to have further explained that:

> Whoever purposely throws himself from a mountain and kills himself, will be in the Hell Fire falling down into it and abiding therein perpetually forever; and whoever drinks poison and kills himself with it, he will be carrying his poison in his hand and drinking it in the Hell Fire wherein he will abide eternally forever; and whoever kills himself with an iron weapon, will be carrying that weapon in his hand and stabbing his abdomen with it in the Hell Fire wherein he will abide eternally forever.[176]

This suggests that Shari'ah law explicitly forbids committing suicide;[177] and disobeying this tenet will result in punishment.[178] Furthermore, Allah has endowed each follower with the power to endure pain.[179] For followers of Islam, pain and suffering are part of being human.[180] Even if a follower is in unbearable pain and suffering, they are forbidden to end their life. The Hadith confirms that, "There was amongst those before you a man who had a wound. He was in such anguish that he took a knife and made with it a cut in his hand, and the blood did not cease to flow till he died. Allah the Almighty said: 'My servant has himself forestalled Me: I have forbidden him Paradise'".[181]

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[174] Quran Surah An-Nisa 4:29-30
[175] No. 1284, Narrated Abu Huraira – in the Sahih-Al-Bukhari
[176] No. 670, Narrated Abu Huraira
[177] Dowbiggin argues that "…the Koran specifically forbids suicides": Ian Dowbiggin, *A Concise History of Euthanasia: Life, Death, God and Medicine* (R&L 2007) 15; and Cornell (n 167) 244
[178] Taylor (n 167) 36. Also see: E Thomas Dowd and Stevan Lars Nielsen, *The Psychologies in Religion: Working with the Religious Client* (Springer 2006) 234; Vartan Gregorian, *Islam: A Mosaic, Not a Monolith* (Brookings Institution Press 2003) 86; and Gawel Walczak, 'Muhammad in Warsaw, or a few words about Warsaw's Somalis' in Katarzyna Gorak-Sosnowska (ed), *Muslims in Poland and Eastern Europe: Widening the European Discourse on Islam* (University of Warsaw Press 2011) 146
[179] Ali Unal, *The Quran: With Annotated Interpretation in Modern English* (Tughra Books 2008) 578
[180] Maha Elkaisy-Friemuth, *God and Humans in Islamic Thought: Abd Al-Jabbar, Ibn Sina and Al-Ghazali* (Routledge 2006) 70
[181] The Hadith by Qudsi (No 28)

The punishment for breaching the doctrine of sanctity of life is not confined to those who end their own lives, but also those who end the lives of others. Islam forbids murder.[182] The Quran states that, "Whosoever has spared the life of a soul, it is as though he has spared the life of all people. Whosoever has killed a soul, it is as though he has murdered all of mankind".[183] Assistance in another's suicide is considered murder in Islam. It is forbidden even if assistance is provided in order to relieve the pain and suffering of a patient. Prophet Mohammed stated that, "Allah did not reveal any disease, without also revealing its cure".[184] This indicates that Islam teaches its followers to be patient and stoical.[185] Even if severe suffering and hardship befalls a Muslim, it is unacceptable to end their own life or that of another. Life is the most precious gift Allah has granted every follower and severe punishment ensues if a follower ends their own life or that of another.[186] Similar to the position of the Christian faith, both suicide and assisted suicide are strictly forbidden in Islam; thus, there is no conflict between the two religions on these end-of-life issues.

2.4 A Secular Approach to Suicide and Assisted Suicide

One of the rudiments of modern British society is the concept of secularism.[187] Secularism is not monolithic and has diversity within it such as non-theism or anti-religion. For the purposes of this thesis, secularism is taken to mean non-theism and consists of a temporal approach.[188] It is necessary to critically review the secular values on assisted suicide because, as the next chapter establishes, the dominant culture of modern Britain has its roots in Christianity but is predominantly secular and pluralistic.

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[182] Scott Alan Kugle, *Sufis & saints' bodies: mysticism, corporeality and sacred power in Islam* (University of North Carolina 2007) 73; Mujahidulislam Qasimi and Islamik Fiqh Akaiḍmi, *Contemporary medical issues in Islamic jurisprudence* (AS Noordeen Publishers 2007) 95; JWH Stobart, *Islam and Its Founder* (Kessinger Publishing 2005) 193; and Robert Wright, *Proving It: Eschatology That Makes Sense in Four Research Reports* (WingSpan Press 2006) 51

[183] Quran Chapter 5, Verse 32

[184] No. 1962 – Narrated Abu Huraira

[185] Kamali (n 155) 303. Also see: John Bowker, *Problems of Suffering in Religions of the World* (CUP 1975) 116

[186] Quran Chapter 17 Verse 33 and Chapter 40 Verse 70

[187] Brian Cummings, *Moral Thoughts* (OUP 2013) 1

[188] Sean Yom, 'Islam and Globalization: Secularism, Religion, and Radicalism' in Alfred Pfaller and Marika Lerch (eds), *Challenges Of Globalization: New Trends In International Politics and Society* (Transaction Publishers 2005) 36

2.4.1 The role of secularism in English society

The concept of secularism was first defined in 1846 by George Holyoake, who coined the term "secularism", as meaning the "policy of life to those who do not accept theology".[189] It was introduced into English society around the period of Enlightenment.[190] Juergensmeyer explains that:

> Prior to the… Enlightenment the words "religion" and "secularism" scarcely existed… The Enlightenment ushered in a new way of thinking about religion – a narrower definition of the term that encompassed institutions and beliefs that were regarded as problematic, and conceptually separated them from the rest of social life, which was identified by a new term, "secular"… After Enlightenment, the whole church and all of its customs… and beliefs were conceptually encompassed by the term "religion". Everything else – including the moral basis for public order, social values, and the idea of moral communities – was secular.[191]

The Enlightenment saw a demarcation of religious and non-religious values and activities. With the introduction of Darwinism and the theory of evolution, in the 19th century, the idea of divine creation and the guiding authority of God were challenged along with an academic and scientific disapproval of the New Testament.[192] This led to the excoriation of Christian doctrines and secularism became a societal and political issue.[193] This eventually changed the public and governmental landscape, which resulted in the weakening or ending

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[189] George Jacob Holyoake, *The Principles of Secularism* (3rd edn, Austin and Co 1870) 6. Also see: Bryan Turner, *Religion and Modern Society: Citizenship, Secularisation and the State* (CUP 2011) 128

[190] Christopher Nadon, *Enlightenment and Secularism: Essays on the Mobilization of Reason* (R&L 2013) xiii

[191] Mark Juergensmeyer, *Global Rebellion: Religious Challenges to the Secular State, from Christian Militants to al Qaeda* (University of California Press 2008) 17-18. For a detailed discussion on the Enlightenment and its effects in Britain and Europe: Jose Casanova, 'A Secular Age: Dawn or Twilight?' in Michael Warner et al (eds), *Varieties of Secularism in a Secular Age* (Harvard 2010) 267; Enrique Dussel, *Beyond Philosophy: Ethics, History, Marxism, and Liberation Theology* (R&L 2003) 188; and Guenter Lewy, *Why America Needs Religion: Secular Modernity and Its Discontents* (WBE 1996) 25

[192] This was a crucial moment in the secularisation of society and the idea is still present in current debates, for example: Richard Dawkins, *The God Delusion* (Houghton Mifflin 2006).

[193] Turner (n 189) 129

of religious ties with citizens, organisations and societies.[194] In this context, secularism is defined as a "… process by which sectors of society and culture are removed from the dominion of religious institutions and symbols".[195] It is a phenomenon towards a society in which religion is not given as much importance in public debates and policy-making.[196]

Secularism has been defined as the separation of the Church from the State,[197] absence of religion, the equal treatment of various religions, and even the replacement of religious beliefs by the social values common to a secular way of life.[198] It is used to demarcate the ideas, practices, beliefs, values, traditions and institutions that are related to particular faiths;[199] from the public sphere of the State and confine them to the private lives of citizens.[200] It calls for the separation of all religious influences from government institutions in order to preserve the rights of everyone involved in a multicultural society.[201] It is submitted here that a multicultural society consists of individuals from different cultures and religious backgrounds. In order to guarantee that the rights of everyone are respected, the government cannot favour one religious group over the other and secularity has become the status quo.[202] It is further submitted here that even though a preference for secular principles can be seen in governmental activities, especially policy making on most issues – and including the debate on assisted suicide to a significant degree – the notion of secularism ought not to deliberately seek to exclude the religious views of various communities within a society. Society, law and policy-making should not be inimical or unconcerned with religion. Under the notion of "new secularism", a more contemporary approach is required to create equality between religious and non-religious viewpoints and to create a more harmonious and integrated society. This approach, of being more open and

[194] Daniel Philpott, 'The Challenge of September 11 to Secularism in International Relations' (2002) 55 World Politics 66, 69
[195] Peter Berger, *The Social Reality of Religion* (Allen Lane 1973) 113; and Trilokinath Madan, 'Secularism in its Place' (1987) 46(4) The Journal of Asian Studies 747, 748.
[196] Craig Calhoun et al (eds), *Rethinking Secularism* (OUP 2011) 10
[197] Paul Kurtz, *Multi-Secularism: A New Agenda* (Transaction Publishers 2010) 1
[198] ibid
[199] Calhoun et al (n 196) 7
[200] Derek McGhee, 'Moderate secularism in liberal societies?' in Gavin D'Costa et al, *Religion in a Liberal* State (CUP 2013) 119
[201] Turner (n 189) 150
[202] J Heath Atchley, *Encountering the Secular: Philosophical Endeavours in Religion and Culture* (University of Virginia Press 2009) 112

inclusive of religious (instead of excluding or disregarding religious viewpoints)[203] should especially be adopted by the government, particularly policy-makers. Policy makers, for example, can use morally neutral vocabulary that society as a whole can share, instead of a morality that is based on a specific religion.[204] This preference for morally neutral vocabulary is based on the notion of secularism.[205] Using neutral vocabulary does not necessarily mean that the views of different religions would be excluded from public debates or policy making. It is recommended here that both religious and non-religious views of individuals and communities should be included in the public debate – for example, through public calls for evidence – on assisted suicide and any subsequent policy making to ensure inclusion, equality and fairness to all members of society; and the final policy and laws should be expressed in a neutral vocabulary in order to avoid giving preference to any one religion and to be able to relate to every citizen, whether they identify with a religion or not.[206]

Furthermore, the need to include the views of all the groups in a society is rooted in the notion of liberal democracy, the government ought not to use religion as a "constitutive device" to control and influence societal debates and issues.[207] In a liberal democracy, there is inclusion of religious and non-religious views in order to guarantee fairness and equality. However, religious values, arguments and doctrines ought not to be exclusively used for governmental activities and action.[208] Both religious and non-religious communities ought to be allowed to have an autonomous, free and independent existence in order to ensure that

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[203] Bruce Ledewitz, *Church, State & the crisis in American Secularism* (Indiana University Press 2011) 201

[204] Paul Cliteur, *Secular Outlook: In Defense of Moral and Political Secularism* (Wiley-Blackwell 2010) 3. For an in-depth discussion on secularism, refer to ch 2.

[205] Note: Religious values draw their authority from, are deeply rooted in, Scriptures and Holy Books such as the Bible and the Quran and are generally immutable; unlike secular laws that are flexible and adjustable in view of societal trends. (Lorenzo Zucca, *A Secular Europe: Law and Religion in the European Constitutional Landscape* (OUP 2012) 179).

[206] Secularism has shaped the relationship between religion and globalisation (Yom (n 188) 29; and Richard Falk, *Religion and Humane Global Governance* (Manuscript, Palgrave 2001) 70-73.

[207] Marc Stern, 'Is Religion Compatible with Liberal Democracy?' <www.trincoll.edu/depts/csrpl/religion%20and%20liberal%20democracy/relibdem.htm> accessed 21 May 2017

[208] ibid

no one religion can impose its beliefs on other individuals or communities, especially since, in a multicultural society, not everyone shares the same faith or identifies with the same values.[209] It "is thought to offer a mode of democracy which allows individuals and groups to promote and defend their interests".[210] It is a representative democracy, operating under the theory of liberalism, which is "… a set of value commitments, for example to the individual's freedom, autonomy, self-realization [and] rights protection" through codifying these values in the law.[211] These liberal values and rights are enshrined in the law via the human rights movement, which is discussed in Chapter Five.[212] John Stuart Mill argues that the values, interests and the conduct and actions in pursuit of fulfilling these values and interests are justified if they are useful and beneficial for the majority; otherwise they ought to be limited, as they then fall within a State's jurisdiction, in order to ensure that an individual's actions do not pose harm to others.[213] Thus, inclusion of both religious and non-religious views allows for a wide range of values, which can be picked and mixed to benefit all of society and limit the more restrictive and disadvantageous principles that curb and infringe the rights and freedoms of others. Mill asserts – "the principle of liberty" – that:

> …the sole end for which mankind are warranted… in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right.[214]

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[209] ibid
[210] Richard Vernon, *Political Morality: A Theory of Liberal Democracy* (Continuum 2001) 3
[211] Charles Mills, 'Race and the Social Contract Tradition' in James Sterba (ed), *Ethics: The Big Questions* (John Wiley and Sons 2009) 324
[212] For greater discussion on the link between liberalism and human rights: Jack Donnelly, *Universal Human Rights in Theory and Practice* (2nd edn, Cornell University Press 2003) 46-47
[213] Bruce David Baum, *Rereading Power and Freedom in J.S. Mill* (University of Toronto Press 2000) 140
[214] John Stuart Mill, *On Liberty* (2nd edn, Ticknor and Fields 1863) 23

Mill adds to the understanding of this principle by explaining that the notion of duty or moral obligation underlies the principle of liberty. Mills explains that any conduct or actions that pose "a definite, damage or a definite risk of damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law".[215] Such conduct is of direct interest to society and any actions that pose a risk of damage fall within the State's jurisdiction and can, thus, be limited in the interest of other citizens in society.[216] Tribe exemplifies this theory by arguing that refusing to wear a seat-belt, individuals endanger innocent third-parties and that by imposing a law that requires individuals to "buckle up… is a legitimate exercise of society's power to protect the innocent not the entering wedge of tyranny".[217] Dershowitz builds on this argument by explaining that:

> Most car drivers who would not wear seat belts if the law were silent are not conscientiously opposed either to seat belts or to the legal requirement that they be worn; they are simply lazy, forgetful, or unconcerned; they will do whatever the law nudges them to do.[218]

Wearing a seat belt not only protects the individual that is required to wear it but also other drivers and people of the general public. An individual should not have an objection to any law that protects other individuals' and community's rights, freedoms and even their health and well-being (even though that individual's liberty may seem to be curtailed). Similarly, the ban on allowing euthanasia, for example, is to ensure that vulnerable individuals are not given unwanted deaths against their will, thus protecting their life and all the rights and freedoms that they enjoy along with it. However, as this thesis demonstrates, allowing assisted suicide (instead of euthanasia) only affects the individual who seeks the assistance and not any other individual or community at large. Thus, it is a justifiable option and

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[215] ibid 158
[216] Baum (n 212) 140-141
[217] Lawrence Tribe, 'The Seat-Belt Law Does Not Intrude on Freedom' *The Boston Globe* (22 March 1986) page 11
[218] Alan Dershowitz, 'Mill, On Liberty' in John Stuart Mill, *On Liberty and Utilitarianism* (Bantam 2008) xiii

allowing it would not encroach on the rights, liberties and freedoms of others.[219]

It is submitted that in a liberal democracy, the State ought to be "neutral in considering various conceptions of the good life".[220] Its role is to provide an unbiased and just framework in which fundamental rights and freedoms of individuals must be protected. As long as these rights and freedoms do not encroach on the rights and freedoms of others, every individual ought to have the freedom to choose how they live and die. The State ought not to favour one religious belief over another religious or even non-religious viewpoint. This thesis contends a "negative seat belt argument" here. If assisted suicide were to be decriminalised, the law would not require every single citizen to seek an assisted suicide. However, it should be open to providing the opportunity to seek an assisted suicide, on a case by case basis, where an individual is under unbearable pain and suffering, that cannot be cured or relieved via palliative care, and the appropriate set of safeguards have been met to ensure that the individual is not under any pressure, coercion or going through any mental health problems, the individual ought to be allowed to assert their autonomy and choose the time and manner of their death.

2.5 The secular values that fuel the debate on assisted suicide

2.5.1 Value of Life

The religious doctrine of sanctity of life, which opposes the idea of allowing individuals the freedom to choose the time and manner of their death, is enshrined into societal values due to the historical ties of the Christian faith with Britain. This doctrine has evolved and transformed even when it was detached from religious beliefs and tenets. Over time, and influenced by pluralism and multiculturalism, it has evolved into a basic moral principle.[221] The sanctity of life doctrine is now part of secular morality.[222] The modern, secular version of the notion of sanctity of life does not put emphasis on the traditional religious rationale

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[219] For a background on the basics of jurisprudence and legal theory: Wacks (n 113); Richard A Posner, *The Problematics of Moral and Legal Theory* (Harvard 2009); and Paterson, *Assisted Suicide and Euthanasia* (n 20).
[220] Robert Simon, *The Blackwell Guide to Social and Political Philosophy* (Blackwell 2002) 4
[221] James Drane, *Clinical Bioethics: Theory and Practice in Medical Ethical Decision-Making* (R&L 1994) 182
[222] Helga Kuhse, The *Sanctity of Life Doctrine in Medicine* (Clarendon 1987) 17

behind sanctity of life.[223] It does not consider life as a gift from God or view sanctity of life, or ending life, as a sin.[224] The non-religious sanctity of life principle ascribes an intrinsic value to every human life.[225] To this end, Keown argues that:

> Human life is the supreme good and one should do everything possible to preserve it… Regardless of the pain, suffering, or expense that life-prolonging treatment entails, it must be administered: human life is to be preserved at all costs… Human life is a basic, intrinsic good. All human beings possess, in virtue of their common humanity, an inherent, inalienable, and ineliminable dignity. The dignity of human beings inheres because of the radical capacities, such as for understanding, rational choice, and free will, inherent in human nature.[226]

However, it is submitted that Keown's argument does not take into consideration that the ability to make autonomous choices, on which the dignity of human beings rests upon, also allows individuals the freedom to choose the time and manner of their death. The intrinsic value is not ascribed to individuals on the basis that human life is sacred, but rather to individuals' right to self-determination, voluntariness, free choice, autonomy, and because of their dignity.[227]

2.5.2 Human Dignity

It is argued that the notion of human dignity emanated from religious tenets. Kilner et al note that:

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[223] Claudia Carr, *Unlocking Medical Law and Ethics* (3rd edn, Routledge 2012) 316
[224] Barbara Maier and Warren Shibles, *The Philosophy and Practice of Medicine and Bioethics: A Naturalistic-Humanistic Approach* (Springer 2010) 125
[225] Ovadia Ezra, *The Withdrawal of Rights: Rights from a Different Perspective* (Kluwer 2002) 214
[226] John Keown, *The Law and Ethics of Medicine: Essays on the Inviolability of Human Life* (OUP 2012) 4-5. It is worth noting that John Keown identifies with Catholicism and opposed the notion of assisted suicide. Also see: Elizabeth Wicks, 'Terminating Life and Human Rights: The Fetus and the Neonate' in Charles Erin and Suzanne Ost (eds), *The Criminal Justice System and Health Care* (OUP 2007) 204
[227] Ezra (n 225) 214. For greater discussion on Human Dignity, refer to chs 2 and 5.

> For Christians, human dignity resides in the fact that a person is a creature of God who has value simply because one is a person, and not because others attribute dignity to him or her. Human dignity, therefore, can never be lost, even when one is shunned because of one's appearance, incontinence, or pain. A human person is a creature for whom God chose to die. How can such a creature lose his or her God-given dignity? Human dignity, therefore, is not lost by the retarded, the demented, those in permanents vegetative states… To deny dignity to those whose sensorial states are impaired is to deny the respect owed them as persons… On the Christian view, a dignified death is one in which the suffering person takes advantage of all the measures available to relieve pain and ameliorate the things that cause a loss of imputed dignity but also recognizes that his or her innate dignity remains.[228]

It is submitted that the theological, particularly Christian, view on dignity seems to be that individuals have an inherent state or quality of being worthy of honour and respect by virtue of being human. This inherent dignity cannot be devalued or lost because of disease or disability. Neither is this inherent dignity a subjective commodity, which is dependent on the individual's own estimation of their quality or life nor how others perceive it. As the next chapter demonstrates, with the rise of various phenomena namely secularism and multiculturalism, the religious connotations have been detached from this understanding and opponents of assisted suicide use this aforementioned definition of dignity to reject the idea of reform.

However, with no religious underpinnings, the idea of dignity has turned into a secular value that proponents also use in favour of reform. Human dignity provides individuals with the moral right to decide the value and worth of their life by allowing them to make their own choices.[229] To this end, Malpas and Lickiss argue that "…human dignity is respected and upheld only when the autonomy of human decision-making is itself respected and upheld".[230] Their argument is accurate in the sense that autonomy is the capacity to make decisions relating to life, how to live it and even when to end it. It provides

[228] Kilner et al (n 26) 113
[229] Ezra (n 225) 214
[230] Jeff Malpas and Norelle Lickiss, *Perspectives on Human Dignity: A Conversation* (Springer 2007) 3

individuals the right to make self-governing and free choices. Individuals who are not allowed this right to self-determination or have decisions made on their behalf lack dignity and those who have this right epitomise true human dignity.[231] Simply put, the relationship between the two notions is that dignity consists of the possession of a right to self-determination.

It is submitted that with medical advancements providing healthcare professionals and individuals with the ability to preserve life through disease, illness, disorders and disabilities; some individuals may now feel that they are being forced to continue preserving their life and endure, what they perceive to be, an undignified existence. To this end, Biggs explains that "…the ability to preserve life despite trauma and terminal disease, has resulted in more people demanding the right to die with dignity rather than endure the perceived indignity of a dependent existence".[232]

It is further submitted that individuals who view their existence as being of poor quality, having no value, degrading and undignified ought to be given the lawful option to end their life in a time and manner of their of own choosing. Thus, human dignity is a notion that can be predicated of a person: as it is reliant on the idea of self-governance and autonomy. "Death with dignity" has become an indirect expression that is substituted when referring to assisted suicide. Support for a change in the law on assisted suicide is driven by the notion of human dignity, which seeks to end the mental or physical pain and suffering of an individual, avoid humiliation and indignity and upholds an individual's right to self-determination, self-worth and dignity.[233]

Orfali accurately encapsulates the argument in favour of allowing "death with dignity" because it:

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[231] Fiona Randall and R S Downie, *The Philosophy of Palliative Care: Critique and Reconstruction* (OUP 2006) 54
[232] Biggs (n 27) 11
[233] Nicholas Christakis, 'The Social Origins of Dignity in Medical Care at the End of Life' in Malpas and Lickiss (n 230) 204

> …lets you decide how much function and dignity you want left when you die. You can wait until everything shuts down, or you can go sooner. You get to determine when enough is enough… At the end, you gradually start to lose control over every function. You feel totally helpless. You're at the mercy of the disease, your caregivers, and the system. The assisted dying option puts you back in control.[234]

However, various academics argue that choosing an assisted death is an attack on human dignity because such a choice is based on the pretense that the individual's life has no value or meaning due to their disease or disability.[235] For example, Sulmasy, a Catholic medical doctor and American ethicist, argues that:

> This premise is necessary in order to justify killing oneself, or to justify asking to be killed. Some may respond that [assisted dying] is justified whenever one determines that one's life no longer has enough dignity, but to do so, such persons would need to measure dignity in terms of either pleasure, or freedom, or control, or social worth or claim that dignity is purely subjective… euthanasia and assisted suicide are freely chosen, willful assaults upon human dignity, based upon the premise that a human life has no meaning or value.[236]

Sulmasy's view is subjective and based primarily on a theological perspective – as he is a former Franciscan friar and his research interests are within spirituality, religion and their role in medicine – who argues that an illness is merely an assault on human dignity and does not completely destroy it.[237] Various studies have established that patients subjectively

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[234] Robert Orfali, *Death with Dignity: The Case for Legalizing Physician-assisted Dying and Euthanasia* (Hillcrest 2011) 30

[235] Daniel Sulmasy, 'Death and Human Dignity' (1994) 61(4) Linacre Quarterly 27, 30-32. Also see: John Keown and Luke Gormally, 'Human Dignity, Autonomy and Mentally Incapacitated Patients: A Critique of Who Decides?' [1999] 4 Web Journal of Current Legal Issues <http://www.bailii.org/uk/other/journals/WebJCLI/1999/issue4/keown4.html#Heading19> accessed 21 May 2017; and Keown, *Law and Ethics of Medicine* (n 226) 6

[236] Sulmasy (n 235) 30-32

[237] Ana Iltis, 'Physician Assisted Suicide: A Roman Catholic Perspective' in Carr (n 111) 53; and Margaret Somerville, *Death Talk: The Case Against Euthanasia and Physician-Assisted Suicide* (McGill-Queens University Press 2001) 259. However, it is submitted that

cite the "loss of dignity" as the main motivation for requesting an assisted death.[238] The medical symptoms and the pain and suffering of terminal diseases, often lead to dependency on others, which may be perceived by some patients as a loss of dignity.[239] It is submitted that this suffering and dependency can be viewed as a kind of indignity. Some patients cannot be cured or have their pain eased through palliative care and have no option but to end life. Thus, disease and disability diminish human dignity. Every individual's dignity and freedoms should always be propagated and protected.[240] Dignity can be restored either by curing that disease or by respecting an individual's autonomous choice to end the disease-ridden life.[241] As Chapter Five will argue, this ability to make autonomous choices – which emanates from the notion of human dignity that is protected by Article 3, which is further explored in Section 5.5 – is the main value on which a reform of the law could be based. The next subsection examines the theoretical background of these concepts: particular importance is given to the notion of autonomy, which is the most significant value that informs the debate on assisted suicide.

2.5.3 Autonomy

The concept of autonomy is central to the notion of secular morality. The idea of individual autonomy has its origins in the Greek language; "auto" meaning "self" and "nomos" meaning "law", to create the concept of self-law or self-government. The principle of autonomy recognises the value of being able to make choices in life and that no man or State can interfere with this ability to choose. This ability to choose is what gives an

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this argument does not take into consideration the notion of compassion in relation to the preservation of human dignity and bringing suffering to an end (Nigel Cameron, 'Autonomy and the Right to Die' in Kilner et al (n 26) 27).

[238] Van der Maas et al, 'Euthanasia and Other Medical Decisions Concerning the End of Life' (1991) 338 Lancet 669; DE Meier et al, 'A National Survey of Physician Assisted Suicide and Euthanasia in the United States' (1998) 338 New England Journal of Medicine 1193; and L Gazini et al, 'Physicians' Experiences with the Orgean Death with Dignity Act' (2000) 342(8) New England Journal of Medicine 557

[239] Arthur Caplan and Robert Arp, *Contemporary Debates in Bioethics* (Wiley-Blackwell 2014) 219

[240] Patricia Wiater, *Intercultural Dialogue in the Framework of European Human Rights Protection* (Council of Europe Publishing (COEP) 2010) 38

[241] O Carter Snead, 'Human Dignity and the Law' in Stephen Dilley and Nathan Palpant (eds), *Human Dignity in Bioethics: From Worldviews to the Public Square* (Routledge 2013) 152. This thought forms the basis behind the desire for a death with dignity: Carl Wellman, *Medical Law and Moral Rights* (Springer 2005) 42.

individual sovereign control over their life. Roberts accurately argues that:

> Choice… is prerequisite to leading a successful, fulfilling and authentic existence according to one's own moral lights. To have an autonomous life, a person must be free to deliberate about and choose the projects he or she will take up in life from an adequate range of options accommodating diversity of human aptitudes, abilities, interests and tastes… Autonomy makes a person the sovereign authority over his own life.[242]

Individual autonomy is taking active steps to live in accordance with one's own opinions, choices, preferences, values, ethics, and identity within the limitations of what one regards as morally acceptable.[243] This right to autonomy applies to choices, of how to live, and also being able to choose the time and manner of death.[244] Committing suicide can be a manifestation of this right to autonomy.[245] However, manifesting this right is restricted when an individual is physically disabled and unable to end their life without assistance. Zucca cogently argues that:

> The question is whether we should allow [individuals to end life] by assisting them in their last informed decision to quit their lives. Religious institutions… want to resist this suggestion… Non-religious people disagree with the idea that God is the ultimate adjudicator… they generally rely on the value of individual autonomy… Life is theirs and they certainly cherish it. But if for some reason they have become detached from their life and only think limiting the pain life protracts, then they should be given a chance to end their life.[246]

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[242] Paul Roberts, 'Privacy, Autonomy and Criminal Justice Rights' in Peter Alldridge and Chrisje Brants (eds), *Personal Autonomy, the Private Sphere and Criminal Law: A Comparative Study* (Hart 2001) 59

[243] Marilyn Friedman, 'Autonomy, Social Disruption, and Women' in Catriona Mackenzie and Natalie Stoljar (eds), *Relational Autonomy* (OUP 2000) 35-57

[244] John Keown, 'A New Father for the Law and Ethics of Medicine' in John Keown and Robert George (eds), *Reason, Morality, and Law: The Philosophy of John Finnis* (OUP 2013) 303

[245] Elizabeth Wicks, *The Right to Life and Conflicting Interests* (OUP 2010) 188

[246] Lorenzo Zucca, 'Law v Religion', in Lorenzo Zucca and Camil Ungureanu (eds), *Law, State and Religion in the New Europe: Debates and Dilemmas* (CUP 2012) 141, 142

The autonomous desire to end life is, as discussed earlier in this chapter, against the beliefs of many Muslims and Christians who believe that God can control when and where an individual's life ends and not a matter that the individual controls. However, exercising the right to self-determination is what contributes to the social, physical and mental well-being of an individual and preserves the inherent dignity that every individual possesses.[247] Whilst autonomy is an innate right that every human being possesses,[248] restrictions need to be placed on this right in order for individuals to engage in social contact and relationships with other members of society, who are equally autonomous beings, in order to preserve their autonomy.[249] To this end, Hoffman and Okany argue:

> Limitations must be placed on human rights when necessary for ensuring that individuals do not exercise their freedoms in a way that infringes on the freedoms of others. [For example] One rationale recognised in human rights law for imposing limitations on the right to free speech is the protection of others against hostility or even violent attacks resulting from what is generally referred to as 'hate speech'… In line with the aforementioned purpose of limitations placed on human rights, its prohibition or prevention would constitute striking a balance between the right of an individual to freedom of expression and the human rights of persons forming the target of such incitement, such as their right to life and their right not to be subjected to violent attacks.[250]

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[247] Keown and Gormally (n 235). For a detailed discussion on Article 8, refer to ch 5. Also see: Karen Eltis, 'Predicating Dignity on Autonomy? The Need for Further Inquiry into the Ethics of Tagging and Tracking Dementia Patients With GPS Technology' (2006) 13 The Elder Law Journal <http://publish.illinois.edu/elderlawjournal/files/2015/02/Eltis.pdf> accessed 21 May 2017

[248] Thomas McClintock, *Skepticism and the Basis of Morality* (Peter Lang 1995) 79. For a detailed discussion on the relationship between liberalism and autonomy: GW Smith, *Liberalism: Ideas of Freedom* (T&F 2002); John Christman and Joel Anderson, *Autonomy and the Challenges to Liberalism: New Essays* (CUP 2005); and Ben Colburn, *Autonomy and Liberalism* (Routledge 2010).

[249] This right to autonomy is guaranteed under Article 8 ECHR, which is discussed in ch 5

[250] Julia Hoffman and Amaka Okany, 'Taking Prevention of Genocide Seriously' in Julia Hoffman and Andre Nollkaemper (eds), *Responsibility to Protect: From Principle to Practice* (Amsterdam University Press 2012) 324

This argument indicates that autonomous desires must be limited; keeping in mind the relationship and effect their autonomous actions have on the rest of society and its members.[251] Autonomy can never be viewed as absolute and exercised without restrictions because society and the State place rules, laws, regulations and restraints on citizens through legislation and cultural norms.[252] There must be certain limitations on the ability to exercise and perform actions in order to fulfill the choices an individual makes, so that the rights and autonomy of others are protected and preserved. These limitations are placed, in accordance with the objective criteria set out by international human rights standards, in order to protect the rights of other individuals and communities in a pluralistic society.[253]

The need to strike a balance between the rights of all individuals and communities is discussed in detail in Chapter Five. The ability to end their life, whenever an individual chooses, is the ultimate act of autonomy. It is possible to exercise this right by committing suicide. However, in a few exceptional cases, for example when a patient is physically disabled and unable to commit suicide alone, they seek help from another individual to assist their suicide. This is when there is a need to draw the line: when a patient decides to seek an assisted suicide, based on their right to self-determination; but due to the criminality attached to assisted suicide cannot seek to do so without encroaching on the rights of the person who provides the assistance.[254]

However, the idea of personal autonomy allows every individual the freedom to determine their course in life, the freedom to choose goals and accomplish them, to be free from coercion and, in the absence of any unreasonable restrictions, to carry out their desires and choices, and even provides every individual with the freedom to act. Raz argues that:

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[251] Scott Rae and Paul Cox, *Bioethics: A Christian Approach in a Pluralistic Age* (WBE 1999) 69-70

[252] Jill McCarthy, 'Autonomy' in Elizabeth Mason-Whitehead et al (eds), *Key Concepts in Nursing* (SAGE 2008) 30. Also see: Eliot Deutsch, *Persons and Valuable Worlds: A Global Philosophy* (R&L 2001) 92

[253] For a greater discussion on human rights standards, refer to ch 5. Also see: Terrance McConnell, *Inalienable Rights: The Limits of Consent in Medicine and the Law* (OUP 2000) 29, who argues, "If exercising a right in a certain way infringes the rights of others, there is at least a reason to believe that exercising the right in that way is wrong".

[254] The next chapter discusses the criminal law on assisted suicide, refer to ch 4

> The ideal of personal autonomy… holds the free choice of goals and relations as an essential ingredient of individual well-being. The ruling idea behind the ideal of personal autonomy is that people should make their own lives. The autonomous person is a (part) author of his life. The ideal of personal autonomy is the vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives… Autonomy is opposed to a life of coerced choices. It contrasts with a life of no choices, or of drifting through life without ever exercising one's capacity to choose.[255]

It is submitted that what makes individuals truly autonomous is not the content or substance of their goals but rather their conduct and actions that fulfill these goals.[256] Even though the State has withdrawn from certain areas by giving individuals complete autonomy over how they choose to conduct their lives; various rights are still limited.[257] Thus, the autonomous person is "part author" of their life. The other part author is the State, who, in accordance with international human rights standards, can limit the actions or conduct that result from a choice made by the individual.[258]

However, the notion of individual autonomy remains the most important value used in favour of the current assisted suicide movement.[259] Judge Stephen Reignhardt argues that:

> …the decision how and when to die is one of the most intimate and personal choices a person may make in a lifetime, a choice central to personal dignity and autonomy. A competent, terminally ill adult, having lived nearly the full measure of his life, has a strong liberty interest in choosing a dignified and humane death rather than being reduced at the end of his existence to a childlike state of helplessness – diapered, sedated and incompetent.[260]

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[255] Raz (n 150) 369-71
[256] Raz (n 150) 369-71
[257] For a detailed discussion on human rights and their limitations, refer to ch 5
[258] Raz (n 150) 369-71. For greater discussion on human rights standards, refer to ch 5
[259] Mitchell (n 7) 107. Note: This current movement is discussed in chs 4 and 6.
[260] *Compassion in Dying v State of Washington* 1996 WL 94848 (9th Cir, 6 March 1996) at 3161-3162

Autonomy allows individuals to make the self-determining decision to choose the time and manner of their death. It also allows these individuals to seek assistance in performing that decision. Even though this right to receive assistance cannot be absolute, as restrictions must be placed to protect vulnerable individuals and even protect the religious freedoms of individuals who may have religious or non-religious objections to assisted suicide;[261] and even persons who do not wish to provide assistance. It is submitted that terminally ill patients should have their suffering relieved by all means necessary including a lawful option of assisted suicide.[262] The ultimate expression of autonomy is an individual choosing the manner and time of their death. Autonomy also gives an individual the freedom to ask for assistance in performing that autonomous act of ending life. Allowing assisted suicide (instead of euthanasia) safeguards individuals from being 'killed off' against their will as the final action that ends life must be taken by the individual who seeks the assistance, thus, it is a justifiable course of action.

2.6 Conclusion

This chapter has examined the foundation and development of the doctrine of sanctity of life, which dictates that suicide and assisted suicide are impermissible, in both the Christian and Islamic faiths. It also traced the evolution of this doctrine from a religious notion into a secular, non-religious principle along with the idea of individual autonomy, which is the most significant value in movement to reform the law on this area.

[261] Miles et al proposes a list of qualifications that limit an individual's right to self-determination, yet allow them to receive assistance in their death: Steven Miles et al, 'Considerations of Safeguards Proposed in Laws and Guidelines to Legalize Assisted Suicide' in Robert Weir (ed), *Physician-Assisted Suicide* (Indiana University Press 1997) 212. Also, for a detailed discussion on the need to protect religious and non-religious views, via Article 9 ECHR, refer to ch 5.

[262] M Therese Lysaught et al (eds), *On Moral Medicine: Theological Perspectives in Medical Ethics* (3rd edn, WBE 2012) 1079. For a general discussion on the moral and legal theory (and in relation to assisted dying): Justine Burley, *Dworkin and His Critics: With Replies by Dworkin* (Blackwell 2004); Jeffrey Brand-Ballard, *Limits of Legality: The Ethics of Lawless Judging* (OUP 2010) 89-90; Posner (n 219) 130-136; Ian Ward, *Introduction to Critical Legal Theory* (2nd edn, Routledge-Cavendish 2004) 43-50.

The teachings of the Christian faith have influenced the law of England for centuries. This chapter has traced the origins of the admonition of the Christian faith on the issues of suicide and assisted suicide, which emanate from the doctrine of sanctity of life. Whilst this doctrine is not explicitly set out in the Bible, followers of the Christian faith have interpreted it to mean that life is sacred; as God has created humans in His image and only He can give or take life. Thus, it is inadmissible to end your own life through suicide or that of another by assisting their suicide. Belief in this doctrine is shared by the Islamic faith, which dictates that Allah owns all human life and decides its length and quality, is reiterated throughout Shari'ah law. No human being must interfere in this process by ending their life or that of another. Even though this doctrine is not absolute: it only forms the rudiments of the generally held belief against suicide and assisted suicide in both faiths.

Over the years – with the influence of secularism, which was traced in this chapter, and multiculturalism, which is analysed in the next chapter – this doctrine has transformed into a secular, non-religious principle. It is now detached from its religious underpinnings and does not have a sacredness attached to it. Instead, life is viewed as having an inherent value, which includes the individual's right to self-determination and free choice. This right to autonomy is the most significant value in the debate to legalise assisted suicide, as it allows individuals to decide how they live and even choose the time and manner of their death.

A central theme of this thesis is tracing the shift in language to better understand the influence and relationship of religion with the law on assisted suicide. Even though the terminology is largely the same, the understanding of the doctrine of sanctity of life has significantly changed. The different understandings of this doctrine are reflected in societal activities. For example, in 1948, the Archbishop of Canterbury, Geoffrey Fisher, used religious terminology and references to explain that the "Christian belief" is that life is "a sacred thing". This position is compared with Archbishop Welby's statement in 2015, which contains no ecclesiastical references, where he suggests, "respect for the lives of others… ought not to be abandoned". This shift in language can be attributed to the demarcation of religion from societal activities, which clearly demonstrates the disparate approach to the doctrine of sanctity of life.

The modern statements made by the Church of England further illustrate this shift in approach and language. They exclude Biblical references, ecclesiastical terminology and fervent religious language. Neutral, non-religious language is used in order to relay the stance of the Church against allowing assisted suicide. The Church recognises the notion of autonomy as being the most important value that informs the debate and on which a change in the law is possible. However, it argues that individual autonomy is superseded by the need to respect human life.

Opponents of reform, including religious groups such as the Church of England, argue that retaining the criminal embargo on assisted suicide protects this intrinsic value. However, the contemporary understanding of the doctrine of sanctity life dictates that it is a subjective notion and takes on quality of life considerations. This doctrine is now based on an individual's own view of their life, which is influenced by their conscience and beliefs. If they deem their quality of life to be so poor and their dignity to be in a deplorable state, there is a case for allowing assisted suicide; under definite circumstances, where the individual has a clear, informed and consistent wish to end life and their humiliation and indignity can be separated from mental illness and coercion or pressure.

Even though the debate on assisted suicide is now predominantly fuelled by secular values, society, the law, and governmental activities, particularly policy-making, should not exclude religious beliefs in order to ensure equality, fairness and concord in society. Furthermore, under the "new secularism" approach, discussed in this chapter, both religious beliefs and non-religious principles ought to be continually included in the debate on assisted suicide in liberal democratic English society to ensure that there is objectivity, inclusion and fairness in society and the final policy or laws ought to be in a non-religious language in order to ensure that no one religion is given preference over the other and to be able to relate to every citizen in society, regardless of their religious or non-religious affiliation.

In an attempt to provide a more definitive answer to the role of religion and secularism in multicultural English society, the remainder of this thesis explores their influence, as set out in this chapter, on the momentum for reforming the law on assisted suicide in England.

Chapter 3. The influence of multiculturalism on assisted suicide policy-making in England

3.1 Introduction

This chapter provides the background analysis that partly informs the remainder of this thesis. It examines the meaning of multiculturalism, which consists of a dominant culture and minority subcultures, to establish the role that religion and secularism plays within modern, pluralistic, multicultural English society. In doing so it examines the historical development of how English society became multicultural, namely through waves of immigration from former colonies, especially the Indian subcontinent that brought a significant amount of individuals who identify with the Islamic faith into the country.[263] It also discusses the negative perception of Muslims, the reasons behind the intolerance and prejudice towards them, whether the demands made by the Islamic community are unreasonable and conflicting with the dominant culture of English society, which is increasingly secular but has deep-rooted ties with the Christian faith. This includes the accommodations made by government in order to integrate minority subcultures into contemporary English society. It establishes that the current societal landscape of English society, has an increasing separation of religion from public institutions and governmental activities yet the inclusion of religion has not been completely abandoned and religion continues to receive representation in public bodies, such as the House of Lords, and even governmental activities, particularly the law-making process. The role of religion in governmental activities and public bodies is studied to establish whether it influences the debate on assisted suicide, especially the process of reforming the law in this area, in a liberal democratic country such as England. Finally, this chapter establishes that religion is a significant part of the culture of English society. However, even with the deep-seated ties English culture has with the Christian faith, which continue to receive inclusion in public bodies and governmental activities, the pluralism and fluidity that is present in multicultural English society have decreased its influence. This means that English society is no longer

[263] Note: Immigrations patterns have radically changed in the 21st century with the "free movement of workers/persons" from the EU, which are mentioned in ch 3. However, the current debates around the EU Referendum have been excluded from this thesis due to their elaborate, complex and labyrinthian nature, which cannot be accommodated due to the word limitation.

deeply tied to the tenets and historical traditions of the Christian faith and societal and governmental activities have become predominantly secular.

3.2 What is multiculturalism?

The concept of culture has to be understood first to better comprehend the meaning of multiculturalism.[264] Culture has been defined as the intellectual, spiritual and aesthetic development of an individual, group or society.[265] It is a phenomenon, which encapsulates the entire way of life, activities, beliefs, values and customs of a people, group, or society; and is generally understood as an intricate, constantly evolving concept.[266] Figueroa broadens the definition by cogently arguing that:

> Culture does not refer only to folklore, dress, diet or popular music. It embraces all that a group of people have together realised and passed on as part of their heritage. It refers especially to shared symbolic and cognitive systems, to language, beliefs, values, religion, way of life, and social institutions or patterns.[267]

Over time, these values and practices "become a way of life of a group of people… [and] handed down from one generation to the next".[268] However, defining multiculturalism is much more intricate. Understanding the definition and mechanism of multiculturalism helps with analysing how the phenomenon develops notions relating to assisted suicide. Multiculturalism is a complex term. It refers to the openness and presence of more than one culture in society.[269] For example, the United Nations[270] – which is an organisation

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[264] Fernando Falcony Tella, *Challenges for Human Rights* (MNP 2007) 3-16 (This article discusses multiculturalism as a contemporary phenomenon, the concept of tolerance, individual and collective rights and respect for minority subcultures)
[265] Phil Smith and Alexander Riley, *Cultural Theory: An Introduction* (2nd edn, Blackwell 2009) 1
[266] Nancy Adler, 'Do Cultures Vary?' in Theodore Weinshall (ed), *Societal Culture and Management* (Walter de Gruyter & Co 1993) 29
[267] Peter Figueroa, 'Equality Multiculturalism, Antiracism and Physician Education in the National Curriculum' in John Evans (ed), *Equality, Education and Physical Education* (Burgess Science Press 1993) 91
[268] Adler (n 266) 29
[269] Figueroa (n 267) 91
[270] For a detailed discussion on the aims and objectives of the UN: United Nations, 'What We Do' <https://careers.un.org/lbw/home.aspx?viewtype=WWD> accessed 21 May 2017

composed primarily of sovereign States to promote international co-operation, which was established after the Second World War in order to ensure that such a conflict never happened again – has defined multiculturalism as "the existence of ethnically or racially diverse segments in the population of a society or State".[271] A multicultural society is by nature heterogeneous and culturally diverse.[272] It is characterised by a plurality of cultures; their beliefs, traditions and practices, which collectively constitute that society's content and identity.[273] This plurality consists of various cultures and identities and tends to consist of a dominant culture and various minority groups that form the subcultures.

Pluralistic societies are linked with the existence of individuals and groups of different religious, ethnic and racial backgrounds, such as national minorities and immigrants.[274] Multiculturalism seeks to maintain this heterogeneity of cultures. Multiculturalism is multifaceted:[275] it consists of several cultural and ethnic groups, various lifestyles, different religions and languages, and groups with various socio-economic and political backgrounds within the society.[276] This creates pluralism, diversity and heterogeneity in a society, which should be encouraged, to flourish and maintain the different identities of various groups within that society. It is submitted here that multiculturalism is a beneficial phenomenon: it celebrates the difference between cultures, seeks to protect cultural variety,[277] and even recognises, accepts and promotes these differences.[278]

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[271] Christine Inglis, 'Multiculturalism: New Policy Responses to Diversity' (UNESCO MOST Policy Paper No 4, 1996) <http://unesdoc.unesco.org/images/0010/001055/105582e.pdf> accessed 21 May 2017
[272] Bhikhu Parekh, 'Dialogue between cultures' in Ramon Maiz and Ferran Requejo (eds), *Democracy, Nationalism and Multiculturalism* (T&F 2004)
[273] ibid
[274] Jan Niessen, *Diversity and Cohesion: New challenges for the integration of immigrants and minorities* (COEP 2000) 37
[275] Jan Nederveen Pieterse, *Ethnicities and Global Multiculture* (R&L 2007) 89
[276] Niessen (n 274) 37; and Will Kymlicka, 'The rise and fall of multiculturalism? New debates on inclusion and accommodation in diverse societies' (2010) 61(199) International Social Science Journal 97, 102.
[277] Michel Wieviorka, 'Is Multiculturalism the solution?' (1998) 21(5) Ethnic and Racial Studies 881-910; and Giuliana Prato, 'Introduction – Beyond Multiculturalism: Anthropology at the Intersections Between the Local, the National and the Global' in Giuliana Prato (ed), *Beyond Multiculturalism: Views from Anthropology* (Ashgate 2009) 7
[278] Margaret Adsett, 'The Notion of Multiculturalism in Canada and France: A Question of Different Understandings of Liberty, Equality and Community' in Reza Hasmath (ed),

3.2.1 The relationship between multiculturalism and globalisation

Multiculturalism is the corollary of globalisation, which can be divided into three, interlinked dimensions: economic, political and social.[279] Van Krieken et al argue that:

> We have become used to thinking of economic activity as global… many families are also spread around the world, political action takes place as much in world forums as it does in national parliaments or congress, and [even] cultural innovations spread around the world [very quickly]… Thinking globally is not in itself especially new.[280]

The main thrust of Van Kreiken's argument is that globalisation is not a new phenomenon. Furthermore, its strength and magnitude has increased over the years and there is an intertwinement of modern societies and countries through the increased movement of goods, services, information and people and interdependence on technological, scientific and cultural advancements.[281] It is submitted here that globalisation and multiculturalism are mutually interdependent.[282] Both these phenomena can be predominantly attributed to waves of immigration, which is discussed in the next section, that have changed the ethnic and social landscape of cities and even entire countries. Immigration in England and Wales has unprecedentedly increased in recent decades. The 2011 Census reveals that the foreign-born population of England and Wales has increased from 4.6 million in 2001 to 7.5

Managing Ethnic Diversity: Meanings and Practices from an International Perspective (Ashgate 2011) 48 who argues that diversity ought to be allowed to be expressed in private life and public spheres of society. Note: There are antithetical arguments presented by other academics: Paola Catenaccio, 'Between multiculturalism and globalisation' (2003) <http://www.ledonline.it/mpw/allegati/mpw0303catenaccio.pdf> accessed 21 May 2017; and Robert Van Krieken, Daphne Habibis, Philip Smith, Brett Hutchins, Greg Martin and Karl Maton, *Sociology* (5th edn, Pearson 2014) 243). For an opposite opinion on multiculturalism, as being a disadvantageous phenomenon and minority groups, particularly the Islamic community, using it as a tool to remain segregated: Doug Saunders, *The Myth of the Muslim Tide: Do Immigrants Threaten the West?* (Vintage Books 2013)

[279] Van Krieken et al (n 278) 29-30

[280] ibid 27

[281] Leon Tikly, 'The New Partnership for African Development: Implications for Skills Development' in Joseph Zajda (ed), *International Handbook on Globalisation, Education and Policy Research: Global Pedagogies and Policies* (Springer 2005) 294

[282] Catenaccio (n 278). Also see: Peter Stalker, *Workers Without Frontiers – The Impact of Globalization on International Migration* (Lynne Riener Publishers 2000)

million in 2011.[283] It is further submitted here that this shift in demographics has transformed monocultural English society into a pluralistic, multicultural one – and Britain into the globalised country – it is today.[284] Shifting economic patterns, for example through open and nonrestrictive labour and economic markets – coupled with personal reasons for immigrating to a foreign country – have allowed for globalisation to take effect.[285] Cantle argues that:

> Globalisation will ensure that the world… will have become more multicultural… each country will find that its population is increasingly… "super-diverse". The ease of travel, and the opening up of labour and financial markets means that this is inevitable. The ideal of a more integrated international community… is seldom advanced as a desirable political objective, despite the evident interdependency of economic and political decision-making. Similarly, whilst people are themselves increasingly crossing borders… and creating real and tangible personal relationships at all levels, they are often fearful about the impact of globalisation on their communities and collective identity. 'Identity politics', whether on a narrow national, ethnic, faith or regional basis, often holds back the transition, rather than supporting and inspiring a new and interconnected world… Minorities are often the visible expression of the change brought by globalisation and whilst their movement and growth is often seen as the cause of changing economic and social patterns, it is simply the consequence of those changes. This makes them highly vulnerable.[286]

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[283] ONS, '2011 Census Analysis: Social and Economic Characteristics by Length of Residence of Migrant Populations in England and Wales' (4 November 2014) <http://www.ons.gov.uk/ons/dcp171776_381447.pdf> accessed 21 May 2017

[284] David Lundy, 'Multiculturalism and pluralization: kissing cousins of globalization' in Richard Tiplady (ed), *One World Or Many? The Impact of Globalisation on Mission* (William Carey Library 2003) 72

[285] For a discussion on the link between neoliberalism (which is a modified form of liberalism that tends to favor free-market capitalism) and autonomy: Mark Olssen, *Liberalism, Neoliberalism, Social Democracy: Thin Communitarian Perspectives on Political Philosophy and Education* (Routledge 2010) 151-176; and Michael Freeden, Lyman Tower Sargent and Marc Stears (eds), *The Oxford Handbook of Political Ideologies* (OUP 2013) 147.

[286] Ted Cantle, 'Interculturalism as a new narrative for the era of globalisation and super-diversity' in Martyn Barrett (ed), *Interculturalism and multiculturalism: similarities and differences* (COEP 2013) 69-71

Cantle's argument indicates that globalisation creates diversity within countries and societies. However, minority groups are highly vulnerable and entirely dependent on societal and governmental decisions to preserve their identity and culture in a globalised, pluralistic State[287] through political accommodation.[288] Thus, when accommodation is made for them, it leads to political, economic and social change within society. British society, which continues to develop and grow, has become multicultural – and subsequently globalised – predominantly through the immigration of non-white individuals from outside Europe.[289] The next section analyses how immigration shifts have shaped modern English society.

3.3 Immigration in 20th Century Britain

The historical context of immigration into Britain must be examined to explain how modern society has become pluralistic and determine when different cultures began influencing policy making. McKay explains that:

> The UK has been a country of immigration for more than a century. The expansion of British colonialism in the eighteenth and nineteenth centuries, with the annexation of countries in the Caribbean, South East Asia and Africa as a product of imperial expansion, inevitably created the conditions for future chains of migration. Originally these were from the UK to the 'colonies', but in the 20th century – and particularly the end of the Second World War – they increasingly ran from former colonies to the UK. Immigration also had a 'pre-colonial' phase, with movements of people from Italy, Poland and Russia… from the final years of the nineteenth century and the early years of the twentieth.[290]

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[287] Joke Swiebel, 'The European Union's Policies to Safeguard and Promote Diversity' in Elisabeth Prugl and Markus Thiel (eds), *Diversity in the European Union* (Palgrave-Macmillan 2009) 25

[288] Multiculturalism in Britain has occurred through the amassing of minority groups through immigration from outside western countries, who need political accommodation: Tariq Madood, *Multiculturalism* (2nd edn, Polity Press 2013) 5

[289] ibid 2

[290] Sonia McKay, 'The Dimensions and Effects of EU Labour Migration in the UK' in Bela Galgoczi et al (eds), *EU Labour Migration since Enlargement: Trends, Impacts and Policies* (Ashgate 2009) 29

However, immigration patterns have drastically changed since the twenty-first century especially when examining these patterns within the EU context. The number of individuals coming into Britain from EU countries (particularly after the expansion of the EU in May 2004 with the low income 'A8' countries – namely the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia – joining the EU);[291] has averaged around 200,000 per year.[292] During the General Election in 2015, Prime Minister David Cameron stated that the new Conservative government would aim to reduce net migration (the difference between the numbers entering and leaving the country).[293] However, the net migration figures released by the Office of National Statistics (ONS) in November 2015 establish that it remained the highest on record (compared to the previous results in the year ending June 2014).[294] Net migration of EU citizens significantly increased to 180,000 (up by 42,000) and non-EU net migration also increased to 201,000 (up by 36,000).[295] It is submitted here that the British government cannot directly control the number of individuals entering Britain from the EU and that Mr Cameron's ambition of reducing net migration to the "tens of thousands" can only be achieved by cutting down the immigration numbers of international, non-EU foreign nationals.[296] It is further submitted here that controlling the influx of foreign nationals (due to the inability to control persons moving

[291] BBC News, 'Who are the A8 countries?' (24 April 2005) <http://news.bbc.co.uk/1/hi/programmes/panorama/4479759.stm> accessed 21 May 2017
[292] McKay (n 290) 31
[293] Laurence Dodds, 'David Cameron Will Never Hit His Immigration Target: Here's Why' *The Telegraph* (21 May 2015) <http://www.telegraph.co.uk/news/general-election-2015/politics-blog/11602078/Immigration-how-will-the-Conservatives-tackle-it.html> accessed 21 May 2017
[294] ONS, 'Migration Statistics Quarterly Report' (26 November 2015) <http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/november-2015/stb-msqr-november-2015.html> accessed 21 May 2017
[295] ibid
[296] Dodds (n 293). In recent years, there has been significant, visible opposition to EU migration, which was particularly notable during the EU referendum and Brexit. For example, various news articles stated that EU immigration was a decisive factor for the vote to leave the EU: Steven Swinford, 'Theresa May vows Brexit deal will limit migration whatever the impact on EU trade' <www.telegraph.co.uk/news/2016/08/31/theresa-may-vows-to-make-controls-on-eu-migrants-a-red-line-duri/> accessed 21 May 2017; Gonzalo Vina, 'Four ways to curb migration post-Brexit' <https://www.ft.com/content/e03bde3a-4f39-11e6-88c5-db83e98a590a> accessed 21 October 2016; and Simon Tilford, 'Britain, Immigration and Brexit' <https://www.cer.org.uk/sites/default/files/bulletin_105_st_article1.pdf> accessed 21 May 2017

into the country from within the EU) is a predominant factor in generating hostility towards foreign nationals and subsequently their cultural and religious beliefs, which are seen to run counter to those of the dominant culture of the country, which is discussed in the next section.[297] Since it is non-EU immigration that is a cause for concern, particularly during election season and has been seen in recent party manifestos, this thesis focuses on foreign immigration from the Indian subcontinent. As the historical context of immigration influences the inclusion of the views of minority religious groups in Parliamentary debates on assisted suicide – which, as Chapter Six will establish, began in 1936 – the starting point of the detailed examination of the immigration patterns is the 1900s.

Britain underwent waves of immigration for consecutive decades after 1900. Britain had a "free immigration" policy until 1905, when the Aliens Act was passed to allow the home secretary to prevent undesirable individuals from entering the country.[298] From 1900 to 1909 around 2,287,000 individuals immigrated to the United Kingdom.[299] A significant amount of minority religious communities started to gather in Britain during this time. This is evidenced by the first Sikh Temple opening, in 1911, in a house in London and Sikh followers travelling hundreds of miles, from within Britain, to attend religious services and festivals.[300]

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[297] Mehdi Hasan, 'Five questions for anyone who says 'it's not racist to talk about immigration'' *NewStatesman* (13 November 2014) <http://www.newstatesman.com/politics/2014/11/five-questions-anyone-who-says-its-not-racist-talk-about-immigration> accessed 21 May 2017

[298] Rita Simon and James Lynch, *Immigration the World Over: Statutes, Policies, and Practices* (R&L 2003) 123

[299] Mark Clapson, *The Routledge Companion to Britain in the 20th Century* (Routledge 2009) 337

[300] Panikos Panayi, *An Immigration History of Britain: Multicultural Racism Since 1800* (Routledge 2014) 158. The history is arguably very different to the current position under the neoliberal frame. For a detailed discussion on neoliberalism: David Harvey, *A Brief History of Neoliberalism* (OUP 2005); Alfredo Saad-Filho and Deborah Johnston, *Neoliberalism: A Critical Reader* (Pluto Press 2005); and Monica Prasad, *The Politics of Free Markets: The Rise of Neoliberal Economic Policies in Britain, France, Germany and the United States* (University of Chicago Press 2006).

The wave of immigration carried through subsequent decades, with 2,494,000 people moving to Britain in 1920.[301] The amassing of minority religious groups carried on too, which is evidenced by the formation of the Central Hindu Association and the Hindu Association of Europe in the 1930s.[302] Panayi explains that "The most visible of the new migrant religious identities in post-war Britain and those which count the largest number of adherents originate in South Asia in the form of Hinduism, Sikhism and Islam".[303] These minority groups were establishing a permanent presence within British society.[304]

The end of the Second World War – in 1945 – brought various cultures, ethnicities, languages and religions via immigrants from the Indian subcontinent and the Caribbean islands into Britain.[305] Thus, the end of the war became a significant period, which shifted and shaped the terms of contemporary debates about immigration. This large-scale immigration continued throughout the 1950s[306] and the 1960s when another 2,000,000 immigrants arrived in Britain.[307]

3.4 Segregation of minority subcultures and its impact on the Islamic Community

In response to this influx of immigrants from former British colonies, Roy Jenkins, the British Home Secretary, issued a statement in 1966 explaining the need to include, welcome and integrate the new immigrants into British culture.[308] Jenkins stated that:

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[301] Clapson (n 299) 337
[302] Panayi (n 300) 158
[303] Panayi (n 300) 157
[304] Ali Rattansi, *Multiculturalism: A Very Short Introduction* (OUP 2011) 7-9
[305] Rattansi (n 304) 7-9; David Gunning, *Race and Antiracism in Black British and British Asian Literature* (Liverpool University Press 2010) 108; and Eugenia Siapera, *Cultural Diversity and Global Media: The Mediation of Difference* (Wiley-Blackwell 2010) 30
[306] Francis Thompson, 'Town and City' in Francis Thompson (ed), *The Cambridge Social History of Britain, 1750-1950, Volume I, Regions and Communities* (CUP 1990) 85; and David Childs, *Britain Since 1945: A Political History* (6th edn, Routledge 2001) 63
[307] Clapson (n 299) 337. The Immigration Act 1971 was passed to replace all previous immigration legislation and consolidate the laws into one Act in order to control and administer the stay of foreign and Commonwealth nationals (Simon and Lynch (n 298) 126). Yet the 1970s continued to experience large-scale multiculturalism, via immigration, in Britain (Tahir Abbas, *Islamic Radicalism and Multicultural Politics: The British Experience* (Routledge 2011) 47-48; and Siapera (n 305) 30).
[308] Gunning (n 305) 108

> Integration is perhaps rather a loose word. I do not regard it as meaning the loss, by immigrants, of their own national characteristics and culture. I do not think that we need in this country a 'melting-pot', which would turn everybody out in… carbon copies of someone's misplaced vision of the stereotyped Englishman… I define integration, therefore, not as a flattening process of assimilation but as equal opportunity, accompanied by cultural diversity, in an atmosphere of mutual tolerance. That is the goal.[309]

It is submitted here that this statement suggests that immigrants would not be required to change their lifestyle or abandon their beliefs, customs and practices. They would be tolerated within society and their viewpoints would even be included in policy-making in order to accommodate and assimilate them into the country. The extent to which minority views have been accommodated in policy-making on assisted suicide is discussed in greater detail in Chapter Six.

Even though this influx of immigrants, and their respective cultures, was generally welcomed, various politicians did not view this inflow favourably, particularly in the post-imperialism era. For example, John Enoch Powell, a Conservative politician, opined that Britain should close its borders to immigrants, particularly Commonwealth citizens. He opined that this influx could create racial and ethnic divisions, which would increase to the extent that they would threaten the country's democratic system.[310] In an attempt to protect democracy and the British national identity, he opined that a pre-Imperial role should be adopted via reverting power and prestige to the Monarchy, the Parliament and the Church of England.[311] It is submitted here that Powell did not want to accept the post-Imperial status of Britain and Commonwealth nations in an attempt to avoid cultural and ethnic dissonance. However, with the liberal Labour party in power at the time, different cultures

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[309] Roy Jenkins, *'Racial Equality in Britain' in Roy Jenkins, Essays and Speeches* (Collins 1967). Also see: Anthony Lester, 'Multiculturalism and Free Speech' (2010) 81(1) The Political Quarterly 15

[310] Enoch Powell, 'Memorandum on Indian Policy' cited in Simon Heffer (ed), *Like the Roman: The Life of Enoch Powell* (Weidenfeld and Nicholson 1998) 106; and Peter Brooke, 'India, Post-Imperialism and the Origins of Enoch Powell's 'Rivers of Blood' Speech' (2007) 50(3) The Historical Journal 669, 670

[311] Powell (n 310) 106; and Brooke (n 310) 670

and racial minorities were welcomed into Britain and were assured that they would be allowed to maintain and preserve their own distinctive customs and identities. It is further submitted that these negative views around immigration, especially individuals who identify with the Islamic faith, are still held and are blatantly expressed by politicians. For example, during campaigning for the General Election 2015, the UK Independence Party's (UKIP) immigration spokesman, Gerard Batten, stated that there ought to be a ban on building new mosques in the country, and across Europe, and that the Islamic faith and its texts, namely the Quran, needed updating because "there's something wrong… [Muslims] need to revise their thinking".[312] He also stated in an interview in 2010 that the Islamic community would never be able to integrate into British culture because of the threat of having "two incompatible systems living in the same place at the same time".[313] Also, in the run up to the General Election 2015, UKIP member Ken Chapman, commented that, "Islam is a cancer that needs eradicating, multiculturalism does not work in this country, clear them all off to the desert with their camels that's their way of life".[314]

Muslims continue to be reported in a negative light by the media, political commentators and suchlike who equate the religion with intolerance, backwardness, negativity and hostility.[315] Cesari argues that a misrepresented and intolerant view of Islam and its

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[312] Rowena Mason, 'UKIP MEP says British Muslims should sign charter rejecting violence' *The Guardian* (4 February 2014) <http://www.theguardian.com/politics/2014/feb/04/ukip-mep-gerard-batten-muslims-sign-charter-rejecting-violence> accessed 21 May 2017

[313] ibid

[314] This argument can be put into the political context but is outside the scope of this thesis. More examples of UKIP members commenting that Islamic beliefs and practices are against English society: Ruby Stockham, 'Is UKIP a racist party? These 15 comments would suggest so' (23 February 2015) <http://leftfootforward.org/2015/02/is-ukip-a-racist-party-these-15-comments-would-suggest-so/> accessed 21 May 2017

[315] Andrew Shryock, 'Introduction: Islam as an Object of Fear and Affection' in Andrew Shryock (ed), *Islamophobia-Islamophilia: Beyond the Politics of Enemy and Friend* (Indiana University Press, 2010) 4. For a detailed example of various newspapers/reporters reporting the Islamic religion in a negative light: Paul Baker, Costas Gabrielatos and Tony McEnery, *Discourse Analysis and Media Attitudes: The Representation of Islam in the British Press* (CUP 2013) 108-110. Also see: Jocelyne Cesari, 'Self, Islam and Secular Public Spaces' in Nilufer Gole (ed), *Islam and Public Controversy in Europe* (Ashgate 2013) 49-50

followers is steered by intellectuals and the media.[316] This is clearly demonstrated by their role in the hijab controversies and the Rushdie affair.[317] These misrepresentations of the Islamic religion and exaggerations of Muslim's demands and reactions to societal issues have led to a significant proportion of society developing a prejudiced and distorted view of Islam. Some citizens now harbour an unnatural fear of Muslims, their faith and practices.[318] In 2006, one-in-four individuals in Britain had an unfavourable view of the presence of Muslims in society.[319] Just 14% of the British public expressed a negative view of Muslims in 2005, compared with 23% in 2008.[320] In recent years, hate crimes against Muslims, particularly women, have significantly risen. For example, the Metropolitan Police Service's Statistics for the 12 months up to July 2015, recorded that hate crime was up by 70% with 816 Islamophobic crimes (compared with 478 for the previous 12-month period).[321] The negative representations also create hostility, prejudice, discrimination, inequality and intolerance within society,[322] which seem to have grown in Britain, and worldwide, after the Rushdie Affair, the first Gulf War[323] and the 9/11 attacks in the United States.[324] There is also a recent increase in anti-Islamist sentiment and uncertainty about multiculturalism in Britain based on the 7/7 and 21/7 London bombings in 2005.[325]

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[316] Jocelyne Cesari, 'The Secularisation of Islam in Europe' (2009) CEPS Challenge Programme Paper Series 1, 8
[317] ibid; and Shryock (n 315) 7
[318] Burak Erdenir, 'Islamophobia qua racial discrimination: Muslimophobia' in Anna Triandafyllidou (ed), *Muslims in 21st Century Europe: Structural & Cultural Perspectives* (Routledge 2010) 30
[319] Pew Global Project Attitudes, 'Unfavourable Views of Jews and Muslims on the Increase in Europe' (17 September 2008) <http://www.pewglobal.org/files/pdf/262.pdf> accessed 21 May 2017
[320] ibid
[321] Zack Adesina and Oana Marocico, 'Islamophobic crime in London up by 70%' <http://www.bbc.co.uk/news/uk-england-london-34138127> accessed 21 June 2016
[322] Ingrid Ramberg, *Seminar Report: Islamophobia and Its Consequences on Young People* (COEP 2004) 6
[323] Shryock (n 315) 4
[324] For a detailed discussion on the negative impression, especially by the news media, about Muslims and the Islamic faith after the 9/11 attacks: Fawzia Reza, *The Effects of the September 11 Terrorist Attack on Pakistani-American Parental Involvement in US Schools* (R&L 2016) 26-40
[325] Toby Archer, 'Welcome to the Umma: The British State and its Muslim Citizens Since 9/11' (2009) 44(3) Cooperation and Conflict 329, 333-343; and Tahir Abbas, 'Muslim Minorities in Britain: Integration, Multiculturalism and Radicalism in the Post7/7 Period' (2007) 28(3) Journal of Intercultural Studies 287, 293-295.

Furthermore, this fear of Islam and its followers subsequently endangers the balance and equality of a multicultural society by drawing attention to the differences between beliefs and values of minority groups and the dominant culture. This fear, and the subsequent unbalance stems from the view that Islamic beliefs are strict, severe and run counter to the modern Western values of the dominant culture of Britain.[326] Poulter states to this effect that Islam is an unalterable and fixed path that every Muslim must follow regardless of where they live and that followers must comply with traditional norms of behaviour or they are at risk of losing their standing and prestige in the society: both in Britain and overseas especially their home countries.[327] This conception has led to a public perception that Islamic values run counter to liberal values and are incompatible with the Christian ideology that is deep-rooted in the culture and law in England, which is why the aforementioned religions are being chosen for detailed analysis in this thesis.[328]

Many academics and experts – such as Lewis,[329] Huntingdon,[330] and Kaplan[331] – argue that various minority groups, particularly minority religious groups such as the Muslim community, are also seen as an obstacle to globalisation: they have no role in global governance or a globalised, modern society due to the history, traditions, values, viewpoints and reactions against competing values.[332] Furthermore, in recent years, opposition to

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[326] Poulter (n 132)
[327] ibid
[328] For greater discussion on the accommodations, made by government, to minority communities, refer to section 3.4.2. For more recent discussions on Islamophobia: Julian Hargreaves, 'Islamophobia: reality or myth? (PhD thesis, Lancaster University 2016) 1-242; Todd H Green, *The Fear of Islam: An Introduction to Islamophobia in the West* (Fortress Press 2015) 153-232; David Tyrer, *The politics of Islamophobia: race, power and fantasy* (Pluto Press 2013); and Ihsan Yilmaz, 'The Nature of Islamophobia: Some Key Features' in Douglas Pratt and Rachel Woodlock (eds), *Fear of Muslims? International Perspectives on Islamophobia* (Springer 2016) 19-29. For a discussion on the principles of minority groups eradicating British values: Tim Ross, 'Traditions such as Christmas celebrations will die out unless people stand up for British values, government review finds' <www.telegraph.co.uk/news/2016/09/10/traditions-such-as-christmas-celebrations-will-die-out-unless-pe/> accessed 21 May 2017
[329] Bernard Lewis, *What Went Wrong* (Princeton University Press 2001) 177-179
[330] Samuel Huntingdon, *The Clash of Civilizations and the Remaking of World Order* (Touchstone 1997) 68, 109-11, and 259
[331] Robert Kaplan, 'The Coming Anarchy' *The Atlantic Monthly* (February 1994) 44-76
[332] For a detailed discussion on the conflict between religion and secularism, in the context of Islamic history: Lewis (n 329); Huntingdon (n 330); and Kaplan (n 331)

multiculturalism has arisen due to social, economic and political factors; and is seen as undermining "…the cohesion and shared identity that any society needs".[333] Trevor Philips – a writer, broadcaster, former Labour party politician, and former Head of the Commission for Racial Equality in 2003 – opined that allowing individuals from different subcultures practice and adhere to different religions may have allowed them to maintain a separate and distinct religious or cultural identity;[334] but has also bred separatism and Britain is "…sleep-walking into segregation".[335] Philips further argues that the excessive cultural difference between the Islamic community and the dominant culture has led to the Islamic community living parallel lives within society and has subsequently created a loss of societal coherence and homogeneity.[336]

It is submitted that the religious affiliation and ethnic and cultural traditions influence individuals' decisions of whether or not to seek an assisted suicide. Furthermore, this role of the State in endorsing, regulating or providing assistance in an individual's suicide becomes more complex and difficult when there is a significant lack of uniformity on the issue, due to the presence of parallel opinions and behaviours of minority subcultures that disagree with the viewpoint of the dominant culture. Finding mutual ground on certain societal issues, particularly assisted suicide, is fundamental in order for the State to allow and regulate the law on the issue.[337] However, as established in the previous chapter, the views of the Christian and Islamic faiths are in congruity on this issue but they tend to significantly differ from those of the secular school of thought on assisted suicide.

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[333] George Crowder, *Theories of Multiculturalism: An Introduction* (Polity Press 2013) 4
[334] 'Britain Sleepwalking to Segregation' *The Guardian* (19 September 2005) <http://www.theguardian.com/world/2005/sep/19/race.socialexclusion> 21 December 2014. Also see: M A Kevin Brice, 'Sleepwalking to Segregation or Wide-Awake Separation' (2007) <https://www.academia.edu/528757/Sleepwalking_to_Segregation_or_Wide-awake_Separation_Investigating_Distribution_of_White_English_Muslims_and_the_Factors_Influencing_their_Choices_of_> accessed 21 May 2017
[335] Dominic Casciani, 'Analysis: Segregated Britain?' *BBC News* (22 September 2005) <http://news.bbc.co.uk/1/hi/uk/4270010.stm> accessed 21 May 2017
[336] Augie Fleras, *The Politics of Multiculturalism: Multicultural Governance in Comparative Perspective* (Palgrave-Macmillan 2009) 177; and Arun Kundnani, *The End of Tolerance: Racism in 21st Century Britain* (Pluto Press 2007)
[337] This argument is based on regulating the law if the criminal embargo on assisted suicide was lifted; and policy regulating assisted suicide (namely the DPP policy), see: ch 4.

It is further submitted that the non-religious views and religious beliefs of all the different communities should be included in public debates that have a direct effect on the lives of every individual within that community. Minority subcultures form a significant majority of the population of England and Wales:[338] 14% of the population – a mixture of temporary residents and permanent citizens – belongs to a non-white ethnic group,[339] and 13% of the residents (around 7.5 million people in England and Wales) were born outside the United Kingdom.[340] Thus, their views need to be included in public debates, particularly under the current movement towards allowing assisted suicide.[341] In order to establish the views of a minority subculture – in particular, the Islamic community – the definition of subculture needs to be set out, the role it plays and the manner in which it interacts with the dominant culture must be analysed.

A subculture is the culture of a minority group whose values and norms of behaviour are seemingly very different from the dominant culture.[342] Stolley argues that:

> A subculture is a smaller culture within a dominant culture that has a way of life distinguished in some important way from that dominant culture. Subcultures form around any number of distinguishing factors… for example… racial and ethnic backgrounds.[343]

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[338] For greater discussion on presence of minority subcultures in Britain: Anthony Heath et al, *The Political Integration of Ethnic Minorities in Britain* (OUP 2013); Tariq Modood et al, *Ethnic Minorities in Britain: Diversity and Disadvantage* (Policy Studies Institute 1997); and Nicola Piper, *Racism, Nationalism and Citizenship: Ethnic Minorities in Britain and Germany* (Ashgate 1998).

[339] ONS, 'Ethnicity and National Identity in England and Wales 2011' <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/rpt-ethnicity.html#tab-Ethnicity-in-England-and-Wales> accessed 21 May 2017

[340] ONS, 'International Migrants in England and Wales 2011' <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/rpt-international-migrants.html> accessed 21 May 2017

[341] The theoretical background of nature of law making in this country can be read in order to understand this argument better: Michael Zander, *The Law-Making Process* (CUP 2004); and Jeffrey Goldsworthy, *Parliamentary Sovereignty: Contemporary Debates* (CUP 2010).

[342] Bernie Koening, *Natural Law, Science and the Social Construction of Reality* (University Press of America 2004) 47

[343] Kathy Stolley, *The Basics of Sociology* (Greenwood Press 2005) 49

Subcultures have to live within the confines of the dominant culture.[344] Individuals belonging to a particular subculture tend to associate and interact with one another from the same minority group.[345] They bond through a common history.[346] They speak the same language.[347] They may even behave similarly and have a shared worldview.[348] They are distinguished and identified by their clothing and adornments, language and dialect, and other distinctive cultural markers.[349] To this end, Haenfler argues that a subculture is: "A relatively diffuse social network having a shared identity, distinctive meanings around certain ideas, practices, and objects, and a sense of marginalization from or resistance to a perceived 'conventional' society".[350]

The cultural values, norms and beliefs of minority subcultures are deeply embedded in individuals that belong to them and provide them with an identity.[351] Cultural identity provides individuals with a sense of belonging and security.[352] This identity is formed by the language, religion, values and beliefs, traditions and heritage, and opinions and behaviour of individuals.[353] This identity is expressed and even preserved by interacting with other like-minded individuals who speak the same language, share the same religion and beliefs, come from the same heritage, partake in the same traditions and share the same cultural values and conventions.[354]

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[344] Koening (n 342) 47
[345] Margaret Anderson and Howard Taylor, *Sociology: Understanding a Diverse Soicety* (4th edn, Thomson-Wadsworth 2008) 66
[346] ibid
[347] ibid
[348] ibid
[349] ibid
[350] Ross Haenfler, *Subcultures: The Basics* (Routledge 2014) 16
[351] Wendi Adair, Catherine Tinsley and Masako Taylor, 'Managing the intercultural interface: Third cultures, antecedents, and consequences' in Ya-Ru Chen (ed), *Research on Managing Groups and Teams Volume 9: National Culture and Groups* (Elsevier 2006) 205-232
[352] Steven Roach, *Cultural Autonomy, Minority Rights, and Globalization* (Ashgate 2005) 37; and Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (OUP 1995) 105
[353] Moha Ennaji, *Multilingualism, Cultural Identity and Education in Morocco* (Springer 2005) 5
[354] John Kekes, *The Human Condition* (OUP 2010) 26. Note: Attempting to preserve cultural identity may lead to diminishing participation in society and less interaction between the dominant culture and various subcultures, which, eventually, leads to a

The definition of a minority subculture should not be confounded with the notion of a hybrid culture. The dominant culture and minority groups' values, opinions and behaviour blend over time to create a hybrid culture.[355] This is one of the side effects of multiculturalism. Laegran argues that:

> In the minority world, the formation of particular groups and subcultures are characteristic of youth… Youth cultures do not develop in isolation… but through negotiations between existing elements and new impulses transmitted from [the dominant culture].[356]

The main thrust of Laegran's argument is that the youth tries to fit in and prefers the practices of the dominant culture to their parental generation's culture and heritage, which subsequently leads to a coalesced hybrid culture. This argument is supported by the fact that, for example, Mosque attendance among the younger generation is low and has become a matter of choice.[357] Female Muslims are increasingly entering higher education and refusing arranged marriages.[358] Some even get married with post hoc parental consent.[359] The younger generation is increasingly rejecting what they view as the Islamically uninformed and misguided customs and practices of their parental generation.[360] Based on this analysis, it is submitted that a change in the law on assisted suicide would not meet with opposition from a significant majority of the younger generation of minority groups

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segregated society: John Berry et al, *Cross-Cultural Psychology: Research and Application* (3rd edn, CUP 2011) 341. Also see: Commission, 'Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union' COM (2005) 389 Final

[355] Doreen Massey, 'The spatial construction of youth cultures' in Tracey Skelton and Gill Valentine (eds), *Cool Places: Geographies of Youth Culture* (Routledge 1998) 122

[356] Anne Sofie Laegran, 'Exploring masculinity, technology, and identity in rural Norway' in Ruth Panelli et al (eds), *Global Perspectives on Rural Childhood and Youth: Young Rural Lives* (Routledge 2007) 30

[357] Melvin Ember et al, *Encyclopedia of Diasporas: Immigrant and Refugee Cultures Around the World* (Springer 2005) 482

[358] ibid

[359] ibid

[360] ibid

because they have abandoned their parental customs and beliefs.[361]

3.4.1 The Islamic community in Britain

The Islamic community is the second largest religious group in England and Wales. As discussed earlier, immigration from the Indian subcontinent began after the end of the Second World War and Muslims subsequently achieved cultural and political prominence in the 1970s and 80s in Britain and across Europe.[362] The number of mosques built in Britain increased dramatically in the 1970s.[363] In 1990, there were about 400 mosques in Britain,[364] which has risen to over 1800 mosques as recorded by the Islamic website 'Muslims in Britain'.[365] The 2001 and 2011 Census show that the majority of Muslims in Britain are of South Asian Heritage.[366] In 2011, Indian was the second largest ethnic group with 2.5% followed by 2% Pakistani; compared to 2001 with 2.0% Indian and 1.4% Pakistani.[367] The ONS notes that "This is consistent with census findings on international

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[361] However, Madood, Shain and Jacobson refute this position and argue that the younger generation of Muslims in Britain retain their religious and cultural values, are devout Muslims, even stress and emphasise their Islamic identity in an endeavor to preserve their cultural identity: Tariq Madood, 'British Asian Muslims and the Rushdie Affair (1990) 61(2) Political Quarterly 143; Tariq Madood, *Not easy being British: colour, culture and citizenship* (Institute of Education Press 1992); Farzana Shain, 'Culture, survival and resistance: theorising young Asian women's experiences and strategies in contemporary British schooling and society' (2000) 21(2) Discourse: Studies in the Cultural Politics of Education 155; and Jessica Jacobson, *Islam in transition: Religion and identity among British Pakistani youth* (Routledge 1998). A 2006 survey report by the think tank 'Policy Exchange' established that there is is greater religiosity amongst the younger generation of Muslims: Munira Mirza et al, 'Living apart together British Muslims and the paradox of multiculturalism' *Policy Exchange* (2007) <https://www.policyexchange.org.uk/wp-content/uploads/2016/09/living-apart-together-jan-07.pdf> accessed 21 May 2017

[362] Bhiku Parekh, *European Liberalism & 'the Muslim Question'* (Amsterdam University Press 2008) 5-7

[363] ibid

[364] Ruth Gledhill, 'Thousands of churches face closure in ten years' *The Times* (10 February 2007) <http://www.thetimes.co.uk/tto/faith/article2098225.ece> accessed 21 May 2017

[365] Mehmood Naqshbandi, 'UK Mosques Statistics/Masjid Statistics' (*Muslims in Britain*, 23 September 2015) <http://www.muslimsinbritain.org/resources/masjid_report.pdf> accessed 21 May 2017

[366] Richard Gale, '*Planning Law and Mosque Development in* Birmingham' in Prakash Shah (ed), *Law and Ethnic Plurality: Socio-Legal Perspectives* (MNP 2007) 129-130

[367] ONS, 'England and Wales has become more ethnically diverse in the past decade' (December 2012) <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/sty-enthnicity-in-england-and-wales.html> accessed

migration, which found that South Asian countries (India, Pakistan and Bangladesh) continued to rank highly within the most common non-UK countries of birth".[368] Muslims in Britain mostly come from the Mirpur district of Azad Kashmir and the surrounding cities such as Attock, Jhelum and Rawalpindi and tend to retain the values of their home country.[369] This includes retaining the cultural value of caring for vulnerable, ill and elderly individuals based on the Islamic tenet prohibiting assisted suicide, which was discussed in greater detail in Chapter Two.

In an attempt to retain their cultural traits, to raise their families in compliance with their values and to preserve their cultural identity; Muslims living in the United Kingdom started to make demands in relation to ritualistic slaughter, facilities for prayer at the workplace, exempt female children from certain sports and activities and even demanded that school uniforms be changed.[370] The government eventually created provisions and policies to accommodate the needs of the Islamic community. The demands were initially resisted because of controversies such as those surrounding the publications of the Satanic Verses, for example protests and book burnings, and subsequent public anxiety encompassing the Islamic community.[371] However, the growing Islamic community created a significant cultural presence within Britain and policy makers had to accommodate their demands. To this end, Wetherley et al argue that:

> …in the past 20 years or so in the UK… attention has focused on the religious identification of the majority of Asians as Muslims. This preoccupation with Muslims can be traced in the UK context to the controversy surrounding the publication of *The Satanic Verses* in 1989… Furthermore… the rising tide of criticism of multiculturalism reflects a specific concern with its alleged failure in

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21 May 2017. Note: The 2011 Census reported that 86% of the population reported their ethnic group as White.
[368] ONS, 'Ethnicity and National Identity' (n 339)
[369] Abbas (n 307) 56
[370] Parekh, *European Liberalism* (n 362)
[371] ibid. Note that: The Salman Rushdie saga ended up in the European Commission: *Choudhury v UK* App no 17439/90 (EComHR, 5 March 1991). However, it was not until 2008 that the common law offences of blasphemy and blasphemous libel were abolished by the Criminal Justice and Immigration Act 2008.

relation to the presence of Muslim minorities within these societies.[372]

Even with the seeming incompatibilities, conflicts and differences between cultures, multiculturalism is a favourable phenomenon. It appreciates that pluralism and cultural diversity is characteristic of modern British society and the needs of various cultures can be accommodated and tolerated without disturbing the cohesion, stability and congruity of society.[373] The government, particularly policy makers, have made significant changes to accommodate the various demands of minority groups, and even the dominant culture, which are discussed in the next section. Societal attitudes have also changed towards certain issues, especially assisted suicide. A greater degree of tolerance on this issue seems to be demonstrated by minority groups, which is reflected in the lack of public outrage amongst the Muslim community, as was the case during the Rushdie Affair. Society, and even faith and its representatives, seem to be demonstrating a great degree of tolerance for religious and moral diversity with the recent developments on assisted suicide policy and recent Bills in Parliament, which are evaluated in greater detail in Chapters Four and Six respectively.

3.4.2 Governmental actions accommodating the needs of minority subcultures

The government often accommodates the demands of minority subcultures in an attempt to promote equality and to bring them on an equal footing with individuals of the dominant culture in Britain. One such attempt is the Equality Act 2010, which amalgamates a series of legislation such as the Race Relations Act 1965 and 1976, the Equal Pay Act 1970, the Sex Discrimination Acts 1975 and 1986, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act (Sexual Orientation) Regulations 2007.[374]

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[372] Paul Wetherley et al, 'Introduction: 'Islam', 'the West' and 'Multiculturalism'' in Max Farrar (ed), *Islam in the West: Key Issues in Multiculturalism* (Palgrave-Macmillan 2012) 3
[373] ibid 1
[374] Anne Robinson, *Foundations for Offender Management: Theory, Law and Policy for Contemporary Practice* (Policy Press 2011) 84

The 2010 Act seeks to harmonise and consolidate these laws on equality and discrimination. Robinson argues that "The Act seeks to… strengthen the legal provisions to support the progress of equality... achieve greater equality… for marginalized groups and to recognise diversity".[375] Section 4 of the Act identifies characteristics that are protected under the law: age, disability, race, sexual orientation, religion and belief to name a few. Furthermore, "there is clear scope for the influence of human rights arguments on the development of these laws through statutory interpretation under section 3 of the [Human Rights Act]".[376] The 2010 Act protects religious and non-religious groups against direct or indirect discrimination, ensures that they are not harassed or victimised due to their beliefs,[377] and that equal opportunities are offered to them in the workplace and in wider society.[378]

Furthermore, Britain promotes the idea of equality in its multicultural society by extracting the issues of cultural difference from the public sphere and including both minority and majority views on public issues.[379] Minority groups, particularly, are also provided with equal opportunities and rights exclusive to that minority group.[380] These opportunities and rights not only allow minorities to preserve their cultural identity but also give them some degree of control over how they live their private lives and act in public spheres of society.[381] For example, Sikhs are exempt from wearing safety hard hats on construction sites under section 11 of the Employment Act of 1989 and motorcycle helmets under section 16 of the Road Traffic Act 1988.[382] They are also allowed to carry a "kirpan" –

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[375] ibid 83
[376] Hazel Oliver, 'Discrimination Law' in David Hoffman (ed), *The Impact of the UK Human Rights Act on Private Law* (CUP 2011) 206. Also see: John Wadham et al (eds), *Blackstone's Guide to the Equality Act 2010* (OUP 2012). Human rights provisions are discussed in detail in ch 5.
[377] Malcolm Sargeant, *Discrimination and the Law* (Routledge 2013) 99
[378] Poulter (n 132) 3
[379] John Nagle, *Multiculturalism's Double Bind: Creating Inclusivity, Cosmopolitanism and Difference* (Ashgate 2012) 52
[380] Andrew Heywood, 'Multiculturalism, Identity and Diversity' (2012) <www.andrewheywood.co.uk/resources/MulticulturalismIdentityDiversity.doc> accessed 21 May 2017
[381] ibid
[382] Brian Berry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Harvard 2001) 44; Gerald Gaus, 'The place of religious belief in public reason liberalism'

which is a short sword or knife – in public places under section 139 of the Criminal Justice Act 1988. Jewish shopkeepers are exempt from Sunday trading legislation,[383] and specific exemptions have been made to accommodate ritualistic slaughter of animals for various minority religions.[384] Even in recent years, courts have sought to protect the religious beliefs of minority groups, for example, in *Ghai v Newcastle City Council*,[385] where the Court of Appeal accommodated a Hindu claimant to have an open-air cremation under the Cremation Act 1902 and the Cremation (England and Wales) Regulations 2008. It can be concluded here that these exemptions are legal privileges that provide minority groups with a certain degree of autonomy that entitles them to control and influence the way they live and preserve their cultural identity.[386]

3.5 The dominant culture of English society

In contrast to a minority subculture, the dominant culture is the culture of the most powerful group in a society.[387] It not only consists of a certain life-style, values and opinions, religion and language but also receives "the most support from major institutions and constitutes the major belief system".[388] Andersen and Taylor further explain that:

> Although the dominant culture is not the only culture in a society, it is commonly believed to be "the" culture of a society, despite other cultures present… Often, the dominant culture is the standard by which other cultures in the society are judged… A dominant culture need not be the culture of the majority of people; it is simply the culture of the group in society that has enough power to define the cultural framework.[389]

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in Maria Dimova-Cookson and Peter Stirk (eds), *Multiculturalism and Moral Conflict* (Routledge 2010) 33; and David Feldman, 'Why the English like turbans: multicultural politics in British history' in David Feldman and Jon Lawrence (eds), *Structures and Transformations in Modern British History* (CUP 2011) 285-287

[383] St John A Robilliard, *Religion and the Law: Religious Liberty in Modern English Law* (Manchester University Press 1984) 52

[384] Heywood (n 380)

[385] [2010] EWCA Civ 59

[386] Heywood (n 380)

[387] Anderson and Taylor (n 345) 64-66

[388] ibid

[389] ibid

Asari, Halikiopoulou and Mock argue that every nation needs a distinctive, defining and unifying principle that is exclusive to that nation.[390] For example, a common language or religion, a shared history and common heritage, or even a "golden age" or common historical memories.[391] Hence, the dominant culture is often viewed as a notion that stems from the national identity of the country.[392] The national identity involves the preservation and continuation of beliefs, values, symbols, memories, myths and traditions that compose the distinctive heritage of a nation and the identification of citizens with that heritage.[393] The national identity, and subsequently the traits of the dominant culture, has been formed by the religious traditions, historical events, social customs and even fashion, music and sport. For example, Morra notes that "… sport – particularly football" is a modern, contemporary marker of the British national identity.[394] These characteristics are treated as the norm for society as a whole, including minority groups.[395]

In 1940, Sugarman described the dominant culture of Britain as follows:

> In Britain some of the more obvious features of this dominant culture are: the history of Britain and the former overseas empire, learned not only in history lessons but also through the celebration of anniversaries such as Guy Fawkes and Remembrance Day; the monarchy; the rituals and formulae of the established Church, learned through daily religious assemblies, services for special ecclesiastical holidays and through formal religious education lessons; Shakespeare and "good" literature; "classical" music and the works of Gilbert and Sullivan, which though far from "classical" have been long in favor with the British middle class; ideals of fair play; the ethic of queuing.[396]

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[390] EM Asari et al, 'British national identity and the dilemmas of multiculturalism' (2008) 14(1) Nationalism and Ethnic Politics 1
[391] ibid 3
[392] Anthony Smith, "The Sacred Dimension of Nationalism" (2000) 29(3) Millennium 796
[393] ibid
[394] Irene Morra, *Britishness, Popular Music, and National Identity: The Making of Modern Britain* (Routledge 2014) 43
[395] Anderson and Taylor (n 345) 64
[396] Barry Sugarman, *The School and Moral Development* (Trinity Press 1973) 18. Note: This particular notion of the dominant culture of Britain raises issues about class in Britain, which is outside the scope of this thesis. For a detailed discussion on the issue of Class in

Even though the meaning of the dominant culture is multifarious, complex and varied; the dominant culture has changed very significantly since 1940 and British society is now multicultural, pluralistic, and fluid. Even though it still exists within the dominant culture, society is no longer controlled by the historical heritage and traditions, especially the tenets and rituals of the Church of England, and is becoming increasingly secular.[397]

3.5.1 The increasingly secular dominant culture of England

Recently, former Prime Minister David Cameron declared that Britain is a Christian country: "We should be more confident about our status as a Christian country, more ambitious about expanding the role of faith-based organisations, and, frankly, more evangelical about a faith that compels us to get out there and make a difference to people's lives".[398] However, it is submitted here that Mr Cameron's statement does not take into consideration that even though 59.3% of the English and Welsh population identify with Christianity, a very small percentage consistently practice it, for example, by attending Sunday worship services regularly.[399] It is further submitted that even though the religion an individual identifies with has a significant influence of their decision to seek an assisted suicide; identifying with a religion and supporting assisted suicide are not necessarily

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Britain: David Cannadine, *Class in Britain* (Penguin 2000). Also see: Paul Ward, *Britishness Since 1870* (Routledge 2004) 113-140 (for a discussion on Class in Britain in relation to immigrants/minority groups).

[397] Note: English society is arguably fragmented, however, this thesis argues that there is a dominant culture with various minority cultures in it that has historically been influenced by the Christian religion but it is now increasingly secular. The dominant culture, for the purposes of this thesis, is described in Section 3.5 For a brief discussion on England having a fragmented and segregated society: Danny Dorling, Dan Vickers, Bethan Thomas, Dimitri Ballas and John Pritchard, 'Study exposes an increasingly fragmented society' <https://www.sheffield.ac.uk/news/nr/1126-1.175497> accessed 21 May 2017. For a detailed discussion on the secularisation of British society, its relationship with Islam, its detachment from the Christian religion and the modern societal landscape: Callum Brown, *Religion and Society in Twentieth-Century Britain* (Routledge 2006) 278-325

[398] Andrew Sparrow, 'Alastair Campbell questions sincerity of David Cameron's 'religious ramblings'' *The Guardian* (21 April 2014) <http://www.theguardian.com/politics/2014/apr/21/alastair-campbell-questions-sincerity-david-camerons-religious-ramblings> accessed 21 May 2017. Similarly, PM Cameron also declared UK to be a Christian country in a speech at Oxford University. See: BBC News, David Cameron says the UK is a Christian country (16 December 2011) <http://www.bbc.co.uk/news/uk-politics-16224394> accessed 21 May 2017

[399] Doughty (n 92)

mutually exclusive. Even though individuals identify with the religion, they do not actively practice it and do not necessarily prescribe to its tenets. For example, an individual who identifies with the Christian faith, who does not regularly attend church, may not have a religious opposition to a change in the law on assisted suicide. Similarly, an individual who identifies with the Christian faith and regularly attends Church service may also have no objection to a change in the law.

Furthermore, around quarter of the population identify with no religion and there is an indubitable presence of minority religious groups in Britain.[400] It is submitted that the dominant culture is a phenomenon (as are subcultures) that constantly evolves and integrates and amalgamates with the values and traditions of various minority religious and non-religious groups. Ferrante argues that "the idea of the old secular State, which embraces the idea of religious neutrality of public institutions, has been overcome by the idea of a new secularism that should take into greater account different cultural and religious groups' needs to have a defined public role". [401] It is further submitted here that the dominant culture of Britain is now largely secular but, due to its historical ties, underpinned with the values of the Christian faith. To this end, Bharma cogently argues that:

> …English law and British public policy are influenced by Britain's religious roots… Although Britain is secular in the contemporary sense that the idea of values and ways of life beyond Anglican Christianity are permissible, its history does not permit the idea that the British public sphere is detached from Anglican Christianity. As a liberal democracy it should not be apologetic about its rich religious history. However, pursuit of the myth that Britain's institutions and structures are detached

[400] ONS, 'Religion in England and Wales 2011' (n 91)
[401] Lorenzo Ferrnate, 'Has Multiculturalism Failed in Europe? Migrations Policies, State of Emergency, and Their Impact on Migrants' Identities in Italy' in Maria Caterina La Barbera (ed), *Identity and Migration in Europe: Multidisciplinary Perspectives* (Springer 2015). For greater discussion on the notion of "new secularism" in Britain: Richard Lints, *Progressive and Conservative Religious Ideologies: The Tumultuous Decade of the 1960s* (Ashgate 2010) 191-197; Simon Heffer, *High Minds: The Victorians and the Birth of Modern Britain* (Windmill Books 2014) 577-608; and Elaine Graham, 'Doing God? Public Theology under Blair' in Peter Scott et al (eds), *Remoralizing Britain? Political, Ethical and Theological Perspectives on New Labour* (Continuum 2009) 8.

> from these religious roots perpetuates a damaging and false picture of the neutral nature of the British public sphere.[402]

The United Kingdom is the only Western democracy that reserves seats for a religion, namely the Church of England, in its law-making body.[403] The deep-rooted link between the State and the Church can be seen in the Monarch swearing an oath on coronation as the 'Supreme Governor of the Church of England'.[404] There is also a significant amount of representation of the Christian religion in the local government. The Church of England and the Roman Catholic Church are entitled to representation on local authority committees, as they are providers of education through schools they have set up and can influence issues in relation to education in the area where they maintain schools.[405] Furthermore, the Church of England plays a significant role in formulating and approving syllabuses taught at schools.[406] The relationship between Britain and the Christian religion is also deep rooted in the law making process.[407] For example, twenty-four bishops and two Archbishops of the Church of England are members of the House of Lords and present the views of the Christian faith in the Parliamentary debates.[408] Steven explains:

> Sitting in the chamber in their robes of state, they also provide a very vivid symbol of the power of Christianity in the British political system… the Church of England can have a direct effect on public policy… The Church of England – as the state Church – does not just restrict itself to parliamentary politics inside the Westminster village. It also involves itself directly in party politics outside the Palace of Westminster… Its General Synod (the national decision-making body of the Church)… makes statements about public issues, many of which are essentially party political. While

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[402] Meena Bharma, *The Challenges of Justice in Diverse Societies: Constitutionalism and Pluralism* (Ashgate 2011) 47
[403] Mark Ryan, Unlocking Constitutional & Administrative Law (2nd edn, Routledge 2013) 203
[404] ibid
[405] Mark Hill, Russell Sandberg, Norman Doe, *Religion and Law in the UK* (Kluwer 2011) 111
[406] Robert Jackson, *Rethinking Religious Education and Plurality: Issues in Diversity and Pedagogy* (Routledge-Falmer 2004) 175
[407] Martin Steven, 'Christianity and British politics: a neglected dimension' in Francois Foret and Xabier Itcaina (eds), *Politics of Religion in Western Europe: Modernities in Conflict?* (Routledge 2012) 129
[408] Hill et al (n 405) 107-108

> the Church is always keen to make clear that it is not making a party political point, it nevertheless enters party political issues on a regular basis, posing huge challenges for party politicians in the process… the Church of England has managed to hold on to its influence over British society.[409]

The main thrust of Steven's argument is valid as historically; the Christian religion has had deep-seated historical ties with English law. This argument is supported by the fact that the Church of England and Wales still receives representation in the House of Lords. Although this representation makes up less than 4% of the House of Lords, the views of the Church of England receive direct consideration in every debate and policy-making. Even though the control of the Christian religion has reduced over time, it still has a substantial influence over judicial and governmental activities that have always sought to protect its principles, particularly the doctrine of sanctity of life. The Church of England remains opposed to a change in the law on assisted suicide. The previous chapter demonstrated that this opposition is grounded in Christian tenets. It is submitted that the majority of the members of the dominant culture still identify with the Christian religion as their faith, even if they do not practice it and due to its deep-rooted tied with the country it continues to exert influence on societal issues. This is evident in historic and current debates such as suicide and assisted suicide, which are discussed in Chapters Four and Six respectively.

Over two-thirds of the British public, who took part in a YouGov Poll, agree that the law on assisted suicide needs reforming in order to provide patients with the option of an assisted suicide.[410] This tolerance, and the subsequent demand for a need to reform the law is reflected in a statement by Lord Kerr of Kinlochard, who compared the same-sex marriage Bill to Lord Joffe's assisted dying Bill:

> As this [same-sex] debate has very eloquently shown, the Bill arouses strong feelings on all sides of this House, as did the assisted dying Bill. I believe that there is a majority in this country in favour of this Bill, though a much smaller majority

[409] Martin Steven, *Christianity and Party Politics: Keeping the Faith* (Routledge 2011) 75-84
[410] Bonnie Gardiner, 'Support for Doctor Assisted-Suicide' (5 July 2012) <https://yougov.co.uk/news/2012/07/05/support-doctor-assisted-suicide/> accessed 21 May 2017

than was in favour of the assisted dying Bill. I believe that on assisted dying, the majority is now greater than it then was".[411]

The religious and non-religious views of different communities should be included in all debates that have a direct impact on the lives of every citizen. The debate and the law on assisted suicide directly impact all vulnerable and elderly individuals. Thus, their religious and non-religious views and beliefs on the issue need to be included in the debate. As mentioned earlier in the previous chapter, in the liberal democracy setting of this country, there is a newer approach to governmental activities, such as policy making, that is more open and inclusive of religious views (which are not disregarded in favour of non-religious, secular views).[412] However, even though religious views receive inclusion on certain debates – such as euthanasia – they are, as this thesis argues, increasingly absent from other debates, particularly assisted suicide. The reasons behind this absence, along with a detailed analysis of the Parliamentary debates surrounding recent assisted suicide Bills, which forms the original contribution to this thesis, can be found in Chapter Six.

3.6 Conclusion

This chapter has explored the multifaceted, beneficial phenomenon of multiculturalism and established the role that religion and secularism play within contemporary, pluralistic English society. This chapter has established that English society is now heterogeneous and pluralistic with a diverse range of cultures, beliefs, customs and practices, which now make up its multicultural identity. Religion is one of the most important ingredients of a multicultural society. Depending on the degree of religiosity of an individual, religion may greatly impact their important life decisions such as seeking an assisted suicide. Thus, their views and beliefs of the issue need to be included in societal and governmental activity. This chapter has explained that English society is pluralistic, as it consists of a dominant culture and various minority subcultures, and has become this way due to waves of immigration in order to determine when different cultures and their beliefs began

[411] HL Deb 3 June 2013, vol 745, col 1032

[412] This idea of liberal democracy is connected with the role of faith, especially in same sex marriage and the quadruple lock, and the continued influence of the Church of England in this context, see: ch 6

influencing the policy-making process, which is discussed in greater detail in Chapter Six. The government made promises to these immigrants to ensure that they would not have to abandon their beliefs and cultures, which subsequently led to their beliefs being accommodated via policy-making in order to integrate them into society. However, there is significant historic and contemporary opposition to immigration, particularly minority groups such as the Islamic community, who have been reported negatively, particularly by political representatives and commentators who associate the Islam with backwardness, hostility and conflicting with the increasingly secular dominant culture of English society, which has deep-rooted ties with the Christian faith.

Even though the stance of the Christian and Islamic faiths is harmonious in their opposition to allowing assisted suicide, these negative representations have led to the popular belief, which is reflected in opinion polls and surveys that the two faiths are in conflict and that the Islamic faith contradicts the secular values of the dominant culture. When there is a lack of homogeneity on an issue, due to the presence of parallel beliefs and opinions and negative representation of Islam, the role of policy-makers to regulate the law on assisted suicide is even further complicated. As the previous chapter argued, both the non-religious views and religious beliefs of all the different communities should be included in public debates that have a direct effect on the lives of every individual within that community. Thus, finding mutual ground on societal issues, particularly assisted suicide, is essential in order for policy-makers to regulate the law in this area.

Even though the Christian faith remains opposed to a change in the law on assisted suicide and continues to have an influence within governmental activities especially the policy-making process; as the next chapter demonstrates, this control and influence has reduced over time as religious doctrine is being superseded by secular values such as the notion of autonomy along with medical and technological advancements that are reflected in contemporary policies and the governmental and judicial approach to assisted suicide cases. Even the societal approach and attitudes to assisted suicide have significantly changed over time, as traced in the previous chapter. Society is demonstrating a much higher degree of tolerance, for religious and moral diversity, and for allowing, or at least not acting against, assisted suicide, which is demonstrated in the next chapter.

Chapter 4. The Influence of Religion on the Historical and Current Momentum for Reforming the Law of Suicide and Assisted Suicide in England

4.1 Introduction

This chapter traces the influence of religion, particularly the Christian faith on the law on suicide and assisted suicide in England. In developing this discussion, the Parliamentary debates on the Suicide Bill 1961 are analysed, which establish that there is a significant amount of inclusion of religious views, particularly of the Christian faith, but no inclusion of minority views, which, as discussed in the previous chapter, can be attributed to the non-prominent presence of minority groups in England during this time. It argues that with the changing societal and cultural landscape, which was discussed in the previous chapter, suicide was decriminalised to reflect societal changes and medical advancements that acknowledged its causes. However, the decriminalisation of suicide did not mean that society, law or Parliament accepted and promoted suicide nor did they sanction a breach of the doctrine of sanctity of life. This chapter also establishes the reasons behind Parliament retaining the ban on assisted suicide, under section 2(1) of the Suicide Act of 1961, namely the need to protect the doctrine of sanctity of life and societal interest in prosecuting individuals who have malicious motives behind assisting another person to end their life.

This chapter continues by exploring the update, under section 59 of the Coroners and Justice Act 2009, to the criminal embargo on assisted suicide found in the 1961 Act, by evaluating the Parliamentary debates around the Coroners and Justice Bill to establish the reasons behind this update, namely the need to protect vulnerable people, increase public understanding of assisted suicide and to make individuals aware that this provision applies as much to the Internet as to offline activities. It also examines whether religious views were included in this debate and concludes that as a result of this update, the inviolability of life continues to be preserved by retaining the prohibition on assisted suicide. It establishes that a significant majority of individuals with both religious and non-religious viewpoints support a change in the law on assisted suicide; however, religious tenets did not receive any explicit consideration during the Parliamentary debates on the 2009 Bill. It argues that

this lack of consideration given to religious beliefs demonstrates that Parliament's approach to assisted suicide is increasingly secular. Furthermore, this chapter argues that there is a clear shift in societal and Parliamentary attitude and approach towards this debate, which is now much more temporal and does not include religious language and references. The reasons behind this shift in attitudes and language, which is one of the main aims of this thesis, is critically reviewed. For example, this shift is reflected in the Parliamentary debates along with the reaction of religious groups, particularly the Church of England, whose entire response was written using non-religious language.

Finally, this chapter examines the paradoxical position of the current law on assisted suicide. In developing this discussion, it argues that even though the ban on assisted suicide was retained by Parliament in 2009, the DPP Policy, which was published, in 2010, in accordance with the House of Lords' decision in *Purdy*, allows 'back-door' assisted suicide. *Purdy*, which is a very significant assisted suicide case, is studied throughout this thesis and is set out in this chapter along with the DPP's policy that contains the factors used to prosecute an individual under the criminal provision on assisted suicide.

4.2 Pre-19th Century Law in England

In the 5th century, St Augustine declared suicide to be a cardinal sin.[413] He stated that it violates the 6th Commandment, "Thou shalt not kill" and that human suffering is a diktat from God and humans must bear that burden.[414] Canon law, which denied suicides burial rites, was adopted in England in the 7th century.[415] Around the 10th century, suicide became a crime under common law in England.[416] There was no change in the law and suicide

[413] Jennifer Scherer and Rita Simon, *Euthanasia and the Right to Die: A Comparative View* (R&L 1999) 3
[414] ibid; Alexander Murray, *Suicide in the Middle Ages Volume II: The Curse on Self-Murder* (OUP 1998); Rita Robinson, *Survivors of Suicide* (Career Press 2001) 137; and Biggs (n 27) 100
[415] RE Schulman, 'Suicide and Suicide Prevention: A Legal Analysis' [1968] 54 ABA Journal 855, 856
[416] ibid; Biggs (n 27) 100; David Crighton, 'Psychological Research into Reducing Suicides' in Graham Towl (ed), *Psychological Research in Prisons* (Blackwell 2006) 55; and Andrew LeSueur et al, *Principles on Public Law* (Cavendish 1999) 391
[416] Murray (n 414)

remained a cardinal sin and a heinous crime throughout the 16th and 17th century.[417] It was a crime against God and King. To this end, McLynn explains that:

> Before the eighteenth century religion overwhelmingly determined people's attitude to suicide… the suicide was a criminal on two counts. In the first place, he offended against the king, whose interests dictated the preservation of his own subjects. In the second, he blasphemed against the law of God".[418]

Individuals who successfully ended their lives were refused a Christian burial and buried at a crossroad with a wooden stake through their body and their property was confiscated.[419] The confiscated property was distrained to the King.[420] Thus, it was in the interest of the King to be aware of suicides.[421] Blackstone[422] summarised the approach as follows:

> The law of England wisely and religiously considers that no man hath a power to destroy life, but by commission from God, the author of it: and as the suicide is guilty of a double offence; one spiritual, in evading the prerogative of the Almighty, and rushing into his immediate presence uncalled for; the other temporal, against the King, who hath an interest in the preservation of all his subjects; the law has therefore ranked this among the highest crimes, making it a peculiar species of felony, a felony committed on oneself.[423]

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[417] Murray (n 414)
[418] Frank McLynn, *Crime and Punishment in Eighteenth Century England* (Routledge 2013) 50
[419] Williams (n 55) 4
[420] Dermot Walsh, 'Suicide, attempted suicide and prevention in Ireland and elsewhere' (Health Research Board, Dublin, 2008) <http://www.hrb.ie/uploads/tx_hrbpublications/HRBOverviewSeries7.pdf> accessed 21 May 2017
[421] ibid
[422] Sir William Blackstone was a Tory politician and an English judge and jurist in the 18th century, most noted for his writing the "Commentaries on the Laws of England.
[423] William Blackstone, *Commentaries on the Laws of England* (Vol 4, Clarendon 1775) 189

There was predominantly a negative attitude towards suicide throughout the Middle Ages that continued until about the 19th century.[424] Coroners' juries adjudicated on whether a suicide was '*felo de se*' (a felony of himself) or '*non compos mentis*' (not of sound mind).[425] If an individual who attempted or committed suicide was deemed mentally ill or insane they were not convicted. A verdict of '*non compos mentis*' was increasingly being handed down instead of '*felo de se*'.[426] If the suicide was declared a '*felo de se*', the deceased's property was confiscated and reverted back to the Crown.[427]

The punishment of confiscation of property was abolished in 1870.[428] In the latter half of the 19th century, the legal and social landscape started to change when the medical, particularly psychological, reasons behind suicide attempts were being analysed.[429] Due to this shifting social landscape, the role of the law in relation to suicide also began to change. For example, around the First World War, there were increasingly fewer prosecutions of attempted suicides.[430] Juries consisted of local people who felt compassion and sympathy towards the individual who attempted or committed suicide and their families.[431] Jury members would avoid handing down the severe punishment by declaring that the deceased had acted in a moment of insanity.[432]

However, it is submitted here that there was clearly an unfavourable and antipathetic attitude towards suicide and, by extension, assisted suicide in policy-making. This negative attitude towards suicide and assisted suicide was grounded in religious reasoning, particularly the established religion of the country, the Church of England, which is discussed in significant detail in Chapter Two. Therefore, it was not until 1961 that the law

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[424] Robinson (n 414)
[425] Steven Wilf, *Law's Imagined Republic: Popular Politics and Criminal Justice in Revolutionary America* (CUP 2010) 134; and Susan Morrissey, *Suicide and the Body Politic in Imperial Russia* (CUP 2006) 42
[426] Morrissey (n 425); and Victor Bailey, *This Rash Act: Suicide Across the Life Cycle in the Victorian City* (Stanford University Press 1998) 76
[427] Emile Durkheim, John Spaulding and George Simpson, *Suicide* (The Free Press 2010) 328
[428] ibid
[429] Scherer and Simon (n 413) 4
[430] Glanville Williams, *The Sanctity of Life and the Criminal Law* (Faber and Faber 1958) 249
[431] Williams (n 55) 4
[432] Durkheim et al (n 427) 328

on suicide changed in order to reflect a change in public opinion, which was based on compassion and sympathy for those who committed or attempted suicide, along with the rise of secularism and autonomy, better understanding of the medical causes of suicides and a poor track of enforcing the law.[433]

4.3 The 1961 Reforms: The Decriminalisation of Suicide in England

As explained in the previous section, and in Chapter Two, suicide was strongly condemned for centuries by Christianity:[434] it being a crime was rooted in religious belief.[435] Changes in opinion happened gradually by disposing off the religious taboo attached to suicide.[436] In a progressively modern society such changes have been influenced by scientific research, which tend to reign over religious beliefs in regulating social processes and even policy-making.[437] The Lord Chancellor, Viscount Kilmuir, introduced the Suicide Bill in the House of Lords on 14 February 1961.[438] There were a number of reasons, each of which will be examined in turn, that could be attributed to the decrease in prosecution and the eventual decriminalisation of suicide.

Lord Rea, in the House of Lords, who was in favour of a change in the law, stated that:

> If a man commits suicide and is successful… the law comes down in its majesty and penalises him in a way, which reflects only upon his family, his relatives and his reputation; whereas if there is an attempt to commit suicide, which does not succeed, the man himself is the sufferer under the law.[439]

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[433] 'Problems of Suicide: The Changing Legal Attitude' (1959) 103 The Solicitor's Journal 821; and Rab Houston, 'The Medicalization of Suicide: Medicine and the Law in Scotland and England, circa 1750-1850' in John Weaver and David Wright (eds), *Histories of Suicide: International Perspectives on Self-Destruction in the Modern World* (University of Toronto Press 2009) 93. For greater discussion on the reasons behind the decriminalisation of the criminal offence of suicide, see: ch 4; and movement to reform the law in the 20th and 21st centuries, see: ch 6.

[434] Cummings (n 187) 239

[435] (Mr R A Butler) HC Deb 06 February 1958, vol 581 col 1327; and (Baroness Wootton of Abinger) HL Deb 02 March 1961, vol 229, col 266

[436] Cummings (n 187) 239

[437] Cummings (n 187) 2

[438] HL Deb 14 February 1961, vol 228, col 716

[439] HL Deb 9 March 1961, vol 229, col 536

Lord Rea's statement indicates that if the suicide was successful, the individual who committed the crime could obviously not be prosecuted or punished[440] because the perpetrator and the victim of the crime were the same person.[441] Since, the actual perpetrator of the religious sin and the criminal offence of suicide could not be punished, the Church and the State targeted the things that they left behind.[442] However, confiscating property was increasingly seen as distasteful and abhorrent[443] because forfeiture to the Crown was punishment on the deceased's family rather than on the person who committed suicide.[444] Furthermore, a considerable amount of public and societal interest to reform the law existed in 1961, which could be seen in newspaper articles at the time. For example, the Guardian newspaper frequently published articles around the Parliamentary debates backing the Suicide Bill, with titles such as, "Removing Criminal Taint in Suicide",[445] "Bill that suicide, or the attempt, should be no crime: Sympathy with mental stress",[446] and, "Law on suicide has been unchanged for 1000 years".[447] This demonstrates the shifting societal landscape of the country in favour of reforming the law on suicide.

4.3.1 Medical Causes of Suicides

The most important factor that fuelled the reform was the increased awareness of the medical causes of suicide. The Lord Chancellor explained during the Parliamentary debates that:

> There is the question of mental stress… These people could be saved if, somehow, we could provide a more sympathetic contact, and better opportunities for people to talk over their troubles, or at least somebody to listen to them. This Bill is a step in the right direction.[448]

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[440] Williams (n 55) 16. Also see: Demetra Pappas, *The Euthanasia/Assisted Suicide Debate* (Greenwood Press 2012) 50; and Smith (n 31) 183.
[441] Smith (n 31) 183
[442] Sarah Tarlow, *Ritual, Belief & the Dead in Early Modern Britain & Ireland* (CUP 2011) 49
[443] Wicks, *Right to Life* (n 245) 187; and *Pretty* (n 57) [35] (Lord Bingham)
[444] Pappas (n 440); Margaret Pabst Battin et al, *Physician Assisted Suicide: Expanding the Debate* (Routledge 1998) 379; and Williams (n 55) 16.
[445] The Guardian (1959-2003), 'ProQuest Historical Newspapers: The Guardian and The Observer' (11 February 1961) page 2
[446] ibid (3 March 1961) page 2
[447] ibid (15 July 1961) page 2
[448] HL Deb 02 March 1961, vol 229, cols 255-256. Also see: (Eric Fletcher) HC Deb 14

There was clearly more sympathy towards individuals who attempted suicide due to mental stress or illness. Furthermore, Leo Abse, in the House of Commons, pointed out that, "… more than two-thirds of those who, on release [from mental hospitals], subsequently committed suicide did so within a year of being released – most of them within six months".[449] David Weitzman asked: "It is important to consider the reasons why a person is driven to attempt to commit suicide. What are the reasons? It may be because of unbearable pain. It may be a case of mental stress, worry and illness of some kind".[450] Indeed, the majority of suicides were perpetuated because of the pain and suffering caused by psychiatric and physical illnesses. The debates on psychiatric illnesses, particularly depression, had started changing many years before the 1961. For example, by 1948, the Ministry of Health had already established that depressed patients were at an immediate risk of suicide.[451] The advice was that they needed to be medically attended to on the day of admission to a hospital or as soon as they were diagnosed with depression and not treated as criminals.[452]

In considering the Suicide Bill, the Lord Chancellor explained that medical research suggested that:

> Many cases of suicide are the outcome of intolerable mental stress amounting to mental illness. It is even truer that most cases of attempted suicide flow from some form of mental stress or unbalance. Recent research suggests… that those who attempt suicide are often making an appeal for help.[453]

July 1961, vol 644, cols 837-838.
[449] HC Deb 19 July 1961, vol 644, col 1413
[450] ibid cols 1416-1417
[451] Geoffrey Rivett, 'Establishing the National Health Service' (1948) <http://www.nhshistory.net/Chapter%201.htm> accessed 21 May 2017
[452] ibid. More recently, Wellman explained that "Suicide is strongly associated with mental illness" (Nigel Wellman, 'Assessing Risk', in Catherine Gamble and Geoff Brennan (eds), *Working with Serious Mental Illness* (2nd edn, Bailliere Tindall 2006) 154) and Sadock et al calculate that 95% of all persons who commit or attempt suicide have a diagnosed mental disorder (Benjamin James Sadock and Virginia Alcott Sadock, *Kaplan and Sadock's Clinical Psychiatry* (3rd edn, Lippincott Willians and Wilkins Publishers 2008) 429).
[453] (The Lord Chancellor (Viscount Kilmour)) HL Deb 02 March 1961, vol 229, col 248. Also refer to (Lords Silkin and Taylor) Hansard HL Deb 9 March 1961, vol 229 col 541

As a result of medical findings, Members of Parliament argued that the law should have a more sympathetic approach to this area of the law: individuals who attempted or committed suicide were increasingly seen as patients with a mental disorder.[454] Both Houses of Parliament opined that these individuals needed medical treatment and not punishment;[455] and the criminal prohibition on suicide may have seemed to serve as an obstacle to seeking treatment.[456] As a result of the Bill being adopted, the criminal offences of suicide and attempted suicide were decriminalised to protect and safeguard the grieving family of the deceased from further distress and to ensure that the individual who attempts suicide is not hindered from seeking the medical help due to a fear of prosecution.[457] Herring summarises that one of the reasons behind decriminalising suicide "…is that those who have attempted suicide do not need the ministrations of the criminal law, but rather the care of medical and other professionals".[458]

4.3.2 Religious and Ethical Doctrine on Suicide

As well as examining the societal and medical reasons behind the need to decriminalise suicide, Parliament extensively discussed the religious views, particularly of the Christian faith and the need to preserve the doctrine of sanctity of life. The Parliamentary debates are being analysed in significant detail in order to establish the amount of inclusion of religious views on the issue – which are then contrasted with the amount of inclusion in the 2015 debate set out in Chapter Six, in order to evaluate the discursive shift in language in the varying societal, political and cultural contexts over this extensive period of time – which forms one of the elements of the original research presented in this thesis.

No consideration was given to the views of minority religious groups, particularly Islam, in 1961 debate. This lack of consideration can be attributed to the fact that even though

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[454] Smith (n 31) 183
[455] For example: (MP Eric Fletcher Labour MP for Islington East) Hansard HC Deb 28 July 1961, vol 645 col 824 pointed out that individuals who attempt suicide, "…need a great deal of help and medical attention".
[456] Williams (n 430) 259-260
[457] Emily Jackson, *Medical Law: Text, Cases, and Materials* (3rd edn, OUP 2013) 880
[458] Jonathan Herring, *Medical Law and Ethics* (4th edn, OUP 2012) 486

minority groups were present in the country, their presence was not well-established.[459] In contrast, almost all the Members of Parliament, especially in the House of Lords, spoke about the beliefs of the Church of England in relation to debate on suicide and assisted suicide.[460] The significant amount of consideration given to Church of England tenets, during the 1961 Parliamentary debates, demonstrates the historic connection between English law and the Church and even reflected the view of the majority of society. For example, the Baroness Wootton of Abinger, in support of reform, in the House of Lords, stated that:

> …the origin of the concept that suicide should be a crime is rooted in religious belief… It is still possible to hold that the taking of life, whether one's own life or that of another, is a grievous sin, and, at the same time, that it is unnecessary, unwise, and inhumane to make it a crime.[461]

It is submitted that the main thrust of Baroness Wootton's argument is that, historically, religion has had a significant impact on the law against suicide. Even though they may continue to have an influence, especially in the attitudes of individuals and communities who view ending life as a sin; religious principles were beginning to become detached from the law. This can be attributed to reshaping cultural landscape of England and changing societal attitudes, which no longer attached sinfulness to the idea of suicide. Thus, a

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[459] David Cheesman and Nazia Khanum, 'Soft segregation: Muslim identity, British secularism and inequality' in Adam Dinham et al (eds), *Faith in the Public Realm: Controversies, Policies and Practices* (The Policy Press 2009) 43; and Humayun Ansari, *The Infidel Within: Muslims in Britain Since 1800* (C Hurst and Co Publishers 2004) 40. For greater discussion on how and when the Islamic community established in Britain: ch 3.

[460] For example, four of the six Lords spoke about the views of the Church in relation to assisted suicide during the second reading. There was no explicit reference to the views of the Catholic Church. The terms "Christianity" and "the Church" were used by various members in the House of Lords HL Deb 02 March 1961 vol 229: (Lord Silkin) col 254; (Lord Denning) col 262-263; (Baroness Wootton of Abinger) cols 266-267; and (The Lord Chancellor (Viscount Kilmour)) col 270; and in the Commons HC Deb 14 July 1961 vol 644: (B T Parkin) col 1419; (Fletcher-Cooke) col 1425-1426; and (Eric Fletcher) col 836-837 and HC Deb 28 July 1961 vol 645 col 824. The significant majority of these MPs identify with the Christian faith and there were no MPs who identified or represented Islam.

[461] HL Deb 02 March 1961, vol 229, col 266-267

change in the law on suicide and including and respecting religious ideologies was no longer mutually exclusive.

Similarly, Lord Silkin, who too was in support of the Bill, stated that "We are taking the view that it is no longer the business of the community to preserve the life of a person who wants to end his life. Whether or not suicide is a sin is a matter which is not for this House, but in the future it will certainly not be an offence".[462] Members of Parliament also viewed suicide to be an issue of individual, personal despair, which only concerned the individual who ended their life.[463] Whether they believe that it is a sin or not is the conscientious decision of that individual: if they chose to end life, they would not be commissioning a crime.

In light of the Bill being debated Parliament, the Church of England altered its stance on suicide. The Church stated that suicide was an act of despair and that "The punishment of the offender is not likely to deter others from attempting to commit suicide" and agreed that it should no longer be criminal.[464] Instead, steps should be taken to prevent suicides by helping individuals to seek counseling and psychotherapy.[465] After taking into consideration the change in public opinion, altered stance of the Church, the medical reasons behind suicides, and the changed societal landscape, which did not consider suicide as a taboo issue; suicide was decriminalised. Decriminalising suicide did not imply that

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[462] ibid col 254

[463] Note: Suicide was generally seen to be a solely individual despair and issue. However, Durkheim opined that suicide had a social dimension and that individuals from different social and religious background have varying suicide rates: Emile Durkheim, *On Suicide* (first published 1897, Penguin 2006); and Luigi Tomasi, 'Emile Durkheim's Contribution to the Sociological Explanation of Suicide' in WSF Pickering and Geoffrey Walford (ed), *Durkheim's Suicide: A Century of Research and Debate* (Routledge 2000) 11-21.

[464] Church of England Information Office, *Ought Suicide to Be A Crime? A Discussion of Suicide, Attempted Suicide and the Law* (Church Information Office 1959) p10. Note: The Church used religious language and explained that a true Christian "accepts death as that signal occasion when he is finally to prove the love and power of God in Christ. He sees death as the last and crucial occassion for the testing of his faith, where victory is to be won in Christ and his redemption is fulfilled" (p28).

[465] ibid. Note: The aformentioned pamphlet issues by the Church of England was formulated by a Committee made up of various religious leaders and medical experts. An important member of this Committee was a psychiatrist and magistrate, who later became a president of The Samaritans, Dr Doris Odlum.

society had accepted suicide. However, the decriminalisation of suicide meant that the stigma surrounding suicide was greatly reduced and the family of the deceased was no longer treated unjustly.[466] To this end, the Lord Chancellor stated that "The effect of… the Bill would be to take away from attempted suicide the stigma of criminal conduct and replace it by a presumption of mental illness to which, in the eyes of some people, some stigma still attaches".[467] The Suicide Bill received Royal Assent on the 3rd of August 1961 and was immediately in force.[468] Committing or attempting to commit suicide ceased to be crimes.[469] Section 1 provides that "The rule of law whereby it is a crime for a person to commit suicide is hereby abrogated".

It is concluded that both Houses of Parliament prioritised societal and medical reasons over religious doctrine in 1961. However, the beliefs of the Church, particularly in the doctrine of sanctity of life, were included in the debate and were preserved, to some degree, through the retention of the ban on assisted suicide. The next section discusses the reasons behind Parliament retaining this ban in 1961.

4.4 Assisted Suicide and Section 2(1) Suicide Act 1961

Even though suicide was decriminalised, it remains criminal to be complicit in another's suicide under section 2(1) of the 1961 Act, which states that "A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment".[470] When this clause was being debated in Parliament, a number of religious issues such as the impact that changing the law on assisted suicide would have on the Christian faith, particularly the doctrine of sanctity of life, were discussed and are analysed in this section.

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[466] Luke Monahan and Siobhan Foster-Ryan, *Echoes of Suicide* (Veritas Publications 2001) 101
[467] HL Deb 09 March 1961, vol 229, cols 542-543
[468] Royal Institute of Public Health and Hygiene, *The Journal of the Royal Institute of Public Health and Hygiene: Volume 25* (The Institute 1962) 119
[469] Basant Puri et al, *Mental Health Law: A Practical Guide* (2nd edn, CRC Press 2012) 211-212; Smith (n 31) 183; Ben Livings, 'A right to assist? Assisted dying and the interim policy' (2010) J Crim L 31, 32; and Herring (n 458) 486.
[470] Section 2(1) Suicide Act 1961. Also see: Livings (n 469) 32. For a detailed discussion on the crime of assisting the suicide of another before the Suicide Act 1961, refer to: John Spencer, 'Furnishing someone with the means by which they kill themselves' (2002) 5 Arch News 6, 6-7

4.4.1 Parliamentary Debate on Clause 2(1) of the Suicide Bill

As discussed earlier in this chapter, one the reasons suicide was decriminalised was to allow individuals to freely use their religious and conscientious views to dictate their choice of ending or preserving life without commissioning a crime. However, the doctrine of sanctity of life was still viewed, by various Members of Parliament, to be of paramount importance and retaining the criminal embargo on assisted suicide preserved this doctrine to some degree.[471] To this end, Eric Fletcher, a Labour party MP, categorically stated:

> …that it would be a travesty were it thought that by passing this Bill… we were in any sense attempting to lessen the sanctity of human life. Suicide will still remain a mortal sin. This Measure should not in any sense be interpreted as an encouragement to people who wish to commit suicide and, of course, by the provisions of Clause 2 it still remains a criminal offence to advise or counsel anybody to commit suicide.[472]

The House of Lords also discussed that Christianity views suicide as a sin but also that the criminal embargo on assisted suicide should be retained in order to preserve the religious doctrine of sanctity of life.[473] To this end, the Lord Bishop of Carlisle argued that:

> Clause 2 makes it a crime to encourage or assist or tempt anyone to take his own life. It is concerned with the protection of life in society. Now while Clause 2 helps to protect society, I am not satisfied that it is sufficiently strong to uphold the sanctity of life… the preservation of that sanctity is basic for the wellbeing of any society... it needs to be preserved at all costs... I want to do everything possible through the law and at the same time to guard that view of life, which regards life as

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[471] (Lord Silkin) HL Deb 02 March 1961, vol 229, col 254; (The Lord Bishop of Carlisle) HL Deb 02 March 1961, vol 229, col 258; and (Eric Fletcher) HC Deb 14 July 1961 vol 644 col 837. Also see: Dana Cohen, 'Looking for a Way Out: How to Escape the Assisted Suicide Law in England' (2010) 24 Emory International Law Review 697, 703.

[472] HC Deb 28 July 1961, vol 645, col 824

[473] Richard Huxtable, *Euthanasia, Ethics and the Law: From Conflict to Compromise* (Routledge-Cavendish 2007) 166

> a mystery, a wonderful and sacred thing which has been given to man by other than himself.[474]

The Lord Bishop of Carlisle's statement suggests that the ban on assisted suicide attempted to protect the doctrine of sanctity of life and reflect the importance placed on this doctrine, by making it a crime to encourage anyone to take their own life or assist in another's suicide.[475] This importance is endangered when an individual demonstrates a willingness to engage in activity that ends the life of another person.[476] Prado further explains that, "the policy behind the proscription against assisted suicide is an abhorrence of the act of suicide even though it is no longer a crime".[477]

Guinn et al argue that the criminal embargo on assisted suicide appears to have been retained because holding those liable who assist another person to die raises a significant degree of public and societal interest.[478] The main thrust of Guinn's argument is valid in that suicide is, generally, a course of action that ends the life of one individual and does not involve another person. However, assisted suicide concerns the person who assists another individual with the act of ending their life; and without any regulations and monitoring, there is no way to distinguish a compassionate assistor from an individual who has malicious intentions. Thus, assisted suicide raises a significant amount of societal interest. However, as Chapter Six will establish, the nature of assisted suicide is such that the individual who seeks the assistance always takes the final action that ends life. Therefore, the risk of unwanted deaths is significantly reduced. Furthermore, under definite circumstances and with the proper safeguards – to ensure that an individual has an

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[474] (The Lord Bishop of Carlisle) HL Deb 02 March 1961, vol 229, col 258-262
[475] HL Deb 2 March 1961, vol 229, col 258-259. Also see: (Mr Eric Fletcher) HC Deb 28 July 1961, vol 645, col 824-825 (on the importance of upholding the doctrine of sanctity of life). Note: Retaining the criminal embargo on assisted suicide was an attempt to preserve the Christian doctrine of sanctity of life: Sheila McLean and Derek Morgan, 'Taking it or leaving it: Demanding and refusing medical treatment in intensive care' in Christopher Danbury et al (eds), *Law and Ethics in Intensive Care* (OUP 2010) 98
[476] Jerry Menikoff, *Law & Bioethics: An Introduction* (Georgetown University Press 2001) 331
[477] Russell Savage, 'Death and the Law' in CG Prado (ed), *Assisted Suicide: Canadian Perspectives* (University of Ottawa Press 2000) 79
[478] Livings (n 469) 32; and David Guinn et al, 'Law and Bioethics in *Rodriquez v Canada*' in David Guinn (ed), *Handbook of Bioethics and Religion* (OUP 2006) 202

informed, consistent and autonomous wish to end their life and is not mentally ill or under any pressure – assisted suicide is a justifiable choice and ought to be a lawful option.

It is concluded from this analysis that during the Parliamentary debate, both Houses of Parliament unanimously agreed that assisted suicide ought to be regarded as criminal conduct.[479] The inviolability of human life is reflected by the maximum punishment of 14 years' imprisonment;[480] for "Aiding, abetting, counselling or procuring suicide or an attempt to commit suicide" under section 2(1) Suicide Act 1961.[481] This prohibition, contained in section 2(1), remained the same until movement to reform it began in the mid-2000s;[482] and it was reformed in 2009. The next section critically evaluates the reasons for this change,[483] along with the terminology used during the Parliamentary debates, in order to establish whether the shifting cultural and societal landscape of England has affected the importance placed on the doctrine of sanctity of life, the values that inform the modern debate on assisted suicide and contrasts them with the historic movement to reform the law in this area.

4.5 Section 59 of the Coroners and Justice Act 2009

The offence of "aiding and abetting" the suicide or attempted suicide of another person was a criminal offence under section 2(1) of the 1961 Act, which has now been amended to one of "encouraging or assisting" by section 59 of the Coroners and Justice Act 2009.[484] The effect of this amendment is to hold individuals accountable, who assist another person

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[479] The (Lord Chancellor (Viscount Kilmour)) HL Deb 02 March 1961, vol 229, col 250; (The Joint Under-Secretary of State for the Home Department (Mr Charles Fletcher-Cooke)) HC Deb 14 July 1961, vol 644, col 834; Mr Fletcher-Cooke HC Deb 19 July 1961, vol 644, col 1424. Members of Parliament were divided on whether a new offence should be created, or whether complicity in another's suicide should be regarded as murder: (Mr Fletcher-Cooke) HC Deb 19 July 1961, vol 644, col 1424; (The Lord Chancellor) HL Deb 09 March 1961, vol 229, col 537; and (Mr Peter Kirk) HC Deb 14 July 1961, vol 644, col 843

[480] Keown, *Law and Ethics of Medicine* (n 226) 8

[481] Huxtable (n 473) 166

[482] This was due to the influence of the *Pretty* case, which is discussed throughout ch 5.

[483] The recent momentum to change the law on assisted suicide, namely through the Bills in Parliament, is discussed in greater detail in ch 6.

[484] Keown, *Law and Ethics of Medicine* (n 226) 8. See: Section 1.3 for various cases have come to court, before and after the 1961 reform, mostly involving doctors who have knowingly ended the life of a terminally ill patient such as *R v Bodkin Adams* [1957] Crim LR 365 and *R v Cox* [1992] 12 BMLR 38.

whose conduct and actions encourage the person to attempt or commit suicide.[485] This individual, who provides the assistance, may be an unknown individual such as a person over the Internet or a familiar individual to the person who attempts or commits suicide.[486]

The main factor behind this change is the need to protect vulnerable individuals from being influenced by modern technology, particularly the Internet, into committing suicide. Biggs and Jones explain that "a spat of suicides by young people thought to have been influenced by Internet websites promoting and glamorizing suicide provided the impetus to revise the law".[487] The new formulation of the offence, under section 59, takes into consideration the constantly expanding threat of the Internet. It also includes the view of the Law Commission in 2006, which reported that there has been a growth of "suicide websites" over the past few years and that these websites have proven to play a role in a number of reported suicide pacts.[488] For example, they unite individuals who are contemplating suicide and even provide them with various suicide methods they could use to end their lives.[489] Furthermore, Tanya Byron's report in 2008 – Safer Children in a Digital World – also evaluates the risks such websites pose to children who use the Internet.[490] The report explains that pro-suicide sites might encourage harmful behaviour in young people.[491] Vulnerable young people meet online and share pacts to commit suicide.[492] Individuals who have access to websites that provide information about suicide techniques have an increased chance of their suicide attempt being successful.[493] It is submitted here that the societal landscape was changing due to technological advancements, particularly the

[485] Bridgit Dimond, *Legal Aspects of Pain Management* (2nd edn, MA Healthcare 2015) 70-72
[486] ibid
[487] Biggs and Jones (n 38) 166
[488] Law Commission, *Inchoate Liability for Assisting or Encouraging Crime* (Law Com No 300, 2006) para B.1 160
[489] ibid
[490] Tanya Byron, 'Safer Children in a Digital World The Report of the Byron Review' (2008) <http://webarchive.nationalarchives.gov.uk/20101021152907/http://publications.education.gov.uk/eorderingdownload/dcsf-00334-2008.pdf> accessed 21 May 2017; and Tanya Byron, 'Do we have safer children ina digital world? A review of progress since the 2008 Review' (2010) <http://webarchive.nationalarchives.gov.uk/20101021152907/http://dcsf.gov.uk/byronreview/pdfs/do%20we%20have%20safer%20children%20in%20a%20digital%20world-WEB.pdf> accessed 21 May 2017
[491] Byron 'The 2008 Review' (n 490)
[492] ibid
[493] ibid; and Richard Card, *Card, Cross and Jones: Criminal Law* (20th edn, OUP 2012) 315

widespread accessibility and usage of the Internet, thus, the understanding of both suicide and assisted suicide was also beginning to transform. This shift in understanding can also be attributed to medical advancements, particularly the increasingly unstigmatised debate around mental health problems in Britain, which has led to a better understanding of mental health and psychiatric illness.[494] This technological and societal evolution is reflected in the legislative changes made by section 59.

4.5.1 Parliamentary Debates on the Coroners and Justice Bill

In the 2009 debate, Lord David Alton, who identifies with Roman Catholicism,[495] and was against a change in the law, argued that the section 59 amendment introduces a new offence of encouraging or assisting suicide by outlawing predatory websites that encourage or promote suicide.[496] However, it is submitted that section 59 does not create a new law: it merely simplifies and updates the language: the scope of the law remains the same.[497] The question arises: almost 50 years later, why did Parliament change the wording without fundamentally altering the scope of the offence? Wells and Quick explain that section 59 "merges the substantive and attempt offences of assisted suicide into a single offence of 'encouraging or assisting' suicide or attempted suicide".[498] As the evidence found in the Parliamentary debates suggests, the rising popularity of the Internet seems to be a pivotal reason for this change, and criminal liability for encouraging another individuals' suicide arises in online activities and offline circumstances.[499]

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[494] Organisation for Economic Co-operation and Development (OECD), *Mental Health and Work Mental Health and Work: United Kingdom* (OECD Publishing 2014); Charles Kaye and Michael Howlett, *Mental Health Services Today and Tomorrow: Perspectives on Policy and Practice* (Radcliffe 2008); and Claire Henderson, 'Stigma and discrimination in mental illness: Time to Change' (2009) 373 Lancet 1928.

[495] Alessandra Stanley, 'Ideas & Trends; Just What Politicians Needed: A Patron Saint' <www.nytimes.com/2000/10/29/weekinreview/ideas-trends-just-what-politicians-needed-a-patron-saint.html?pagewanted=2&src=pm> accessed 21 May 2017

[496] (Lord Alton of Liverpool) HL Deb 18 May 2009, vol 710, col 1280

[497] HL Deb 18 May 2009 vol 710: (The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach)) col 1206; (Lord Falconer of Thoroton) col 1222; (Baroness Jay of Paddington) col 1235; and (Lord Goodhart) col 1266. Also see: Celia Wells and Oliver Quick, *Reconstructing Criminal Law: Text and Materials* (4th edn, CUP 2010) 628; and Richard Card, *Card, Cross and Jones: Criminal Law* (21st edn, OUP 2014) 317.

[498] Wells and Quick (n 497)

[499] Card (n 497)

McGowan argues "the scope of the law remains the same so these changes [under section 59 of the 2009 Act] do not make anyone liable to prosecution who was not liable before".[500] It is submitted here that this argument fails to take into account the growing concern about whether the law was adequate to protect vulnerable individuals and to deal with encouragement or information about suicide over the Internet.[501] Section 59 addresses the issue of encouragement provided over the Internet and offline activities.[502] The amendment clarifies that an individual who provides any services or information on how to commit suicide is potentially committing an offence even if it is read by anyone not known to the author of that information.[503]

During the Parliamentary debates on the Coroners and Justice Bill, Members of Parliament appreciated the law was being updated to make the public aware how the law operates and that the law on assisted suicide applies to both online and offline activities.[504] Various Members of both Houses of Parliament opined that updating the language was necessary to protect vulnerable individuals – especially young people – from ending their lives after reading or discussing information on websites that provide information on suicide by prohibiting inimical online activity which would have the effect of encouraging or assisting suicide.[505] To this end, in the House of Commons, Mr James Gray commented:

> I googled "How to kill yourself", and the sort of stuff that came tumbling out was simply appalling... Some of these sites not only describe how to do it but encourage people to do it… In a civilised society such as ours we cannot allow that to continue… it should not be all that difficult to analyse the dozen or 20 really

[500] Laura McGowan, 'Criminal law legislation update' (2010) J Crim L 94, 95
[501] Sophie Brannan et al, *Medical Ethics Today: The BMA's Handbook of Ethics and Law* (3rd edn, BMJ Books 2012) 470
[502] Card (n 493) 315
[503] Brannan et al (n 501) 470
[504] HL 18 May 2009, vol 710: (The Parliamentary Under-Secretary of State, Lord Bach) col 1206. Note: Members of the House of Lords such as (Lord Waddington) col 1223), argued that "The Bill contains the new offence of encouraging or assisting suicide". However, (Lord Bach) col 1206 explained that the scope of the law would not change.
[505] HL Deb 18 May 2009 vol 710: (Baroness Finlay of Llandaff) col 1228; (Baroness Jay of Paddington) col 1234-1235; (The Lord Bishop of Southwell and Nottingham) col 1220; (Lord Patel) col 1237; (Baroness Warnock) col 1276; and (Baroness Emerton) col 1286.

> wicked, vicious, nasty sites and… having them taken down.[506]

In the House of Lords, a paramount concern was to protect vulnerable people, who are exposed to malicious and unscrupulous activity on the Internet. To this end, Lord Hylton explained that "…many people, especially the feeble-minded, the frail, the elderly, the confused or the chronically ill, are particularly vulnerable. They deserve our protection against coercion or persuasion to take their own lives".[507] In the House of Commons, Brian Iddon, the MP for Bolton (South-East), stated that, "…some people who have no suicidal tendencies in their mind when they stumble on to those sites, which is not difficult to do, may begin to think about suicide, particularly if they are already distressed".[508]
The Coroners and Justice Bill was introduced in the House of Commons on 14 January 2009. The Lord Chancellor and Secretary of State for Justice, Jack Straw, explained that the amendment:

> …does not substantively change the law, but it does simplify and modernise the language of section 2 of the Suicide Act 1961 to increase public understanding and to reassure people that the provision applies as much to actions on the internet as to actions offline.[509]

An individual who encourages or assists a suicide, either online or offline, is commissioning a crime. It should be noted here that during the Parliamentary debate on the Coroners and Justice Bill, Lord Patel argued that the section 59 amendment "…fails to distinguish between those who maliciously encourage suicide and those who compassionately assist the death of a terminally ill adult who is suffering but mentally competent".[510] Individuals may have benevolent and altruistic motives behind assisting, encouraging or comforting those with suicidal intentions. However, there are others in

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[506] HC Deb 26 January 2009 vol 487 col 107
[507] HL 18 May 2009, vol 710, col 1279
[508] HC 26 January 2009, vol 487, col 105. (Baroness Emerton) HL 18 May 2009, vol 710, col 1286 elaborated that the primary objective of the law is to protect vulnerable people from abuse "…who might seek assistance with suicide not because it is what they want, but as a result of pressures either from others or, more often, from within themselves".
[509] HC 26 January 2009, vol 487, col 35
[510] HL Deb 18 May 2009, vol 710, col 1237

cyberspace, who encourage, provoke and even pressurise individuals to commit suicide. The Internet and individuals in cyberspace teach vulnerable persons how to end their life. There is a perceived risk of the Internet as "…the modern version of the howling crowd yelling, Jump! Jump! at the suicidal person standing on the skyscraper window ledge".[511] This risk of the Internet can be illustrated by the recent incidents of "Internet suicides". Various news reports stated that all these individuals, who ended up committing suicide, frequented suicide websites, forums and chat rooms.[512] They often had conversations in chat rooms with users about how to commit suicide. One news report states that chat room users encouraged a father to take the life of his son and then end his own life by hanging himself.[513]

In an attempt to protect these vulnerable individuals from being manipulated or coerced into a premature death, via online activity, the language of the law was updated.[514] The Lord Bishop of Southwell and Nottingham encapsulates the position of the House of Lords, on the section 59 amendment, as follows:

> Since the Suicide Act 1961, developments in communication mean that powerful influences can be brought to bear on emotionally vulnerable people, not least young people, by so-called suicide websites. This is a very sensitive area where people

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[511] Wesley Smith, '*Suicide advocacy goes online*' (National Review Online, 12 June 2003) <http://www.discovery.org/a/1488> accessed 21 May 2017

[512] Nicole Martin, 'Strangers die after suicide pact on internet' *The Telegraph* (30 September 2005) <http://www.telegraph.co.uk/news/uknews/1499572/Strangers-die-after-suicide-pact-on-internet.html> accessed 21 May 2017; and Will Pavia, 'Bridgend, Suicide and the Internet: The Facts' *The Times* (19 February 2008) <http://www.timesonline.co.uk/tol/news/uk/article3399528.ece> accessed 15 September 2011

[513] The Guardian Press Association, 'Father killed his six-month-old son and then hanged himself' *The Guardian* (15 September 2011) <http://www.guardian.co.uk/uk/2011/sep/15/father-baby-murder-suicide-investigation> accessed 21 May 2017. Also refer to: 'Young man stages horrifying online suicide attempt by trying to burn himself to death as 200 viewers watched live stream and encouraged him' *Daily Mail* (2 December 2013) <http://www.dailymail.co.uk/news/article-2516641/4chan-user-sets-live-streamed-suicide-attempt-200-people-watch.html> accessed 21 May 2017

[514] As per, HL 18 May 2009, vol 710: (Lord Patel) col 1237; (Lord Goodhart) col 1267; (Viscount Craigavon) col 1287; (Lord Falconer of Thoroton) col 1222); (Lord Lester of Herne Hill) col 1245); (Baroness Jay of Paddington) col 1235; and (Lord Alton of Liverpool) col 1280.

> frequently act under tragic and burdensome pressures. We must avoid criminalising people who are merely discussing their feelings… However, it is vital that the law should continue to prohibit irresponsible or unscrupulous actions, which would have the effect of encouraging or assisting suicide.[515]

It is concluded that as a result of these debates, the inviolability of life is preserved through the updated prohibition on assisted suicide in section 59 of the 2009 Act.[516] Keown encapsulates the amendment as follows:

> Section 2(1) of the Suicide Act 1961 provides a maximum penalty of 14 years' imprisonment for aiding, abetting, counseling, or procuring suicide or an attempt to commit suicide. The prohibition has been updated by section 59(2) of the Coroners and Justice Act 2009 which, replacing section 2(1), provides that a person commits an offence if he does an act capable of encouraging or assisting the suicide or attempt to commit suicide.[517]

The amendment not only updates the technical terminology of section 2(1) of the 1961 Act but also protects vulnerable individuals from encouragement or assistance from known or unknown users over the Internet.[518]

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[515] HL 18 May 2009, vol 710, col 1219-1220; and (The Lord Bishop of Southwell and Nottingham) HL 18 May 2009, vol 710, col 1220.
[516] Keown, *Law and Ethics of Medicine* (n 226) 8
[517] ibid. Also see: Duncan Atkinson, *Blackstone's Criminal Practice 2012* (OUP 2010) 13; and DPP, 'Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide' (February 2010, updated October 2014) <http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html> accessed 21 May 2017
[518] Note: Mr Justice Hawkins differentiated between the terms "aiding and abetting" and "encouragement" in *R v Coney and Others* (1882) 8 QBD 534. Even though the case concerned public bare-knuckle contests, Hawkins J noted that encouragement does not always amount to aiding and abetting a crime. Aiding and abetting a crime takes place when an individual actively provides assistance and facilitation to commit a crime. However, encouragement can be knowingly or unknowingly given. Words or actions can be misinterpreted and be taken as encouragement.

4.5.2 Religious and Secular Attitudes in the 2009 Debate

During the second reading of the Bill in the House of Lords, Lord Taverne appreciated that a significant majority of individuals with non-religious viewpoints support a change in the law on assisted suicide; and there was also an increase in individuals from the Christian religion, about 80% of both Catholics and Protestants, who now supported assisted suicide. He opined that this change "… has been consistent over a long period and is based on the personal experience of miserable deaths of relatives and friends".[519] However, religious tenets and viewpoints, especially those of minority groups, did not receive any explicit consideration during the Parliamentary debates. This negligible amount of consideration given to religion demonstrates that Parliament's approach to assisted suicide is increasingly secular.

Various members of Parliament opined that the amendment sought "to prohibit irresponsible or unscrupulous actions which would have the effect of encouraging or assisting suicide" and protect vulnerable individuals especially young people from "suicide websites".[520] The idea that fuelled this debate was the need to protect vulnerable individuals from coercion, pressure and undue influence from any third party. The significance of religion is decreasing in society and in the debate on assisted suicide; which is why the approach to the debate is not derived from the views of a particular religion and now has a secular undertone.[521]

The evidence found in the Parliamentary debates suggests that Members of Parliament did not view 'religion' as a factor on which the change in the law was based. It can be concluded that there is a clear switch from religious terminology in 1961, to secular

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[519] HL Deb 18 May 2009, vol 710, col 1273

[520] For example, HL Deb 18 May 2009, vol 710: (Lord Goodhart) col 1266 stated that "…assisting the suicide of a person who has a few weeks or months to live, and will suffer great pain and distress during that period, is not and should not be a crime". Also see: (The Lord Bishop of Southwell and Nottingham) col 1220; (Baroness Finlay of Llandaff) col 1228; (Baroness Jay of Paddington) col 1233; (Lord Patel) col 1237; (Lord Alderdice) col 1258; (Lord Neill of Bladen) col 1267; and (Baroness Warnock) col 1276; (Lord Hylton) col 1279; (David Howarth) HC Deb 26 Jan 2009, vol, 487 column 68; and (Mrs Madeleine Moon (Bridgend) (Lab)) HC Deb 26 Jan 2009, vol, 487 cols 78-79.

[521] For greater discussion on secularism and morality, refer to ch 2. This shift has led to a change in the approach to the debate around the legalisation of assisted suicide, see: ch 6.

language in the 2009 Act.[522] For example, the values that fuel the debate on assisted suicide, were described by Lord Kingsland, as "…entirely a matter of conscience".[523] Secular values seem to be receiving priority over religious doctrine. As can be seen from Parliamentary debates, policy makers are advocating and promoting secular values.[524] Non-religious values seem to be favoured in the modern debate on assisted suicide.[525] The Islamic community did not react to the section 59 amendment.[526] However, the Church of England reacted to this Bill by reiterating that:

> Encouraging or assisting suicide remains a criminal offence... In amending the Suicide Act by Section 59 of the Coroners and Justice Act 2009, Parliament confirmed that it should remain an offence to intentionally encourage or assist suicide or an attempted suicide.[527]

Even the reaction of the Church of England to the section 59 amendment was written using non-religious language. There is a clear secular attitude towards this debate, which is now much more temporal and non-religious.[528] Religious groups have abandoned ecclesiastical references and religious language in Parliamentary debates, which may be an attempt to relate to every citizen in society and not just an individual faith group or community. This

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[522] For greater discussion on the Voluntary Euthanasia Bill 1969, refer to ch 6.
[523] HL Deb 18 May 2009, vol 710, col 1212
[524] Tthe Lord Bishop of Southwell and Nottingham HL Deb 18 May 2009, vol 710, col 1220 stated that the amendment not only sought to protect vulnerable and young people but also "…to ensure that the operation of the law is compassionate towards people who find themselves in a difficult position because their relatives wish to end their own lives".
[525] Members of Parliament pointed out that there is a significant degree of moral culpability of assisting the suicide of another (The Lord Chancellor (Viscount Kilmour)) HL Deb 02 March 1961, vol 229, col 250. The aim of the Suicide Bill is to administer compassion yet protect society and uphold the sanctity of life (The Lord Bishop of Carlisle) HL Deb 02 March 1961, vol 229, col 258. Hence, complicity in another's suicide did not cease to be an offence as per (The Lord Chancellor (Viscount Kilmour)) HL Deb 02 March 1961, vol 229, col 250.
[526] However, they had strong, opposing views on Lord Falconer's Assisted Dying Bill, discussed in ch 6.
[527] Church of England, 'Assisted Suicide Debate – Bishop of Bristol Warns Against Change in the Law' (The Church of England in Parliament, 5 March 2014) <http://churchinparliament.org/2014/03/05/assisted-suicide-debate-bishop-of-bristol-warns-against-change-in-the-law/> accessed 21 May 2017
[528] George Jacob Holyoake, *English Secularism: A Confession of Belief* (The Open Court Publishing 1896) v

move away from religious references and undertones has shifted the manner in which certain values, particularly the doctrine of sanctity of life, are understood. This doctrine is now understood as having an intrinsic value, rather than a religious attachment. The basis of this doctrine is now the freedom and autonomy of an individual to make decisions in relation to their life and death, based on the quality and subjective worth of their life, which are significantly influenced by the religious and non-religious views that the individual identifies with.

4.6 Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide

Parliament did not change the law on assisted suicide during the 2009 debate, however, the DPP issued guidelines, which were published on 25 February 2010, clarifying the circumstances in which a suspect would be prosecuted for assisted suicide. This section focuses on this policy, which was published in response to the House of Lords' decision in the *Purdy* case. It concerned a woman with progressive multiple sclerosis that sought clarity on the factors that the DPP takes into account when prosecuting individuals under section 2(1) of the 1961 Act. The House of Lords required the DPP to publish guidance on the prosecution policy in relation to individuals who assist or encourage another to commit suicide.[529] The DPP then published interim guidance and launched a public consultation on 23 September 2009.[530] Consistently with section 2(4) of the 1961 Act, it applies to cases of assisting or encouraging another individual's suicide. Section 2(4) must be read alongside the Code for Crown Prosecutors.[531] The Code follows a two-stage test: the Evidential Stage and the Public Interest Stage.[532]

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[529] *Purdy* (n 56) [41], [52]-[53]. Also see: Dave Powell, 'Assisting suicide and the discretion to prosecute revisited' (2009) 73(6) J Crim L 475, 477; James Chamlers, 'Assisted suicide: jurisdiction and discretion' (2010) Edin L R 295, 297-298; and Jonathan Dickens, *Social Work, Law and Ethics* (Routledge 2013) 80

[530] Keown, *Law and Ethics of Medicine* (n 226) 303

[531] For greater discussion on the two-stage test under The Code, refer to: David Calvert-Smith and Stephen O'Doherty, 'Legislative technique and human rights: a response' (2003) Crim L R 384, 385

[532] David Ormerod, *Blackstone's Criminal Practice 2012* (OUP 2011) 1268; and Penney Lewis, 'The Limits of Autonomy: Law at the End of Life in England and Wales' in Negri (n 24) 241

In order to satisfy the Evidential Stage, it must be proved that "the victim committed or attempted to commit suicide and the suspect aided, abetted, counselled or procured the suicide or the attempt".[533] It is clear within the policy that the victim must be the one who takes their own life.[534] The suspect must not, under any circumstance, physically assist the victim in committing suicide. Cohen summarises the position as follows:

> The policy clarifies that the victim must be the sole actor in taking his own life. If the assister causes the victim's death by administering the lethal procedure, the assister will have committed murder or manslaughter, regardless of the victim's genuine desire to die.[535]

Once the DPP establishes that there is significant evidence, which satisfies the Evidential Stage, the case is then evaluated under the Public Interest Stage using the factors set out in the policy. The policy sets out 16 factors specifying when it is in the public interest to prosecute a suspect who encouraged or assisted another individual to commit suicide; such as the age, voluntariness, mental capacity of the victim, and whether the suspect was paid by the victim, whether they had a history of violence, or gave assistance or encouragement to more than one victim to name a few.[536] The policy sets out a further 6 factors explaining when prosecution is not in the public interest; such as the suspect being wholly motivated by compassion and reluctance to assist the victim, whether the suspect sought to dissuade the victim and subsequently reported the victim's suicide to the police and fully cooperated with them in their enquiries.[537]

It is worth noting here that following the consultation exercise on the interim policy, the DPP received around 5000 responses.[538] A very small minority of all the respondents to the public consultation on the interim policy included the view of religion on assisted suicide. For example, 9% of the relevant respondents stated that, "All life is sacred and we must

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[533] DPP Policy (n 517)
[534] ibid
[535] Cohen (n 471) 713
[536] DPP Policy (n 517)
[537] ibid
[538] CPS, 'Assisted Suicide Consultation: Annex A – Summary of Respondents' <http://www.cps.gov.uk/consultations/as_responses_annex_a.html> accessed 21 May 2017

preserve the sanctity of life".[539] One of these respondents was the Mission and Public Affairs Division (MPAD) of the Church of England who reiterated that the Church remains opposed to any change in the law on assisted suicide.[540] The MPAD stated that the DPP policy does not change the law and merely brings "clarity in the application of the law prohibiting assisted suicide".[541] The other respondents, around 447 of the 5000 respondents, opined that the sanctity of life was a significant issue in the debate on assisted suicide and needed to be identified and included when deciding in favour of or against prosecution.[542] In contrast, 7% of the total number of respondents, viewed autonomy as a significant issue within the assisted suicide debate.[543] These 339 respondents agreed to the following statements: "Every person should have the right to make decisions about their own life. A change in the law is required; no cases involving assisted suicide should be prosecuted".[544]

Furthermore, the MPAD made a statement after the publication of the final policy:

> Assisted suicide, as well as being a crime, is always also a tragedy… the most compassionate course is to provide love, support and the best possible medical and nursing care, not to acquiesce in requests for assisted suicide… Protecting the vulnerable, ensuring that every life is appreciated as being valuable… outweighs arguments in favour of individual choice… We believe that [the publication of the DPP policy] ought to bring to an end to calls for a change in the law. Any further

[539] CPS, 'Assisted Suicide Consultation: Public Consultation Exercise on the Interim Policy for Prosecutors in respect of Cases of Assisted Suicide: Summary of Responses' (February 2010) <https://www.cps.gov.uk/consultations/as_responses.pdf> accessed 21 May 2017
[540] MPAD of the Church of England, 'Response to the Director of Public Prosecutions' Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide' (25 February 2010) <http://www.churchofengland.org/media-centre/news/2010/02/pr2710.aspx> accessed 21 May 2017. The Church of England seems to be the only respondent. The Islamic community, especially organisations such as the MCB did not respond to the interim or final DPP policy.
[541] CPS, 'Response to the DPP Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide' (25 February 2010) <http://www.churchofengland.org/media-centre/news/2010/02/pr2710.aspx> accessed 21 May 2017
[542] CPS, 'Assisted Suicide consultation Summary of Responses » Question 9: issues identified' <http://www.cps.gov.uk/consultations/as_responses_question_9.html> accessed 21 May 2017
[543] ibid
[544] ibid

> calls for change would be ideologically driven and, if heeded, would change fundamentally and irrevocably the moral status of our society and would make this a less compassionate and caring land in which to live and die.[545]

Firstly, the Church of England is not using religious vocabulary. There is no mention of the sanctity of life doctrine, being a religious value or mention of religious text.[546] This may be an attempt to relate to individuals who practice the Christian faith, non-Church going parishioners (individuals who identify with the Christian faith but do not practice it) and even individuals who hold other religious or non-religious beliefs. Secondly, even though autonomy is the most important value that influences the debate on assisted suicide, the Church does not view it as a significant value as it is outweighed by the need to protect vulnerable individuals who may be given a premature death. Lastly, the Church opined that any momentum to change the law, subsequent to the DPP policy, would be "ideologically driven" based on a system of ideas concerning economic, political and social theory rather than being driven by religious principles.[547] Thus, demonstrating a preference for non-religious principles and the secular system of thought. For example, even the term 'moral', in relation to the societal landscape, is used with a secular undertone in the Church of England's statement.

After the final policy was published, the Catholic Archbishop of Cardiff also commented:

> In issuing these Guidelines it is clear that the DPP has listened very carefully to, and taken account of, the many representations made to him during the consultation… the new Guidelines, which now give greater protection to some of the most vulnerable people in our society. There is also a greater stress on the fact that the law has not changed, that all cases will be investigated and that no one is being given immunity from prosecution under these Guidelines.[548]

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[545] MPAD (n 540)
[546] For a detailed discussion on the Church of England's view on assisted suicide and the role of the sanctity of life doctrine refer to ch 2.
[547] MPADs (n 540)
[548] The Most Reverend Peter Smith Archbishop of Cardiff Chair of the Bishops' Conference of England and Wales Department of Responsibility and Citizenship,

The comments were made in general, non-religious terms. Although it may have been implied, there was no religious terminology used nor was there a mention of the doctrine of sanctity of life. The Church of England and Wales were concerned with the need to protect vulnerable, ill and disabled individuals. The Church of England even felt that the need to protect vulnerable individuals overrode the right to autonomy, on which individuals seek an assisted suicide. Both the Church of England and Catholic Churches also reiterated that the DPP guidelines merely clarified the law and did not change it. It is concluded here that there is a clear shift in attitudes to this debate, which is reflected by the shift in language of religious and Parliamentary members from a religious to a secular approach.

The current position of the law on assisted suicide in England can be encapsulated as follows. The DPP policy does not change or repeal the Suicide Act of 1961.[549] It does not guarantee a suspect immunity from prosecution for assisting the victim to commit suicide. The policy does, however, attempt to clarify whether or not prosecuting a suspect would be in the public interest. To this end, the policy sets out 16 factors that influence the decision of the DPP to favour prosecuting the suspect and a further list of 6 factors telling against prosecution. Regardless of whether the suicide occurs, the policy applies to assistance or encouragement provided by a suspect – wholly or partly – in England and Wales.

4.7 Conclusion

Suicide was a crime in England for centuries; however, the social and legal landscape began changing when the medical reasons behind suicide attempts were established, and society developed a more compassionate attitude towards individuals, and their families, who tried to or ended their lives. Even though the law was changed to reflect this compassionate attitude, there was a significant attachment of religion with this area of the

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'Publication of the DPP Assisted Suicide Guidelines: Comment from the Archbishop of Cardiff' (25 February 2010) <www.catholic-ew.org.uk/Home/News/2010/Publication-of-the-DPP-Assisted-Suicide-Guidelines-Comment-from-the-Archbishop-of-Cardiff/(language)/eng-GB> accessed 21 May 2017

[549] In common law systems, like England, any new amendments are adjunct to the previous law and tend to supplement it or codify pre-existing case law (rather than superseding, replacing or abolishing it as in a civil law system): John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (2nd edn, Stanford University Press 1985) 7, 27, 32

law. Thus, it was not until 1961 that suicide was decriminalised. This relationship of religion with the law on assisted suicide was reflected in the extensive inclusion of religion, namely the Church of England, in the Parliamentary debates during that time. Furthermore, the lack of inclusion of minority groups, particularly the Islamic faith, can be attributed to the fact that, as established in the previous chapter, even though minority subcultures were present in the country at the time, their presence was not well-established.

By decriminalising suicide, Parliament or society was not accepting or encouraging suicide neither was it devaluing the doctrine of sanctity of life. In an attempt to protect the inviolability of this doctrine, which is rooted in Christianity, the criminal embargo on assisted suicide was retained. The historic connection of the Christian faith with the law was reflected in the Parliamentary debates, which continued to view the taking of life against its religious tenets.

Over the years, there was an increasing detachment of religion from societal activities; and medical and technological advancements led to a shift in social and governmental approach that led to an interest in reforming the law on this area. However, this interest to review the law did not take place until 48 years later, in 2009, due to secular values beginning to fuel the debate on assisted suicide, particularly the notion of autonomy gaining ground. To this end, section 2(1) of the Suicide Act of 1961, which codified the offence of "assisting, aiding or abetting" suicide, was amended to one of "encouraging or assisting" by section 59 of the Coroners and Justice Act 2009.

Even though the criminal embargo on assisted suicide continued to protect the doctrine of sanctity or value of life, the main reason behind the retention of this ban, in 2009, is that there is a significant amount of public interest in prosecuting an individual who is willing to maliciously assist or encourage another person to take their life. Furthermore, the main reason behind this amendment was the need to protect vulnerable people from being influenced by modern technology, namely the Internet, into committing suicide. This amendment updates and simplifies the language and makes the public aware that the law applies to both online and offline activities.

The shift in approach towards the issue of assisted suicide was established in this chapter. For example, the Parliamentary debates revolved around the need to protect vulnerable individuals from malicious intent, coercion and pressure instead of the need to include the views of various religions on this issue. There is clearly a decrease in inclusion of religious views in the debate on assisted suicide, which is increasingly secular and not derived from any religion. This shift in approach is evident in the language, during the Parliamentary debates, which viewed ending life as a "mortal sin" in 1961 compared to it being "entirely a matter of conscience" in 2009. This shift in language and approach to this issue will be discussed further in Chapter Six. Clearly, the approach to this area of the law is largely non-religious and temporal.

This shift is even reflected in the reaction of religious groups, namely the Church of England, to the section 59 amendment. The Church's statement was drafted in non-religious language without any ecclesiastical references. A clear secular approach was taken in order to relate its stance to every citizen in society and not just individuals who identify with the Christian faith. Even the understanding of the doctrine of sanctity of life has shifted from having a religious piety attached to it to having an inviolable and intrinsic value. However, as argued in Chapter Two, the contemporary understanding of this doctrine is that it has a subjective value, takes on quality of life considerations and allows individuals the freedom to make decisions in relation to their life and death. This freedom to choose the time and manner of death is guaranteed under Article 8 of the European Convention on Human Rights and is discussed in the next chapter.

Chapter 5. The impact of human rights law on reforming assisted suicide law in multicultural English society

5.1 Introduction

This chapter analyses the influence human rights law has on furthering the reform of the law on assisted suicide in England. It also extracts the values that influence domestic and Strasbourg human rights jurisprudence on this area of the law. The aim of human rights law is to protect, safeguard and develop the dignity and freedoms of every citizen. It should be noted here that only certain provisions under human rights law, which have been invoked in assisted suicide cases and are directly linked to the religious and secular values that inform the human rights debate on assisted suicide, are being analysed in this chapter.

This chapter begins with an analysis of the Strasbourg jurisprudence on Article 2, which protects the right to life that is based on the doctrine of sanctity of life and is one of the central principles that inform the jurisprudence and debate on the law on assisted suicide. It establishes that since the main aim of Article 2 is to protect life, it cannot be extended to include an antithetical right to die. However, Strasbourg jurisprudence creates an opening, under Article 8, which has become a very powerful Convention right, to allow individuals to choose the time and manner of the death. To develop this discussion, this chapter examines the domestic and Strasbourg jurisprudence on Article 8 in order to understand how the right to self-determination emanates from this Convention right; and evaluates whether the DPP's refusal to provide immunity from prosecution or the blanket ban on assisted suicide, contained in section 2 of the Suicide Act of 1961, breach an individual's Article 8 rights. The *Pretty* case is examined in significant detail as it was the first of its kind to reach the Strasbourg court and was applied to various subsequent Strasbourg and domestic cases, such as *Koch* and *Purdy* and *Nicklinson* respectively.

The previous chapters have extracted the values and principles that guide the law on the issue of assisted suicide namely the doctrine of sanctity of life, which is historically a religious principle, on which the opposition to reform is based; and the notion of autonomy, which is primarily a non-religious value and grounded in human rights law, on which a reform of the law on assisted suicide can be based. This chapter also examines the notion of

dignity and whether the loss of dignity that disabled or terminally ill patients feel – which causes pain and suffering and the dependency on others – amounts to an infringement of Article 3. This extraction and analysis of these competing values, in the human rights context, forms the original contribution of this thesis. Lastly, this chapter inquires, and forms part of the original contribution, whether these competing values are protected under Article 9; and if a lack of lawful option of assisted suicide breaches an individual's freedom of thought, conscience and religion, if they believe in the notion of assisted suicide for themselves. *Pretty* was the only case that invoked Article 9 in this context and is given particular importance throughout this chapter.

5.2 The intrinsic link between Article 2 and the doctrine of sanctity of life

This section examines the scope of Article 2 in order to determine whether it was formulated to preserve life, whether Strasbourg jurisprudence gives consideration to religious tenets such as the doctrine of sanctity of life and if it can be extended to provide individuals with a right to die with dignity. Article 2 provides as follows:

> (1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> (2) Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 2 is one of the most significant foundations of a democratic, pluralistic society; and must be stringently and meticulously interpreted. The Strasbourg Court has confirmed, in *Solomou v Turkey*, that Article 2 "... ranks as one of the most fundamental provisions in the Convention".[550] It imposes both a negative and positive obligation on Member States.[551]

[550] *Solomou and Others v Turkey* [2008] App no 36832/97, para 63
[551] Philip Leach, *Taking a Case to the European Court of Human Rights* (OUP 2011) 184

The negative obligation imposes a duty on Member States not to intentionally or even negligently take life.[552] The positive obligation imposes a duty to safeguard life.[553] Even though the Strasbourg Court continues to maintain, as in *Osman v UK*,[554] that Member States must take reasonable steps to avoid a real and immediate risk to life of which they have (or ought to have) knowledge;[555] the obligation to not take life is not unlimited or absolute.[556] Article 2(2) lists a number of exceptions to the right to life.[557]

English courts have maintained that the purpose of Article 2 is to protect the sanctity of life (which, as established in Chapter Two, can have either a religious or non-religious underpinning) and should not be extended to allow assisted suicide. Furthermore, as Chapter Two established, the sanctity of life is a doctrine that emanates from the Christian religion, which has deep-seated historical ties with England. Thus, discussion around this doctrine can extensively be found in English courts and rarely in Strasbourg jurisprudence. For example, Lord Bingham in *Pretty v DPP* – which concerned a woman with motor neuron disease who claimed that section 2(1) of the Suicide Act 1961 was incompatible with the Convention and that the DPP's refusal to grant immunity to her husband if he assisted her to travel to Dignitas in Switzerland to end her life was an infringement of her Convention rights[558] – opined that:

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[552] ibid 220
[553] ibid 184; and Brid Moriarty and Eva Massa (eds), *Human Rights Law* (4th edn, OUP 2012) 220
[554] This case concerned the police unable to avoid an obsessed male teacher killing a male pupil.
[555] *Osman v UK* (2000) 29 EHRR 245
[556] Susan Breau, 'The Right to Life of Detainees in Armed Conflict' in Jon Yorke (ed), *The Right to Life and the Value of Life: Orientations in Law, Politics and Ethics* (Ashgate 2010) 155; and Wicks, 'Terminating Life and Human Rights' (n 226) 199
[557] Bev Clucas and Scott Davidson, 'Taking Human Rights Seriously: UK and New Zealand Perspectives on Judicial Interpretation and Ideologies' in Roger Brownsword (ed), *Global Governance and the Quest for Justice: Volume 4* (Hart 2004) 158; Breau (n 556) 155; and Fiona Leverick, *Killing in Self-Defence* (OUP 2006) 179
[558] *Pretty v UK* (n 57) para 14(11)(5)

> Whatever the benefits which, in the view of many, attach to voluntary euthanasia, suicide, physician-assisted suicide and suicide assisted without the intervention of a physician, these are not benefits which derive protection from an article framed to protect the sanctity of life.[559]

The main thrust of Lord Bingham's view is valid in the sense that Article 2 is framed to protect the doctrine of sanctity of life and any actions that contravene this doctrine cannot emanate from this Convention right. Thus, a "right to die" would be antithetical to its purpose. However, this view does not take into consideration that the doctrine of sanctity of life is not absolute;[560] "and has changed over time, for example, as in Britain, attempted suicide is no longer a criminal offence"[561] along with the right to refuse treatment, which are all exceptions to this doctrine and allowing assisted suicide would only add to this list of exceptions. In contrast, however, Wicks argues that:

> Article 2 does not say that everyone's right to life must be protected by law until the continuation of that life is no longer in the person's own interests, and indeed such a restriction on the right to life would imply the rejection of the sanctity of life principle by its assumption that death is sometimes preferable to life… The prohibition on the intentional deprivation of life (in Article 2 ECHR) has been stretched to breaking point with the judicial acceptance of the withdrawal of [artificial nutrition and hydration] from patients in [persistent vegetative state] when the clear intention is to cause death.[562]

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[559] *Pretty* (n 57) [6]
[560] Mandy Shircore and Malcolm Barrett, 'Uncomfortable Bedfellows: Queensland Criminal Law and Patients' Rights to Refuse Life-Sustaining Treatment' (2009) James Cook University Law Review (2009) 16(1) 90, 103 ("The House of Lords recognised, however, that the doctrine of sanctity of life is not absolute; it yields in certain circumstances to the right to self determination or autonomy").
[561] Karen Dyer, 'Raising our heads above the parapet? Societal attitudes to assisted suicide and consideration of the need for law reform in England and Wales' (2009) 21 The Denning law Journal 27, 39
[562] Elizabeth Wicks, *Human Rights and Healthcare* (Hart 2007) 247-251. Also see: *Pretty* (n 57) [109]-[111] (Lord Hobhouse of Woodborough).

The main thrust of Wicks' argument is that domestic courts hold that Article 2 emanates from the doctrine of sanctity of life and, thus, seek to preserve it regardless of the justifications provided by individuals want to end it. Furthermore, Wicks criticises that allowing individuals to assisted the suicide of another will have an implication on the duty of the State to take steps to safeguard life. Even though Wicks criticises the court for allowing withdrawal of artificial food and hydration, Wicks does not take into consideration that judicial acceptance of patients being allowed to withdraw artificial food and hydration is not the only exception into the doctrine of sanctity of life in English law. Decriminalising suicide in 1961,[563] which is discussed in the previous chapter, was another exception into English law that has always sought to protect the doctrine of sanctity of life. Furthermore, the judicial acceptance based on distinctions between withholding or removing food and hydration as being an omission and act, respectively (and not euthanasia, which was discussed in Section 1.3) also amounts to an exception to the aim of preserving the doctrine of sanctity of life under English law.[564] Thus, allowing assisted suicide would only add to the list of exceptions in English law that are based on the doctrine of sanctity of life.[565]

In *Pretty*, the House of Lords, rejected her application on the basis that assisting the suicide of another is criminal under section 2(1) of the Suicide Act 1961.[566] The House also noted that the right to life under Article 2 was formulated to protect against the intentional taking of life and preserve the doctrine of sanctity of life. To this end, Lord Steyn opined that:

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[563] For a detailed discussion on the decriminalisation of suicide in 1961, refer to ch 4.
[564] Rebecca Louise Blackburn, 'Ending One's Own Life: Unjustifiable Injustice' (PhD thesis, Durham University 2011) 70
[565] ibid 78
[566] For the media response to the Pretty case: Staff and Agencies, 'Diane Pretty loses right to die case' *The Guardian* (29 April 2002) <http://www.theguardian.com/society/2002/apr/29/health.medicineandhealth> accessed 21 May 2017. The Guardian uses language that clearly supports the notion of assisted suicide and largely quotes supporters of the movement to reform the law. Also see: BBC News, 'Diane Pretty: The Fight Continues' (29 November 2001) <http://news.bbc.co.uk/1/hi/health/1682321.stm> accessed 21 May 2017. The BBC supports the movement to reform the law, and uses emotive language in its report. For example, when describing Mrs Pretty's condition, the report states, "The disease robs the patient of the ability to move muscles – including, eventually, those controlling speech and breathing".

> The purpose of Article 2(1) is clear. It enunciates the principle of the sanctity of life and provides a guarantee that no individual "shall be deprived of life" by means of intentional human intervention… Nothing in the article or the jurisprudence of the European Court of Human Rights can assist Mrs Pretty's case on this article… So radical a step [of assisted suicide], infringing the sanctity of life principle, would have required far more explicit wording.[567]

It should be noted here that Lord Steyn further stated that the notion that the doctrine of sanctity of life should always be preserved by retaining the criminal embargo on assisted suicide, is shared by different religions within a pluralistic society:

> There is a conviction that human life is sacred and that the corollary is that euthanasia and assisted suicide are always wrong. This view is supported by the Roman Catholic Church, Islam and other religions. There is also a secular view, shared sometimes by atheists and agnostics, that human life is sacred.[568]

The main thrust of Lord Steyn's argument is that the doctrine of sanctity of life ought to be protected as there are many religious communities and even non-religious groups and individuals who oppose a change in the law based on their religious beliefs or non-religious viewpoints. However, this argument does not take into consideration that there is a significant majority of individuals, from non-religious groups and even religious communities, who support a change in the law on assisted suicide. For example, a British Social Attitudes Survey, which was published in 2010, calculated that "71% of religious and 92% non-religious people believe that a doctor should be allowed to end the life of a patient with an incurable disease".[569] Similar polls have been conducted in recent years,

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[567] *Pretty* (n 57) [59]-[60]

[568] *Pretty* (n 57) [54]. Lord Steyn further stated, "On the other side, there are many millions who do not hold these beliefs. For many the personal autonomy of individuals is predominant. They would argue that it is the moral right of individuals to have a say over the time and manner of their death". For a detailed discussion on autonomy see ch 2 and 5; and for a discussion of the relationship between autonomy and human rights, refer to ch 5.

[569] British Humanist Association, 'Religion and belief: some surveys and statistics' <https://humanism.org.uk/campaigns/religion-and-belief-some-surveys-and-statistics/> accessed 21 May 2017

such as a YouGov poll in 2013, which calculated that 62% of individuals who identify with a religion support the notion of assisted suicide. In May 2014, a YouGov poll of 4500 individuals calculated that 73% of respondents supported Lord Falconer's proposals, which are discussed in Chapter Six, to legalise assisted suicide for terminally ill individuals and only 13% were against a change in the law.[570] Similarly, in a 2015 Populus poll of 5000 people, where 82% of the respondents in favour of Lord Falconer's Assisted Dying Bill, which is discussed in Chapter Six.[571] These polls demonstrate a favourable shift in attitude towards the notion of assisted suicide and have demonstrated that this support to change the law has been consistent and unwavering. Even though the values largely remain the same, such as the doctrine of sanctity of life, the meaning attached to these values and terms has significantly changed. With the constant and unswerving public support for reform and the considerable public, media and judicial attention given to the issue of assisted suicide, it is the ideal time to change the outdated law on assisted suicide.[572]

Williams argues that "It is true that the predominant spirit borne by the Convention at its inception, when the 'right to life' was asserted, no doubt focused upon the notion of preservation of life… Yet a more global, or inclusive, notion of the right to life might very well include some idea of a right to die".[573] Even though the inceptive aim of Article 2 was to preserve life, in a multicultural society, with a number of varying opinions and beliefs, which all need to be included and protected, and in light of these numerous polls, which demonstrate an overwhelming amount of public support to change the law on assisted

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[570] YouGov, 'YouGov/Dignity in Dying Survey Results' (May 2014) <d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/63mety3ekh/DignityinDying_Results_140521_AssistedDying.pdf> accessed 21 May 2017

[571] Populus, 'Dignity in Dying Poll' (2015) <www.populus.co.uk/wp-content/uploads/2015/12/DIGNITY-IN-DYING-Populus-poll-March-2015-data-tables-with-full-party-crossbreaks.compressed.pdf> accessed 21 May 2017

[572] For greater discussion on the historic and modern attempts to reform the law, see: ch 6.

[573] Williams (n 149) 185. The idea of the the Convention as a 'living instrument', which emerged from Strasbourg's decision in *Tyrer v UK* App no 5856/72 (ECHR, 25 April 1978), allows the freedoms and rights contained within the Convention to be interpreted and applied in an evolving, continually adapting and changing manner over time. For a greater discussion on the living instrument principle: Philip Plowden and Kevin Kerrigan, *Advocacy and Human Rights Act* (Cavendish, 2002) 26-27; and Clotilde Pegorier, *Ethnic Cleansing: A Legal Qualification* (Routledge 2013) 29.

suicide, Article 2 ought to be viewed as a Convention right that could be extended to include a right to end an undignified life.

5.2.1 Does Article 2 provide a right to die?

After having exhausted all domestic remedies, Mrs Pretty took her claim to the Strasbourg Court who handed down a decision on the 29th of April 2002.[574] This was the first case where the Strasbourg Court adjudicated on the relationship between the right to life under Article 2 and ending life through an assisted death, which is examined in this section.[575] Mrs Pretty submitted that Article 2 protected the right to choose whether or not to carry on living and included a right to die in order to "… avoid inevitable suffering and indignity as the corollary of the right to life".[576] She also argued that allowing assisted suicide "would not be in conflict with Article 2… otherwise those countries in which assisted suicide was not unlawful would be in breach of this provision".[577]

The Strasbourg Court held that it was not persuaded that "the right to life" guaranteed in Article 2 could be interpreted as involving a negative aspect on the basis that:

> Article 2 cannot, without a distortion of language, be interpreted as conferring… a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life.[578]

The Strasbourg Court explicitly held that "… no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2".[579] Since such a right does not exist, the United Kingdom was not in breach of its Article 2

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[574] *Pretty v UK* (n 57)
[575] It has subsequently adjudicated on this matter in various cases such as *Haas v Switzerland* (2011) App no 31322/07 (ECtHR, 20 January 2011); *Koch v Germany* (2012) App no 497/09 (ECtHR, 19 July 2012); *Gross v Switzerland* (2014) App no 67810/10 (ECtHR, 14 May 2013); and *Lambert and Others v France* (2015) App no 46043/14 (ECtHR, 24 June 2014).
[576] *Pretty v UK* (n 57) para 35
[577] ibid para 35
[578] ibid para 39
[579] ibid para 40

obligations by failing to decriminalise assisted suicide.[580] Mrs Pretty's argument was completely antithetical to the purpose of Article 2. The decision of the Court and the formulation of Article 2 sought to preserve life,[581] except in very limited circumstances as listed in Article 2(2), and to uphold the sanctity and value of life.[582]

It is submitted here that the judgment of the Strasbourg Court indicates that since the right to die is "diametrically opposite"[583] to the right to life, it simply does not exist.[584] Neither could Article 2 be extended to grant a right to die.[585] To this end, Ovey et al note that Article 2 cannot be extended to allow a right to die or assisted suicide and that "There is little doubt that other provisions of the Convention are better suited to arguments about legalized assisted dying [such as Article 8] ";[586] since the inceptive aim of Article 2 is to protect life and, by extension, the doctrine of sanctity of life. Even though the Strasbourg Court rarely mentions the doctrine of sanctity of life, the main aim of Article 2 is to preserve this doctrine,[587] which is formulated in a way to prevent the unsanctioned, unwanted or premature ending of life,[588] and contains within it the notion that human life has irreducible, equal and infinite value.[589] To this end, the Strasbourg Court explained that:

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[580] ibid para 41. Also see: Michael Mandelstam, *Community Care Practice and the Law* (4th edn, Jessica Kingsley Publishers 2009) 135

[581] Keown, *Euthanasia, Ethics and Public Policy* (n 10) 283; and Clucas and Davidson (n 557) 158

[582] Richard Huxtable, 'Denying Life: Sanctity of Life Doctrine in English Law' (2002) 25(3) Retfærd 60-81

[583] John Keown, 'European Court of Human Rights: Death in Strasbourg-assisted suicide, Pretty case and ECHR' (2003) Int'l J Cont L 722, 727

[584] Christina Cerna, 'The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights' in Chiara Giorgetti (ed), *The Rules, Practice, and Jurisprudence of International Courts and Tribunals* (MNP 2012) 337; Jonathan Herring, *Medical Law* (OUP 2011) 222; and Dinah Shelton and Paolo Carozza, *Regional Protection of Human Rights* (OUP 2013) 526

[585] Aurora Polmer, *The Law and Ethics of Medical Research: International Bioethics and Human Rights*, (Cavendish 2005) 108. Also see: Wicks, *Right to Life* (n 245) 76

[586] Bernadette Rainey et al, *Jacobs, White and Ovey: ECHR* (6th edn, OUP 2014) 168

[587] Shaun Pattinson, *Medical Law and Ethics* (Sweet and Maxwell 2006) 490

[588] McLean, *Assisted Dying* (n 1) 13

[589] Simon Woods, *Deaths Dominion: Ethics At The End Of Life* (Open University Press 2007) 11

> The very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life protected under the Convention, the Court considers that it is under Article 8 that notions of the quality of life take on significance… many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity... [The Court acknowledged] the principle of personal autonomy in the sense of the right to make choices about one's own body applied to deciding on ending one's life based on our own assessment of our quality of life.[590]

It is submitted that there seems to be flexibility on allowing assisted suicide. On one hand, the Strasbourg Court holds the notion of sanctity of life to be so significant that assisted suicide cannot be allowed under Article 2. However, on the other hand, it seems to accept that if human dignity is so eroded and degraded, there may be an opening of the possibility, under Article 8 of the Convention, which is discussed in the next section, depending on the individual circumstances of the case, for assisted suicide to be allowed. It is further submitted that assisted suicide may be acceptable, under definite circumstances – with a number of safeguards to ensure there is no coercion, pressure or vulnerability such as a temporary mental health illness that is leading the individual to make such a request – where the dignity of that individual is weak, deteriorated and irreparable, and, thus, the quality of their life is so poor that an individual consistently and conscientiously views it to have no value.

It is reiterated here that the sanctity, or value, of life is a very subjective issue: it depends on the quality of life of every individual, especially for those who have severe disabilities and terminal illnesses that causes them physical and mental pain and suffering.[591] Where the utter humiliation, pain and suffering are very severe, the loss of dignity is irreversible and not repairable and, under a number of safeguards, can be separated from mental illness, it can be ensured that there is no pressure or coercion and other options have been fully

[590] *Pretty v UK* (n 57) paras 65-66
[591] Katri Lohmus, *Caring Autonomy* (CUP 2015) 40. Lohmus argues that, "autonomy… is based on a subjective (quality of life) valuation of life, rather than on some objective set of ideals (sanctity of life)".

explored, such as palliative care, individuals ought to have the right to receive an assisted suicide. As the Strasbourg Court has decided, such a right cannot emanate from Article 2. However, it seemed to have opened up the possibility of accepting assisted suicide under Article 8. In recent years, the Strasbourg Court has further clarified the relationship between Articles 2 and 8, in relation to end-of-life decisions:

> [Article 2] obliges the national authorities to prevent an individual from taking his or her own life if the decision has not been taken freely and with full understanding of what is involved".[592]

The Strasbourg Court opined that there is a need for end-of-life decisions to be free, informed and autonomous. This notion of autonomy emanates from Article 8, which has now become a very powerful Convention right. The next section of this chapter analyses the scope and working of Article 8 in order to determine how the principle of autonomy emanates from it and whether it provides individuals with the freedom to choose the time and manner of their death. It also examines whether a refusal to provide immunity for assistance or the blanket ban on assisted suicide are an infringement of an individual's Article 8 rights.

5.3 How the right to self-determination emanates from Article 8

Article 8 is set out in two paragraphs and provides as follows:

> (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

[592] *Haas* (n 575) para 54

Article 8 places both a negative obligation "to protect the individual against arbitrary interference by the public authorities"[593] and a positive obligation to adopt "…measures designed to secure respect for private life even in sphere of the relations of individuals between themselves".[594] Article 8 primarily provides a right to respect of private life. The Strasbourg Court has previously held that there is no exhaustive definition of the idea of private life, but it generally encompasses the right to "establish and develop relationships with other human beings".[595] The Strasbourg Court did not want to overly restrict the notion of an individual's private life to an "inner circle" in which people live their personal life.[596] Article 8 not only protects conduct in an individual's private life but also any relationships and conduct in the public sphere.[597] Article 8 has been successfully raised in order to receive protection against interference by the State and its public authorities in a wide variety of circumstances.[598] For example, a right to identity and personal development, sexual life, sexual orientation and gender identification,[599] the right to establish and flourish relationships with other individuals, every individual's physical and mental integrity and social identity are all protected activity within the scope of Article 8.[600]

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[593] *Van Kuck v Germany* (2003) 37 EHRR 5, para 70. For a detailed discussion on the negative obligation under Article 8: Alisdair Gillespie, *The English Legal System* (4th edn, OUP 2013) 180

[594] *Van Kuck* (n 593) para 70. For a detailed discussion on the positive obligation under Article 8: Helen Toner, *Partnership Rights, Free Movement and EU Law* (Hart 2004) 94; and Gerda Kleijkamp, *Family Life and Family Interests* (Kluwer 1999) 45; Brid Moriarty, Eva Massa and Anne-Marie Mooney Cotter, *Human Rights Law* (2nd edn, OUP 2007) 59; Michael Cousens, *Surveillance Law* (LexisNexis 2004) 44; and James Pennycook, 'Police Powers and Human Rights in Scotland' in Daniel Donnelly and Kenneth Scott (eds), *Policing Scotland* (Routledge 2011) 341

[595] *Neimietz v Germany* (1992) 16 EHRR 97, para 29

[596] ibid

[597] ibid

[598] Moriarty et al (n 594) 59; Cousens (n 594) 44; and Pennycook (n 594) 341

[599] The Strasbourg Court extended Article 8 to protect an individual's sexual identity and life in *Dudgeon v UK* App no 7525/76 (ECtHR, 22 October 1981); sexual orientation as in *Lustig-Prean and Beckett v UK* (2000) 29 ECHR 548; rights of transsexuals in *B v France* [1992] ECHR 40 (right to change gender or name on a birth certificate); and *Smith and Grady v UK* (1999) 29 EHRR 493 where it was held that inquiring and discharging armed forces members due to their sexual orientation constitutes a breach of their Article 8 rights.

[600] Moriarty et al (n 594) 59; Cousens (n 594) 44; and Pennycook (n 594) 341. Also see: Jill Marshall, *Personal Freedom through Human Rights Law: Autonomy, Identity & Integrity under ECHR* (MNP 2009) 49

This protected activity can be carried out in private and even public spheres as long as it does not encroach on the rights of others.[601]

The Strasbourg Court has extended Article 8 to provide for a right to self-determination in assisted suicide cases. In order to illustrate this argument, the *Pretty v UK* case must be examined in greater detail. In the context of Article 8, Mrs Pretty argued that section 2(1) of the 1961 Act interferes with her right of self-determination by prohibiting a lawful option of assisted suicide, which subsequently restricts the autonomous decisions of individuals who seek to receive an assisted suicide and infringes their right to choose the time and death – in order to avoid pain, suffering and indignity – under Article 8.[602]

Even though the text of Article 8 does not explicitly provide for such a right, the Strasbourg Court has recognised that the notion of individual autonomy is based on the freedom to choose, which is fundamental to the working of Article 8. [603] To this end, the Strasbourg Court held in this respect that:

> Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees.[604]

The Strasbourg Court recognised that Mrs Pretty was suffering due to her disease, which would cause her to further deteriorate and increase her physical pain and mental suffering, and she wanted to "…mitigate that suffering by exercising a choice to end her life with the

[601] Andrea Hopkins, 'The Interception of Communications: The Regulation of Investigatory Powers Act 2000 in Madeleine Colvin and Jonathan Cooper (eds), *Human Rights in the Investigation and Prosecution of Crime* (OUP 2009) 24; and Aalt Heringa, 'Article 8 ECHR' in JH Gerards, Aalt Willem Heringa and HL Janssen (eds), *Genetic Discrimination and Genetic Privacy in a Comparative Perspective* (Intersentia Publishers 2005) 32
[602] *Pretty v UK* (n 57) para 17
[603] Eltis (n 247)
[604] *Pretty v UK* (n 57) para 61

assistance of her husband".[605] The Court further stated that the manner in which Mrs Pretty chooses to pass the last moments of her life is part of the act of living, and that she has the right to ask for that choice to be respected.[606] Section 2(1) of the 1961 Act prevented Mrs Pretty from exercising her choice to avoid an undignified death.[607] The Strasbourg Court noted that this constituted an interference with her Article 8(1) rights.[608]

It is submitted here that the Strasbourg Court's judgment indicates that there is clearly a right to self-determination, guaranteed by Article 8(1), which allows individuals to choose the time and manner of their death. Personal autonomy is an important principle underlying the interpretation of Article 8's guarantees.[609] The notion of autonomy surrounds the decision of individuals seeking assistance to end their undignified and distressing lives.[610] However, the Court went on to decide that even though Mrs Pretty's Article 8(1) rights were engaged;[611] the government's interference may be justified, under Article 8(2), as "necessary in a democratic society" for the protection of the rights of others in society.[612] Furthermore, under the notion of margin of appreciation, Member States are under no obligation to lift criminal embargo on assisted suicide, grant immunity to individuals who assist others in ending their lives or to create measures in order to accommodate those who need assistance in ending their lives.

The Strasbourg Court concluded in *Pretty* that the right to choose how to end life is within the scope of Article 8(1). However, the criminalisation of assisted suicide is within the State's margin of appreciation (and not a disproportionate measure under Article 8(2)). Thus, the concept of margin of appreciation should be noted here. In relation to all the

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[605] ibid para 64. Also see: Kenneth Vietch, *The Jurisdiction of Medical Law* (Ashgate 2007) 116
[606] ibid
[607] *Pretty v UK* (n 57) para 65. For greater discussion on section 2(1) Suicide Act 1961 refer to ch 4.
[608] ibid para 65
[609] Douwe Korff, 'The Rights to Life: A Guide to the Implementation of Article 2 of ECHR' in *Council of Europe Human Rights Handbook No 8* (COEP 2006) 15-22
[610] Charles Foster, *Choosing Life, Choosing Death: The Tyranny of Autonomy in Medical Ethics and Law* (Hart 2009) 148
[611] *Pretty v UK* (n 57) paras 76-77. Also see: Vietch (n 605) 116; and Keown, 'New Father for the Law and Ethics of Medicine' (n 244) 303
[612] *Pretty v UK* (n 57) para 78. Also see: Vietch (n 605) 116

Articles found in the European Convention on Human Rights, with exception of Article 3,[613] the margin of appreciation is leeway provided to Member States to decide how they fulfill their obligations under the Convention, which subsequently affects the extent of protection provided by the Convention Rights.[614] This leeway is given to Member States to ensure that the Convention Rights are accessible and workable in individual States, which all have very different histories, traditions and pluralistic and diverse modern societal landscapes.[615] Allowing this leeway has the effect that the application of Convention rights is not uniform or homogenous across all the Member States.[616] Furthermore, it is this leeway that allows Member States such as the United Kingdom to retain the criminal embargo on assisted suicide in line with its deep-rooted Christian traditions and culture, yet allow Switzerland to decriminalise assisted suicide and even set up organisations, such as Dignitas, that provide patients with extensive assistance to end their life by taking lethal medication through a feeding tube, orally or intravenously.[617]

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[613] Article 4 ECHR, which prohibits slavery and forced labour is also absolute. However, it is outside the scope of this thesis and will not be discussed in greater detail: Alex Conte, *Human Rights in the Prevention and Punishment of Terrorism – Commonwealth Approaches: UK, Canada, Australia and New Zealand* (Springer 2010) 284; and Gloria Garland et al, *Ensuring access to rights for Roma and Travellers – The role of the European Court of Human Rights* (COEP 2009) 20.

[614] Steven Greer, *Margin of Appreciation: Interpretation and Discretion Under ECHR* (COEP 2000) 5

[615] Hilaire Barnett, *Constitutional and Administrative Law* (6th edn, Routledge-Cavendish 2006) 496. For discussion on margin of appreciation: James Sweeney, *The European Court of Human Rights in the Post-Cold War Era: Universality in Transition* (Routledge 2013) 32-38.

[616] Barnett (n 615) 496

[617] Margaret Pabst Battin, *Ending Life: Ethics and the Way We Die* (OUP 2005) 61. Note: Article 115 Swiss Penal Code states that assisted suicide is not unlawful if assistance is provided for unselfish or altruistic reasons. For a detailed discussion on the cultural and societal landscape, as influenced by religion, with a consideration to events such as the Reformation, denominational disputes, and civil war – that led to religion, specifically the Christian faith, being dropped from constitutional and governmental activities and Switzerland becoming a secular country: Rene Pahud De Mortanges, 'Religion and the Secular State in Switzerland' Int'l Ctr L & Religion Stud 690 <www.iclrs.org/content/blurb/files/Switzerland.1.pdf> accessed 21 May 2017; and Kenyon Mason, Graeme Laurie and Alexander McCall, *Smith, Mason and McCall Smith's Law and Medical Ethics* (9th edn, OUP 2013) 2002. For a detailed discussion on the current legal landscape on assisted suicide in Switzerland: Marc Stauch, Kay Wheat and John Tingle, *Text, Cases and Materials on Medical Law and Ethics* (4th edn, Routledge 2012) 615-616.

It should be noted here that the refusal of the Strasbourg Court to extend Article 8 to include a "right to assisted suicide" along with allowing a wide margin of appreciation in such cases, is an ill-founded approach. For example, Lord Lester argues that:

> The danger of continuing to use the standardless doctrine of the margin of appreciation is that, especially in the enlarged Council of Europe, it will become the source of a pernicious 'variable' geometry of human rights, eroding the acquis of existing jurisprudence and giving undue deference to local conditions, traditions, and practices.[618]

It is submitted that whilst allowing Member States to exercise their margin of appreciation is done in order to tolerate and respect the choices made under the varying legal systems in accordance with the idea, beliefs and principles that are valued in their respective, unique societies; allowing for such a wide margin of appreciation in assisted suicide cases and not creating a substantive right generates a significantly varying and dissimilar landscape of human rights. Nonetheless, allowing a wide margin of appreciation in relation to assisted suicide cases and not creating a right to assisted suicide could be attributed to the Strasbourg Court not wanting to act as a judicially elite institution by imposing such a right on Member States. The decision to change the law should be done by the representatives of the individual democratic Member States in accordance with their societal and cultural landscape, rather than a judicially elite institution. Thus, as discussed in the previous section, in the *Pretty* case, the Strasbourg Court left an opening under Article 8 of the possibility of allowing assisted suicide, in certain circumstances with a number of safeguards to regulate such an option, for domestic courts and institutions to interpret in a manner that conforms with the societal and judicial landscape of the individual Member State. As discussed previously, surveys and polls conducted over a number of years demonstrate a change in societal attitudes, which are now favourable towards a reform in

[618] Anthony Lester, 'Universality versus subsidiarity: a reply' (1998) 1 European Human Rights Law Review 73, 74, For further criticism on the working of the margin of appreciation: *Z v Finland* EHRR 371 (dissenting opinion of De Meyer J); and Paul Mahoney, 'Speculating on the future of the reformed European Court of Human Rights' (1999) 20 Human Rights Law Journal 1, 3.

the law and add further impetus to the momentum to reform the law.[619] This reform can only be based on the notion of autonomy guaranteed under Article 8. The string of domestic and Strasbourg cases, in which *Pretty* was subsequently applied, demonstrate the continuing expansion of the scope of Article 8 and the significance of this powerful Convention right, under which a reform of the law is possible.

5.3.1 The effect of Pretty and Article 8 as the trump card in domestic and Strasbourg cases

Mahendra argues that the *Pretty* case has very little, if any effect at all on English law in relation to assisted suicide because it did not lead to a change in the law.[620] Even though Strasbourg's decision in *Pretty* did not lead to a change in the law on assisted suicide in England, the House of Lords applied it to the *Purdy* case in 2009. This case concerned a woman, Debbie Purdy, who was suffering from multiple sclerosis, a progressive disease, which increased her pain and suffering everyday and rendered her unable to perform everyday tasks.[621] Due to her deteriorated physical condition, she was unable to commit suicide and needed her husband to assist her to go to the Dignitas Clinic in Switzerland, where assisted suicide is lawful.[622] Mrs Purdy argued that the prohibition in section 2(1) of the 1961 Act constituted a violation of her Article 8(1) rights; and this violation is not "in accordance with the law", under Article 8(2), in view of the DPP's failure to provide clear guidance on when a prosecution for assisted suicide is brought.[623]

The House of Lords unanimously agreed that Mrs Purdy's decision to seek assisted suicide was within the scope of Article 8(1).[624] Any interference with her Article 8(1) rights needed to be justified by under Article 8(2).[625] The failure of the DPP to provide clear guidance on when a prosecution for assisted suicide is brought did not fall within the qualifications

[619] The next chapter discusses the historic and modern Bills in Parliament that have attempted to reform the law in this area.
[620] Bala Mahendra, 'Still No Right to Die' (2002) 152 (7031) New Law Journal 693
[621] *Purdy* (n 56) [17]
[622] ibid [17]
[623] ibid [28]
[624] ibid [60]-[106]
[625] ibid [57]-[106]

under Article 8(2).[626] Hence, Mrs Purdy's Article 8(1) rights had been breached and this interference was not justified under Article 8(2).[627] To this end, Baroness Hale stated that "The need for more precise guidelines governing the prosecution of those who may help them stems from the right to respect for their private lives protected by Article 8".[628] Finally, the House of Lords required the DPP to "promulgate an offence-specific policy identifying the facts and circumstances which he will take into account in deciding… whether or not to consent to a prosecution under section 2(1) of the 1961 Act".[629] It should be noted here that both Diane Pretty and Debbie Purdy sought to travel to Switzerland to receive an assisted death at the Dignitas clinic, with their husbands, and challenged section 2(1) of the 1961 Act. Mrs Pretty sought immunity for her husband whereas Mrs Purdy brought a judicial review seeking clarification of the law if her husband assisted her to travel to Switzerland.

The House of Lords required the DPP to publish a policy on the factors taken into account when deciding to prosecute an individual for assisting the suicide of another. The DPP, Keir Stramer QC, who published this policy in 2010, in accordance with the *Purdy* decision, stated that: "The policy does not change the law on assisted suicide. It does not open the door for euthanasia".[630] However, pressure groups, such as 'Not Dead Yet', rightly proffer that the policy was "…seeking to change the law by the back door by creating the impression that those who assist in a suicide will be immune from prosecution".[631] It is submitted here that the individuals who assisted their family members to travel to Switzerland, where assisted suicide is lawful, to end their lives were never prosecuted. The *Purdy* decision reinforces this position. This argument is supported by the fact that the second highest number of people who travel to Dignitas in Switzerland to end

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[626] ibid [57]-[106]
[627] ibid [57]-[106]
[628] ibid [67]
[629] ibid [56] (Lord Hope). For a detailed discussion on the DPP guidelines, refer to ch 4.
[630] CPS, 'Assisted Suicide' <http://www.cps.gov.uk/publications/prosecution/assisted_suicide.html> accessed 21 May 2017. For a detailed discussion on the DPP Policy on assisted suicide, refer to ch 4.
[631] Peter Saunders, 'DPP guidance on prosecutions for assisted suicide comes in for serious criticism' (Christian Medical Fellowship Blog, 19 December 2009) <http://www.cmfblog.org.uk/2009/12/19/dpp-guidance-on-prosecutions-for-assisted-suicide-comes-in-for-serious-criticism/> accessed 21 May 2017

their lives is from Great Britain. From 2002 to 2009, 134 Britons have received an assisted suicide at Dignitas.[632] A further 176 individuals travelled to Switzerland, from 2010 to 2015, to receive an assisted death at Dignitas.[633] None of the individuals, generally family members, who assisted competent patients to travel to Dignitas, in Switzerland, have been prosecuted under section 2(1) of the 1961 Act.[634] To this end, Rogers notes that, "Presently it is clear that nothing very bad awaits those who compassionately assist a competent person who wishes to die".[635] This suggests that individuals who assist another to end their life will not be prosecuted, unless they have a malicious motive.[636]

Individuals value their right to self-determination in death as much as they do in life thus, they want an option to end life in order to avoid suffering and, in most cases, a painful death. Debbie Purdy's case predominantly rested on the claim that the DPP code hindered with her right to self-determination as it was not specific and clearly defined to allow individuals to regulate their conduct and actions.[637] To this end, Greaseley argues that:

> The value of personal autonomy has become something of a trump card... the underlying premise of... *Purdy*... was that the right to privacy and self-determination entails the right to end one's own life so as to avoid intolerable or degrading forms of suffering.[638]

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[632] Simon Rogers, 'Assisted suicide statistics: the numbers Dignitas helps to die, by country' *The Guardian* (25 February 2010) <http://www.theguardian.com/news/datablog/2010/feb/25/assisted-suicide-dignitas-statistics> accessed 21 May 2017

[633] Dignitas Clinic, 'Accompanied Suicides Per Year and residence' <http://dignitas.ch/images/stories/pdf/statistik-ftb-jahr-wohnsitz-1998-2015.pdf> accessed 21 May 2017

[634] Rogers (n 632); Michael Hirst, 'Suicide in Switzerland: Complicity in England?' [2009] Crim LR 335; and Sheila McLean, *Autonomy, Consent and the Law* (Routledge 2010) 122

[635] Jonathan Rogers, 'Assisted suicide saga – the Nicklinson episode' (2014) Arch Rev 7, 8

[636] It is rare for a guilty conviction to be handed down: one example is *R v Kevin James Howe* [2014] EWCA Crim 114.

[637] Heather Keating and Jo Bridgeman, 'Intensive Caring Responsibilities and Crimes of Compassion?' in Jo Bridgeman, Heather Keating and Craig Lind (eds), *Regulating Family Responsibilities* (Ashgate 2011) 260

[638] Kate Greaseley, '*R (Purdy) v DPP* and the Case for Wilful Blindness' (2010) 30(2) OJLS 301, 313-314

It is submitted that the application of the Strasbourg decision in *Pretty* by the House of Lords in *Purdy* clearly demonstrates that the scope of Article 8 is non-restrictive, very powerful and is interpreted by the courts to include a very wide variety of circumstances; such as the right to self-determination in order to make a judicial demand for the DPP to clarify and codify the policy they use in order to determine whether or not a defendant will be prosecuted for providing assistance to an individual to end their life. Unlike Article 2, which was formulated to protect life and has a very restricted scope; Article 8 is a very flexible Convention right. In definite circumstances and after a number of safeguards have been met, where human dignity is irreparably eroded, the quality of life is poor and the individual has an informed, autonomous and consistent wish to end their life, there is an opening under Article 8 to allow an individual to seek an assisted suicide.

5.3.2 The continuing expansion of the scope of Article 8

The Strasbourg Court is continually expanding the scope of Article 8, particularly under the notion of the right of self-determination, as was evident in *Koch v Germany*.[639] It concerned an applicant, Mr Ulrich Koch, whose late quadriplegic wife needed him to assist her to end her undignified life.[640] She requested lethal medication from the Federal Institute for Drugs and Medical Devices, Germany; who refused on the basis that domestic law did not allow the Federal Institute to provide drugs for the purpose of committing suicide as Article 8 did not encompass a right to assisted suicide.[641] This decision was appealed: but during this time, the applicant and his wife travelled to Dignitas in Switzerland where Mrs Koch received an assisted death.[642] The decision of the Federal Institute was upheld.[643] Having exhausted all domestic remedies, the applicant lodged a claim with the Strasbourg Court on the basis that the refusal of the Federal Institute violated his wife's Article 8 rights by refusing to examine the individual circumstances and the merits of the complaint.[644] The Court ruled in Koch's favour by holding that "the domestic authorities are under an

[639] *Koch* (n 575)
[640] ibid para 8
[641] ibid para 10
[642] ibid para 12
[643] ibid paras 16-20
[644] ibid para 3

obligation to examine the merits of the applicant's claim"[645] and that "there has been a violation of the applicant's right under Article 8 to see the merits of his motion examined by the courts".[646]

One of the consequences of the *Koch* decision is that the Strasbourg Court yet again refused to create a right to assisted suicide. This has been attributed to the Court attempting to not act as a judicially elite institution, choosing not to impose its decisions and allowing Member States to change the law in conformity with their distinct societal and cultural outlooks.[647] To this end, Thielborger argues that the *Koch* case shows that the Strasbourg Court:

> …generally welcome inclination not to monopolize all decision-making, but to have trust in the judicial orders of the Member States, is concerningly being developed into a denial by the Court to give its opinion even on questions of general and principled importance.[648]

However, this argument does not take into consideration that the Strasbourg Court provides extensive guidance on how Convention rights are understood and ought to be applied. It has further expanded the scope of Article 8 by shifting the obligation from the individual to the Member States. An individual is required to demonstrate that they are going through a significant amount of suffering and seek to avoid a painful death by having their autonomous decision respected by being allowed to receive assistance in their suicide. Member States must now prove that they are meeting their obligations under the Convention rights (or that their actions to the contrary are justified and within the margin of appreciation). To this end, McLean argues that the *Koch* case shifted the emphasis "…from the individual's need to prove that the State should provide assisted dying, to the need for

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[645] ibid para 71
[646] ibid para 68
[647] As ch 3 argues, due to the cultural shift in English society, with polls demonstrating that society now has a favourable approach towards this issue, it is the ideal time to change the law. For greater discussion on contemporary Bills to allow assisted suicide refer to ch 6.
[648] Pierre Thielborger, 'Judicial Passicism at the European Court of Human Rights' (2010) 19 Maastricht J Eur & Comp L 341

the State to justify its failure to do so".[649]

It is further submitted that the Court widened the scope of Article 8 even further by requiring Member States to consider the merits and individual circumstances of every case. However, it chose not to create a substantive right to assisted suicide under Article 8. This reluctance to create a new right can also be based on the fact that "the vast majority of Member States seem to attach more weight to the protection of the individual's life than to his or her right to terminate it".[650] This argument is substantiated by the fact that thirty-six Member States prohibit any form of assisted suicide and only four – namely Switzerland, Belgium, Luxembourg and the Netherlands – allow it (by permitting doctors to prescribe lethal medication to their patients to commit suicide).[651] Member States clearly attach great significance to the value of human life and seek to preserve it. The Court chose not to create a new right to assisted suicide, however, it did provide a comprehensive direction on how the Convention rights, particularly Article 8, ought to be understood and applied to cases; and shifted the obligation from the individual who needed to prove that the State ought to provide them with a regulated option of assisted suicide, to the Member States who must now justify their failure to do so. York accurately encapsulates the position of the Strasbourg Court as follows:

> …everyone's right to life must be protected by the law… only until the continuation of that life is no longer in the person's own interests… [which suggests] that death may sometimes be preferable to life… primarily [to uphold] an individual's right to self-determination within a democratic society.[652]

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[649] Sheila McLean, 'Decisions at the end of life: An attempt at rationalisation' in Catherine Stanton et al (eds), *Pioneering Healthcare Law: Essays in Honour of Margaret Brazier* (Routledge 2015)
[650] *Haas* (n 575) para 55
[651] *Koch* (n 575) para 26. Note: There is further Strasbourg jurisprudence in Swiss cases namely *Gross* (n 575) and *Haas* (n 575). However, both these cases concerned non-terminal, able-bodied applicants who sought to acquire lethal medication in order to commit suicide (and did not seek assistance in their death).
[652] Elizabeth Wicks, 'Positive and Negative Obligations under the Right to Life in English Medical Law: Letting Patients Die' in Yorke (n 556) 324

5.3.3 The recent application of Strasbourg decisions in English courts

These two competing values – namely autonomy and sanctity of life – continue to be considered in domestic courts, which apply Strasbourg's decisions in assisted suicide cases, as was the case in *Nicklinson*.[653] In the Supreme Court, Lord Neuberger, President of the Supreme Court, explained that:

> The appeals arise out of claims brought by three men, Tony Nicklinson, Paul Lamb and someone known for the purpose of these proceedings as Martin, each of whom was suffering such a distressing and undignified life that he had long wished to end it, but could not do so himself because of his acute physical incapacity.[654]

Nicklinson and Lamb argued that there ought to be a lawful option of assisted suicide in England and Martin sought further clarification on the DPP policy, particularly in relation to prosecuting an individual if they assist him in killing himself.[655]

In the Supreme Court, Lord Wilson opined that the main objection to changing the law is the notion of "sanctity (or, for those for whom that word has no meaning, the supreme value) of life which, for obvious reasons, is hard-wired into the minds of every living person".[656] The English courts continue to view the doctrine of sanctity of life, which is deep-rooted in Christian ideology, as a paramount principle, that informs the debate on assisted suicide and on which the movement to reform the law should be abandoned. It is argued in this thesis that the law can no longer be based on Christian morality. There is a clear shift in social attitudes, as discussed in Chapters Two and Three, towards the notion of sanctity of life, which historically had religious underpinnings, to a non-religious conception of this notion which is defined in terms of its intrinsic value and quality. In a multicultural society, there are competing and varying values and beliefs, which all need to be included in the public debate on assisted suicide. Many religious and non-religious

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[653] *Nicklinson* (n 58). Note: Mr Tony Nicklinson died during these proceedings and it was his wife, Jane Nicklinson, supported Mr Lamb in the Supreme Court proceedings.
[654] ibid [2]
[655] ibid [2]
[656] ibid [199]. The doctrine of sanctity of life was discussed at [357-358] as per Lord Kerr; [215] as per Lord Sumption; and [311] as per Lady Hale (who mentioned that this doctrine was grounded in Judaeo-Christian morality).

groups view human life as being sacred and attach an intrinsic value to it. However, other groups and individuals do not view life as a sacred commodity and its value is defined in terms of its quality. For example, a terminally ill patient who is in constant pain because of their disease may not view it as a life worth living but a healthy individual would view it as a valuable or sacred commodity. The value or sacredness of life is an entirely subjective matter. To this end, Draghici argues that:

> The legalisation of assisted suicide is value-neutral, in that it simply leaves the judgment on the quality of life that makes life worth living or the unwavering sanctity of life to the individual's own determination. This is already the case for the overwhelming majority of individuals, as suicide does not constitute an offence. Decriminalising compassionate assistance to die would merely amount to permitting someone who has lost full possession of their physiological integrity to choose in the same way another individual with full command of their body would do; indeed the only time the state steps in to limit individual belief in this area is when the individual loses the natural ability to dispose of themselves. The ethical unease with a change in the law quite possibly stems from the conviction that it would represent an endorsement of a particular view on life and death, whereas in fact it is not a decision on what is right or wrong, but a deferral to private opinion.[657]

The main thrust of Draghici's argument is valid in that the quality of life, and the subsequent decision to seek an assisted suicide, is a subjective issue, which is influenced by an individual's own beliefs and values. Furthermore, once a decision to end life has been made, individuals should be allowed to seek an assisted suicide without the fear that they are commissioning a crime and should be protected by extensive safeguards. Thus, there is a continued need to strike a balance between protecting the value of life and allowing individuals the autonomy to choose the time and manner of their death.[658] Moreover, the assisted suicide debate has historically been influenced by the religious doctrine of sanctity of life and with the modern "new secularism" approach requiring both religious and non-

[657] Carmen Draghici, 'The blanket ban on assisted suicide: between moral paternalism and utilitarian justice' (2015) 3 EHRLR 286, 296

[658] This debate is also surrounded by notions of compassion and human dignity in ch 6.

religious values to be continually included in this debate to ensure that there is openness, inclusion and equality; there is room for inclusion of religious beliefs in the debate. However, in order to ensure that one religion, such as the Christian faith due to its historic deep-rooted ties with England, is not given preference over another, particularly minority religions such as Islam, it is recommended that the final policies and laws on the issue are expressed in a non-religious, "value-neutral" undertone.

However, in a contemporary societal landscape, this notion of sanctity of life can no longer be treated as an absolute principle as it takes on quality of life considerations and constantly conflicts with an individual's right to self-determination. To this end, Lord Sumption explained:

> The problem in this case is that on the issue of suicide, our most fundamental moral instincts conflict. Our belief in the sanctity of life is not consistent with our belief in the dignity and autonomy of the individual in a case where the individual, being of sound mind and full capacity, has taken a rational decision to kill himself.[659]

The two main values that continue to fuel the debate on assisted suicide are the sanctity of life, which can have either a religious or non-religious underpinning, and the notion of individual autonomy. In the Supreme Court, it was held that "autonomy is an important value";[660] in making decisions and choices about the time and manner of ending life and engages Article 8.[661] It is submitted here that the majority of the Court's approach was appropriate and the most significant Convention right that continues to fuel the debate on assisted suicide is Article 8. However, in order to be able to access this right, it was continuously reiterated – particularly by Lords Neuberger[662], Mance,[663] Wilson,[664] and Kerr[665] – that the decision to commit suicide, whether assisted or not, must be "voluntary,

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[659] *Nicklinson* (n 58) [209]
[660] ibid [160]
[661] ibid [264] as per Lord Hughes
[662] ibid [56], [86], [108], [123] and [136].
[663] ibid [186]
[664] ibid [205]
[665] ibid [335], [359]

clear, settled and informed".[666] It is further submitted that this notion was rightly given great importance in the Supreme Court because it creates a high threshold that needs to be met in order to request an assisted suicide (if it is permitted by Parliament) and safeguards weak and vulnerable individuals, particularly those who are temporarily feeling unhappy or depressed. The notion of autonomy, under Article 8, is the paramount value in the debate on assisted suicide in England and the main principle on which a reform of the law could be based. It allows individuals to choose how to live life and even to end an undignified life. As long as the decision to end life is an autonomous, voluntary and informed one, the right to self-determination ought to allow individuals to commit suicide or receive assistance in doing so.

In the Supreme Court, the discussion predominantly revolved around Article 8, and applying Strasbourg jurisprudence to the appeals. For example, the Strasbourg Court has extended Article 8(1) to include "the right to decide how and when to die, and in particular the right to avoid a distressing and undignified end to life (provided that the decision is made freely)";[667] and that having a third party involved in enabling an individual to die does not prevent them from invoking Article 8(1).[668] With this Strasbourg jurisprudence as the foundation of the appeal, the Supreme Court was asked to adjudicate on whether the DPP Policy was lawful or if it interfered with the rights guaranteed under Article 8; and whether the blanket ban, under section 2 of the 1961 Act, was within the margin of appreciation or incompatible with Article 8?[669]

On the first issue, the Supreme Court unanimously agreed that it should not "involve itself with the terms of the DPP's policy on assisted suicide, albeit that [the Court] would expect the DPP to clarify her policy."[670] With regards to the second issue, that sought a declaration of incompatibility, the Court unanimously agreed that the "blanket ban" under section 2 of

[666] This requirement is included in the DPP Policy, which is discussed in in ch 4.
[667] *Nicklinson* (n 58) [29]. Also see: *Haas* (n 575), *Koch v Germany* (2013) 56 EHRR 6, paras 46 and 51, and *Gross v Switzerland* (2014) 58 EHRR 7, para 60.
[668] *Nicklinson* (n 58) [30]
[669] ibid [58-60]
[670] ibid [148]

the 1961 Act was within the margin of appreciation afforded on this issue to Member States.[671] However, Lord Neuberger pointed out that:

> …if the primacy of human life does not prevent a person committing suicide, it is difficult to see why it should prevent that person seeking assistance in committing suicide… some people with a progressive degenerative disease feel themselves forced to end their lives before they would wish to do so, rather than waiting until they are incapable of committing suicide when they need assistance (which would be their preferred option). Section 2 therefore not merely impinges adversely on the personal autonomy of some people with degenerative diseases, but actually, albeit indirectly, may serve to cut short their lives.[672]

Furthermore, in the Supreme Court, the majority of the judges held that it had the constitutional authority to make a declaration of incompatibility but it would be unsuitable for the Court to do so before letting Parliament the opportunity to debate the position in relation to this area of the law, especially in light of the Court's judgment in *Nicklinson*.[673] Adentire explains that:

> …one should conclude that by issuing a declaration, the judiciary would instead be summoning Parliament, with its legitimacy and expertise, to draw its mind to the effects that the absolute prohibition has on individuals in Mr Nicklinson's position.[674]

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[671] ibid [148]
[672] ibid [90], [96]
[673] ibid [148]. Note: Lady Hale and Lord Kerr would have preferred to grant a declaration of incompatibility immediately. Also note: The next chapter discusses the contemporary Bills in Parliament that sought to decriminalise assisted suicide.
[674] John Adenitire, 'A conscience-based human right to be "doctor death"' (2016) PL 613, 616. Also see: Draghici (n 657) 286-297, which discusses the power of the courts to make a declaration of incompatibility under Section 4 of the Human Rights Act 1998 along with the ramifications of the *Nicklinson* judgment.

This explanation suggests that Parliament would be the more suitable setting to consider the proportionality of the criminal embargo on assisted suicide and decide whether or not the current prohibition on assisted suicide ought to be altered or repealed.[675] Lord Sumption further discussed, in great detail, whether this issue was one for "Parliament or the Courts" to decide:[676]

> The question whether relaxing or qualifying the current absolute prohibition on assisted suicide would involve unacceptable risks to vulnerable people is in my view a classic example of the kind of issue which should be decided by Parliament… the issue involves a choice between two fundamental but mutually inconsistent moral values, upon which there is at present no consensus in our society. Such choices are inherently legislative in nature. The decision cannot fail to be strongly influenced by the decision-makers' personal opinions about the moral case for assisted suicide. This is entirely appropriate if the decision-makers are those who represent the community at large. It is not appropriate for professional judges. The imposition of their personal opinions on matters of this kind would lack all constitutional legitimacy.[677]

It is submitted here that the Supreme Court clearly believed that changing the law is Parliament's prerogative and they ought to let Parliament, on the basis of constitutionality, especially the House of Commons, to debate and change the law, as they are a democratically elected body that ought to impartially represent the views of their constituencies. Lord Hughes further explained that:

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[675] Rogers (n 635) 7

[676] *Nicklinson* (n 58) [230] to [235]. Also see: Lord Neuberger ([98], [104], [116] and [118]) accurately encapsulated the position of the majority of the court as follows: "…Parliament has not sought to resolve these questions through statutes, but has been content to leave them to be worked out by the courts… Parliamentary sovereignty and democratic accountability require that the legislature has the final say… it would be institutionally inappropriate at this juncture for a court to declare that section 2 is incompatible with article 8, as opposed to giving Parliament the opportunity to consider the position without a declaration… Parliament now has the opportunity to address the issue of whether section 2 should be relaxed or modified, and if so how, in the knowledge that, if it is not satisfactorily addressed, there is a real prospect that a further, and successful, application for a declaration of incompatibility may be made".

[677] ibid [230]

> A change, whether desirable or not, must be for Parliament to make. That is especially so since a change would be likely to call for an infrastructure of safeguards which a court decision could not create.[678]

Lord Hughes believed that the courts could not create a policy or Act, in the same manner as Parliament, setting out a limited set of circumstances in which assisted suicide would be accessible and a number of safeguards to protect both the individuals who seek an assisted suicide and all individuals, especially health care professionals, who would be involved in the process. It is submitted that Lord Hughes' approach was accurate since Parliament can debate the issue of reforming the law on assisted suicide in great detail and receive input from the democratically elected members in the House of Commons and experts with comprehensive and authoritative knowledge on various subjects in the House of Lords. Furthermore, they can pass laws with a number of safeguards and protections for patients, their friends and family, healthcare professionals and all the individuals who would be involved in the assisted dying process. Lastly, the principle of Parliamentary Sovereignty dictates that Parliament is the supreme legal authority in this county that creates and repeals laws. Thus, as a matter of constitutionality, Parliament ought to be the one considering reforming the law on this area.

The majority of the Supreme Court appealed to Parliament to debate and alter its stance. Lord Wilson, on the other hand, took a more stern approach, by stating that:

> Were Parliament for whatever reason, to fail satisfactorily to address the issue whether to amend the subsection to permit assistance to be given to persons in the situation of Mr Nicklinson and Mr Lamb, the issue of a fresh claim for a declaration is to be anticipated.[679]

[678] ibid [267]
[679] ibid [202]

It is argued that it seemed that Lord Wilson had a minatory manner in telling Parliament that they ought to consider the issue of reforming the law at the next opportunity, which was the Lord Falconer Bill, discussed in greater detail in Chapter Six, or the court system would do it form them.[680] To this end, Mullock accurately encapsulates that:

> …the Supreme Court's warning (that a future declaration of incompatibility might follow Parliament's failure to consider this question) has arguably had a similar impact to an actual declaration. As the warning was so timely in the light of the Assisted Dying Bill, Parliament is conveniently presented with the opportunity to do just as [the majority of the Supreme Court] has requested... the remarkable judgment in *Nicklinson* distinguishes itself from other end-of-life decisions by strongly directing Parliament to address this issue in order to avoid a future declaration of incompatibility.[681]

It is further argued that since Parliament failed to reform the law with the Lord Falconer Bill in 2015, the Supreme Court may change the law as they have the opportunity to do so.[682] The position of the Supreme Court on the issue of a declaration of incompatibility can be summarised as follows:

> In the Supreme Court, the appeal focused exclusively on the compatibility of Section 2(1) of the 1961 Act with Article 8… The majority declined to grant the declaration on the basis that it was a discretionary remedy and that Parliament was better placed to resolve the difficult moral, ethical and philosophical issues before them. However, two of the majority warned that they may be prepared to grant a

[680] Also see: Lord Mance [190] who stated that "I am also influenced in the view that this is not an appropriate time to contemplate such an investigation by, firstly, the very frequent consideration that Parliament has given to the subject over recent years and by, secondly, the knowledge that Parliament currently has before it the Assisted Dying Bill and the hope that this may also give Parliament an opportunity to consider the plight of individuals in the position of Mr Nicklinson and Mr Lamb. Parliament has to date taken a clear stance, but this will give Parliament the opportunity to confirm, alter or develop its position".

[681] Alexandra Mullock, 'The Supreme Court decision in Nicklinson: human rights, criminal wrongs and the dilemma of death' (2015) 31(1) PN 18, 24-28

[682] *Conway v Sectretary of State for Justice [2017] ECHC* 640, where the High Court did not change the law on assisted suicide.

declaration in a future case in the event that Parliament did not satisfactorily consider the matter.[683]

It is concluded that the two competing values in the debate and jurisprudence on assisted suicide continue to be the value of life and the right to self-determination. Since the value of life is a principle that needs protection, as is guaranteed under Article 2, especially to ensure that the rights and freedoms of weak and vulnerable individuals are not encroached upon, it cannot be extended to include a right to end life. However, the modern notion of value of life takes on quality of life considerations and is sometimes preferable to end life that the individual perceives to be undignified. Thus, the idea of autonomy – under the all-encompassing, powerful Article 8 – is beginning to take over as the most important principle, which is clearly reflected in domestic and Strasbourg jurisprudence, under which the autonomous decision to choose the time and manner to end an undignified life in certain, safeguarded circumstances can be respected, including one which requires assistance from another individual.

A further inquiry needs to be made here: if an individual holds particular beliefs about end-of-life issues, would not respecting that individual's autonomous decision to receive an assisted suicide constitute a breach of their right to freedom of thought, conscience and religion as protected by Article 9? The next section of this chapter analyses whether Article 9 allows individuals to hold and manifest any religious or non-religious beliefs, particularly whether this protection covers an individual's belief in assisted suicide for themselves along with the actions they take to fulfill and manifest their beliefs.

5.4 The functioning of Article 9

Europe was predominantly Christian and the countries "who drafted the European Convention on Human rights and the smaller subset who formed the EEC in the 1950s" saw themselves as a homogenous Christian community.[684] Thus, the Convention was

[683] 'Assisted dying: general prohibition on assisted suicide – absence of judicially-approved procedure for voluntary euthanasia' (2015) 5 EHRLR 546, 547

[684] Gwyneth Pitt, 'Religion or belief; aiming at the right target?' in Helen Meenan (ed), *Equality Law in an Enlarged European Union: Understanding the Article 13 Directives* (CUP 2007) 202

drafted by individuals who possessed Christian values, which is reflected in the wording of the Convention to a certain degree.[685] To this end, during the Parliamentary debate on the Human Rights Bill, Lord Lester stated that:

> …the founders of the European Convention on Human Rights were men and women imbued with religious values as well as with the secular values of the Enlightenment… the convention is steeped in Christian values. Indeed, it is part of our Christian and Judeo-Christian tradition. That is why… the guarantee of religious freedom is so ample in the convention.[686]

This religious freedom is explicitly codified in Article 9 of the Convention. It is set out in two paragraphs, and provides as follows:

> (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

[685] Note: The Convention does not provide absolute freedoms, especially in relation to the free practice of religion, as it is subject to the will of the democratic majority in a multicultural society. For a similar opinion: Malory Nye, *Multiculturalism and Minority Religions in Britain: Krishna Consciousness, Religious Freedom and the Politics of Location* (Curzon Press 2001) 228

[686] (Lord Lester of Herne Hill) HL Deb 5 Feb 1998, cols 752-753 (During the Parliamentary Debate on the Human Rights Bill)

Article 9 places two obligations on every Member State.[687] The first is a negative obligation that requires Member States, and even arms of the State or public authorities, not to interfere with the right of an individual to hold a religious or non-religious belief.[688] The second is a positive obligation that requires Member States to ensure that an individual's enjoyment of Article 9 is protected under the law, for there to be sanctions and provisions in order to prevent a breach and remedies in case there is an interference with this Convention right by the State or its public authorities or even private parties where the State fails their duty to protect.[689]

Even if a conviction does constitute a belief under Article 9(1), the right to exercise or actions taken pursuant to manifesting a belief can be restricted by the State under certain circumstances that are listed in Article 9(2).[690] The State can only interfere with an individual's enjoyment of Article 9(1) if the restriction is "prescribed by law",[691] "necessary in a democratic society",[692] and pursues one of the legitimate aims namely "interests of public safety, for the protection of public order, health or morals, or the

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[687] Yutaka Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of ECHR* (Hart 2002) 96; and Ian Leigh, 'The European Court of Human Rights and Religious Neutrality' in D'Costa et al (n 200) 46

[688] Arai-Takahashi (n 687) 96; Leigh (n 687) 46; Russell Sandberg, 'The Changing Position of Religious Minorities in English Law: The Legacy of Begum' in RD Grillo et al (eds), *Legal Practice and Cultural Diversity* (Ashgate 2009) 269; and Mohammed Aziz, 'Religious Discrimination' in Colin Harvey (ed), *Human Rights in the Community: Rights as Agents for Change* (Hart 2005) 202

[689] Arai-Takahashi (n 687) 96; and Leigh (n 687) 46

[690] Sandberg (n 688) 269; Aziz (n 688) 202; and Peter Edge, *Religion and the Law: An Introduction* (Ashgate 2006) 57

[691] For discussion on the 'Prescribed by Law' qualification: Malcolm Evans, *Religious Liberty and International Law in Europe* (CUP 1997) 319; and Mark Hill, ''Bracelets, Rings and Veils' The Accommodation of Religious Symbols in the Uniform Policies of English Schools' in Myriam Hunter-Henin (ed), *Law Religious Freedoms and Education in Europe* (Ashgate 2011) 314

[692] For discussion on 'Necessary in a Democratic Society' qualification: Peter Danchin and Lisa Forman, 'The Evolving Jurisprudence of the European Court of Human Rights and the Protection of Religious Minorities' in Peter Danchin and Elizabeth Cole (eds), *Protecting the Human Rights of Religious Minorities in Eastern Europe* (Columbia University Press 2002) 199; *Serif v Greece* (2001) 31 EHRR 20; David Feldman, *English Public Law* (OUP, 2nd edn 2009) 371; Carolyn Evans, *Freedom of Religion Under ECHR* (OUP 2002) 145; *R (Begum) v Denbigh High School* [2006] UKHL 15; *Kokkinakis v Greece* (1993) 17 EHRR 397; and Kristin Henrard, *Devising an Adequate System of Minority Protection: Individual Human Rights and the Right to Self-Determination* (Kluwer 2000) 112

protection of the rights and freedoms of others".[693] A claimant merely needs to demonstrate that there has been a violation of either their right to hold or manifest a religion or belief and the burden then falls upon the State to prove that the restriction was justified under the exceptions listed in Article 9(2).[694]

The Strasbourg Court applies the definitions of religion or belief to the applicant's individual circumstances and their conduct and actions in pursuit of manifesting a belief or religion when adjudicating on alleged Article 9 violations.[695] The next part of this section analyses the scope of Article 9 by examining the definition of belief according to the Strasbourg Court, in order to determine whether individuals' belief in assisted suicide for themselves falls within the scope of Article 9.

5.4.1 The Definition of Belief

The Strasbourg Court made it clear that a "belief" is a worldview that can be differentiated from "mere opinion";[696] and that "there must be a holding of spiritual or philosophical convictions which have an identifiable formal content.[697]

It is submitted here that the test to determine whether or not a conviction constitutes a "belief", which is protected under Article 9, is a subjective one and is entirely dependent on the individual circumstances of each case. The Strasbourg Court has accepted Islam (a case that concerned a school teacher who was refused permission to attend prayers at a mosque during work hours),[698] the Church of Scientology (a case that concerned the advertisement by the Church of Scientology and whether it was a manifestation of their religion),[699] Jehovah's Witnesses, (a case that established that proselytism was a genuine manifestation

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[693] For discussion on 'Legitimate Aim' qualification: Russell Sandberg, *Law and Religion* (CUP 2011) 86
[694] Antoine Buyse and Michael Hamilton, *Transitional Jurisprudence and ECHR: Justice, Politics and Rights* (CUP 2011) 105
[695] For discussion on definition of religion: Silvio Ferrari, 'Who needs freedom of religion?' in Frank Cranmer et al (eds), *The Confluence of Law and Religion: Interdisciplinary Reflections on the Work of Norman Doe* (CUP 2016) 180-190
[696] *Vereniging Rechtswinkels Utrecht v Netherlands* (1986) 46 DR 200
[697] *McFeekly v UK* (1981) 3 EHRR 161
[698] *Ahmad v UK* (1982) 4 EHRR 126
[699] *X and Church of Scientology v Sweden* (1976) 16 DR 68

of religion),[700] and veganism (where the Court protected a vegan from unfair treatment due to their beliefs in veganism)[701] amongst other conceptions, to amount to "beliefs" under Article 9(1).[702]

English Courts have applied this criterion to domestic case law. Lord Nicholls elaborated on the Strasbourg Court's position by explaining that:

> Everyone… is entitled to hold whatever beliefs he wishes… a belief must satisfy some modest, objective minimum requirements… The belief must be consistent with basic standards of human dignity or integrity… It must possess an adequate degree of seriousness and importance… The belief must also be coherent in the sense of being intelligible and capable of being understood… Depending on the subject matter, individuals cannot always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall, these threshold requirements should not be set at a level that would deprive minority beliefs of the protection they are intended to have under the Convention.[703]

It is submitted that the definition of belief is very narrow in order to make it easier for the courts to limit the range of views that will be protected by Article 9 and for frivolous claims to be easily disregarded.[704] However, the threshold to meet this definition is not unreasonably high to ensure that minority religious or non-religious beliefs do not get unfairly disregarded. The next section examines whether these definitions extend to safeguard an individual's belief in assisted suicide for themselves. Moreover, does this

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[700] *Kokkinakis* (n 675)
[701] *H v UK* (1993) 16 EHRR CD44
[702] For a distinction between the definitions of religion and belief: Ferrari (n 695) 180-183
[703] *R v Secretary of State for Education and Employment and others (Respondents) ex parte Williamson (Appellant) and others* [2005] UKHL 15
[704] Once the claimant's belief is held to fall within the ambit of Article 9, which did not happen in *Pretty*, then the second filter – "The Manifestation Requirement" – is applied to establish whether the State's interference in their actions to express that belief constitutes a breach. A claimant's conduct must also be an expression of the religion or belief and that the claimant must not be merely motivated or inspired by it. The leading authority on the manifestation-motivation filter is *Arrowsmith v UK* (1981) 3 EHRR 218.

belief amount to a sincerely held one with a philosophical underpinning and does it have the required "level of cogency, coherence, seriousness and importance"?[705]

5.4.2 Does Article 9 protect a person's belief in assisted suicide for themselves?

Mrs Pretty's claim in relation to Article 9, which was the first and only one of its kind in the Strasbourg Court, sought to protect her belief in assisted suicide for herself.[706] She submitted that the State had interfered with this belief by "imposing a blanket ban which allowed no consideration of [her] individual circumstances" and by their refusal to grant immunity to her husband from prosecution if he helped her end her life.[707] The Government argued that Article 9 does "not confer any general right on individuals to engage in any activities of their choosing in pursuance of whatever beliefs they may hold".[708] Furthermore, it argued that even if there had been an interference with Mrs Pretty's Article 9(1) rights, it was justified under Article 9(2) as assistance in another's suicide was criminal under national law.[709]

The Strasbourg Court held that that they did not "doubt the firmness of the applicant's views concerning assisted suicide" but not every opinion or conviction constitutes a belief, which can be protected under Article 9.[710] Even though Diane Pretty firmly held her belief in assisted suicide for herself, her claim did not pass the first hurdle of meeting the Strasbourg Court's definition of belief. Nor did her belief amount to a requirement that could allow her husband to assist her suicide and then exculpate him of committing a criminal offence even if it is in line with Mrs Pretty's belief.[711] The Article 9 right to religious freedom does not extend to provide immunity from complicity in another's suicide.[712] To this end, Merkouris argues that "Since the notion of assisted suicide would

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[705] This is the test created by the Strasbourg Court of what constitutes religion in *Campbell and Cosans v UK* App no 7511/76 (ECtHR, 25 February 1982) para 38.
[706] *Pretty v UK* (n 57) para 80
[707] ibid para 80
[708] ibid para 81
[709] ibid para 81
[710] ibid para 82. Also see: Paul Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice* (CUP 2005) 207
[711] Panos Merkouris, 'Assisted Suicide in the Jurisprudence of the European Court of Human Rights: A Matter of Life and Death' in Negri (n 24) 119
[712] Alec Samuels, 'Complicity in suicide' [2005] Journal of Criminal Law 535, 538

not seem to meet these criteria of 'cogency, seriousness, cohesion and importance' it is no surprise that the Court summarily rejected the claim that there was no violation of Article 9".[713]

The main thrust of Merkouris' argument is that Mrs Pretty's claim under Article 9 was rejected because it did not meet the Strasbourg Court's definition and criteria of belief. However, it is submitted here that the Court's approach to Diane Pretty's claim under Article 9 was unsatisfactory. Janis et al inquire:

> Is it satisfactory that the Court gives only four sentences to dismiss Mrs Pretty's Article 9 claim as not involving 'a form of manifestation of a religion or belief? Is it really that easy to decide that her claims were not made pursuant to 'freedom of thought, conscience and religion'?[714]

While the notion of pacifism, as in *Arrowsmith v United Kingdom*,[715] has been held to be sufficiently serious, coherent and important to amount to a protected belief, a sincerely held belief in assisted suicide was not protected under the scope of Article 9 as the Court held that it did not have the necessary degree of coherence.[716] It is further submitted here that the Strasbourg Court should have examined the reasons behind the need to protect an individual's belief in assisted suicide. This belief emanates from the argument that individuals should have the right to choose the time and manner of their death if they feel that the quality of their life, which is entirely dependent on every individual's subjective viewpoint, is poor and deplorable and that, for example, an incurable, painful, disease stricken life is not worth living and they believe in assisted suicide for themselves in such circumstances. Most patients can end their life without assistance but those who are physically incapable should have this same freedom. Thus, it is submitted that the Court unsatisfactorily dismissed the claim in a very precipitous manner and without careful

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[713] Merkouris (n 711) 119-120
[714] Mark Janis, Richard Kay and Anthony Bradley, *European Human Rights Law: Text and Materials* (3rd edn, OUP 2008) 338
[715] (1981) 3 EHRR 218
[716] Nicolas Bratza, 'The "precious asset": freedom of religion under ECHR' [2012] Ecc LJ 256, 259

consideration. Since detailed consideration was given to establish whether or not pacifism was a notion that would receive protection under Article 9 in *Arrowsmith*, the Court could have considered the individual circumstances of Mrs Pretty's, the actions she sought to undertake in order to express her belief in assisted suicide, whether she was motivated by those beliefs to take those actions and whether or not those beliefs and actions were allowed under this Convention right.

It should be noted at this juncture that there are other Convention rights that are claimed to have been breached in assisted suicide cases, such as Articles 3 and 14. The next section briefly discusses the Strasbourg jurisprudence in relation to these Convention rights. This discussion has been curtailed since neither Article plays a significant role in furthering the momentum to reform the law.

5.5 What amounts to a breach of an individual's human dignity under Article 3?

The fundamental objective of human rights law is to preserve, protect and even develop human dignity and freedom for every individual.[717] Human dignity has been defined as the worth of human beings, their higher rank or special place in nature.[718] Human dignity is the state or quality of being worthy of honour and respect from others and having self-respect and a sense of pride in oneself. This particular genre of worthiness and self-respect also absorbs the concept of autonomy, which is ineradicable and inherent to all humans.[719]

Even though the concept of human dignity has not been expressed as part of the European Convention on Human Rights, it forms the basis of the entire Convention, in terms of the drafting history and its teleology.[720] It broadens the scope of the Articles and strengthens

[717] Marshall (n 600) 13

[718] George Kateb, *Human Dignity* (Harvard 2011) ix. Note: Equal human value, self-respect, autonomy and positive mutuality have been described as the four dimensions of human dignity. For greater detail: Chak Chan and Graham Bowpitt, *Human Dignity and Welfare Systems* (Policy Press 2005) 4

[719] Bayertz (n 105) xiv. Note: The concept of autonomy is discussed in chs 2 and 5.

[720] Olha Cherednychenko, *Fundamental Rights, Contract Law and the Protection of the Weaker* Party (Sellier European Law Publishers 2007) 262, 263; and Andreas Dimopoulos, *Issues in Human Rights Protection of Intellectually Disabled Persons* (Ashgate 2010) 206

the entire Convention as a whole.[721] The Strasbourg Court confirmed in *Christine Goodwin v United Kingdom* that "the very essence of the Convention is respect for human dignity and human freedom".[722] To this end, Cherednychenko encapsulates that:

> Although the guarantee of human dignity is not explicitly mentioned in the text of the ECHR, there are important indications that human dignity constitutes its implicit foundation… Moreover, in its decision in the *Christine Goodwin v UK* case, the ECtHR explicitly emphasised that the ECHR is meant to protect human dignity. If one therefore accepts that human dignity is the infrastructure on which the entire superstructure of human rights is constructed.[723]

It is submitted that the Convention is designed to protect every individual's human dignity and the rights and freedoms that emanate from it; and that every individual's dignity and freedoms should always be propagated and protected.[724]

Certain kinds of treatment are incompatible with an individual's inherent human dignity and infringe their Convention rights, particularly those guaranteed by Article 3. Article 3, provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

Article 3 is absolute: it has no exceptions or qualifications.[725] Derogation is not permitted even in times of national emergency or war in order to protect prisoners from being tortured

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[721] Catherine Dupre, 'Human dignity and the withdrawal of medical treatment: a missed opportunity?' [2006] 6 EHRLR 678, 683; and Dimopoulos (n 720) 206
[722] App no 28957/95 (ECtHR, 11 July 2002) para 90
[723] Cherednychenko (n 720) 262, 263
[724] Wiater (n 240) 38
[725] Jonas Christoffersen, *Fair Balance: Proportionality, Subsidiarity and Primarity in ECHR* (MNP 2009) 83. In contrast, Foster argues that Article 3 has open-ended wording (Steve Foster, 'Article 3 of the European Convention, the Human Rights Act and prison conditions' (2004) 9(2) Cov LJ 25, 44)

into false confessions.[726] To achieve this, the right does not allow for negotiation and is formulated in absolute terms in order to punish the authority or private party who infringes an individual's Article 3 right.[727] The Article itself does not state that it is absolute: however, the European Commission and the Strasbourg Court have always operated on the basis that it is absolute and non-negotiable.[728] It provides absolute protection against conduct and treatment that has harmful physical or psychological effects on the victim.[729] It is formulated in a manner that preserves the inherent dignity of every human being by creating absolute protection against torture and inhumane treatment.[730] Even the use of proportionality or the margin of appreciation is not granted to Member States, in relation to Article 3, as it would compromise the absolute nature of the prohibition against torture or inhuman or degrading treatment or punishment.[731]

Certain actions, even if they breach the notion of human dignity – such as handcuffing or detaining a suspect in police custody – are an acceptable violation.[732] However, this section determines whether the criminal embargo on assisted suicide, the compulsion to prolong life and the lack of lawful opportunity of requesting an assisted suicide, fall within the ambit of torture or inhuman or degrading treatment or punishment, and, thus, breach an individual's Article 3 rights. More specifically, this section analyses whether this Convention right can be engaged by individuals, such as Mrs Pretty, who argue that the

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[726] Elspeth Guild, *Security and European human rights: protecting individual rights in times of exception and military action* (Wolf Legal Publishers 2007) 25

[727] Catharine Estelle Rowe, 'The Scope of Article 3 of the ECHR in relation to Suspected Terrorists' (2002) 10 Exeter Papers in European Law 35

[728] Michael Addo and Nicholas Grief, 'Does Article 3 of ECHR Enshrine Absolute Rights?' (1998) 8 European Journal of International Law 510, 512-517

[729] Stephanie Palmer, 'A wrong turning: Article 3 ECHR and proportionality' (2006) 65(2) CLJUK 438

[730] David Feldman, 'Human dignity as a legal value: Part 1' (1999) PL 682, 682-691

[731] Magdalena Forowicz, *The Reception of International Law in the European Court of Human Rights* (OUP 2010) 198; Howard Davis, *Human Rights and Civil Liberties* (Willan Publishing 2003) 32; and Stijn Smet, 'The 'absolute' prohibition of torture and inhuman or degrading treatment in Article 3 ECHR: truly a question of scope only?' in Eva Brems and Janneke Gerards (eds), *Shaping Rights in ECHR: The Role of the European Court of Human Rights in Determining the Scope of Human Rights* (CUP 2013) 281

[732] Note: A breach can be found in circumstances, for example when an individual is handcuffed, if it causes mental anguish or distress as in *Erdogan Yagiz v Turkey* App no 27473/02 (ECtHR, 6 March 2007) and *Mouisel v France* App no 67263/01 (ECtHR, 14 November 2002).

State failed to protect them from the pain and suffering of their intolerable diseases by refusing to decriminalise assisted suicide or grant immunity to those who assist them to end their lives.

As the drafters of the European Convention used the Universal Declaration of Human Rights as their model, Article 3 is identical to Article 5 of Universal Declaration.[733] At first sight it appears that Article 3 only imposes a negative obligation on Member States to refrain from inflicting torture, and inhuman or degrading treatment or punishment on their citizens.[734] However, Article 3 also imposes a two-fold positive obligation on Member States. Firstly, it requires them to protect their citizens from being tortured or ill-treated by state authorities and even private parties and, secondly, to investigate allegations of torture and ill-treatment.[735]

5.5.1 The limited role of Article 3 in assisted suicide cases

In relation to Article 3, Diane Pretty claimed that the State owed to its citizens not only a negative obligation to refrain from inhumane or degrading treatment but also a positive obligation to protect individuals from suffering (which she would otherwise have to endure).[736] Mrs Pretty further claimed that refusing to grant her husband immunity from prosecution, the DPP denied her the opportunity to bring her suffering to an end, and in forcefully prolonging her life, her Article 3 rights were breached.[737]

Article 3 is not formulated in terms of a general, sweeping fundamental right to be free from suffering.[738] A very high threshold must be met in order for this Convention right to be engaged.[739] The ill treatment must attain a minimum level of severity to constitute

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[733] Chris Ingelse, *United Nations Committee Against Torture: An Assessment* (Kluwer 2001) 49
[734] Ugur Erdal and Hasan Bakirci, *Article 3 of ECHR: A Practitioner's Handbook* (OMCT 2006) 213
[735] Erdal and Bakirci (n 734) 213
[736] *Pretty v UK* (n 57) at para 44
[737] ibid para 14(11)
[738] Antje Pedain, 'The human rights dimension of the Diane Pretty case' (2003) 62(1) CLJUK 181, 188
[739] Laurens Lavrysen, 'The scope of rights and the scope of obligations: positive obligation' in Brems and Gerards (n 731) 178; and Jeff A King, 'United Kingdom' in Malcolm

torture or inhuman or degrading treatment or punishment and fall within the scope of Article 3.[740] The threshold, that needs to be met in order for there to be a breach, limits the application of Article 3.[741] The Strasbourg Court has held that Article 3 is generally applied in situations where an individual is under the risk or has been subjected to proscribed forms of treatment, which are intentionally inflicted by State agents or public authorities.[742] The Court went on to state that:

> Where treatment humiliates… an individual, showing a lack of respect for, or diminishing, [their] human dignity, or arouses feelings of fear… or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3.[743]

The Court accurately held that the pain and suffering that naturally comes from a physical disease or mental illness can only be covered by Article 3 if the State acts in a way to exacerbate or worsen the condition, which was not the case in *Pretty*.[744] In Mrs Pretty's situation, "the respondent State has not, itself, inflicted any ill-treatment on [her]".[745] Neither was she complaining of receiving inadequate medical treatment.[746] It was "the refusal of the DPP to give an undertaking not to prosecute her husband if he assisted her to commit suicide" to which she objected.[747] Mrs Pretty argued that it was this refusal that was causing the inhuman and degrading treatment, as a lawful option to assisted suicide

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Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (CUP 2012) 287

[740] *Ireland v UK* App no 5310/71 (ECtHR, 18 January 1978). Also see: *Grice v UK* App no 22564/93 (ECtHR, 14 April 1994) para 90; *Steward-Brady v UK* (1999) 27 EHRR 284: "To fall within the scope of this provision, ill-treatment must attain a minimum level of severity, taking into account all the circumstances, including the duration of the treatment and its physical and mental effects".

[741] Mary Donnelly, *Healthcare Decision-Making and the Law: Autonomy, Capacity and the Limits of Liberalism* (CUP 2010) 213-214

[742] *Pretty v UK* (n 57) para 50

[743] ibid para 52

[744] ibid paras 52-55

[745] ibid para 53

[746] ibid para 53. Failing to provide adequate medical treatment can constitute a breach as in *D v UK* App no 30240/96 [1997] ECHR 25 (ECtHR, 02 May 1997) and *Keenan v UK* App no 27229/95 (ECtHR, 3 April 2001).

[747] *Pretty v UK* (n 57) para 54

would save her from an agonising and painful death (which was a natural occurrence of her terminal condition). The Strasbourg Court concluded that it was sympathetic to Mrs Pretty because she was facing a distressing death.[748] However, this distress was not being caused by the State's failure to prevent ill-treatment by public authorities or private individuals.[749] Furthermore, Article 3 did not require Member States to grant immunity from prosecution or provide a lawful opportunity to assist suicide.[750] To this end, the Court concluded that:

> …no positive obligation arises under Article 3… to require the respondent State either to give an undertaking not to prosecute the applicant's husband if he assisted her to commit suicide or to provide a lawful opportunity for any other form of assisted suicide. There has, accordingly, been no violation of this provision.[751]

It is concluded here that the Strasbourg Court's swift approach to dismiss Mrs Pretty's Article 3 claim was appropriate. This Convention right has a very high threshold that must be met in order to constitute a breach. This threshold is not met unless there is direct infliction of torture or ill treatment, by a State authority or even private party, or a gross failure to protect individuals from it. Pain and suffering, and the subsequent sense of loss of dignity, that naturally emanates from a disease does not amount to a breach of Article 3, nor does a refusal to grant immunity from prosecution to family members. Thus, Article 3 does not play a significant role in informing the debate on end-of-life issues.[752]

5.6 The scope and working of Article 14

The Strasbourg Court similarly tackled the issue of indirect discrimination that engaged Article 14, in the *Pretty* case, in a swift and perfunctory manner. Article 14 provides as follows:

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[748] ibid para 55
[749] ibid
[750] ibid para 56
[751] ibid
[752] This decision was applied and confirmed in *Lambert* (n 575). This case concerned withdrawal of artificial food and hydration, which is outside the scope of this thesis.

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 14 does not provide an "equality right": it is merely a device to prevent unjust, unfair or prejudicial treatment of different groups and categories of people.[753] Nor is it a "stand-alone Article" and cannot be used independently.[754] It can only be engaged in order to protect the rights and freedoms set out in the Convention.[755] This is why Article 14 has been described as a "parasitic provision".[756] Thus, it is of no use to an individual claiming a breach of Article 14 by alleging discrimination by a Member State or its public authorities who cannot substantiate that another independent Convention Article has been engaged.[757]

Diane Pretty submitted in the Strasbourg Court that the criminal embargo on assisted suicide in England, discriminated against her, on the basis of her disability; because it treated her in the same manner in which it treated individuals whose circumstances were significantly different.[758] Mrs Pretty relied on Article 14 as an independent article, alleging that section 2(1) of the 1961 Act discriminates against those with disabilities as they are unable to take their own lives without the assistance of another. The Strasbourg Court explained that it had repeatedly held that Article 14 is not autonomous but had effect in relation to Convention rights.[759] It is submitted here that this reluctance by the Strasbourg Court to extend the scope of Article 14 might be an attempt to avoid opening a floodgate of litigation, which would come through various forms of direct and indirect discrimination that individuals and groups may feel they have been subjected to and, thus, create a burden on the running of the Strasbourg Court and even unpredictably and extensively expand the

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[753] Buyse and Hamilton (n 694) 191
[754] Oddny Mjoll Arnardottir, *Equality and Non-Discrimination Under ECHR* (MNP 2003) 37
[755] Barnett (n 615) 530
[756] Noel Whitty et al, *Civil Liberties Law: The Human Rights Act Era* (Buttersworth 2001) 404
[757] Barnett (n 615) 510; and Maja Kirilova Eriksson, *Reproductive Freedom: In the Context of International Human Rights and Humanitarian Law* (MNP 2000) 103
[758] Keown, *Law and Ethics of Medicine* (n 226) 297
[759] *Pretty v UK* (n 57) para 33

scope of Article 14.[760] The Strasbourg Court went on to conclude that even if Mrs Pretty established that section 2(1) of 1961 Act is discriminatory against disabled individuals, if none of the Articles on which Diane Pretty had relied on proved in her favour – as was indeed the case – then the claim under Article 14 would automatically fail.[761]

It is submitted here that there is a failure to extend Article 14 to cover situations of surreptitious, subdued and indistinct forms of discrimination and the Strasbourg Court's approach to equality, fairness and prevention of unfairness, prejudice and bias has been insufficient and unsatisfactory.[762] The Court's decision to continually restrict the scope of Article 14 – by not providing individuals with a freestanding right against discrimination on the codified grounds – forms one of the main weaknesses of the Convention, which can be attributed to the failure of assisted suicide claims.[763] To this end, various academics – such as Howard,[764] O'Hare,[765] Schokkenbroek[766] and Grief[767] – have criticised Article 14 as being a "prominent failure of the Convention system" [768] and "for falling short of the standard of protection provided in other international human rights instruments".[769] It is further submitted here that the application of Article 14 ought not to necessitate an

[760] Eriksson (n 757) 104. Article 14 was allowed to act independently in *Abdulaziz, Cabales, and Balkandali v UK* (1985) 7 EHRR 471. Also see: Howard Yourow, *The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence* (MNP 1996) 168-172; and Sargeant (n 377) 24-25. The Strasbourg Court also discussed the scope to extend Article 14 in *Thilmmenos v Greece* (2001) 31 EHRR 411 and *Belgian Linguistics* Case (No 2) (1968) 1 EHRR 252.
[761] *Pretty v UK* (n 57) para 34
[762] McColgan (n 25) 433
[763] For a detailed discussion on the working of Article 14: Robert Wintemute, 'Within the ambit': how big is the "gap" in Article 14 ECHR? Part 1' (2004) 4 EHRLR 366-382
[764] Erica Howard, *The EU Race Directive: Developing the protection against racial discrimination within the EU* (Routledge 2009) 52
[765] Ursula O'Hare, 'Enhancing European Equality Rights: A New regional Framework' 8 Maastricht J Eur & Comp L (2001) 133, 135
[766] Jeroen Schokkenbroek, 'Towards a stronger European protection against discrimination; the preparation of a new additional protocol to ECHR' in Gay Moon et al (eds), *Race Discrimination: Developing and Using a New Legal Framework* (Hart 2000) 31
[767] Nicholas Grief, 'Non-discrimination under ECHR: a critique of the UK Government's refusal to sign and ratify Protocol 12' (2002) 27 European Law Review 3-18
[768] O'Hare (n 765) 135
[769] Howard (n 764) 52

infringement of another right or freedom of the Convention.[770] If an able-bodied individual has the right to privacy and self-determination, which includes a choice to commit suicide rather than go through pain and suffering then surely a disabled individual who makes the same choice – but requires assistance in carrying out that choice – would also be enjoying the same right to privacy and autonomy. However, this freedom ought to only be extended under certain circumstances where an individual is going through incurable pain and suffering an irreparable loss of dignity due to their medical condition. Furthermore, there would need to be appropriate safeguards namely ensuring that the individual is not mentally ill or being coerced or pressured and that their action is entirely voluntary, which is why assisted suicide must be allowed instead of euthanasia, which is discussed in the next chapter.[771] However, as the law stands, Article 14 cannot be used in an independent manner and does not play a significant role in furthering the momentum to reform the law on assisted suicide under the human rights movement.

5.7 The impact of human rights law on the movement to reform the law on assisted suicide

As the analysis in this chapter has demonstrated, human rights law has had the most significant influence on the movement to reform the law on assisted suicide. The Strasbourg Court adjudicated on the issue of assisted suicide for the first time in the *Pretty* case and continued to develop the jurisprudence on this area of the law, along with domestic courts, in cases such as *Purdy*, *Nicklinson* and *Koch*. It not only clarified the role certain human rights provisions play within this debate but also set out the religious and non-religious values that influence the assisted suicide debate which would receive protection if invoked in such cases. For example, the Court stated that Article 2 could not be used to create an antithetical right to die as it was was formulated in order to protect life, which itself stems from the recognition of the doctrine of sanctity of human life. Preserving

[770] Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (CUP 2010) 572; and Pieter VanDijk et al, *Theory and Practice of ECHR* (3rd edn, Kluwer 1998) 715. However, this idea has continually been rejected by Strasbourg, for example, in *Van Raalte v Netherlands* (1997) 24 EHRR 503 at para 33. Also see: *Botta v Italy* (1998) 26 EHRR 241 para 39.

[771] Aaron Baker, 'Article 14 ECHR: A Protector, Not a Prosecutor' in Helen Fenwick, Gavin Phillipson and Roger Masterman, *Judicial Reasoning under the UK Human Rights Act* (CUP 2007) 355-356

this doctrine, via Article 2, protects the views of various religious and even some non-religious individuals and groups who oppose a change in the law. However, there has been a shift in societal attitudes, which now support a change in the law. Thus, the Strasbourg Court explained that Article 2 and the protection it provides this doctrine are not absolute and left an opening under Article 8, which provides every individual with the right to self-determination, which allows them to choose the time and manner of their death. Article 8 that protects the notion of individual autonomy, which is the most important principle that drives the contemporary debate on assisted suicide, is the most powerful Convention right in this area of the law. The notion of autonomy and the scope of Article 8 in relation to assisted suicide have been continually expanded by Strasbourg and domestic courts in cases such as *Purdy*, *Nicklinson* and *Koch* amongst others, which further demonstrates the significance this Convention right and the idea of autonomy have on this debate. Thus, Article 8, which protects the principle of autonomy, is the most important human rights provision on which a reform of the law could be based.

Another value that influences the assisted suicide debate, along with the notions of autonomy and the religious and non-religious conceptions of the doctrine of sanctity of life, is the idea of human dignity that also receives protection under human rights law, namely Article 3. Human dignity – as argued in Chapter Two, is a concept that arguably emanates from the Christian faith – provides individuals with an innate respect that cannot be diminished or eradicated by disease or disability. However, over the years, this principle has transformed into a secular value that allows individuals to decide the value of their life based on their own conscientious views and subjective perception of its quality and worth along with the ability to make a decision to end their life if they perceive it to be of poor quality, undignified and degrading. Thus, the notion of dignity consists of possessing the right to self-determination. However, as argued earlier in this chapter, the Strasbourg Court has applied Article 3 in a manner that protects individuals from deliberate and intended torture and degrading treatment and it cannot be claimed to have been breached if the perceived indignity emanates naturally from a disease not from a lack of an available option of assisted suicide to end what they perceive to be an undignified life or if immunity from prosecution is not provided to a friend of family member who assisted an individual to end their life. Even though Article 3 was formulated to protect every individual's dignity and

protect them against torture and inhumane or degrading treatment, it clearly plays a very limited role in assisted suicide cases.

The transformation of all these values, over time, from having religious underpinning to becoming secular principles is traced throughout this thesis, particularly the next chapter. The predominant reason behind this discursive shift in language is that the cultural landscape of English society has changed from one that was historically deeply attached to the Christian faith but has become multicultural and increasingly secular. This has led to public attitudes shifting in favor of reform of the law based on the common and shared non-religious values – such as autonomy and dignity that are grounded in human rights law – and a subsequent detachment of religious principles from this debate. However, as explained throughout this thesis, it is necessary to include the views of various religious groups since over three-quarters of the population identifies with a religion and to ensure equality and fairness in society and safeguard minority groups from being excluded and marginalised. Furthermore, as explained in Chapter Three and will be discussed in greater detail in the next chapter, a reform of the law on the issue of assisted suicide and inclusion of religious views is no longer mutually exclusive. Lastly, human rights law protects the views of various religious (and non-religious) groups, under Article 9. It protects the religious and non-religious conceptions of the doctrine of sanctity of life, dignity and autonomy, which all need to be included and protected in a pluralistic society. However, since all these principles are contradictory, Strasbourg and domestic courts apply Article 9 in a manner that protects the rights and freedoms of every individual and group in society. It preserves the doctrine of sanctity of life, which is protected by Article 2, by retaining the criminal ban on assisted suicide yet provides individuals the right to self-determine the time and manner of their death (or even to preserve life), under Article 8. An individual who believes in the doctrine of sanctity of life, based on their personal religious or non-religious conscience, has the option to not prematurely end it. However, others who do not share this belief have the option to end their life when and how they want. This option ought to be further extended to protect an individual's belief in assisted suicide for themselves by providing them with a regulated and safeguarded lawful option of assisted suicide. This option would only be available to individual who are unable to end their life on their own and have a consistent, informed, autonomous wish to end life in a limited set of

circumstances after a number of safeguards have been met.

5.8 Conclusion

This chapter has established that human rights law has had the most significant impact on indirectly allowing, or at least not acting against, assisted suicide. However, not all human rights provisions have added impetus to reforming the law on assisted suicide. Article 2 was formulated in order to preserve the sanctity and value of human life. This notion of the inviolability of the value of life, as protected by Article 2, is reflected in the decisions of domestic courts, which argues that the inceptive aim of this Article is to protect life and cannot be used to provide an antithetical right to die. However, the Strasbourg Court has created an opening, under Article 8, to allow every individual to choose the time and manner of their death. Article 8 has an open, constantly expanding and very broad scope: it has become a very powerful right, particularly in assisted suicide cases as is evident from Mrs Purdy and Mr Lamb being allowed to make judicial demands to codify and clarify the factors the DPP uses when determining whether or not to prosecute an individual for assisting the suicide of another, which, as this chapter argued, allows back-door assisted suicide. The significance of Article 8 is also reflected in the statistics that suggest that individuals who compassionately assisted mentally competent individuals to end their life at Dignitas, in Switzerland, have been not prosecuted under section 2(1) of the 1961 Act. Clearly, Article 8 has had the most impact on the movement to reform the law on assisted suicide in England as it has a very broad and constantly expanding scope. If an individual's dignity is so eroded – due to the medical symptoms of their illness causing dependency on others, pain, suffering and humiliation – the quality of their life is deplorable and, thus, the subjective value of their life is insubstantial and depreciated; the individual is then allowed to choose the time and manner of their death under Article 8, and ought also to be allowed to receive assistance in doing so under certain, safeguarded circumstances.

However, other Convention rights have not been developed and expanded in this manner. The Strasbourg Court took an inaccurate approach by summarily dismissing Mrs Pretty's claim of a belief in assisted suicide for herself, which did not meet the definition of belief previously set out by the Court. Article 9 has been extended to cover, arguably inconsequential, notions such as veganism and pacifism. The Strasbourg Court extensively

examined the reason behind the claimant's belief in these notions, the goals and actions they took or wished to take in order to fulfill their beliefs and the effect that their beliefs and actions would have on the rights and freedoms of others. A similar approach ought to have been taken in the *Pretty* case. Furthermore, the views and beliefs of various non-religious and religious groups ought to have an independent and autonomous existence. The beliefs of one religion, namely the Christian faith, on which the criminal embargo on assisted suicide in England was originally based ought not to be imposed on individuals and communities who do not share this belief and instead, firmly hold a belief in assisted suicide for themselves. Thus, Article 9 ought to protect the conviction of those who share this belief in assisted suicide.

As this chapter has argued, the human rights movement has been the most significant in fuelling the reform of the law on assisted suicide. The next chapter examines the historic and contemporary momentum to reform the law on assisted dying by analysing the Bills through Parliament, the values that drove the Parliamentary debates and concludes that assisted suicide, instead of euthanasia, would be a much more practicable and safeguarded option.

Chapter 6. The inclusion of religious and non-religious values in the legislative momentum to reform the law on euthanasia and assisted suicide

6.1 Introduction

This chapter critically reviews the historic legislative attempts, which began in 1936, to reform the law on assisted dying in order to establish the religious and non-religious values that influenced the historic debate and to analyse the extent of inclusion of religion in this debate. This chapter establishes that the Christian faith, which had deep-rooted ties with English society, has always opposed a change in the law. Historically, religious representatives used ecclesiastical language to describe their faith's opposition to the issue of assisted dying. However, over the years, there has been a shift in language and religious representatives (and society at large) now base their opposition on secular values and use non-religious language when objecting to a change in the law. For example, the historic, religious belief in the sanctity of human life, which was seen as a gift from God, on which various faith groups, particularly Christianity, base their opposition was the main principle that influenced the law in this area. However, over time, with society becoming multicultural and increasingly secular, the debate is now influenced by non-religious values such as the notions of dignity, autonomy and compassion, which are each examined in significant detail in this chapter. This chapter traces this discursive shift in language, along with the reasons of this change, which forms part of the original contribution to knowledge by this thesis, by evaluating historic Parliamentary debates and contrasting the language used in the contemporary, recent debates on assisted suicide.

This chapter argues that secular values, namely dignity and autonomy, were increasingly included, thus demonstrating a historical shift, in the debate on assisted dying in 1969, when the Voluntary Euthanasia Bill was being discussed in Parliament and stood the strongest chance of becoming law due to the societal and media attention it received. However, religious opposition led to the Bill being defeated. This led to the momentum to reform the law significantly diminishing until the Walton Committee was formed in 1993 to consider whether voluntary active euthanasia or physician assisted suicide ought to be

decriminalised. This Chapter analyses the report of the Walton Committee and compares its findings with that of the Select Committee of 2005. These Committees attempted to distinguish between these terms "euthanasia" and "assisted suicide" and argued that the former affects everyone as it is seen as intentional killing (as stated by Walton Committee) but the latter only affects the individual ending their life (as established by the 2005 Committee), with the latter being given preference for legislation. This chapter analyses this distinction and explains why this distinction is necessary for any future attempts to reform the law.

This chapter analyses the contemporary attempts to reform the law in this area, which began with a series of Bills introduced by Lord Joffe between 2003-2005. It argues that even though there continued to be religious opposition, it was continually declining and the values that influenced this debate were increasingly secular principles rather than religious tenets. The language used by religious representatives is evaluated and compared to that expressed during the historic legislative attempts to change the law in order to trace the discursive shift in language and establish the values that influence the modern debate on assisted dying along with the extent of inclusion of various religious groups – not only Christian faith but also other minority groups such as the Islamic community – during the Parliamentary debates. This chapter establishes that even though there is some inclusion of minority religious groups' viewpoints within this debate, it is not very significant due to the lack of representation because of the structure of the religion, particularly of the Islamic faith, which has led to intermittent and limited involvement from the Islamic community in this debate.

Lastly, this chapter argues that the failure of all the aforementioned Bills to reform the law in this area led to the Commission on Assisted Dying being set up in 2010. It extensively analyses the aims and objectives of this Commission. For example, its main objective was to establish if the current law on assisted suicide and euthanasia was satisfactory and whether it needed to be reformed. It also examines whether the Commission satisfactorily accommodated the needs of various religious and non-religious communities by critically reviewing the evidence submitted to the Commission by both these groups particularly on assisted suicide. It also evaluates the Bill, in significant detail, which sought to allow

physician-assisted suicide that was produced by the Commission and introduced in the House of Lords by the Chair of the Commission, Lord Falconer of Thoroton, along with the ethical and religious issues that arose in the Parliamentary debate around this Bill. It examines the main reasons behind the failure of Lord Falconer's 2015 Bill. It also establishes that there was very little evidence (for example, in the form of oral and written statements) submitted by Christian Churches and their representatives and a significant lack of evidence from minority religious groups. It argues that this lack of inclusion of religious beliefs can be attributed to the fact that this issue is a matter that only affects the individual requesting it and not an entire community within society (and if a person does not support the notion of assisted suicide, they have the option to simply not request it); and predominantly because the debate on assisted suicide has become a secular matter and is driven by non-religious values, such as the notion of individual autonomy, dignity and compassion.

6.2 Historical momentum to reform assisted dying laws

There is a lengthy history of legislative and social attempts to make euthanasia lawful; which began in 1935, with two British doctors, Sir Berkley Moynihan and Dr Killick Millard founding the Voluntary Euthanasia Legalisation Society (VES).[772] The objective of the Society was to promote and change public opinion,[773] particularly through separating the concept from religion by explaining that the notion of voluntary euthanasia is not against the Christian faith.[774] The Society met with Christian opposition, which the Society sought to dissipate by publishing a statement, signed by fifteen Christian religious leaders, clergymen and principals and heads of institutions on the ethical and religious aspect of

[772] Ezekiel Emanuel, 'Why Now?' in Emanuel (n 140) 188; and Pieter Admiraal, 'Euthanasia and Assisted Suicide' in David Thomasma and Thomasine Kushner (eds), *Birth to Death: Science and Bioethics* (CUP 1996) 210. This Society is now known as "Dignity in Dying".

[773] The Society sought a "radical departure from olde-established custom and tradition" (Nick D A Kemp, *Merciful Release: The History of the British Euthanasia Movement* (Manchester University Press 2002) 117)

[774] John Keown, 'Williams versus Kamisar on euthanasia: a classic debate revisited' in Dennis J Baker and Jeremy Horder (eds), *The Sanctity of Life and the Criminal Law: The Legacy of Glanville Williams* (CUP 2013) 259

euthanasia.[775] The statement declared that in their opinion, voluntary euthanasia should not be seen as contrary to the teachings of Christianity.[776] Kemp notes that:

> This [statement] came about as the result of a meeting between Millard and Dr Bardsley, Bishop of Leicester, in which they had discussed the religious aspect of euthanasia. Although Bardsley had registered an 'instinctive feeling' against the proposed Bill, he suggested that W R Matthews the Dean of St Paul's might be in sympathy with the Society's objectives. This was indeed the case, and Matthews suggested other figures who might be of a similar opinion. The resulting statement declared in their opinion, voluntary euthanasia under the conditions outlined in the proposed Bill, should not be regarded as contrary to the teachings of Christ or the principles of Christianity".[777]

The main thrust of Kemp's argument is that the VES sought to distinguish the notion of "voluntary euthanasia" from suicide, by separating the stigmatised, criminal activity of suicide from the religiously justifiable notion of ending pain and suffering that occurs due to an untreatable illness, under definite circumstances set out in the 1936 Bill, which is discussed in the next section. Based on this evidence, it can be concluded that the movement to reform the law began with the necessity to separate religion from the debate on assisted dying, particularly euthanasia, in order to be able to reform the law.

6.2.1 Voluntary Euthanasia (Legalisation) Bill 1936

In the same year, the movement to reform the law gained impetus when Lord Arthur Ponsonby of Shulbrede introduced the 'Voluntary Euthanasia (Legalisation) Bill 1936' in the House of Lords. The Bill would have allowed voluntary active euthanasia for patients

[775] Kemp (n 773) 101. The full statement can be found at: Contemporary Medical Archives Centre (CMAC), Voluntary Euthanasia Society Archives, Wellcome Institute for the History of Medicine, Euston Road, London. CMAC/SA/VES/A.13 ("Ethical statement by religious leaders (1935)").
[776] Kemp (n 773) 101
[777] Kemp (n 773) 101

of sound mind, over the age of 21, who request it because they are suffering from an incurable and terminal illness that causes them severe pain and suffering.[778]

Lord Shulbrede opined that legalising euthanasia would not be contrary to the principles of Christianity,[779] and that compassion should be administered to those who are in "agony of hopeless and helpless suffering".[780] Despite this, there was considerable religious opposition to the Bill that led to the majority of the House of Lords not supporting the Bill. The Viscount Fitzalan of Derwent noted further that:

> This Bill is not opposed only because it is condemned by the Church… but because the law of nature brands it as evil and a cowardly act. What about other people? What about the Jews?... I am assured that there is not an orthodox Jew in the world who would not oppose this measure tooth and nail. What about the Mahomedans? Do they approve a measure of this kind? Not at all. They consider it to be contrary to the natural law and the law of God.[781]

As argued in Chapter Three, waves of immigration started from 1900 and minority religions began amassing around a decade later. This societal shift is the reason behind religious minorities beginning to be included in societal and Parliamentary debates such as the one in 1936.[782] However, Viscount Derwent was the only member of the House of Lords to include minorities in the Parliamentary debates. Thus, it is submitted that this exiguity of including minority religions can be attributed to the fact that multiculturalism was not prominent enough in 1936. The Bill was ultimately defeated by 35 votes to 14;[783] on the grounds that it was against the Christian religion and that the medical profession's

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[778] Tim Helme, 'The Voluntary Euthanasia (Legalisation) Bill (1936) revisited' (1991) 17 Journal of Medical Ethics 25, 25-26
[779] HL Deb 01 December 1936, vol 103, col 470
[780] ibid col 474. (Earl of Listowell) HL Deb 01 December 1936, vol 103, col 501 agreed with this opinion.
[781] HL Deb 01 December 1936 vol 103 col 479
[782] Intentional or reckless killing was regarded as murder or manslaughter before 1961, when the criminal law against assisted suicide was codified.
[783] Otlowski (n 9) 269

aim was to prolong and preserve life, and not end it by "killing" patients.[784] Clearly, religion played a momentous role in informing the debate and shaping the law in 1936.

Shortly after the failure of the 1936 Bill, various prominent members of the VES fell ill or passed away – such as the first President of the Society, Lord Moynihan, who died in 1936 at the age of 71 and the Honorary Secretary, Dr Millard, resigned due to heart disease in 1951 – which led to a decrease in the impetus for reforming the law on this issue.[785] Further decline in this movement to reform the law came when the term "euthanasia" began being associated with Nazi brutality.[786] However, during the 1960s, the movement for reform was brought back into the societal debate, in England, in wake of the decriminalisation of suicide in 1961, allowing medical termination of pregnancies in 1967, a high volume of media coverage on the issue of euthanasia and public surveys,[787] which demonstrated an increased support for voluntary euthanasia. It is submitted here that there was clearly a growing acceptance of the right to self-determination, which ought to have translated into a tolerance for allowing assisted dying.[788] Thus, with the shift in attitudes towards euthanasia, based on the notion of individual autonomy, the VES drafted a Bill, which was introduced into the House of Lords on 6 March 1969, by Lord Raglan.[789]

6.2.2 Voluntary Euthanasia Bill 1969

This Bill stood a considerable chance of being passed to reform the law on euthanasia.[790]

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[784] The Bill sought to allow voluntary active euthanasia. Even though it would be voluntarily requested, the idea that doctors would actively end their patients' life meant that the doctor-patient relationship would be destroyed. (Lord Dawson of Penn) HL Deb 01 December 1936, vol 103, cols 481-485

[785] Kemp (n 773) 149

[786] Henry Friedlander, *The Origins of Nazi Genocide: From Euthanasia to the Final Solution* (University Of North Carolina Press 1995) 21

[787] National Opinion Polls (January 1965) asked 1000 doctors, with 76.2% agreeing that "some medical men do in fact help their patients over the last hurdle in order to save them unnecessary suffering, even if that involves some curtailment of life"; and around 36.4 % agreed that they would provide voluntary euthanasia to their patient's if it was allowed by the law ((Lord Raglan) HL Deb 25 March 1969 vol 300 col 1148; and Kemp (n 773) 195).

[788] Dowbiggin (n 177) 123

[789] HL Deb 6 March 1969 vol 300 col 277-278

[790] Following the decriminalisation of suicide in 1961 and abortion in 1967, which created exceptions to the doctrine of sanctity of life, the notion of euthanasia came back up in the societal and subsequently Parliamentary debate in 1969. The Labour government was in

According to Lord Raglan, the Bill would:

> …provide in certain circumstances for the administration of euthanasia to persons who request it and who are suffering from an irremediable condition, and to enable persons to request in advance the administration of euthanasia in the event of their suffering from such a condition at a future date.[791]

It is argued that the notion of autonomy was gaining ground (thus, creating tolerance for providing individuals assistance to end their life) and there was a reinterpretation of the relationship between dying from the religious doctrine of sanctity of life – and not a detachment of this doctrine from the issue – which ought to have fuelled a reform of the law on euthanasia.[792] This argument is supported by the 1969 Parliamentary debates. For example, various Members of the House of Lords opined that public opinion was changing and had significantly shifted in favour of allowing euthanasia since 1936.[793] To this end, the Earl of Listowel stated that:

> Voluntary euthanasia has certainly more adherents now in the professions, in the Churches and among… people in every walk of life than it had 33 years ago. It is also much more often discussed in the Press and in broadcasting, which shows a wider public interest in the whole subject. The legalisation of suicide in… 1961 is another symptom of this change in the climate of public opinion; because… if you say, as the law does now, that it is lawful to take your own life, it is surely a logical step to go on to say that if you have an incurable and distressing illness which makes you so weak physically that you cannot do this without help, it should also be lawful to take your own life with the help of a doctor – and that is really all this

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still power, under Prime Minister Harold Wilson when the Bill 1969 was being debated.

[791] HL Deb 6 March 1969 vol 300 col 277-278

[792] Dowbiggin (n 177) 123

[793] (Lord Raglan) HL Deb 25 March 1969, vol 300, col 1143 felt that "opinion generally has become so favourable to a change in the law". Also see: (Lord Ailwyn) HL Deb 25 March 1969, vol 300, col 1185 explained that public opinion on this matter has changed since 1936 and is slowly moving towards allowing assisted deaths.

Bill sets out to do.[794]

The main thrust of Earl Listowel's argument is valid in that public opinion was increasingly developing a more tolerant view of euthanasia, by taking a more compassionate stance on the issue and prioritising patient autonomy: not due to a detachment from religious doctrines, which continued to exercise influence throughout the debate.[795] However, even though the 1969 Bill had much broader scope – in contrast to 1936, which was restricted to terminally ill patients, this Bill allowed euthanasia for non-terminal patients – it was defeated by 61 votes to 40.[796] However, there seemed to be a growing acceptance and more support for a change in the law with only 60.39% of Members of Parliament opposing it, compared to the 71.43% who opposed the 1936 Bill. The main concerns in the House of Lords were the lack of protection for patients,[797] the lack of safeguards for doctors and a modification of their duties and responsibilities,[798] and ethical and religious objections to

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[794] HL Deb 25 March 1969, vol 300, col 1210. Also see: (Earl of Cork and Orrery) HL Deb 25 March 1969, vol 300, col 1158.

[795] For example, the Guardian newspaper published an article around the Parliamentary debate, titled "Voluntary euthanasia 'an extension of freedom'" on the 26th of March 1969 (The Guardian, 'Voluntary euthanasia 'an extension of freedom'' *The Guardian* (26 March 1969) ProQuest Historical Newspapers: The Guardian and The Observer p 16) and another article on the 7th of May 1969, titled 'A time to die', which stated that "…the biggest risk that faces most of us today is not that of being killed off… but that of being kept alive too long" (Gillian Tindall, 'A time to die' *The Guardian* (7 May 1969) ProQuest Historical Newspapers: The Guardian and The Observer p 9).

[796] Robert Wennberg, *Terminal Choices: Euthanasia, Suicide, and the Right to Die* (WBE 1989) 194. The 1969 Bill would have allowed any individual over the age of 21 to request euthanasia as long as two physicians were satisfied that the individuals was experiencing pain and suffering due to an incurable illness that would cause them severe distress or render them incapable or a rational existence: Biggs (n 27) 13

[797] For example: (the Earl of Cork and Orrery) HL Deb 25 March 1969, vol 300, cols 1155-1156; (Lord Newton) HL Deb 25 March 1969, vol 300, cols 1163-1164; and (Lord Strabolgi) HL Deb 25 March 1969, vol 300, col 1241. Also see: Wennberg (n 796) 194: "…the incurable but non-terminal have longer to live, but they have more time to suffer as well; therefore, they become fitting candidates for euthanasia… it was the inclusion of this provision that in part caused the bill's defeat in the House of Lords".

[798] For example: (Lord Amulree) HL Deb 25 March 1969, vol 300, col 1167 explained that it is "…important that the confidence of the patients in doctors and hospitals should be maintained. We do not want the patient to feel that the man with a syringe is going to be a killer". Also see: (Lord Brock) HL Deb 25 March 1969, vol 300, col 1177; Dan Brock, *Life and Death: Philosophical Essays in Biomedical Ethics* (CUP 1993) 299; and James Bernat, *Ethical Issues in Neurology* (3rd edn, Lippincott Williams and Wilkins 2008) 204. Various

allowing euthanasia, which are examined in the next section.

6.2.3 Religious Objections to the 1969 Bill

The House of Lords extensively discussed the need to include ethical and religious views in this debate, which vehemently opposed euthanasia.[799] Firstly, various members of the House of Lords discussed the need to include the view of the Christian faith in the debate.[800] Lord Balerno argued that "…life is sacred in the eyes of God".[801] The Lord Bishop of Durham – an Anglican bishop responsible for the Diocese of Durham in the Province of York, the fourth most senior bishop of the Church of England and an automatic Member of the House of Lords[802] – further explained that:

> …there is no one Christian view on voluntary euthanasia… the theology… has changed enormously over the past three or four hundred years… on this issue all Christians will… share with all others a respect for human life… they will be guided by the work of Christ in healing and relieving distress, the parables of compassion.[803]

The opinions presented in the House of Lords indicates that the Church of England continued its opposition against euthanasia, and strongly voiced it during the Parliamentary debate as is evident by the Lord Bishop of Durham's speech. The Christian faith does not allow it: even if an individual compassionately assists a person to end their life to relieve them of their pain and suffering. The Christian faith uses the notion of compassion in an antithetical manner to that of the public opinion, which views it as a basis to reform of the

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members of the House of Lords were satisfied that the Bill contained sufficient safeguards to protect the interests of the doctors. For example: (Lord Segal) HL Deb 25 March 1969, vol 300, col 1244; (Baroness Serota) HL Deb 25 March 1969, vol 300, col 1170; and (Lord Raglan) HL Deb 25 March 1969, vol 300, col 1144.

[799] (Lord Raglan) HL Deb 25 March 1969, vol 300, col 1144

[800] HL Deb 25 March 1969, vol 300: (Viscount Barrington) cols 1237-1240; (Lord Brock) cols 1177-1178; (Lord Ailwyn) col 1187; (Lord Soper) col 1195-1198; (Lord Grenfell) col 1216; and (Lord Ritchie-Calder) cols 1221-1223; in contrast, (Lord Poltimore) col 1227.

[801] HL Deb 25 March 1969, vol 300, col 1220

[802] The Archbishop of York, 'Bishop of Durham Election Confirmed' (20 January 2014) <www.archbishopofyork.org/articles.php/3035/bishop-of-durham-election-confirmed> accessed 21 May 2017

[803] HL Deb 25 March 1969, vol 300, cols 1179-1185

law. Public opinion seeks to allow assisted dying, as it motivates a person to feel compassion and sympathy, which makes them provide the required assistance to another individual.

6.2.4 Non-Religious Objections to the 1969 Bill

The religious opposition that underpinned the movement for legalisation was further supported by the need to protect patients and even safeguard health care professionals especially doctors. Furthermore, the introduction of minority groups and the rise of pluralism and secularism in British society[804] led to the religious tenets that fuelled the debate being reinforced by secular, non-religious values. To this end, Lord Platt, who was in favour of a change in a limited set of circumstances "if properly handled and controlled", argued that:[805]

> The religious arguments may appeal to many people, but some of us believe that moral and ethical laws and medical ethics are not divinely sent to us but are the result of the evolution of thought in a society which is undergoing constant change.[806]

Based on the evidence found in the 1969 Parliamentary debate, it is concluded that the an exiguous move away from religious tents began; and secular values started significantly influencing this debate, based on the grounds of conscience,[807] were the need to administer compassion to individuals who need to be relieved from their pain and suffering;[808] and the need to preserve their dignity.[809] Furthermore, this notion of dignity began to significantly

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[804] For discussion on secularisation of British society, refer to ch 3.
[805] HL Deb 25 March 1969 vol 300 col 1204
[806] ibid col 1205
[807] The Earl of Listowel HL Deb 25 March 1969 vol 300 col 1213-1214; and Lord Raglan HL Deb 25 March 1969 vol 300 col 1144-1145.
[808] Lord Brock HL Deb 25 March 1969 vol 300 col 1174 ("I am filled with compassion for those unfortunate individuals at whose release from pain and suffering this Bill is in some part directed"); and Lord Bishop of Exeter HL Deb 25 March 1969 vol 300 col 1242 ("… this Bill for voluntary euthanasia is by legislation out of compassion").
[809] Lord Ritchie-Calder HL Deb 25 March 1969 vol 300 col 1225 (who felt that individuals have a right to human dignity and to make choices, including the decision of an assisted death); the Earl of Listowel (who supported the Bill) HL Deb 25 March 1969 vol 300 col

influence the debate on this area from 1969. The majority of the members of the House of Lords felt that there was a need to protect the inherent value of human life and preserve human dignity by rejecting the 1969 Bill (which had the effect of dismissing the need to protect autonomous decisions). For example, Lord Ritchie-Calder stated that the House needed to:

> …take some account of human dignity and in any devout belief in the sacredness of human life have some concern for the dignity and the personality of the life that is being preserved, and the indignities and the sacrifices which others have to make in preserving that life. To me it is a mockery… of everything which is in the nature of man, that we should in fact, under the conditions in which we are trying to prescribe what in fact is the nature of life, bedamn the living and condemn people to a death in life.[810]

The majority's stance reflected a division concerning as to how human dignity is understood, a division that is still prevalent today. For example, Keown argues that the doctrine of sanctity of life dictates that human beings possess an innate dignity, which, whether underpinned by religious or secular thought, requires that individuals are not intentionally killed regardless of their illness or disability.[811] However, it is submitted that Keown's argument does not take into consideration that human dignity is the value that provides individuals with the inherent prerogative to decide the value of their life and the option to end it if they deem it to be undignified. To this end, Barilan rightly argues that:

1212; and Council of Europe, *Euthanasia: Volume I – Ethical and human aspects* (COEP 2003) 49.

[810] HL Deb 25 March 1969 vol 300 col 1223. Also see: Lord Clifford of Chudleigh HL Deb 25 March 1969 vol 300 col 1208-1209: "Ethically, we come back to the value that we have set on human life… [vulnerable] people need the protection of society, not an added weapon in the armoury of suicide".

[811] Keown, *Euthanasia, Ethics and Public Policy* (n 10) 40. To this end, also see: Earl Ferizers HL Deb 25 March 1969 vol 300 col 1234; Baroness Serota (HL Deb 25 March 1969 vol 300 col 1168) argued that "Others will maintain that any taking of human life, however well intentioned the motives, is indistinguishable from the act of murder and that it would be wrong in any circumstances to legalise such conduct"; and Lord Brock HL Deb 25 March 1969 vol 300 col 1175.

> …human dignity informs us not to force life on the conscientiously unwilling person or the person for whom existence has become undignified. People must not be forced into being living testimonies to the value of life.[812]

Clearly, the notion of human dignity is closely tied with the need to respect the autonomous decisions of individuals to choose an assisted death in order to end their pain and suffering and not force them to live an undignified life.

It is concluded that even with the religious opposition that the 1969 Bill met with, it stood the strongest chance of being approved (compared to the 1936 Bill) due to the media coverage it received, public awareness around the issue of euthanasia and the changing opinion of society and the new values of dignity and autonomy that were introduced in the debate (by Parliament).[813] However, great significance was placed on the religious doctrine of sanctity of life and the views of the Christian faith in the 1969 debate, which ultimately led to the defeat of the Bill.[814]

6.2.5 The Walton Committee 1993

The momentum to reform the law on euthanasia drastically lessened and eventually completely ceased after a series of rejected Bills in the House of Lords in 1936, 1950,[815] and 1969 and in the House of Commons in 1970;[816] in order to preserve the value of human life and avoid the slippery slope effect, which would lead to patients' lives being ended

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[812] Yechiel Michael Barilan, *Human Dignity, Human Rights, and Responsibility: The New Language of Global Bioethics and Biolaw* (MIT Press, 2012) 187-188

[813] Kemp (n 773) 212-213

[814] (Baroness Summerskill) HL Deb 25 March 1969, vol 300, col 1228 explained the Bill was rejected because allowing assisted dying involved, the person whose life has become intolerable, the individual who will assist their death and "every other person in the country suffering from some incurable disease".

[815] The 1950 debate on voluntary euthanasia was merely a motion in Parliament by Lord Chorley on 28 November 1950, further details of which can be found in the following Hansard record: <http://hansard.millbanksystems.com/lords/1950/nov/28/voluntary-euthanasia> accessed 21 May 2017

[816] Joel Feinberg, *Harm to Self: The Moral Limits of the Criminal Law* (OUP 1989) 367. The 1970 debate on voluntary euthanasia was merely a motion in Parliament by Lord Chorley on 7 April 1970, further details of which can be found in the following Hansard record: <http://hansard.millbanksystems.com/commons/1970/apr/07/voluntary-euthanasia> accessed 21 May 2017

without their consent. Keown accurately summarises the momentum to reform the law on this area as follows:

> Few, if any, legislative bodies can claim to have debated voluntary, active euthanasia and/or physician-assisted suicide (VAE/PAS) over so many years, and in such depth, and drawing on such wide range of expertise, as the House of Lords. The House first considered the issue three quarters of a century ago when a "Voluntary Euthanasia (Legalisation Bill) was introduced by Lord Ponsonby. In 1969 another Bill was introduced by Lord Raglan. In 1993 the House established a Select Committee, chaired by Lord Walton, which considered, in depth, the case for decriminalizing VAE/PAS. In its valuable report, published in 1994, the Walton Committee unanimously rejected the case".[817]

The House of Lords established a Select Committee in 1993, which was chaired by Lord Walton, to consider in great detail whether voluntary active euthanasia or physician assisted suicide ought to be decriminalised. The Walton Committee, which consisted of thirteen members, was chosen to represent the increasingly secular British society. With members from legal, medical and even ethical and philosophical expertise, only one member on the Committee was a religious representative in the form of the Duke of Norfolk, who was the President of the Catholic Union and submitted evidence against reform, written in conjunction with the Guild of Catholic Doctors, to the Walton Committee.[818] The following year, the Walton Committee published its report, detailing the various circumstances in which individuals advocate allowing assisted dying. The Committee explained that, firstly, it did not think it possible to create sufficient safeguards and limitations on the various forms of euthanasia and "it would be next to impossible to ensure that all acts of euthanasia were truly voluntary and that any liberalization of the law was not abused".[819] Secondly, even though the Committee acknowledged that it is possible to separate temporary distress or mental illness from a genuine, consistent wish to end life, it was concerned "that vulnerable people – the elderly, lonely, sick or distressed – would feel pressure… to request

[817] Keown, *Law and Ethics of Medicine* (n 226) 235
[818] John Finnis, Human Rights and Common Good: Collected Essays (OUP 2011) 263
[819] Select Committee 1993 (n 28) para 238

early death".[820] Furthermore, individuals who fear that the availability of advanced medical treatment and life prolonging options would mean that they would be forced to continue to live an undignified life ought not to have such concerns since the notion of withdrawal of treatment or not initiate treatment at all are also available options to them. [821] Lastly, the Committee went on to explain that there have been "outstanding achievements… in the field of palliative care", that "the pain and distress of terminal illness can be adequately relieved in the vast majority of cases", is widely available in hospitals and ought to be the promoted and preferred option (instead of euthanasia).[822]

Clearly, the Walton Committee was vehemently opposed to allowing euthanasia under any circumstance. The Committee concluded that:

> …we do not believe that these arguments are sufficient reason to weaken society's prohibition of intentional killing. That prohibition is the cornerstone of law and of social relationships. It protects each one of us impartially, embodying the belief that all are equal. We do not wish that protection to be diminished, and we therefore recommend that there should be no change in the law to permit euthanasia. We acknowledge that there are individual cases in which euthanasia may be seen by some to be appropriate. But individual cases cannot reasonably establish the foundation of a policy that would have such serious and widespread repercussions. Moreover, dying is not only a personal or individual affair. The death of a person affects the lives of others, often in ways and to an extent that cannot be foreseen. We believe that the issue of euthanasia is one in which the interest of the individual cannot be separated from the interest of society as a whole.[823]

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[820] ibid para 239
[821] ibid para 240. Note: *Airedale NHS Trust v Bland* [1993] 1 All ER 821 HL recognised a PVS patient Anthony Bland's right to be free from unwanted medical treatment that prolonged his life and allowed his feeding-tube to be removed, resulting in his death.
[822] Select Committee 1993 (n 28) para 241
[823] ibid para 237

It is submitted here that the nature of euthanasia is such that it is not possible to always guarantee autonomy and voluntariness in the process, there is a much higher risk of abuse of legislation and unwanted deaths and it affects every citizen within society. Thus, the conclusions of the Walton Committee were accurate in not recommending a change in the law on "euthanasia". Even though the Walton Committee discussed the various facets of euthanasia in significant detail, it summarily dismissed the idea of allowing assisted suicide. The Walton Committee unanimously made the report and rejected any idea of allowing assisted suicide.[824] The Committee stated:

> As far as assisted suicide is concerned, we see no reason to recommend any change in the law. We identify no circumstances in which assisted suicide should be permitted, nor do we see any reason to distinguish between the act of a doctor or of any other person in this connection. [825]

It is argued here that there is a need to distinguish between the notions of euthanasia and assisted suicide. As discussed in Section 1.3, the final action in the process of euthanasia is taken by another individual (and not the person requesting an assisted death), which gives rise to the idea of "intentional killing" of another person as described by the Walton Committee. There is a risk of the slippery slope effect coming into action, which would give rise to abuse of legislation and unwanted deaths being given to individuals. However, the nature of assisted suicide is such that it does not give rise to the risk of slippery slope, since the final action that ends life is always taken by the individual who makes the request, they have the option to change their mind until the very last moment, which forms a safeguard and guarantees autonomy and voluntariness, and the idea of "intentional killing" of another person cannot be attached to a suicide.[826]

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[824] ibid para 277
[825] ibid para 262
[826] Note: This distinction between euthanasia and assisted suicide was created by the Select Committee on the Assisted Dying for the Terminally Ill Bill, 'Assisted Dying for the Terminally Ill Bill' HL Paper 86-I (2005). For discussion: ch 6

It should be noted here, when discussing the Walton Committee's findings in the House of Lords, only a handful of Members viewed theological concerns to be significant enough to receive inclusion. For example, Baroness McFarlane of Llandaff accurately encapsulated the position of the Walton Committee in relation to religious concerns as follows:

> I came to the work from a background of traditional Christian belief which holds the view that human beings are created in the image of God, and as a consequence there is a sanctity or holiness in human life. Yet, as we discussed with those who gave evidence to us and read the evidence submitted it was clear that not everyone holds that view. I accept that for many in a secular society the phrase "the sanctity of human life" has ceased to have meaning. Yet we have to come together as a society and find a way of making decisions.[827]

It is submitted here that even though Baroness McFarlane opposed a reform, the main thrust of her opinion is accurate. In a modern, multicultural society there are various religious and non-religious beliefs and principles. One of these is the notion of sanctity of life. Historically, this notion was rooted in the Christian religion and attached a religious sanctity to human life. Even though this notion has survived – and still remains in its historic form in the Christian religion and even amongst many minority religious groups – the meaning attached to this notion has drastically changed. However, Baroness McFarlane's analysis was erroneous in that the notion no longer has any meaning or significance. The notion has changed by a detachment of its religious understanding and has now transformed into an idea that life has immense value attached to it (which arguably takes on autonomy and quality of life considerations). Furthermore, Baroness McFarlane did not support a change in the law based on her medical, particularly nursing background, and her belief in the Christian faith. However, she stated that her opinion was based on her medical background and not her faith. As previously mentioned, the Duke of Norfolk was

[827] HL Deb 09 May 1994 vol 554 col 1364. Also see: The Lord Bishop of Oxford (HL Deb 09 May 1994 vol 554 col 1369) who quoted the Walton Committee and opined that there ought to be a distinction "between that which is intended and that which is foreseen but unintended" as this "distinction is fundamental to Christian moral reasoning"; and the Marquess of Hertford (HL Deb 09 May 1994 vol 554 col 1397) opined that "I cannot resist commenting that I find it odd that in a largely Christian assembly very few people seem to think that moving on into the next life might be rather a good idea".

the only religious representative, particularly the Catholic faith, in the Walton Committee, yet he based his opposition primarily on secular idea and promotion of palliative care. There is a clearly a very significant decrease in inclusion of religion especially the Walton Committee. Opposition continues due to assisted suicide and euthanasia not being differentiated and the terms used interchangeably. Furthermore, increase in secularism and multiculturalism has led to this debate to become non-religious and there is a clear detachment of religion.

It can be concluded that the movement to reform the law on assisted dying significantly diminished after the 1969 Bill and resurfaced after the Walton Committee of 1993-4's findings; the Bland case in 1993, which recognised Anthony Bland's right to be free from unwanted medical treatment that prolonged his life and allowed his feeding-tube to be removed, resulting in his death;[828] the *Pretty* case in 2001;[829] and the *Re B* case in 2002 where a 41-year-old mentally competent woman with paralysis had her autonomous decision respected by having her ventilator switched off leading to her death.[830] These events and cases revived the movement to reform the law, which led to a series of Bills, which reached policy-makers in 2003.

6.3 Patient (Assisted Dying) Bill 2003

Lord Joel Joffe introduced the "Patient (Assisted Dying) Bill" in 2003, in the House of Lords, which sought to allow physician assisted euthanasia at the voluntary request of a mentally competent adult who was in unbearable suffering from a terminal or incurable and progressive illness.[831] Physicians would have been allowed to administer lethal injections to end the life of their patients. The Bill was debated in June 2003, but did not proceed beyond a second reading, predominantly due to religious opposition from both Christian and minority faiths.[832]

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[828] *Bland* (n 821)
[829] Discussed in greater detail in ch 5
[830] *Re B* (n 61)
[831] For a list of definitions used throughout this thesis, refer to ch 1. The decision of the House of Lords reflected the popular opinion of doctors around that time, see: Carr (n 223) 323. For a detailed discussion around this 2003 poll, refer to section 6.3.2.
[832] McLean, *Assisted Dying* (n 1) 147. For discussion on all the Bills introduced by Lord Joffe: L Wayne Sumner, *Assisted Death: A Study in Ethics and Law* (OUP 2011) 142.

6.3.1 Religious Opposition to the 2003 Bill

Based on the evidence found in the Parliamentary debates, it is contended here that the Christian faith remained opposed to allowing euthanasia.[833] For example, Baroness Thomas of Walliswood opined that "…suicide is wicked and against God's teaching and that therefore helping someone to commit suicide is equally wicked".[834] Similarly, Baroness Masham of Ilton noted that "One of the Ten Commandments states: Thou shalt not kill. If one believes in the sanctity of life, one cannot consider making the Bill law".[835] Furthermore, both the Church of England and the Roman Catholic Church maintained a united stance against euthanasia.[836] To this end, the Lord Bishop of Oxford noted that "The Roman Catholic Church and the Church of England are totally one on this… assisted death is wrong in itself however compassionate the motive behind it might be".[837]

Christian doctrine was not the only opposition to a change in the law on euthanasia in the 2003 debate and the House of Lords ought to "listen carefully to the leaders of the Churches and other communities on this issue".[838] Other religious groups also had an objection to allowing euthanasia. To this end, Lord Alton of Liverpool noted that:

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[833] Other examples of inclusion of Christian faith on the issue, HL Deb 06 June 2003 vol 648: Baroness Richardson of Calow col 1627-1628; Lord Beaumont of Whitley col 1640; and Lord Bishop of St Albans col 1654. Other members of the House of Lords also discussed the views of the Christian faith: Viscount Craigavon col 1674; Lord Maginnis of Drumglass col 1645; and Lord Mowbray and Stourton col 1630.

[834] HL Deb 06 June 2003 vol 648 col 1639

[835] HL Deb 06 June 2003 vol 648 col 1634

[836] The views of the Catholic Church were also included in the debate, which remained in harmony with the Church of England. The Earl of Arran (HL Deb 06 June 2003 vol 648 col 1668) explained that the Catholic Church, the Church of England and the British Medical Association were strongly against the Bill. Other members of the House of Lords also discussed the views of the Catholic faith, HL Deb 06 June 2003 vol 648: Lord St John Fawsley col 1593-1594; and Lord Lester of Herne Hill col 1595-1597

[837] HL Deb 06 June 2003 vol 648 col 1602

[838] Lord St John Fawsley (HL Deb 06 June 2003 vol 648 col 1594). Also see: Lord Tombs HL Deb 06 June 2003 vol 648 col 1665 ("That special regard for human life is not restricted to Christians; on the contrary it is shared by most established religions and it forms an essential part of our legal system and of our way of life").

> …the views of which we certainly should not simply dispose of… including the most reverend Primate the Archbishop of Canterbury, the Archbishop of Westminster, the Chief Rabbi, Dr Jonathan Sacks, and the Islamic Medical Association have urged your Lordships to resist the Bill.[839]

It is submitted here that even though, in recent years, there has been a shift in public attitudes, which now views non-religious values such as autonomy and dignity as being more common and shared between different religious and non-religious groups and ought to drive public debates on various issues, religion should not be excluded from these debates. Inclusion is necessary as religion is a vital ingredient in society since so many people and cultures are influenced by it. Thus, inclusion of religion leads to a fair and equal debate and congruent society.[840] It is further submitted here that Lord Alton's suggestion indicates that with pluralism being much more prominent in multicultural English society, the views of various minority religions were increasingly being included. For example, the views of the Islamic faith were extensively included in the debate. Lord Ahmed quoted numerous verses of the Quran on the issues of suicide and euthanasia. However, he went on to note that:

> I received only one letter from a Muslim urging me to oppose the Bill on the grounds of my religious beliefs… [The] reason why Muslims have not been writing to me over this religious and moral issue is that we have no choice in the matter. As Muslims, we believe that life is sacred and that only God, the creator of all, is the owner of life… No doctor, judge, MP, or Lord can give any ruling to end the life of any innocent human being. That is why in Islam and in all Holy Scriptures euthanasia and assisted suicide are prohibited... I believe 30,000 Muslim doctors and health professionals along with millions of British people would agree with me that life is precious and that, in spite of all the pain and suffering one experiences, only God can make the decision of cure or death.[841]

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[839] HL Deb 06 June 2003 vol 648 col 1615
[840] However, inclusion of religion and a reform of the law, on assisted suicide, are not mutually exclusive.
[841] HL Deb 06 June 2003 vol 648 col 1641-1642

Lord Ahmed's statement indicates that even with an increasingly prominent presence within English society,[842] Muslim individuals do not engage in the debate on assisted dying. It is contended here that this lack of engagement of Muslim individuals can be attributed to three reasons. Firstly, assisted suicide and euthanasia are against the religion and deeply rooted within its tenets, which have been discussed in greater detail in Chapter Three.[843] Secondly, the notion of individual autonomy is a deciding factor in this debate. It is a matter to be decided solely by the individual who seeks an assisted death based on their conscience: an individual, who opposes assisted dying on the grounds of their religion, has the choice to not request assistance. Lastly, unlike the Church of England and the Roman Catholic Church, the Islamic community does not have a head or leader to represent and voice the values and views of the religion. However, Muslim groups such as campaigners and pressure groups engage in the public debate on euthanasia. For example, the Islamic pressure group, "Pro-Life Muslims", who campaign in favour of preserving the sanctity of life, explicitly stated that they were against the 2003 Bill: "…we hope all Muslims do write to their MPs and to the Lords to drop this inhumane barbaric euthanasia Bill".[844] It is further contended here that charities and institutions such as the Muslim Council of Britain and the British Islamic Medical Association sometimes attempt to present a collective opinion of the Islamic community in England but one is merely an umbrella representative for schools and mosques in Britain and the other provides networking opportunities for Muslim healthcare professionals and students respectively. The Islamic community does not have religious representatives or institutions that can issue official statements or even change or reinterpret the position of the religion – in the same manner that the Archbishop can for the Church of England or the Pope for the Catholic Church – on issues such as assisted dying. Thus, with limited, intermittent representation the role of the Islamic religion tends to be significantly restricted. However, with society being highly pluralistic,

[842] For discussion on multiculturalism, refer to ch 3

[843] For a detailed discussion on the views of the Islamic faith on suicide and assisted dying, see ch 2. Also note that the Islamic Medical Association was formed in order "to inform [Muslim doctors and students] about the Islamic view on different medical Ethic issues". For a detailed discussion on the aims and objectives of this Assosciation: A Majid Katme, 'Islamic Medical Association – UK' <http://www.islamicmedicine.org/imaUK.doc> accessed 21 May 2017

[844] A Majid Katme (Pro-Life Muslims: Muslims Campaign For the Sanctity of Life) <www.prolifemuslims.com/ISLAM%20AND%20EUTHANASIA.asp> accessed 21 May 2017

campaigners, charities, institutions and even individuals of the Islamic faith occasionally submitting evidence and responding to governmental policies and actions, the Islamic community does receive some inclusion and representation within policy-making and public debates on issues such as assisted dying and the religious sentiment and opposition, of the Islamic community, to this issue remains unchanged.[845]

It is concluded that the theological opposition to euthanasia remains; and with the increase in secularism and pluralism within English society, minority religious views were being included in the debate along with those of the Christian faith. However, unlike the 1936 and 1969 Bills, the paramount opposition to allowing euthanasia is not religious objection. Instead, the basis of rejecting the Bill was as follows: whether there was a sufficient amount of safeguards in the Bill for all the individuals involved in the process,[846] altering the doctor-patient relationship,[847] and the slippery slope argument.[848] Furthermore, it is submitted that there is an increasing prominence of secular, non-religious views; which

[845] Hassan Chamsi-Pasha and Mohammed Ali Albar, 'Assisted dying: law and practice around the world' BMJ 2015, 351:h4481. Also see: Muslim Council of Britain (MCB), 'Muslim Council Responds to Assisted Dying Bill' (17 July 2014) <http://www.mcb.org.uk/muslim-council-responds-to-assisted-dying-bill/> accessed 21 May 2017

[846] HL Deb 06 June 2003 vol 648: Baroness Howells of St Davids col 1592; Lord Lester of Herne Hill col 1597; Baroness Finlay of Llandaff col 1599; Lord Philips of Sudbury col 1605-1606; Baroness Masham of Ilton (col 1634) who opined that "Many disabled people throughout the country feel threatened by the Bill"; and Lord Neil of Bladen (col 1658) who argued that "…the enactment of the Bill will by itself create that sense of a duty to die in old and vulnerable people". In contrast: Baroness Young of Old Scone (HL Deb 06 June 2003 vol 648 col 1646), who felt that the Bill was "…surrounded by careful safeguards, checks and balances against misuse" and the Lord Bishop of Oxford (HL Deb 06 June 2003 vol 648 col 1600) argued that "I recognise that the Bill introduced by the noble Lord, Lord Joffe, has a number of important safeguards".

[847] HL Deb 06 June 2003 vol 648: Lord Lester of Herne Hill (col 1595) who opined that "…doctors and nurses should not be under any duty or coercive pressure to do anything to which they have a conscientious objection"; Lord Bishop of Oxford col 1600; Lord Brennan col 1610-11; Lord Patten col 1612; Lord Alton of Liverpool col 1616; and Baroness Flather col 1663. In contrast: Lord Chalfont (col 1644) who opined that "[The Bill] provides robust safeguards against abuse and carefully protects the doctor-patient relationship".

[848] HL Deb 06 June 2003 vol 648: Baroness Wilkins col 1661; Lord Bridges col 1659; and Lord Taverne Deb col 1626

increasingly dictate public opinion on this issue.[849] As the next section establishes, this prominence of a secular viewpoint led to non-religious values being extensively discussed, and even prioritised over theological doctrine, in the 2003 debate.

6.3.2 Non-Religious, Secular Opposition to the 2003 Bill

The debate clearly establishes that secular values were beginning to fuel this debate, and, thus, needed to be included in the Parliamentary discussions. Baroness Warnock explained that:

> …the arguments derived from religious beliefs should be kept to one side in this debate. Of course those who have beliefs derived from their religion… which would prohibit the legitimising of assisted death, should not be compelled either to accept such assistance or to proffer it… But it seems to me that the law should be based not on religious beliefs, but on a concept of morality separate from any particular religion… for many people their morality is derived from their religion. But for many, morality is essentially secular. It is this secular path that the law must follow.[850]

As traced throughout this chapter, and will follow in this chapter, religion is a significant phenomenon that has historically, and continues to, play an important role in public debates and policy making on various issues. However, the public perception and attitude has changed over the years, due to the influence of multiculturalism and secularism, which now views non-religious, secular values as being more homogenous and shared between individuals and different communities. These common secular values are the reason behind increasingly less importance being placed on religious tenets. Furthermore, Baroness Warnock's explanation indicates that in order to avoid giving one religion preference over the other, and to maintain neutrality and objectivity, Members of Parliament chose to

[849] For discussion on secularism in British society, refer to ch 3

[850] HL Deb 06 June 2003 vol 648 col 1608. In contrast: Lord Bishop of St Albans (HL Deb 06 June 2003 vol 648 col 1653) opined that British society was not secular. Also see: Lord Ahmed (HL Deb 06 June 2003 vol 648 col 1642) felt that "Even if we put aside religious faith-based arguments to oppose the Bill, and just look at morals and ethics, we can still come to the conclusion.

express their opinions using a secular, non-religious viewpoint. The secular values that fuelled the debate 2003 Bill were as follows. Firstly, the principle of compassion was beginning to influence the debate on assisted death. There are arguments, based on the notion of compassion, against and in favour of reform. The principle of compassion is often limited in order to protect vulnerable individuals and avoid the risk of an unwanted death, and even protects doctors from unfair prosecution.[851] However, other members of the House of Lords viewed compassion as a value that completely fuels the debate;[852] and this paramount principle should dictate the law.[853] Compassion is the most significant value that justifies the permissibility of allowing an assisted death for terminally ill patients in order to relieve them of their suffering.[854] However, as will be discussed later in this chapter,[855] the notion of compassion has no legal grounding; and a change in the law can only be based on the notion of autonomy, thus, it takes over compassion as the most significant non-religious principle on which the law can be reformed.

Secondly, various members of the House of Lords opined that autonomy is a fundamental right, which allows individuals to choose the time and manner or their death. It is accepted here that it is the central value in support of reforming the law on assisted dying, on which a reform of the law can be based. To this end, Baroness Jay of Paddington stated that "…the role of individual autonomy in making decisions is fundamental… the individual human right to choose should be paramount".[856] However, the majority of members of the House of Lords argued that autonomy cannot be used as a basis to allow assisted dying:

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[851] The limitations to the notion of compassion were discussed in the House of Lords: Lord Bishop of St Albans (HL Deb 06 June 2003 vol 648 col 1653) "In the name of compassion the Bill could – not necessarily would – create a merciless society"; Lord Philips of Sudbury (HL Deb 06 June 2003 vol 648 col 1605); and Baroness Greengross (HL Deb 06 June 2003 vol 648 col 1651).

[852] Baroness Finlay of Llandaff HL Deb 06 June 2003 vol 648 col 1598 ("…this important debate is driven on all sides by compassion").

[853] Baroness Warnock HL Deb 06 June 2003 vol 648 col 1608 ("morality of compassion… must be paramount and dictate what the law should allow").

[854] Mary Hayden Lemmons, 'Compassion and the Personalism of American Jurisprudence: Bioethics Entailments' in Christopher Tollefsen (ed), *Bioethics with Liberty and Justice: Themes in the Work of Joseph M Boyle* (Springer 2011) 59

[855] Refer to Section 6.6.5

[856] HL Deb 06 June 2003 vol 648 col 1604. Lord Alexander of Weedon HL Deb 06 June 2003 vol 648 col 1622 held a similar opinion.

even though every individual has a right to choose; this right is not absolute and needs to be restricted in order to protect the rights and beliefs of other individuals or groups in society.[857] To this end, Hamel argues:

> In such proposals [to allow assisted dying particularly active euthanasia]… we confront but another manifestation of our growing incapacity to recognize the demands of human solidarity, which can require sacrifice of individual autonomy to protect others from being brutally constrained to kill themselves or to ask others to kill them.[858]

It is submitted that this argument is partly accurate: certain rights of an individual must be limited in order to protect other individuals and communities within the state. However, it does not take into consideration that autonomy is the notion, which allows individual to make decisions about their life, and even how and when to end it. Furthermore, allowing individuals to be able to exercise their right to self-determination, by having their autonomous decision to end life respected, is the most important value on which a reform of the law can be based, as long as the decision is an informed, settled and fully thought out one. Thus, the state should allow individuals to make their own decisions and choose which values inform those decisions, provided there are safeguards to protect them (and every other citizen) including the main safeguard by distinguishing between assisted suicide and euthanasia and only allowing the former.

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[857] The Lord Alton of Liverpool (HL Deb 06 June 2003 vol 648 col 1617) argued that: "Autonomy is one of the buzzwords of the pro-euthanasia lobby and can clearly be seen in the wording of the Bill. However, autonomy is not an absolute right that each of us, as individuals, can exercise while living in our own little bubbles". Also see: Lord Brennan HL Deb 06 June 2003 vol 648 col 1609. The majority of members of the House of Lords argued that autonomy cannot be used as a basis to allow assisted dying: Baroness Finlay of Llandaff HL Deb 06 June 2003 vol 648 col 1598; and The Lord Bishop of St Albans HL Deb 06 June 2003 vol 648 col 1652-1653

[858] Ronald Hamel, *Choosing Death: Active Euthanasia, Religion, and the Public Debate* (Trinity Press International 1991) 111

Thirdly, the notion of human dignity was another principle included in the debate on the 2003 Bill.[859] The medical symptoms and manifestations of a terminal illness are generally the reason behind a loss of dignity.[860] Individuals slowly lose control of their physical and mental abilities and functions and become helpless and completely dependent on others to look after them.[861] Being in such a state of helplessness and incapacity is an undignified and degrading condition for them. Not being able to have an autonomous decision respected, to end life to stop this degradation and suffering, is the ultimate loss of dignity.[862] Baroness Andrews accurately summarised the minority position of the members of House of Lords, who supported the Bill, as follows: "[The Bill] upholds the moral principle of autonomy by supporting the concept of choice; it upholds the human value of dignity; and it sets out some protections for individuals".[863] Thus, it is argued that human dignity dictates that life should not be prolonged and individuals – who conscientiously, autonomously and voluntarily choose to end life – should not be forced to continue to live what they perceive to be an undignified life.[864] It is further argued that human dignity can only be preserved through allowing individuals to make autonomous decisions; by being released from a life that the individual perceives to be intolerable and undignified.[865] To this end Biggs rightly notes that "in order to preserve their autonomy and dignity" they wish to have their "independent thought, will and action [which is] fundamental to autonomy and human dignity" applied by "seeking release from a life they perceive as intolerable and choosing to bring about their own death [and] shaping their own destiny".[866]

Lastly, as Rae argues, "the value of life and recognition of the intrinsic dignity of the human person are clearly linked".[867] This notion was included in the 2003 debate: the notion of value of life was viewed to be closely linked to that of human dignity. To this

[859] For discussion on Human Dignity; refer to chs 2 and 5.
[860] Lord Gary of Contin HL Deb 06 June 2003 vol 648 col 1649 and Lord Laing of Dunhill HL Deb 06 June 2003 vol 648 col 1638 who supported this notion.
[861] Herring (n 458) 520
[862] Lord Alexander of Weedon HL Deb 06 June 2003 vol 648 col 1622-1623
[863] HL Deb 06 June 2003 vol 648 col 1686
[864] Barilan (n 812) 187-188
[865] Biggs (n 27) 106
[866] ibid
[867] Scott Rae, 'The Language of Human Dignity in the Abortion Debate' in Dilley and Palpant (n 241) 225

end, Lord Goodhart accurately noted that even though he did not have a religious belief or view life as a gift from God, life has immense value:

> However… when life becomes so burdened by suffering that that has no value to them and there is no prospect that it ever will have. For those people the greatest kindness is to help them to die, and that withholding that help is unkind. I do not believe that providing that help in strictly defined and limited circumstances, and with proper safeguards, should be a crime.[868]

However, the decision to not change the law reflected the popular opinion of doctors at the time. For example, in a poll conducted around the time of the Bill, 74% of doctors stated that they would not perform assisted deaths even if they were allowed. The importance of this poll lies in the fact that the 2003 Bill sought to allow physician assisted euthanasia, where doctors would be carrying out all the actions that led to the death of the patient. Since another individual, even if it is a healthcare professional, is the one carrying out the final action in the process of euthanasia, which as explained in Section 1.3 and throughout this chapter, carries a risk of the slippery slope effect coming into play and is seen as intentional killing, thus, it can never be morally justified. For the assisted death to be truly autonomous and voluntary, and the only justifiable grounds on which is can be allowed by the law, is when the individual who seeks it always performs the final action that ends life. If a consistent, unchanging, informed and autonomous decision can be separated from mental illness; individuals ought to have access to a lawful option of assisted suicide.

It is concluded that the opposition to making assisted dying permissible was not only based on theological doctrine but also secular values.[869] Compassion, autonomy and dignity (which is entwined with the notion of value of life) were the main values that fuelled the debate. The idea of value of life was on par with the religious doctrine of sanctity of life,

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[868] HL Deb 06 June 2003 vol 648 col 1614. Other Members of the House of Lords also held similar views: Baroness Young of Old Scone HL Deb 06 June 2003 vol 648 col 1647; and Lord Russell-Johnston HL Deb 06 June 2003 vol 648 col 1633-1634.

[869] Mary Warnock and Elisabeth Macdonald, *Easeful Death: Is there a case for assisted dying?* (OUP 2008) 66

thus, both of them received equal consideration in the 2003 Bill.[870] The need to uphold the value of life (whether based on religious or non-religious conceptions) and protect vulnerable individuals ultimately led to the Bill being defeated.[871]

6.4 Assisted Dying for the Terminally Ill Bill 2004

In light of the Parliamentary debates, Lord Joffe revised the 2003 Bill and reintroduced it as the "Assisted Dying for the Terminally Ill Bill" the next year.[872] This Bill would have allowed doctors to provide both euthanasia and physician-assisted suicide.[873] A Second Reading was delayed as this Bill was referred to the House of Lords Select Committee that produced a Report in April 2005.[874]

The main findings of the Select Committee were as follows. There was a need to distinguish between voluntary euthanasia and assisted suicide, with the latter to be given preference for legislation due to assisted suicide being where slippery slope cannot come into affect, is not seen as intentional killing and the final action is always taken by the individual who requests it and not another person, which acts as a safeguard from unwanted death. The Committee recommended that assisted suicide should only be made available to a select group of people, namely terminally ill patients who have a clear, informed and

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[870] For discussion on value of life, refer to ch 2

[871] The majority of the members of the Lords opined that allowing assisted death – even if an individual is mentally or physically suffering – would weaken the moral fabric of society and diminish the intrinsic value of life. See: HL Deb 06 June 2003 vol 648: Lord Alton of Liverpool (col 1616); Baroness Jay (col 1604) "I do strongly believe that the unique value of each individual human life should be respected"; Lord Alexander of Weedom col 1629; and Baroness Greengross col 1650. Other members of the Lords also felt that allowing assisted dying would decimate the value of life: Lord Plant of Highfield col 1619-1620; Lord Bishop of St Albans col 1654; and Lord Gary of Contin col 1648.

[872] Glenys Williams, *Intention and Causation in Medical Non-Killing: The impact of criminal law concepts on euthanasia and assisted suicide* (Routledge-Cavendish 2007) 171; James Davey and John Coggon, 'Life assurance and consensual death: law making for the rationally suicidal' (2006) 65(3) CLJUK 521, 522; and Hazel Biggs, 'The Assisted Dying for the Terminally Ill Bill 2004: will English law soon allow patients the choice to die?' (2005) 12(1) EJHL 43

[873] Sumner (n 832) 142

[874] Select Committee 2005 (n 826); Margaret Brazier and Emma Cave, *Medicine, Patients and the Law* (5th edn, Penguin 2011); and Woods (n 589) 153

settled intention to end life.[875] Furthermore, a significant number of other safeguards needed to be included in the Bill, including having considered the option of palliative care, establishing which patients would be allowed to have access to the option of ending life (for example, excluding patients with mental disorders) and the actions that would authorise a doctor to provide assistance.[876]

The Select Committee received responses from various religious leaders and individuals. For example, the Chief Rabbi and the Archbishops of Canterbury and Westminster explained the importance of the doctrine of sanctity of life and the need to retain the criminal embargo in order to preserve it.[877] Furthermore, a Muslim doctor, Khalid Hameed, also submitted oral evidence explaining that:

> In Islamic bioethics, the physician has… no right to terminate human life… To legalise assisted suicide, that is euthanasia, will lead to direct or indirect coercion of terminal patients to express a wish to die. Legislation would place unfair psychological pressure on all ill patients… [who] may be pressured to terminate [their] feeling that they are a burden to society and… family and friends… Hence, personal autonomy must give way to the interest of the society at large.[878]

It should be noted here that the terms assisted suicide and euthanasia were used interchangeably in Mr Hameed's submission. This denotes a lack of understanding of the significant difference between the two concepts. As explained earlier in this chapter, assisted suicide is generally always voluntary, with exception of susceptibility through mental pressure or coercion, as the individual who seeks the assistance to end their life takes the final action. However, even with safeguards, euthanasia is when another person assists that individual – for example, through actively injecting them with lethal medication to end their life – and there is a risk of the 'slippery slope' coming into effect and

[875] Select Committee 2005 (n 826) 7
[876] ibid 7
[877] Warnock and Macdonald (n 869) 66-68
[878] Select Committee on Assisted Dying for the Terminally Ill Bill (Minutes of Evidence, 13 January 2005) <http://www.publications.parliament.uk/pa/ld200405/ldselect/ldasdy/86/5011304.htm> accessed 21 May 2017

individuals being given unwanted deaths. Thus, assisted suicide only affects the individual seeking the assistance whereas euthanasia can affect every person within a community who is terminally ill, elderly or vulnerable and, thus, may be at risk of being prematurely killed off.

Even though the theological debate was not an extensive one, the Select Committee gave significant consideration to various religions (and non-religious views) in the report. The main finding of the Select Committee was that values such as individual autonomy needed to make way for the value of human life, whether on religious or secular grounds, which needed to be prioritised and preserved. The value and sanctity of life was the paramount principle against the reform of the law. To this end, the Select Committee noted that:

> It was clear from the evidence which we took from representatives of religious organisations… that many people believe that life is God-given and cannot in consequence be terminated by others, even on request. For them the sanctity of human life is a concept which is closely linked with religious convictions… however… there is also a secular version of this principle… Human life is… special and to be treated with care. Intentional killing is not something any of us should be taking lightly, whether we are religious or not.[879]

The Select Committee also noted the antithetical argument used in favour of allowing reform, which was accurately explained by Professor Blackburn as follows: "the sanctity of life is actually honoured when we give due weight to human suffering, human dignity and human self-determination".[880] Based on this argument, it is submitted that the value of human life is subjective: the individual uses the non-religious or religious beliefs they hold to decide its worth and quality and whether or not to end or preserve life.[881] The doctrine of sanctity of life is not an absolute principle: respecting an individual's choice, by

[879] Select Committee 2005 (n 826) p 24
[880] ibid
[881] For discussion on autonomy, refer to chs 2 and 5.

acknowledging their pain and indignity, which they need to end, upholds the modern understanding of sanctity of life.[882]

6.5 Assisted Dying for the Terminally Ill Bill 2005

Lord Joffe revised the 2004 Bill, in light of the Select Committee's findings, and presented it in the House of Lords in November 2005.[883] This Bill sought to legalise physician-assisted suicide, and not active euthanasia, for terminally ill patients (to avoid the slippery slope effect and to ensure autonomy and voluntariness in the process). The Bill would have allowed doctors to prescribe lethal medication, or set up equipment to allow patients to self-administer medication, to end their own life.[884] It is submitted here that the change in these Bills from seeking to allow euthanasia to physician-assisted suicide was based on the Select Committees findings in 2004 that it was paramount to distinguish between assisted suicide and euthanasia, with the former given preference for legislation. As explained in Chapter One, assisted suicide is always voluntary as the final action that ends life is taken by the individual who seeks the assistance (as opposed to euthanasia where another person takes that action and there is the risk of the slippery-slope coming into effect).[885]

With the inclusion and submission from religious groups, especially minorities, being subdued or even absent, this Bill met with an unprecedented response from six faith groups – Christians, Muslims, Hindus, Sikhs, Jews and Buddhists – who collectively published an open letter to Parliament regarding their opposition to changing the law on assisted suicide and euthanasia.[886] The letter largely had neutral, non-religious language. It is submitted that

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[882] For discussion on the changing conception of sanctity of life, refer to chs 2, 5 and 6.
[883] David Price, 'What shape to euthanasia after Bland? Historical, contemporary and futuristic paradigms' (2009) 125(Jan) LQR 142, 144. Lord Joffe failed to incorporate a number of key suggestions made by the Committee. As the revised Bill stood, individuals with impaired judgment could misguidedly request assistance and would be at a risk of abuse if physicians failed or chose not to report the cases. See: Keown, *Law and Ethics of Medicine* (n 226) 269
[884] House of Lords, Assisted Dying for the Terminally Ill Bill [HL Bill 36 – 54/1] <http://www.publications.parliament.uk/pa/ld200506/ldbills/036/2006036.pdf> accessed 21 May 2017
[885] Refer to Section 1.3
[886] Church of England, 'Nine leaders from six major British faith groups join together in unprecedented stand against assisted suicide and euthanasia' (7 October 2005)

this was an attempt to relate to individuals, not only from Christian and Islamic backgrounds, but also individuals who subscribe to a secular school of thought and to relate to society at large. The Bishop of Southwark, Church of England,[887] the Catholic Archbishop of Cardiff,[888] The General Director of the Evangelical Alliance, which is the largest and oldest body representing evangelical Christians in the United Kingdom,[889] and the Chair of the Muslim Law Sharia Council,[890] personally signed the letter.

The faith groups raised five issues. Firstly, countries that have legalised euthanasia or physician-assisted suicide, such as Holland, are experiencing abuse of the system.[891] For example, patients with manageable psychiatric disorders were receiving lethal medication.[892] Secondly, medical opposition to allowing assisted suicide has increased in recent years and health care professionals, particularly doctors, have refused to be involved in the process.[893] Thirdly, opinion polls, which demonstrate that a large majority of citizens would favour a change in law on assisted suicide are misleading; as they simplify very complex questions without providing any other options of explanatory context.[894] Fourthly, instead of allowing access to an assisted death, patients should be given access to palliative care, which has advanced enough to greatly relieve the suffering of patients.[895] Furthermore, the expeditious advances being made in palliative care, which significantly diminish the suffering of patients, are done in an effort to preserve human life. To this end, Cohen-Allmagor, argues that "Good palliative care enables people to continue living and

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<https://www.churchofengland.org/media-centre/news/2005/10/pr7505.aspx> accessed 21 May 2017

[887] The Rt Revd Tom Butler

[888] Peter Smith

[889] Joel Edwards

[890] Sheikh Dr M A Zaki Badawi

[891] Church of England, 'Nine Leaders stand against assisted suicide' (n 886)

[892] In jurisdictions that allow assisted dying, such as Belgium, there is reported abuse of legislation, with doctors approving of individuals with suicidal tendencies: Darren Boyle, 'Belgian doctors give healthy woman, 24, green light to die by euthanasia because of 'suicidal thoughts'' *Daily Mail* (27 June 2015) <www.dailymail.co.uk/news/article-3141564/Belgian-doctors-healthy-woman-green-light-die-euthanasia-suicidal-thoughts.html> accessed 21 May 2017

[893] Church of England, 'Nine Leaders stand against assisted suicide' (n 886)

[894] ibid

[895] ibid

coping with suffering without opting for euthanasia".[896] However, it is submitted that this argument does not take into consideration that there are a handful of patients, with certain diseases, who are irresponsive to palliative care and the only way to end their pain and suffering is through receiving an assisted suicide. It is further submitted that since patients with psychiatric disorders or mental illnesses can easily be separated from individuals who have an informed, autonomous and constant wish to end life; the very small number of individuals who are mentally competent and not under any pressure or coercion, have an informed and constant wish to seek an assisted suicide (as every individual with a disease or illness would not utilise such as option) and are unresponsive to palliative care ought to be allowed to receive assistance in ending their lives.

The last issue raised by the faith groups was that allowing "Assisted suicide and euthanasia will radically change the social air we all breathe by severely undermining respect for life".[897] All the religions were in agreement that the main value that fuelled their opposition to reforming the law was the value of human life, which has both religious and secular grounding. The wording used did not have an inherently religious underpinning: it can be seen as sacred and having an intrinsic respect and worth (instead of a religious sanctity) attached to it.[898] To this end, the faith groups stated that, "We… hold all human life to be sacred and worthy of the utmost respect".[899] However, it is submitted here that the value of human life is subjective and its worth can only be decided by the terminally ill patient (who can choose to preserve or end life).

It is concluded that historically, the debate on assisted dying was largely influenced by religious values, particularly those of the Christian faith due to its deep-seated ties with England. However, over the years, with the influence of multiculturalism and secularism in society, there has been a steady decline of religious influence in this debate and secular values, which society perceives to be much more common and shared in a highly pluralistic and increasingly secular country. There has been intermittent inclusion of religious tenets in

[896] Raphael Cohen-Almagor, *Euthanasia in the Netherlands: The Policy and Practice of Mercy Killing* (Kluwer 2005) 124
[897] Church of England, 'Nine Leaders stand against assisted suicide' (n 886)
[898] ibid
[899] ibid

the Lord Joffe Bills and an incident of unprecedented opposition from religious groups. However, this opposition was based on secular values and was written entirely in non-theological language in an attempt to relate to society at large, not just the religious groups whose representatives opposed the 2005 Bill. The next section critically reviews the extent and role of faith, and non-religious principles, in the Parliamentary debate in 2005.

6.5.1 Parliamentary Debates on the 2005 Bill

This Bill was a modified version of the 2004 Bill, was the third "assisted dying" Bill that Lord Joffe had tabled in the House of Lords in three years. It sought to allow mentally capable adults with an unchanging and consistent wish to die, who had unbearable pain from a terminal illness to receive a physician-assisted suicide (and not euthanasia). It received a Second reading in the House of Lords on the 12th of May 2006. Parliament debated this Bill for almost eight hours and more than ninety Members spoke on various ethical, social, medical, religious and non-religious issues that surrounded this Bill. When introducing the Bill, Lord Joffe explained that:

> The current law has the following defects. It results in unnecessary suffering by a significant number of terminally ill patients who are denied the right to end their suffering by ending their lives and the right, as they see it, to die with dignity. It is ignored by some caring doctors who, from time to time, moved by compassion, accede to persistent requests by suffering patients to end their lives. That results in grave risks to those doctors' careers, reputations and possibly freedom. It is also ignored by loved ones who face a terrible emotional burden when helping with such a request. It places patients at risk of making spontaneous and ill formed decisions to end their lives. It influences patients with progressive physical diseases to end their lives earlier than they need to… because they fear that at a later stage they may not be physically able to do that. Finally, it results in patients leaving the United Kingdom to die lonely deaths at Dignitas in Zurich, without any legislative safeguards whatever.[900]

[900] HL Deb 12 May 2006 Vol 681 Col 1184-1185

It is submitted here that Lord Joffe accurately encapsulated why there was a need to change the law. Firstly, even though the number of terminally ill patients is very significant, not all of them would seek an assisted death. Only a small number of these patients want the option to end their undignified life. Clearly, the notion of dignity continued to play an important role in this debate in 2006; as some patients who are terminally ill and unresponsive to treatment and palliative care, may feel their quality of life is deplorable due to their physical incapacity, dependency on their carers to do everyday tasks, and subsequently feel that their autonomy and dignity are compromised. The only way to restore their dignity is by providing them with a right to self-determine the time and manner of their death with a lawful option to end their undignified life. Secondly, not having a lawful option of assisted suicide leads to family members, friends and healthcare professionals providing the assistance in an unregulated manner, with no legal safeguards whatsoever that subsequently endanger the individual who provides the assistance and makes them vulnerable to emotional distress and even prosecution. Lastly, individuals, who are able to afford to go to Dignitas in Switzerland, prematurely end their lives – whilst they are still physically capable to travel in order to avoid putting their loved ones at risk of prosecution – in a foreign country without their family or friends around them.

However, the majority of Members in the House of Lords did not share Lord Joffe's opinion. For example, Lord Carlile of Berriew, who was an expert in the field of palliative care, opined that palliative treatment, available in Britain, was very advanced and "capable of meeting every need discussed in these debates".[901] Other Members, for example, Lord Wilson of Dinton stated that "it is much better to put effort into palliative care, which is a very positive approach to the end of life, rather than bring forward death".[902] Similarly, Lord Clement-Jones agreed that the way forward was through:

> …the development of high-quality palliative care, pioneered by the hospice movement in this country, in which we are now world leaders. We should not extend patient autonomy for a few by a dramatic change in medical ethics and

[901] ibid Col 1192
[902] ibid Col 1229

practice, which could be detrimental to the many.[903]

It is argued here that whilst palliative care was, and continues to be, a widely available and very effective option for the majority of patients, there is still a small number of patients who are unresponsive to palliative treatment and want to exercise their right to self-determination by choosing the time and manner of their death. A lawful option of assistance ending their life as it is the only way to end their pain, suffering and indignity. To this end, Baroness Jay of Paddington, who was in the minority who supported this Bill, stated that "the vast majority of terminally ill patients can be helped by palliative care; for the minority, they may experience either intractable suffering or simply prefer to end their lives".[904]

The majority of the House of Lords clearly preferred to promote and further develop access to palliative care rather than allow assisted deaths. Clearly, assisted dying was seen to be "a complete ethical nightmare" as it causes serious concerns amongst vulnerable people – especially the elderly and disabled – who fear that they will be given unwanted deaths.[905] To this end, Lord St John of Fawsley stated that, "The trouble is that the Bill would open the way to abuse by the greedy and the acquisitive and bring pressure on those who are at their most vulnerable".[906] Lord Phillips of Sudbury further explained that the Bill would exert pressure "unintentionally though inescapably… on many vulnerable people to avail themselves of assisted suicide to avoid being a burden on their families or dissipating scarce resources".[907]

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[903] ibid Col 1210. Also see: Baroness Williams of Crosby (HL Deb 12 May 2006 Vol 681 Col 1201); and Lord Elton (HL Deb 12 May 2006 Vol 681 Col 1213).
[904] HL Deb 12 May 2006 Vol 681 Col 1195. Also see: Baroness Greengross HL Deb 12 May 2006 Vol 681 Col 1240 ("Most people do not suffer if they receive good, comprehensive palliative care. That is why I support it so strongly. However, we know that a minority do not. For them, this Bill, were it an Act, would bring a sense of security and the knowledge that, if necessary, they can call on help. For most people, that knowledge is all they need").
[905] As per Lord Carlile HL Deb 12 May 2006 Vol 681 Col 1192
[906] HL Deb 12 May 2006 Vol 681 Col 1196
[907] ibid Col 1214

It is contended here that protecting vulnerable people remained a significant concern, which is present in every debate in relation to assisted dying. Even though "the vulnerability is very real";[908] it is possible to safeguard vulnerable individuals through tightening up legislation, including a number of safeguards such as only allowing assisted suicide (instead of euthanasia) in limited circumstances where the terminally ill patient has an informed, autonomous, voluntary and consistent wish to end life that can be separated from temporary depression or long term mental illness. It is further contended that not every disabled or elderly person is vulnerable nor being terminally ill make a patient vulnerable or more susceptible to coercion or pressure.[909] Furthermore, only a handful of terminally ill patients would want to access the option to receive assistance in ending their life. However, the majority of the House of Lords were not convinced and Lord Tombs' statement accurately summarised the position of the House on this issue:

> In seeking to change the law in order to help a small number of people to end their lives voluntarily within the law, they will imperil many others by creating a presumption that life has become worthless, or inconvenient to others, as a means of inducement to end their lives. That seems to me quite indefensible. Coercive pressures could change measures intended to be caring into aggressive ones against the terminally ill, the aged and the handicapped, who would rightly feel threatened in a way that no civilised society should accept. I believe that that argument alone is sufficient reason to reject the Bill.[910]

It should be noted here that even though this Bill sought to allow physician-assisted suicide, because of its title, it was viewed as legalising assisted dying, an umbrella term for all forms of euthanasia and assisted suicide. To this end, Baroness Finlay of Llandaff noted that:

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[908] As per Lord Elton HL Deb 12 May 2006 Vol 681 Col 1213
[909] Lord Ashley of Stoke HL Deb 12 May 2006 Vol 681 Col 1198 ("The public often misunderstand disability… but they surely cannot be so stupid as to believe that Britain's 11 million disabled people are terminally ill".)
[910] HL Deb 12 May 2006 Vol 681 Col 1212

> The Bill is not called "Assisted Suicide" for good reason, because that takes us to the very brink of euthanasia in one fell swoop. Doctors could supply a lethal overdose, which is assisted suicide in the Oregon law. But what are the alternate means, undefined in this Bill, by which those drugs could be taken? The doctor is not required to be present, so who knows whether the patient actually took the drugs themselves or was euphemistically "helped" by someone else? How could malpractice be proven if the principal witnesses were dead or would not come forward? The Bill ignores the recommendation that the doctor's actions be clearly set out. As I listen today, there is still no clarity about precisely what "assisting to die" is… The Bill flies in the face of the committee's recommendation that, "a clear distinction should be drawn in any future bill between assisted suicide and voluntary euthanasia".[911]

It is submitted here that this Bill failed to differentiate between assisted suicide and euthanasia. To reiterate the definitions set out in Section 1.3, assisted suicide is when the individual takes the final action that ends life, which acts as a safeguard that ensures autonomy and voluntariness in the process. On the other hand, voluntary euthanasia is when an individual requests assistance and another person takes the final action such as administering lethal injections to that individual. The idea of a person ending the life of another is viewed as "intentional killing"; where there is potential for the slippery slope to be engaged and involuntary or non-voluntary euthanasia being effectuated. Thus, it is recommended that assisted suicide, instead of euthanasia, be the preferred method of providing the lawful option to end life. This should be made clear in any future Bill introduced for the purpose of reforming the law. To this end, Baroness McFarlane of Llandaff explained the importance of creating a distinction between these terms:

> It is important to look at the definition of euthanasia as a deliberate intervention undertaken with the express intention of ending life to relieve intractable suffering. I believe too, that the term "passive euthanasia", which has been so commonly used, is misleading. It is important to make those distinctions.[912]

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[911] ibid Col 1201
[912] HL Deb 09 May 1994 vol 554 col 1364

Simply put, due to the nature and process of euthanasia and the extent of involvement of a third person in ending the life of another, it is seen as intentional killing and can eventually lead to coerced or unwanted deaths. Assisted suicide on the other hand is a very individualistic process, where the person who requests it end their life and the risk of unwanted deaths is eliminated. Thus, it is vital to understand and promote a distinction between these two concepts, as the lack of differentiating between them has arguably been one of the reasons the law has not been reformed. Furthermore, it can be concluded that the main oppositions to the Bill was the need to protect vulnerable individuals, promote palliative care and treatment, the risk of engaging the slippery slope effect due to a lack of differentiation between assisted suicide and euthanasia;[913] and changing the doctor-patient relationship.[914] Amongst these objections were also religious and non-religious issues that the House of Lords considered in equal detail and are examined in the next section.

6.5.2 Religious and Non-Religious Objections to the 2005 Bill

Lord Joffe explained that the opposition to his Bill was from a "relatively small number of deeply committed Christian worshippers and are the result of a massive political campaign by the Churches" and that public opinion, including "about 80% of Christians of all denominations support assisted dying".[915]

Members who supported this Bill, such as Lord Pearson of Ranch,[916] went into significant detail about the position of the Christian religion on this issue and argued that there is an "exaggerated fear of death" that guides the Christian community's opposition of this Bill. Lord Laing of Dunphail further elaborated by stating that:

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[913] The following Members discussed the slippery slope for and against allowing the Bill, HL Deb 12 May 2006 Vol 681: Lord Ashley of Stoke Col 1198; Baroness Williams of Crosby Col 1200; Lord Nickson Col 1223; Earl of Glasgow Col 1239; Lord Swinfen Col 1268; and Lord Patten 81 Col 1199.

[914] As per, HL Deb 12 May 2006 Vol 681: Baroness Williams of Crosby Col 1200; Archbishop of Canterbury Col 1197; Lord Nickson Col 1222; and Lord Brennan Col 1236.

[915] HL Deb 12 May 2006 Vol 681 Col 1185-1186

[916] HL Deb 12 May 2006 Vol 681 Col 1215-1216

> A person contemplating assisted suicide will no doubt bear in mind the views of the Church. But I believe that one has a personal relationship with God through Jesus Christ. If after prayer one chooses assisted suicide that is a personal decision between oneself and one's maker. We should bear in mind that God gave us free will. It is a strange coincidence that we are debating this issue almost four years to the day that brave Dianne Pretty died. I, like the majority of the population at the time, did not believe that she should have had to suffer the indignity of dying in the manner she feared; a manner contrary to all her values. Since then, many others have been forced to go on living against their will and I hope that this House will have the compassion to spare others the same fate.[917]

However, the majority of the House disagreed with this position and explained that they "believed in the sanctity of human life… the Christian argument".[918] Lord Ahmed even presented the views of the Islamic faith on this issue by quoting the Quran and stating that Muslims "believe that life is sacred and that only Almighty God, the creator of all, has the right and the power to end anyone's life, even if the patient is old, disabled and terminally ill". It is contended here that the views of the Christian and even Islamic faith received inclusion within this debate. Religious language and vocabulary via Biblical and Quranic texts was included and various Members of the House took theological standpoints against allowing this Bill. Other Members of the House of Lords also noted that there is a "strong opposition in principle from those whose ideological – usually religious – beliefs would forbid assisted dying".[919] For example, Lord Hayhoe opined that:

> There are many arguments against the Bill but for me… the most persuasive have been the clear and principled objections of religious leaders – Christian, Jewish, Buddhist, Islamic, Hindu, Sikh – who hold all human life to be sacred and worthy of the utmost respect. As a… Catholic, I judge the Bill to be ethically and morally wrong and my opposition is both principled and total. I will vote against the Bill.[920]

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[917] HL Deb 12 May 2006 Vol 681 Col 1220
[918] As per Lord Nickson HL Deb 12 May 2006 Vol 681 Col 1222
[919] As per Lord May of Oxford HL Deb 12 May 2006 Vol 681 Col 1278
[920] HL Deb 12 May 2006 Vol 681 Col 1246

Lord Hayhoe's opinion indicates that the views of various religions are homogenous on this issue: they view human life to be sacred and as having immense value that needs to be protected under all circumstances. Other Members of the House shared similar opinions by arguing that this Bill would not only change "the legal but also the general perception of the sanctity of human life";[921] and that in a pluralistic society, a belief in the doctrine of sanctity of life may not be shared by all but ignoring this doctrine all together and endorsing the view, by allowing this Bill, "that certain kinds of human life are not worth living… would bring disastrous risks".[922] Clearly, both the religious and non-religious traditional conceptions of the doctrine of sanctity of life (which do not consider it to take on quality of life considerations) continued to be a hindrance in the reform of the law.

However, it is argued here that in a multicultural, increasingly secular society with varying, competing religious and non-religious beliefs and views, the importance of human rights, particularly that of the right to self-determination is increasingly valued. To this end, Baroness Jay of Paddington stated that:

> However much we may respect the opposition in principle to this Bill from those with religious faith and those of us who have a spiritual concern that perhaps may not be a formal religious faith, we live today in a diverse and predominantly secular society where the importance of individual human rights is increasingly valued. The Minister, my noble friend Lord Warner, made the point when winding up our previous debate. He also emphasised on that occasion that patient choice is a central theme in today's healthcare.[923]

Clearly, this debate has moved away from its religious rooting and is now influenced by secular values that are shared by society at large such as dignity and autonomy, which are grounded in human rights provisions and were discussed in greater detail in the previous chapter. Even when introducing the Bill, Lord Joffe explained that "The principle underpinning the Bill is one of personal autonomy – the right of each individual to decide

[921] As per Lord Elton HL Deb 12 May 2006 Vol 681 Col 1213
[922] As per the Archbishop of Canterbury HL Deb 12 May 2006 Vol 681 Col 1197
[923] Baroness Jay of Paddington HL Deb 12 May 2006 Vol 681 Col 1194

for himself or herself how best he or she should lead his or her life".[924] Other Members of the House of Lords seconded Lord Joffe's opinion. For example, Baroness David stated that "I strongly believe in personal autonomy and the right of individuals to decide when and how they die".[925] Lord Desai further built on this argument by explaining that for individuals "who are not Christians, Muslims or Jews [and] have a mind of our own… [want to exercise their] personal autonomy. I cherish my personal autonomy, and if I were to lose it to some religious dogma, I would be very sorry indeed".[926] Lord Desai's opinion is accurate in the sense that individuals who relate with a secular school of thought and do not identify with a religious faith ought to be allowed to access a lawful option of assisted suicide and a criminal prohibition, which disregards their right to self-determination and was historically based on Christian tenets, ought not to be imposed upon them.[927]

It is submitted that the notion of individual autonomy continued to be one of the most important values that influenced this debate in support of assisted suicide. It was however perceived as conflicting with the religious and non-religious conceptions of doctrine of sanctity of life. Members of the House of Lords who opposed this Bill opined that this doctrine was a central value that needed to be preserved in a civilised society and allowing a handful of terminally ill patients to exercise their right to self-determination would put the lives of every citizen in society at risk and change the moral fabric of society. To this end, Lord St John of Fawsley stated that:

> There is tremendous interest in this topic simply because the life of a great society depends on a common possession of moral principles. If those moral principles disappear, the society disappears with them. People are so concerned about this issue because, at a time of great moral change and uncertainty, one of the fundamental pillars of our society is being shaken.[928]

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[924] HL Deb 12 May 2006 Vol 681 Col 1186
[925] HL Deb 12 May 2006 Vol 681 Col 1203
[926] HL Deb 12 May 2006 Vol 681 Col 1257
[927] Baroness Tonge (HL Deb 12 May 2006 Vol 681 Col 1256) opined that, "Patients want the right to make their own decisions about life and death, and opinion polls reveal that 80% of the public support that right".
[928] HL Deb 12 May 2006 Vol 681 Col 1195

It can be concluded that the House of Lords appreciated that society is multicultural with various religious and non-religious beliefs that led to all their views being included in this debate. The views of the Christian faith continued to receive the most inclusion and, due to the rise of pluralism in society, the views of the Islamic faith were also included. However, the non-religious values that fueled the debate, such as the notion of individual autonomy and the competing idea of sanctity or value of life were discussed in significant detail (with the latter continuing to be one of the reasons for defeat of this Bill). Thus, even though there was a significant amount of public support for a change in the law, the Bill was defeated in the House of Lords, in May 2006, by 148 to 100 votes.[929] There were three main reasons behind the defeat of this Bill. Firstly, medical practices prohibited a change in order to preserve the doctor-patient relationship along with a failure to provide adequate safeguards to protect both the patients and physicians who would be involved in the process.[930] Secondly, there was a preference for palliative care and not assisted death. Thirdly, the risk of the slippery slope coming into action with this Bill was greater as it did not distinguish between euthanasia and assisted suicide or set out the parameters of the physician-assisted suicide process that it sought to legalise. Lastly, the religious objections towards the issue of assisted dying,[931] which sought to preserve the doctrine of sanctity of

[929] Deebs Canning, 'End-of-Life Issues' in Carl Margereson and Steve Trenoweth (eds), *Developing Holistic Care for Long-term Conditions* (Routledge 2010) 357; John Coggon and Soren Holm, 'The Assisted Dying Bill: 'Death Tourism' and European Law' in Jennifer Gunning and Soren Holm (eds), *Ethics, Law and Society: Volume III* (Ashgate 2007) 233; and Sonya Donnelly and Sophia Purcell, 'The evolution of the law on assisted suicide in the UK and the possible implications for Ireland' (2009) MLJI 82, 85

[930] The following Members of Parliament who feared for disabled, old and vulnerable indivdiuals, HL Deb 12 May 2006, vol 681: (Baroness Chapman) col 1205; (Lord Turnberg) col 1208; (Lord Elton) col 1213; (Lord Brennan) col 1236; and (Lord Livsey of Talgarth) col 1222. Also see: (the Lord Bishop of Portsmouth) col 1226; (Lord MacKenzie of Culkein) col 1270; (Baroness Wilkins) col 1272 concluded that "If it were to succeed, it would remove the cornerstone of our law that protects us when we are at our most vulnerable. If we cross that threshold, society's attitude will inevitably change. It is for that reason that we have all been inundated with pleas from disabled people to reject the Bill". In contrast, the following Members felt that the Bill contained sufficient safeguards, HL Deb 12 May 2006, vol 681: (Baroness David) col 1203; (Lord Goodhart) col 1206; and (the Earl of Glasgow) col 1239. Also see: Coggon and Holm (n 929) 233

[931] HL Deb 12 May 2006, vol 681: (The Archbishop of Canterbury) col 1196-1199; (Lord Goodhart) col 1205; (Lord Pearson of Rannoch) col 1215; and in contrast, (Lord Joffe) cols 1185-1186; (Lord Prior) col 1209; and (Lord Carey of Clifton) col 1235.

life, along with the non-religious viewpoints[932] – such as changing the law being an ethical nightmare, which would change the culture of society by renouncing the doctrine of sanctity of life that single-handedly protects every citizen in society from an unwanted death – which were both of great significance as they were extensively included in the Parliamentary debates.[933]

6.6 The Commission on Assisted Dying

The failure of all these Bills led to the Commission on Assisted Dying being set up in 2010. It was an independent body set up with the funding of pro-assisted suicide campaigners, novelist Terry Pratchett and historian Bernard Lewis, in conjunction with the organisation 'Dignity in Dying'. The aim of the Commission was to establish whether the current law on euthanasia and assisted suicide was satisfactory and to suggest a system with appropriate safeguards to protect vulnerable individuals and prevent abuse of that system, which would allow certain individuals to be assisted to die.[934] This section examines the main objectives of this Commission and its final report. It critically reviews the subsequent Bill it presented in Parliament and the extent to which the religious and non-religious beliefs of individuals and groups were accommodated within this Bill. Lastly, it analyses the religious and non-religious values that informed the recent Parliamentary debates (in 2015) on assisted suicide.

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[932] The following Members of Parliament who argued that changing the law would be an 'ethical nightmare' (as per Lord Carlile), which would change the culture of medicine and society (as per Lord Philips) HL Deb 12 May 2006, vol 681, col 1215. Furthermore, abuse of the system would begin (as per Lor St John); as the nature of the doctor-patient relationship would change (as per the Archbishop of Canterbury) HL Deb 12 May 2006, vol 681, col 1197; (Lord Carlile of Berriew) HL Deb 12 May 2006, vol 681, col 1192.

[933] However, religious opposition is not as resolute as it once was, there is a significant shift in public attitudes, particularly with the notion of autonomy gaining ground, yet sanctity of life continues to be a powerful obstacle to the movement to reform the law: see ch 3.

[934] Commission on Assisted Dying (CoAD), 'Report: The current legal status of assisted dying is inadequate and incoherent' (January 2012) <https://www.demos.co.uk/files/476_CoAD_FinalReport_158x240_I_web_single-NEW_.pdf?1328113363> accessed 21 May 2017. Also see: Andrew Otchie, 'A right to die?' (2012) 176(4) C L & J 37

Lord Falconer of Thoroton, a British Labour peer in the House of Lords, chaired the Commission on Assisted Dying. There were 11 other commissioners: the criteria on which they were chosen are not mentioned in the report. The majority of commissioners, which identified with a non-religious viewpoint, had backgrounds in health, psychiatric and social services and even in palliative care. The only religious representative on the Commission was The Reverend Canon Dr James Woodward, an Anglican priest and Canon of St George's Chapel in Windsor.[935]

There was a public call for evidence by the Commission. The Commission received over 1200 responses from health care professionals, academic experts, hospitals and hospices, organisations such as Dignity in Dying, the DPP, and even members of the public.[936] There was very little evidence submitted from religious leaders and organisations.[937] The evidence submitted by religious and non-religious groups included statements from the British Humanist Association, the Bio-Ethics Group of the Church of Wales, the Independent Methodist Churches,[938] and individual clergy members of the Church of England.[939]

It is submitted here that even though the doctrine of sanctity of life continues to be included in the debate, the power and influence of the religious formulation of this doctrine is exponentially reduced, especially compared to the significant consideration it received during the Parliamentary debates when suicide was decriminalised, which were examined in Chapter Four. Furthermore, the reaction of the other significant Christian denominations was subdued compared to the time of the earlier euthanasia Bills in 1936 and 1969 and even the recent Joffe Bills. For example, the Catholic Church did not submit evidence to

[935] He submitted "…that until greater ethical, moral and social consensus has been generated on [assisted dying], it is not the right time to consider a change in the law" (CoAD (n 934) 20).
[936] CoAD (n 934) 39
[937] CoAD (n 934). There were no articles/explanations by organisations, such as the MCB and Mosque Websites, on why they chose not to submit evidence to the Commission.
[938] Brian Rowney, of the Independent Methodist Churches, was the only individual to submit evidence who viewed the religious doctrine of sanctity of life to be the highest value in the debate that needed preservation: "Many Christians view life as a gift from God, and the taking of life as taking what belongs to God" (CoAD (n 934) 75)
[939] CoAD (n 934) 39

the Commission, even though it remains opposed to euthanasia and assisted suicide.[940] This is evident from Pope Francis' "Day for Life" message where he stated that:

> …even the weakest and most vulnerable, the sick, the old… are masterpieces of God's creation, made in His own image, destined to live forever, and deserving of the utmost reverence and respect… Care for life. It's worth it.[941]

However, other Christian denominations, such as the Church of England, continued to oppose a change in the law and submitted evidence to the Commission. As demonstrated in Chapter Two, the Christian faith states that the Bible protects and advocates human life as being innately valuable.[942] The evidence submitted by Christian Churches and institutions – such as the Church of England's Archbishops Council[943] – viewed the value of human life (rather than the religious doctrine of sanctity of life) to be the central principle in the debate on assisted suicide; which would be devalued by allowing assisted suicide.[944] It is submitted here that the tone of the Churches' statement was neutral and did not have a religious underpinning. Within a secular society, Biblical concepts must be transposed into a context that is relevant for everyone:[945] in a globalised, pluralistic society, there is a need to communicate various viewpoints, namely those of the Church, in a manner that allows

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[940] For detailed discussion on the Catholic Church's religious viewpoint on assisted dying, refer to ch 2. Note: Priest Vincent Harvey (The Commission on Assisted Dying, 'Public Call for Evidence'), stated that he was personally against the issue and opposed a changed in the law; and a journalist from the Catholic Voices did submit that the basis of an opposition to any change in the law on assisted suicide by the Catholic Community is based on the equal dignity and worth of humans (CoAD (n 934) 75).

[941] Catholic Church in England and Wales, 'Pope Francis sends 'Day for Life' message to UK and Irish Catholics' (16 July 2013) <http://www.catholic-ew.org.uk/Home/News/2013/July-Sept/Pope-s-Life-Message/(language)/eng-GB> accessed 21 May 2017

[942] Kyle Fedler, *Exploring Christian Ethics: Biblical Foundations for Morality* (Westminster John Knox Press 2006) 81-83

[943] This Council explained that it viewed the debate on assisted suicide as one that promotes the affirmation of life rather than preserving the religious doctrine of sanctity of life (CoAD (n 934) 76). Also see: Church of England, *On Dying Well: A Contribution to the Euthanasia Debate* (2nd edn, Church House Publishing 2000) 18

[944] Individual members of the Church of England clergy, such as a Robert Fieldson (CoAD (n 934) 75), further noted that allowing it would devalue human life.

[945] Ambrose Mong, *Are Non-Christians Saved? Joseph Ratzinger's Thoughts on Religious Pluralism* (Oneworld Publications 2015) 105

every citizen within that society (and not just followers of one single faith) to relate with that viewpoint.[946] Thus, the submission of the Church needed to be neutral, non-religious and have a secular undertone.

Other religious groups also submitted evidence to the Commission, such as the Bio-Ethics Group of the Church in Wales, who stated that the doctrine of sanctity of human life is no longer an absolute value in a multicultural society with various faith communities.[947] As argued in this thesis, the terms that fuel the debate have remained the same yet the meaning attributed to these terms has significantly changed. This observation is supported by the fact that there was no evidence submitted by minority faith groups such as the Hindu, Sikh, or Islamic communities. Sanctity of life is no longer a value that receives absolute protection since the religious grounding has been largely detached from this doctrine. It is now primarily a secular matter, which includes a right to self-determine the time and manner of death, thus, it is a matter that only affects the individual seeking an assisted suicide and does not concern entire religious communities. The Commission did, however, consider evidence submitted to the Select Committee on the Assisted Dying for the Terminally Ill Bill, by a Muslim doctor, who explained the traditional Islamic position on assisted suicide as being impermissible and a sin, and a believer who participated in any activity in relation to euthanasia and assisted suicide would "end up in hell".[948] It is submitted here that the structure of the Islamic religion is such that there is no one person or group who represents the views of the Muslim community, who can voice their opinions, thus there was a lack of submitting evidence. It is further submitted that heads of Islamic mosques such as Imams, individual Muslim legal scholars called Ulema, other leaders within the Islamic community or even followers of Islam submitted no evidence to reinforce and inform the Commission of the Islamic position on euthanasia and assisted suicide. This can be attributed to, as demonstrated previously in Chapter Two, euthanasia

[946] Mong (n 945) 104
[947] CoAD (n 934) 76. This notion is further supported by the fact that the only minority faith groups who submitted evidence to the Commission were Liberal Judaism and the Office for the Chief Rabbi (CoAD (n 934) 75, 77). For a detailed position of the Church of Wales on assisted death: Church of Wales, 'Assisted Death: Bioethical Consideration – Assisted Death Notes for the Bench of Bishops' <www.churchinwales.org.uk/society/science-and-society/assisted-death/> 16 February 2016
[948] CoAD (n 934) 75-76

and assisted suicide being strictly prohibited in Islam; and, thus, followers of the faith choose not to engage in the debate.

It can be concluded that historically, this debate was driven by the religious understanding of the doctrine of sanctity of life, which attached sacredness to human life. However, with society becoming more multicultural and increasingly secular, non-religious values such as dignity and autonomy, which are protected by human rights provisions and have been discussed in the previous chapter, have begun to fuel this debate and drive this area of the law into a new direction where reform can be achieved. Furthermore, this is evidenced by the fact that there was very little consideration given to religious values by the Commission, mostly due to the lack of engagement from various religious groups. Any evidence submitted to the Commission had neutral vocabulary and non-religious wording. This suggests that the debate, particularly on assisted suicide, has become predominantly secular and non-religious values are the ones that significantly influence this debate. The next section establishes which secular values were considered by the Commission and influence the contemporary debate on assisted suicide.

6.6.1 Secular principles considered by the Commission

Non-religious ideologies and values were extensively considered and played a key role in the Commission's examination. To this end, the principles of humanism, in relation to assisted suicide, should be noted here. Humanism is a system of thought, based on secularist, non-religious values rather than religious beliefs.[949] Humanists have a very liberal attitude towards suicide and assisted death.[950] The value of human life and an individual's right to self-determination are on equal footing in the humanist system of thought.[951] Humanists believe that individuals should have ultimate control over decisions regarding the continuation of their life, after they have considered the effect that ending their life may have on the individual or collective rights, freedoms and entitlements of

[949] Jeaneane Fowler, *Humanism: Beliefs and Practices* (Sussex University Press 1999) 9-10
[950] Glenn Hardie, *The Essence of Humanism: Free Thought Versus Religious Belief* (Xlibris Corporation 2004) 53
[951] ibid. However, they do not encourage individuals who are, for example, mentally ill to prematurely end their lives.

others.[952] The Chief Executive of the British Humanist Association, Andrew Copson, submitted this secular, non-religious humanist view on the debate to the Commission. In support of a change in the law, he explained that the two most important foundations, on which a reform in the law can be based, are human dignity and individual autonomy. He further stated that a good quality of life, and not just an extension of human life, is central to maintaining human dignity.[953] He argued that:

> People should have the right to choose a painless and dignified end, either at the time or beforehand… Individuals should be allowed to decide on such personal matters for themselves… humanists defend the right of each individual to live by her own personal values, and the freedom to make decisions about her own life so long as this does not result in harm to others.[954]

This argument indicates that an individual ought to be allowed to choose whether or not to end their life: it is simply a matter of choice. It is submitted that by making a decision to not request an assisted death, they inherently protect their beliefs and preserve the sanctity and value of human life and the intrinsic dignity they perceive to be attached to it. However, others who do not share this view can make the autonomous choice to end their pain, suffering and indignity (which stems from the loss of mental and physical bodily functions) and should be allowed to receive assistance in ending their life. Thus, the law needs to preserve every individual's human dignity by striking a balance between the autonomous decisions to avoid pain and receiving assistance in ending life and protecting the intrinsic value and sanctity of human life.[955]

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[952] ibid
[953] Andrew Copson, 'Written Evidence to the Commission on Assisted Dying from the British Humanist Association (BHA), April 2011' <https://humanism.org.uk/wp-content/uploads/bha-submission-to-commission-on-assisted-dying-april-2011.pdf> accessed 21 May 2017
[954] ibid
[955] CoAD (n 934) 283

Taking all the evidence – and the ethical, moral and religious aspects – into consideration, the Commission proposed that assisted suicide should be lawful for individuals, aged 18 or over, who have a terminal illness and have a prognosis of 12 months.[956] These individuals must be adults, with the mental capacity to make an autonomous, "voluntary choice that is an expression of [their] own wishes and is not unduly influenced by others" and informed decision to request an assisted death.[957] The decision can only be executed once it has passed all the necessary safeguards, namely, undergoing psychiatric evaluation to ensure that the patient's decision is not due to a mental health problem such as depression and receiving independent advice from two doctors.[958] Lastly, the Commission emphasised the need to ensure that "any decision to seek an assisted suicide is a genuinely voluntary and autonomous choice, not influenced by another person's wishes, or by constrained social circumstances",[959] and that the patient must take the final action that ends their life.[960] Thus, the Commission proposed that assisted suicide be lawful (instead of euthanasia) to ensure that the decision is truly autonomous and voluntary as the final action that ends life is always taken by the individual who seeks assistance.[961]

6.6.2 The Parliamentary debates around the Assisted Dying Bill 2014-2015

The Chair of the Commission, Lord Falconer, introduced the Assisted Dying Bill in the House of Lords, as a Private Members Bill,[962] which can be introduced by Members or Lords, in either Houses of Parliament, who are not governmental ministers. These Bills usually have less time allocated to them even though they go through the same stages as Public Bills.[963] Lord Falconer's Bill sought to allow assisted suicide for terminally ill individuals, over the age of 18, with a prognosis of 6 months (instead of 12 months, in order to further narrow down the number of individual who can request assistance) and the

[956] ibid 26
[957] ibid 26
[958] ibid 26-30
[959] ibid 27
[960] Dickens (n 529) 82
[961] CoAD (n 934) 26
[962] This received its Second Reading on 18 July 2014
[963] For further details: UK Parliament, 'Private Members' Bills' <http://www.parliament.uk/about/how/laws/bills/private-members/> accessed 21 May 2017

mental capacity to make a fully informed decision to end their life.[964] An attending and independent doctor must sign off on their request.[965] If either doctor has a doubt as to the individual's mental capacity, they must refer the individual to a psychiatric specialist.[966] Once all the requirements are met, the attending doctor can prescribe the individual with lethal medication; which the individual can directly self-administer or an authorised healthcare professional, such as a nurse or doctor, can prepare a medical device that enables the individual to self-administer the medication.[967] This Bill did not seek to allow euthanasia; instead it sought to regulate assisted suicide through self-administration of lethal drugs by the individual who seeks to end life.[968]

This Bill was debated in the House of Commons on 11 September 2015.[969] Rob Marris, the Labour party MP for Wolverhampton South West, moved for the Bill to be read for a second time explaining that the law needed to be reformed since it did not meet the needs of terminally ill patients, their friends and family, and even health care professionals.[970] Furthermore, amateur suicides and illegal assistance needed to be stopped and individuals without the means to travel to Switzerland needed an option to end their indignity, pain and suffering.[971] However, the House was not unanimous in wanting to change the law on assisted suicide on the proposed Bill.

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[964] 'Assisted Dying Bill [HL]' (Explanatory Notes) <http://www.publications.parliament.uk/pa/bills/lbill/2015-2016/0025/160025.pdf> accessed 21 May 17
[965] ibid
[966] ibid
[967] ibid page 3. Also see: (Baroness Finlay of Llandaff) HL Deb 18 Jul 2014, vol 755, col 792, "This Bill is about licensing doctors to supply lethal drugs to some of their patients and helping them to commit suicide, however long their life might otherwise have gone on for".
[968] Rob Marris HC Deb 11 Sep 2015, vol 599, col 659
[969] For a summary of the House of Common's position, see Conservative MP for Montgomeryshire (Gyln Davies) HC Deb 11 Sep 2015, vol 599, col 706.
[970] HC Deb 11 Sep 2015, vol 599, col 656
[971] ibid

There were three main oppositions to allowing the Bill in both Houses of Parliament. Firstly, there was a need to protect vulnerable people.[972] The House of Lords opined that patients who are suffering through an illness are much more vulnerable even though they may have the mental capacity to request an assistance in their suicide.[973] Furthermore, various Members of the House of Commons – such as Caroline Spelman[974], Lyn Brown[975], Fiona Bruce[976], Keir Stramer[977] and Mary Robinson[978] – viewed the current law to be beneficial as it protects disabled, elderly and vulnerable individuals from being coerced or pressured into an unwanted death and, thus, should be retained.[979]

It is submitted here that the aforementioned Members of Parliament failed to appreciate that not all individuals who are terminally ill are vulnerable. To this end, Hamden cogently argues that:

> …being terminally ill does not necessarily make the patients part of a vulnerable category. Some terminally ill individuals within a group may lack the capacity to make clear decisions because of the illness… but that does not mean that the entire group is inherently vulnerable and unable to guard their interests through informed consent.[980]

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[972] For example, HL Deb 18 July 2014, vol 755: (Lord Morrow) col 891, "Pressure on vulnerable people at the end of life is not novel or imagined, it is very real. It is truly life or death"; (Lord Wills) col 901; (Lord Gold) col 886; (Baroness Kennedy of The Shaws) col 874; (Lord Sheikh) col 856; (Baroness Masham of Ilton) col 865; (Baroness Finlay of Llandaff) col 792; (Lord Mawhinney) col 793; (Lord Brennan) col 802; and (Lord Bishop of Bristol) col 831.
[973] (Baroness O'Neill of Bengarve) HL Deb 18 July 2014, vol 755, col 782
[974] (Meriden) (Con) HC Deb 11 Sep 2015, vol 599, col 664
[975] (West Ham) (Lab) HC Deb 11 Sep 2015, vol 599, col 669
[976] HC Deb 11 Sep 2015, vol 599, col 671
[977] HC Deb 11 Sep 2015, vol 599, col 672
[978] (Cheadle) (Con) HC Deb 11 Sep 2015, vol 599, col 720
[979] Also see: (Jim Fitzpatrick (Poplar and Limehouse) (Lab)) HC Deb 11 Sep 2015, vol 599, col 666 (who favoured a change in the law but appreciated that vulnerable individuals need to be protected).
[980] Mahmoud Hamdan, *Cancer Biomarkers: Analytical Techniques for Discovery* (John Wiley & Sons 2007) 343-344. Similar concerns were noted in the House of Lords; that the prohibition on assisted suicide, found in section 2(1) of the Suicide Act 1961 (as amended by section 59 Coroners and Justice Act 2009) already provides them with the necessary protection against pressure and coercion and, thus, should be maintained as per (Lord Mackay of Clashfern) HL Deb 18 July 2014, vol 755, col 778.

The main thrust of Hamden's argument is that being disabled or having a terminal illness does not necessarily make an individual vulnerable or prone to being coerced or pressured.[981] Furthermore, the number of individuals who would access the option to assisted suicide is very small and would be further limited to individuals whose needs are not met via palliative care.[982] Also, not every individual who is terminally ill, even if physically disabled, would opt to end life (for example, they may have religious or non-religious objections to making such a request).[983]

The second opposition to allowing the Bill was changing the doctor-patient relationship, which would increase the vulnerability of patients[984] and have a negative effect on patients and their families.[985] Members of the House of Lords, for example, opined that healthcare professionals, especially doctors, would experience the most serious effects of this change. If doctors were allowed to supply lethal medication to their patients, the doctor-patient would be severely prostrated and even destroyed.[986] To this end, for example, Lord Brennan opined that demolishing the doctor-patient relationship would also create "… a danger to the medical profession".[987] Thus, in order to avoid changing the nature of the doctor-patient relationship and prevent abuse of vulnerable individuals, by making them even more susceptible to coercion and pressure, various members of the House suggested that the option of palliative care should be preferred and promoted.[988] However, it is submitted that this viewpoint fails to take into consideration that a handful of patients are

[981] Rob Marris HC Deb 11 Sep 2015, vol 599, col 657
[982] ibid col 659
[983] ibid col 663
[984] The vulnerability of patients is intrinsically linked to changing the doctor-patient relationship. See: (Baroness Grey-Thompson) HL Deb 18 July 2014, vol 755, col 823; and (Lord McColl of Dulwich) HL 18 July 2014, vol 755, col 797-798
[985] (Lord Mawson) HL Deb 18 July 2014, vol 755, cols 799-800
[986] (Lord Hameed) HL Deb 18 July 2014, vol 755, col 834; and (Baroness Emerton) HL Deb 18 July 2014, vol 755, col 893
[987] HL Deb 18 July 2014, vol 755, col 802
[988] HL Deb 18 July 2014, vol 755: (Lord Tombs) col 816 who supported palliative medicine; (Baroness Greengross) col 787; and (Lord Dubs) col 780 who opined that individuals should have a choice between palliative care and assisted suicide. Other members of the House of Lords discussed palliative care, for example, HL Deb 18 July 2014, vol 755: (The Earl of Sandwich) col 818; (Viscount Craigavon) col 814; (Baroness Blackstone) col 815; (Baroness O'Cathain) col 802; (Baroness O'Neill of Bengarve) col 781; (Lord Purvis of Tweed) col 786; and (Baroness Warwick of Undercliffe) col 800.

disabled and have certain diseases, which lead them to being non-responsive to palliative treatment;[989] and, thus, require an assisted suicide to end their pain and suffering.[990] To this end, Ferguson et al rightly argue that: "…palliative care is available for those who wish to take advantage of it, while those for whom this is either not effective or not desired may opt for [an assisted death]".[991] It is further submitted here that due to the irreversible nature of assisted suicide, it ought to be the last course of action, for an individual with an incurable illness or disease, who has made an informed decision and tried all available options, particularly palliative care. After a number of safeguards have been met to ensure that the individual has a consistent and unchanging wish to receive an assisted suicide, is not under any pressure or coercion or temporarily going through a treatable mental illness, they should be allowed to exercise their right to self-determination to choose the time and manner of their death and receive assistance in doing so.

Lastly, the third opposition was to ensure that the decision to receive an assisted suicide was the informed, voluntary and autonomous choice of the patient requesting it. Without ensuring voluntariness, a patient who is not mentally capable of making such a decision or physically able to end their life is at risk of being given a premature death by a proxy, relative or healthcare professional.[992] Thus, it is submitted here that it is essential that the patient, who requests the assistance, be the one taking the final action that brings about their death in order to ensure that the request is autonomous and entirely voluntary.[993] To this end, Lord Joffe opined that this protects vulnerable individuals by requiring "… that both assessing doctors must be satisfied that the informed decision is voluntarily made".[994] This distinction, which differentiates assisted suicide from euthanasia, forms the basis of

[989] Jean-Paul Harpes, 'The contemporary advocacy of euthanasia' in Council of Europe (ed), *Euthanasia: ethical and human aspects* (COEP 2003) 28 ("…in 2-3% cases, palliative care is ineffective or not effective enough").
[990] (Lord Clinton-Davis) HL Deb 18 July 2014, vol 755, col 844 opined that "Palliative care can bring some relief but cannot ensure a compassionate death".
[991] Tom Campbell, 'Assisted Dying: Humanity or Autonomy?' in Pamela Ferguson and Graeme Laurie (eds), *Inspiring a Medico-Legal Revolution: Essays in Honour of Sheila McLean* (Ashgate 2015) 267
[992] (Baroness O'Neill of Begarve) HL Deb 16 January 2015, vol 758, col 1004 explained that there needed to be a clarificatory amendment that this is not a euthanasia Bill.
[993] (Baroness Howells of St Davids) HL Deb 18 July 2014, vol 755, col 915. In contrast: (Lord MacKenzie of Culkein) HL Deb 18 July 2014, vol 755, col 794.
[994] HL Deb 18 July 2014, vol 755, col 789

increased acceptability of assisted suicide and impermissibility of euthanasia.[995]

6.6.3 The influence of religious and non-religious values on the Assisted Dying Bill

Non-religious viewpoints received much greater consideration; and even though the views of various religions were included, they did not receive significant inclusion in the Parliamentary debates. The four central non-religious values that drove the debate were the notions of dignity, compassion, autonomy and the intrinsic value of life: each of these is considered in turn.

6.6.4 Dignity

The first non-religious value that continued to influence this debate was the idea of human dignity. As was evident in previous debates, this idea can be used both against and in support of allowing a change in the law. The majority of Members of the House of Commons, who were against reform, voiced their opinion by arguing that the notion of dignity ought to be used in a manner to reject the idea of reform. For example, MP Jim Fitzpatrick[996] stated that "it is about treating every citizen with the same degree of respect and dignity, and affording them the opportunity to access the best advice and professional help available".[997] Dr Philippa Whitford[998] further explained that:

> …we should support palliative care and we must ensure that it is available to people who are dying, regardless of their illness. We should support letting people live every day of their life until the end, and make sure that, as legislators, we provide the means for them to live and die with dignity and comfort. We should not say,

[995] Members of the House, in support of the Bill, believed that it contained sufficient safeguards to protect vulnerable individuals from being coerced or forced into a premature death. For example, HL Deb 18 July 2014, vol 755: (Lord Aberdare) col 836; (Lord Clinton-Davis) col 844; (Lord Stone of Blackheath) col 815; (Lord Alli) col 808; (Lord Wigley) col 787; (Lord Dubs) col 780. In contrast, some members of the House felt that the safeguards were not adequate and that there needed to be stronger protection, HL Deb 18 July 2014, vol 755: (Baroness Wheatcroft) col 823; (Lord McColl of Dulwich) col 798 ("The safeguards in the Bill are not safe; they are defective"); and (Baroness Greengross) col 787.

[996] Labour MP (Poplar and Limehouse)

[997] HC Deb 11 Sep 2015 vol 599 col 666

[998] MP for Central Ayrshire (SNP)

> "When you can't thole it, take the black capsule." We should vote for life and dignity, not for death.[999]

It is contended that opponents of a change in the law continue to view assisted suicide, or any form of assisted dying, as an attack on human dignity. They do not view it as a subjective value that is dependent on that individual's self-worth or autonomy but as an inherent value that is attached to individuals by virtue of being human that cannot be diminished or eradicated by disease or illness. It is further contended that instead of an option to end life, these opponents propose that individuals be given extensive palliative care and forced to continue with their life and disregard the subjective valuation of their quality of life or autonomous decisions to end life.

In contrast, a handful of Members of the House of Commons who were in favor of reform, such as MP Crispin Blunt, stated that individuals who seek an assisted suicide "want to exercise the option of ending their life with dignity, at a time of their choosing".[1000] MP Huw Merriman[1001] further explained that:

> This Bill is for the smaller number of people who wish to exercise their right to die earlier in their final six months – before they fade away in front of their family, before they enter a desperate period that they feel they cannot face, before they believe they will lose their dignity. It is for those people, with their own individual reasons, that I will cast my vote today to allow them this right.[1002]

It is submitted that the purpose of this Bill was to allow a small number of individuals – with an incurable illness who have an unfavorable prognosis but have the mental capacity to make such a decision and feel that their quality of life is deplorable and undignified – a lawful option of a death with dignity at the time and manner of their choosing, surrounded by their loved ones.

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[999] HC Deb 11 Sep 2015 vol 599 col 692-693
[1000] HC Deb 11 Sep 2015 vol 599 col 668
[1001] Conservative MP for Bexhill and Battle
[1002] HC Deb 11 Sep 2015 vol 599 col 719

6.6.5 Compassion

The second non-religious principle that received considerable inclusion was the idea of compassion. The notion of compassion relies on the response of another individual to a patient's suffering.[1003] Thus, a patient's autonomy is submerged in the observer's emotion of compassion.[1004] Pellegrino argues that:

> Compassion is a universal emotion generated in all persons of goodwill in the face of another's suffering. It is accompanied by a desire to help the one who suffers and, as such, it can be a motive for beneficent acts that are essential to a good death. Compassion is not, however, a self-justifying reason for relieving pain or suffering at any cost, including taking the life of the sufferer. Compassion has its own… limitations as a sole basis for professional or personal ethics.[1005]

It is argued that the notion of compassion is separate from the idea of sanctity of life.[1006] The idea of compassion rests on the force of feeling and emotional response, to relieve the suffering of an individual, of another person; who then decides the appropriateness of an action to bring about an individual's death.[1007] It is further submitted that these persons, who are motivated by compassion to assist an individual to end their life, are arguably preventing the value or sanctity of life of that individual from being diminished. To this end, Dworkin argues that "People who want an early peaceful death for themselves or their relatives are not rejecting or denigrating the sanctity of life; on the contrary, they believe that a quicker death shows more respect for life than a protracted one".[1008]

[1003] Lysaught et al (n 262) 1079

[1004] Edmund Pellegrino, 'Compassion is Not Enough' in Kathleen Foley and Herbert Hendin (eds), *The Case Against Assisted Suicide: For the Right to End-of-Life Care* (John Hopkins University Press 2002) 48. The slippery slope argument (discussed in Section 1.3) tends to limit the notion of compassionate assistance (Michael Stingl, *The Price of Compassion: Assisted Suicide and Euthanasia* (Broadview Press 2010) 14).

[1005] Pellegrino (n 1004) 51

[1006] Cameron (n 237) 27

[1007] ibid

[1008] Ronald Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia and Individual Freedom* (Harper Collins 1993) 238

The notion of compassionately assisting individuals, to have their autonomous choice respected, to choose the time and manner of their death in order to preserve their dignity by ending their pain and suffering,[1009] led to various members of the House stating that public opinion was now strongly in favour of changing the law.[1010] For example, Lord Vinson argued in favour of the Bill because "… it deepens compassion; and it reduces suffering. We should support it".[1011] However, the majority of the members of the House of Lords opined that allowing the Bill, based on the need to administer compassion to end the suffering of patients, would put other members of society at risk. For example, Baroness Grey-Thompson argued that: "It is too simplistic to suggest that this is… a debate about compassion versus suffering… we should not pass legislation based on emotion; it is about protecting the whole of society".[1012] This argument indicates that, for the opponents of allowing assisted suicide, the notion of compassion is closely tied with the need to safeguard vulnerable individuals and to protect the rights and interests of other members of the society.

The notion of compassion was also extensively discussed in the House of Commons. The Conservative MP Glyn Davies explained that both the proponents and opponents of assisted suicide are driven by compassion.[1013] Labour MP Robert Flello further explained:

[1009] (Lord Purvis of Tweed) HL Deb 18 July 2014, vol 755, col 786

[1010] For example, HL Deb 18 July 2014, vol 755: (Lord Hollick) col 881 "Currently, public opinion is clearly behind the law"; (Lord Dubs) col 780 "… public opinion is overwhelmingly on our side; 70% to 80% of the public consistently want a change in the law"; and (Lord Dholakia) col 913.

[1011] HL Deb 18 July 2014, vol 755, col 894. Other members of the House of Lords who supported the notion of compassion included, HL Deb 18 July 2014, vol 755: (Lord Purvis of Tweed) col 786; and (Baroness Morgan of Huyton) col 912; other members of the House of Lords also viewed it as a compassionate Bill, which would put an end to the suffering of terminally ill patients: (Baroness Jay of Paddington) col 784; and (Lord Lester of Herne Hill) col 781. Also note: The Bill ensures that individuals, particularly doctors, who compassionately assist their patients to end their lives, are not commissioning a crime as per (Lord Rees of Ludlow) HL Deb 18 July 2014, vol 755, col 874-875.

[1012] HL Deb 18 July 2014, vol 755, col 823. Other members of the House of Lords who had a similar view included, HL Deb 18 July 2014, vol 755: (Lord Bishop of Bristol) col 832; (Lord Browne of Belmont) cols 854-855; (Lord Singh of Wimbledon) col 869; and (Lord Bishop of Carlisle) col 909.

[1013] HC Deb 11 Sep 2015, vol 599, col 706

> …the people who are promoting this Bill are motivated by the desire to alleviate suffering… by compassion… we are all moved and saddened by what we hear and want to act with compassion, but that compassion is misguided if we think that by prematurely ending someone's life, we are alleviating suffering. There are ways to alleviate physical, mental and emotional suffering and they are done extremely well in this country.[1014]

The main thrust of MP Flello's argument is that the notion of compassion is an inexpedient value in the movement to change the law as the motive behind this notion is misplaced if it is used, to relieve mental or physical suffering and preserve dignity, by allowing assisted suicide. However, this argument does not take into consideration that there is a very small minority of individuals whose pain and suffering is incurable, untreatable and cannot be alleviated via palliative care and need an option to end, what they perceive to be, an undignified life.[1015] These individuals ought to be allowed to exercise their right to self-determination under certain circumstances and after a number of safeguards have been met. Furthermore, the notion of compassion is generally a driving force behind the decision of a third party, including health care professionals, to provide assistance to the individual who seeks it.[1016] To this end, during the *Nicklinson* case, Lord Sumption opined that:

> …whatever right a person may have to put an end to his own life depends on the principle of autonomy, which leaves the disposal of his life to him. The right of a third party to assist cannot depend on that principle. It is essentially based on the mitigating effect of his compassionate motive.[1017]

[1014] ibid col 699. Also see: (Sir David Amess (Southend West) (Con)) HC Deb 11 Sep 2015, vol 599, col 698

[1015] In conformity with this idea, the former DPP (Keir Stramer) HC Debate 11 Sep 2015, vol 599, col 672, stated that the criminal law should not be used against individuals "who compassionately assist loved ones to die at their request… so long as that person had reached a voluntary, clear, settled and informed decision to end their life"; and strong safeguards are in place to protect vulnerable individuals from being pressured into an unwanted death.

[1016] *Nicklinson* (n 58) [44], [57], [108], [133] and [136] as per Lord Neuberger.

[1017] ibid [215]

Compassion is a significant value in the contemporary debate on assisted suicide. To this end, Lord Wilson further stated that "compassion… is critical in most of these cases".[1018] However, it is submitted that the notion of compassion has no legal grounding in domestic or human rights law and cannot form the basis for a change in the law. Thus, autonomy is the paramount value in the debate on assisted suicide and the main principle on which a reform of the law, under Article 8, could be based.

6.6.6 Autonomy

The third non-religious principle that fuelled the debate was the notion of autonomy, which would allow the small number of people that need assistance in their suicide to end their pain, suffering and indignity.[1019] To this end, Baroness Greengross stated that:

> …if people have had enough of suffering, for whatever reason, they should surely have the right to that choice. The Bill is not about a small number of malevolent people trying to pressurise those who are vulnerable; it is about a small number of people, near to death, sometimes dying in agony.[1020]

Furthermore, some members of the House of Lords argued that this right to choose how to end life was grounded in human rights law and should be more readily available.[1021] For example, Baroness Blackstone opined that:

> We live in a society that promotes individual autonomy and values allowing its members to choose how they spend their lives… We value tolerance and allowing people to make their own choices, even if we wish to make different choices. The same freedom of choice that applies to how we live should also apply to how we die. If we respect human rights, we should not deny those who know that they are

[1018] ibid [247]
[1019] Various members of the House of Lords opined that individual autonomy should be guaranteed by allowing patients to choose the time and manner of their death by receiving an assisted suicide, HL Deb 18 July 2014, vol 755: (Viscount Craigavon) col 813-814; (Lord Sherbourne of Didsbury) cols 841-842; and (Lord Morrow) col 890.
[1020] HL Deb 18 July 2014, vol 755, col 787
[1021] For a detailed discussion on the human rights movement in the context of the assisted suicide debate, refer to ch 5.

dying the right to bring their lives to a more rapid end to alleviate their misery.[1022]

It is submitted here that the main thrust of Baroness Blackstone's argument is valid as it suggests that both secular and religious beliefs exist in a multicultural, pluralistic society that do not consider ending life when terminally ill a wrong, immoral or sinful act.[1023] This also forms one of the central arguments of this thesis. Furthermore, in a multicultural society, where various beliefs, views, and opinions are tolerated,[1024] the freedom to control their own lives by providing them with the option to choose the time and manner of death should also be provided in order to relieve patients of their pain and suffering.[1025] In contrast, Gert et al argue that the risk of abuse of physician-assisted suicide exponentially increases "…in a multicultural society where doctors and patients sometimes do not even speak the same language".[1026] It is submitted here that this argument is partly inaccurate. Whilst absolute protection can never be provided, the Bill itself included a number of safeguards, namely the patient having the capacity to make an informed decision, more than one doctor being satisfied that the patient's wish is informed, settled and voluntary and the final action needing to be taken by the patient (which forms the most important safeguard). To this end, Prado correctly argues that:

> …assisted suicide, to be that, must be autonomous, knowing, and competent self-killing, even if assisted in the sense of being enabled in some way… For it to be suicide, the person dying must be the primary agent in the causing of death, in the sense of both deciding to act and enacting the decision".[1027]

[1022] HL Deb 18 July 2014, vol 755, col 804

[1023] Victor Cicirelli, 'Healthy Elders' Early Decision for End-of-Life Living and Dying' in M Powell Lawton (ed), *Annual Review of Gerontology and Geriatrics, Volume 20, 2000: Focus on the End of Life: Scientific and Social Issues* (Springer 2001) 175

[1024] They are also guaranteed under the right to freedom of thought conscience and religion and the right to freedom of expression. Furthermore, the right to self-determination is also guaranteed under Article 8 ECHR. For a detailed discussed on human rights, refer to ch 5.

[1025] (Lord Vinson) HL Deb 18 July 2014, vol 755, col 894 opined that, "People should have the right to choose. Freedom begins with freedom of choice and should be extended as widely as possible into all areas of society at all levels". Also see: (Lord Hollick) HL Deb 18 July 2014, vol 755, col 882

[1026] Bernard Gert et al, *Bioethics: A Return to Fundamentals* (OUP 1997) 305

[1027] CG Prado, *Choosing to Die: Elective Death and Multiculturalism* (CUP 2008) 13

However, Members of the House of Lords argued that allowing some individuals this freedom to self-determination would diminish the value of human life (which is the fourth principle that drives this debate). Thus, they would be failing to protect the rights and freedoms of other members within that society, which would negatively change the fabric of society.[1028]

6.6.7 Sanctity of Life

The idea that the worth of human life is diminished, if assisted suicide is allowed, is predominantly secular but was once rooted in religious tenets particularly those of the Christian faith.[1029] To this end, opposing the Bill, Lord Mawhinney stated that his opinion was embedded in his belief in the Christian faith and that "… life stems from and is a gift from God… this belief, widely shared, should govern our views on the end of life".[1030] It is submitted here that the opposition of the Christian faith on this issue remains (as has been the case in previous debates since the 1930s). However, there was a considerable absence of the Christian faith in this debate. A clear shift can be seen, compared to debates from a decade ago and especially the 1936, 1961 and 1969 debates (on euthanasia and suicide for both terminally and non-terminally ill patients),[1031] with greater significance being placed on non-religious values and the legal, societal and medical aspects of assisted suicide.

It is submitted that this shift can be attributed to the fact that Christian and religious underpinnings and doctrines are increasingly being separated from the debate on assisted suicide, as the debate is now influenced by the need to respect an individual's right to self-determination. To this end, Labour MP Sarah Champion opined that:

[1028] HL Deb 18 Jul 2014, vol 755: (Baroness Kennedy of The Shaws) col 872; (Baroness Berridge) col 898; and (Baroness Sherlock) col 888.

[1029] This principle has been historically grounded in religious ideology; but, in recent years, has transformed into a secular doctrine, due to the influence of multiculturalism. For greater discussion: ch 3.

[1030] HL Deb 18 July 2014, vol 755, col 793. Similarly opinions were held by, HL Deb 18 July 2014, vol 755: (Archbishop of York) col 782; (Lord Bishop of Carlisle) col 909; (Lord Baker of Dorking) col 810; (Lord Alli) col 808; and (Lord Elton) col 819.

[1031] This shift can be attributed to the increasing abandonment of the Christian religion by citizens in England. The ONS has estimated that between 2001 and 2011, there has been a significant decrease in the number of people who identify with Christianity as their religion, from 71.7% to 59.3% (ONS, 'Religion in England and Wales 2011' (n 91)). For detailed discussion on decline of religion in modern English society, refer to ch 3.

> There is the argument that it is God's will that we should suffer, if necessary, and that it is God's choice how we end our lives. I have 100% respect for that view. If that is someone's position and choice, this Bill is not for them and I do not expect them to seek to make use of its provisions. I feel, however, that I should be able to make a different choice and that others should not be able to stop me.[1032]

However, the views of the Christian religion were still being included in the debate; but only by a handful of Members of Parliament – such as Crispin Blunt,[1033] Jim Shannon,[1034] Steve Brine,[1035] and Karl McCartney[1036] – when debating the Bill.

Furthermore, there is a significant increase of minority subcultures and religious groups in society, which also received some consideration within the debate. This inclusion can be attributed to the prominence of multiculturalism in modern English society.[1037] For example, the views of Judaism,[1038] Sikhism,[1039] Hinduism[1040] and Buddhism[1041] were included. However, the views of Islam were not submitted in the debate. Lord Sheikh, the former Chairman of the Conservative Muslim Forum and also the Chairman of the Conservative Ethnic Diversity Council, mentioned that "Life is sacred" and opposed the Bill on the basis that vulnerable individuals needed protection;[1042] but did not discuss the views of the Islamic faith on the issue. Even though there was no submission from Islamic groups and consideration by MPs, which may also be because of a lack of knowledge of the Islamic viewpoint, there was some, even though very little, reaction of the Islamic community on this Bill. For example, an article found in the 'Islamic Today' magazine states "Amongst the British public there is overwhelming support for the Bill…. However, on matters of death, the Islamic revelation makes it very clear where the line should be

[1032](Rotherham) (Lab) HC Deb 11 Sep 2015, vol 599, cols 680-681
[1033] (Crispin Blunt (Reigate) (Con)) HC Deb 11 Sep 2015, vol 599, cols 667-668
[1034] (Jim Shannon (Strangford) (DUP)) HC Deb 11 Sep 2015, vol 599, col 677
[1035] HC Deb 11 Sep 2015, vol 599, col 683
[1036] (Karl McCartney (Lincoln) (Con)) HC Deb 11 Sep 2015, vol 599, col 693
[1037] For greater discussion on multiculturalism and role of minority subcultures, see: ch 3.
[1038] (Lord Sherbourne of Didsbury) HL Deb 18 July 2014, vol 755, col 842
[1039] (Lord Singh of Wimbledon) HL Deb 18 July 2014, vol 755, col 869
[1040] (Lord Dholakia) HL Deb 18 July 2014, vol 755, col 913
[1041] (Lord Avebury) HL Deb 18 July 2014, vol 755, col 790
[1042] HL Deb 18 July 2014, vol 755, col 856

drawn". The article then goes on to quote two verses from the Quran that oppose suicide and seek to preserve life at all costs. The Islamic religion continues to seek to preserve life and still attaches a religious sanctity to it. The article went on to explain that:

> In such serious matters of life and death, we must make sure we have developed well-considered opinions as a duty of care to ourselves and to our fellow citizens. Many arguments have been put forward for and against the Assisted Dying Bill, and as Muslims living in a democratic society we have a duty to get to grips with such debates, form an opinion and lobby our political representative appropriately.[1043]

The Islamic belief has remained consistent in its opposition to assisted suicide and, as explained previously, religious views ought to be included but not imposed on every individual in society. In a liberal democracy, the non-religious views and religious beliefs are both taken into consideration, however, a change in the law and the inclusion of various religious and non-religious credos is no longer mutually exclusive. Furthermore, an autonomous decision to end life is a human rights matter and should be left to the individual. If they believe in the sanctity or value of life, they will not request it. However, if they do not share this belief then a lawful option of assisted suicide should exist. Religious views ought not to be imposed on everyone else, especially those who do not share them.

It is submitted that this lack of submission of the Islamic viewpoint on the issue of assisted suicide is based on the notion of preserving life being traditionally grounded in religious tenets as has been discussed in Chapter Two. However, in a multicultural, pluralistic society – which is becoming increasingly secular – the notion of the worth of human life is a non-religious, secular concept,[1044] as it is entirely a matter of an individual's own conscience and autonomy and does not affect the community at large. In an increasingly secular society, this view is perceived to conflict with the right to self-determination, which

[1043] Hannah Smith, 'An Islamic response to the Assisted Dying Bill' *Islam Today* (issue 22 vol 2) p27

[1044] For example, HL Deb 18 July 2014, vol 755: (Baroness Howells of St Davids) col 915; and (Lord Tombs) cols 815-816; and in contrast: (Lord Berkeley of Knighton) col 872; (Lord Judd) col 884; and (Lord Pearson of Rannoch) col 896.

includes choosing the time and manner of death,[1045] and as long as that choice does not harm others, in a free, multicultural society we should allow that choice.[1046] Many Members in the House of Commons explained that the right to choose, and subsequently have control over the end of their life, was a driving factor on which the decriminalisation of assisted suicide could be based.[1047] For example, Conservative MP Crispin Blunt opined that: "…the Bill will provide the comfort of having a degree of control over the end of their life. [We] ought to have a right to choose, despite the concerns about what a valid choice looks like".[1048] It is submitted here that choice is entirely a subjective issue and allows individuals the right to choose the time and manner of their death or to preserve life by not making such a choice. Thus, the right to self-determination is the most significant value that informs the debate on assisted suicide and on which a reform of the law could be based.[1049]

It can be concluded that the criminal embargo against assisted suicide was initially based on religious tenets, which are increasingly absent from Parliamentary debates. However, the 2015 Bill was defeated by a very significant majority of 330 to 118. The MPs in the House of Commons were overwhelmingly opposed to a change in the law. Many of them spoke of their personal experiences about terminally ill relatives. A handful even cited religion as the main opposition such as Crispin Blunt who stated:

> I understand the Catholic and faith lobby will have in-principle objections, but I am slightly appalled that they should seek to sustain legislation that limits my personal autonomy when 80% of the population… would support it.[1050]

[1045] HC Deb 11 Sep 2015, vol 599, col 663
[1046] (Rob Marris) HC Deb 11 Sep 2015, vol 599, col 663
[1047] (Jim Fitzpatrick (Poplar and Limehouse) (Lab)) HC Deb 11 Sep 2015, vol 599, col 666
[1048] (Reigate) (Con) HC Deb 11 Sep 2015, vol 599, col 668
[1049] For discussion on the link between autonomy and neoliberalism and healthcare ethics: Ronald Labonte, 'Health promotion and the Common Good: Toward a Politics of Practice' in Daniel Callahan (ed), *Promoting Healthy Behavior: How Much Freedom? Whose Responsibility?* (Georgetown University Press 2000) 95-97
[1050] HC Deb 11 Sep 2015, vol 599, col 668

However, the reasons for defeat of the Bill were not theological, unlike previous assisted dying debates. To encapsulate, the main reasons for the defeat of the Bill were as follows. Firstly, to invalidate the notion that assisted suicide is accepted, or encouraged, by society or Parliament.[1051] Secondly, the doctor-patient relationship would change drastically due to the promotion of death instead of care for patients.[1052] Thirdly, there was a need to protect vulnerable individuals in society from being pressured into an unwanted death. Lastly, Members of Parliament opined that life was precious and needed to be valued,[1053] individuals should be dissuaded from ending life,[1054] and, instead of allowing assisted suicide, palliative and end-of-life care should be improved.[1055]

6.7 Reaction to Lord Falconer's Bill

Twenty-two faith leaders and representatives issued a statement against the Lord Falconer Bill.[1056] These leaders and representatives included the Dean of International Colleges of Islamic Studies, Ayatollah Fazel Milani; the Secretary General of the Muslim Council of Britain, Dr Shuja Shafi; Director Al-Khoei Foundation (A Shia-Muslim Organisation), Mr Yousif Al-Khoei; Chief Imam of the Central Mosque Leicester, Shahid Raza; Archbishop of Wales, Most Rev Dr Barry Morgan; Archbishop of Westminster, Cardinal Vincent Nichols; Archbishop of Canterbury, Rt Hon Justin Welby; and many other representatives of the Christian, Jewish, Hindu, Sikh and Zoroastrian faiths.[1057] They stated that:

[1051] HC Deb 11 Sep 2015, vol 599: (Lyn Brown (West Ham) (Lab)) cols 669-670; (Fiona Bruce) col 671; and (Barbara Keeley (Worsley and Eccles South) (Lab)) col 703

[1052] HC Deb 11 Sep 2015, vol 599: (Mrs Caroline Spelman (Meriden) (Con)) col 664; (Lyn Brown (West Ham) (Lab)) cols 669-670; and (Dr Liam Fox (North Somerset) (Con)) col 679

[1053] (Lyn Brown) HC Debate 11 Sep 2015, vol 599, col 670

[1054] (Sir David Amess (Southend West) (Con)) HC Deb 11 Sep 2015, vol 599, col 698

[1055] ibid. (Robert Flello ((Stoke-on-Trent South) (Lab)) HC Deb 11 Sep 2015, vol 599, col 699 even felt that care for suffering and alleviating pain is done extremely well in England.

[1056] CoAD was an independent body, which is why faith groups may have not engaged through submissions to the Commission. For example, the Bishop of Carlisle Rt Revd James Newcome called for the Commission's Bill to be withdrawn and a Royal Commission on assisted dying to be convened instead. See: Madeleine Davies, 'Welby gives warning ahead of assisted dying Bill' <https://www.churchtimes.co.uk/articles/2014/18-july/news/uk/welby-gives-warning-over-assisted-dying-bill> accessed 21 May 2017

[1057] 'Assisted dying bill: faith leaders' statement' (*The Telegraph*, 16 July 2014) <www.telegraph.co.uk/news/religion/10970955/Assisted-dying-bill-faith-leaders-statement.html> accessed 21 May 2017

> Every human life is of intrinsic value and ought to be affirmed and cherished. This is central to our laws and our social relationships; to undermine this in any way would be a grave error… Vulnerable individuals must be cared for and protected even if this calls for sacrifice on the part of others.[1058]

The faith leaders went on to argue that allowing assisted suicide would turn society into "one in which life is to be understood primarily in terms of its usefulness and individuals evaluated in terms of their utility" and instead recommended:

> Better access to high-quality palliative care, greater support for carers and enhanced end of life services will be among the hallmarks of a truly compassionate society and it is to those ends that our energies ought to be harnessed.[1059]

The entire statement was phrased in non-religious terms, which seems to be an attempt to relate to all faith groups and even individuals and communities who do not identify with any religion. It is submitted here that religious groups are in harmony on the issue of the legalisation of assisted suicide. They remain opposed to a change in the law on the basis that life possesses great value, which would be eradicated, and, thus, put vulnerable individuals at risk. They seek "sacrifice" of the principle of autonomy to make way for the preservation of life and ask that compassion be administered by providing greater care, support and alternative options such as palliative care for patients and vulnerable individuals. It is further submitted that there is a shift in understanding of terms, such as the sanctity of life, which historically had a theological understanding with a religious sanctity attached to it; but is now understood as having infinite value. It can be concluded here that even though theological opposition, not only from the Christian faith but also minority faith groups such as Islam, Judaism, Hinduism amongst many others, was included in the 2015 Bill and religious groups reacted to this Bill, which they previously did not do in the Joffe Bills (except in 2005), in the Select Committee's and even to the Commission on Assisted Dying – this opposition was not an extensive one as was in 1936 and 1969. The paramount principle against reform was the modern notion of sanctity of life (instead of the historic

[1058] ibid
[1059] ibid

religious understanding of this doctrine).

6.8 Role of Faith in Policy-Making

This section briefly examines the inclusion of faith in policy-making on other issues such as abortion and same-sex marriage in order to determine the extent and role of faith in policy making in England and compare it to the amount of inclusion and role it plays within the assisted suicide debate.

6.8.1 Abortion

In England, the laws against abortion could be found in the Offences Against the Person Act 1861, which dictated that abortion was a criminal offence under all circumstances; and the Infant Life (Preservation) Act 1929, which placed a prohibition on aborting a fetus that was capable of being born alive, unless the termination of the pregnancy is necessary to save the life of the mother.[1060] The 1967 Act updated these Acts but did not decriminalise abortion. It merely clarifies the circumstances in which a doctor, acting in good faith and in order to protect the life or health of the pregnant women, can terminate a pregnancy.[1061] The Abortion Act 1967 provides a defence against abortion under certain circumstances and only if the prescribed procedures and set out conditions are fulfilled.[1062] The Abortion Act placed therapeutic abortion on a statutory footing[1063] and regulated the practice of abortion: the practice of abortions needed to be regularised because "abortion has become a matter of great public concern and discussion in this country".[1064] The Abortion Bill, introduced by Lord Silkin in the mid-1960s, brought public attention to the need of

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[1060] These laws are still valid with modifications found in the Abortion Act 1967, Criminal Justice Act 1948; and Statute Law Revision Act 1892/1893.
[1061] John Kenyon Mason and Sheila McLean, *Legal and Ethical Aspects of Healthcare* (Greenwich Medical Media Ltd 2003) 137
[1062] Wai-Ching Leung, *Law for Doctors* (Blackwell 2000) 58
[1063] John Keown, *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982* (CUP 2002) 84
[1064] As per HL Deb 30 November 1965, vol 270: (Lord Wells-Pestell) col 1210; (Joint Parliamentary Under-Secretary of State, Home Office (Lord Stonham)) col 1162-1163; and (Lord Denning) col 1181. The law needed to be reformed in order to put an end to maternal deaths caused illegal and unauthorised abortions performed in unsanitary and dangerous conditions. Also see: Jerome Legge, *Abortion Policy: An Evaluation of the Consequences for Maternal and Infant Health* (State University of New York Press 1985) 75.

reforming the law on abortion.[1065] The 1967 Bill was based on a previous Bill, titled "Medical Termination of Pregnancy", which was introduced by Mr David Steel in the House of Commons and had six failed predecessors.[1066]

In the House of Lords, the concerns revolving around the Abortion Bill were the protection of the mother or baby's physical and mental health,[1067] to stop unauthorised or botched medical abortions from being performed,[1068] to protect the doctor from being unfairly charged or convicted,[1069] and the need to include the views of the Christian religion on abortion.[1070] For example, Lord Craigmyle, a Catholic opposed to a change in the law, and was one of many Lords who based their opposition to reforming the law on abortion on their Christian faith, stated that "…the sun of Christian ethic… has illuminated the law of the land for a 1000 years".[1071] There were similar concerns in the House of Commons, such

[1065] British Academy of Forensic Sciences (BAFS), *Medicine, Science and the Law* (Sweet and Maxwell 1967) 2; Roger Davidson and Gayle Davis, *The Sexual State: Sexuality and Scottish Governance 1950-80* (EUP 2012) 102; and Sally Sheldon, *Beyond control: medical power and abortion law* (Pluto Press 1997) 38

[1066] Carr (n 223) 243; BAFS (n 1065) 2; and Davidson and Davis (n 1065) 109. Also note that The Medical Termination of Pregnancy Bill was also debated in the House of Lords on 19 and 26 July 1967.

[1067] Keown, *Abortion, Doctors and the Law* (n 1063) 84-86. Note: There was a need to prioritise and preserve the mother's life, and the physical and mental health of the mother and the baby. To this end, HL Deb 30 November 1965, vol 270: (Viscount Dilhorn) col 1152; (Lord Denning) col 1182; and (Lord Bishop of Exeter) col 1231. Also see: Davidson and Davis (n 1065) 102.

[1068] Dickson (n 23) 111. Regularising abortion law in order to prohibit unauthorised or botched operations was a concern in the Lords HL Deb 30 November 1965, vol 270: (Lord Silkin) col 1141-1143; (Lord Wells-Pestell) col 1211; and (Lord Amulree) col 1185-1186. Also see: Jackson (n 457) 675.

[1069] There was a need to protect the doctor from being unfairly charged or convicted. See: *R v Bourne* [1938] 3 All ER 615, [1939] 1 KB 687; where a doctor who had acted in good faith was acquitted of terminating a 14-year-old rape victim's pregnancy. Also see, HL Deb 30 November 1965, vol 270: (the Lord Bishop of Southwark), col 1166; (Lord Craigmyle) col 1224-1230; (Viscount Waverley) col 1199; (Viscount Dilhorn) col 1153. Also see: Jackson (n 457) 675.

[1070] The need to include the views of the Church of England were discussed by various members of the House of Lords, HL Deb 30 November 1965, vol 270: (The Earl of Iddesleigh) col 1173; and (the Lord Bishop of Southwark) col 1162; and (Lord Wells-Pestell) col 1210.

[1071] HL Deb 30 November 1965, vol 270, cols 1229-1230

as the need to reduce the number of back-street abortions,[1072] the need for a medical practitioner to be involved in the termination of the pregnancy and to safeguard these practitioners,[1073] the need to protect the mother's life and health,[1074] the need to preserve the child's life[1075] and the respect for life and the need to preserve the sanctity of life. It is argued here that priority was clearly being given to medical reasons over the religious viewpoint, which led to the second exception – after the decriminalisation of suicide, discussed in Chapter Four – to the religious doctrine of sanctity of life being created in English law. These two events were the original impetus for the list of exceptions made into this doctrine and on which a change in the law on assisted suicide could also be based.

Religious opinion on the issue of abortion was divided at the time this Bill came into Parliament. In 1965, the Board for Social Responsibility of the Anglican Church published '*An Ethical Discussion*' on the issue, which acknowledged that abortion could be justified if a pregnancy threatened a woman's life and or even her well-being.[1076] Other members of the Anglican Church, such as the Archbishop of Canterbury, disagreed with the Board's position by opposing it on religious grounds.[1077] The movement against reforming the law on abortion gained further impetus after the formation of the Society for the Protection of

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[1072] Various members of the House of Commons felt that illegal abortions would be prohibited under this Act, HC Deb 22 July 1966 vol 732: (Mr Norman St John-Stevas (Chelmsford)) col 1154; (Mr Kevin McNamara (Kingston upon Hull, North)) col 1124; (Dr John Dunwoody (Falmouth and Camborne)) col 1094-1095; (Mr Jenkins) col 1142; and (Mr David Steel) col 1075.
[1073] HC Deb 22 July 1966 vol 732: (Mr Deedes) col 1091-1092; (Mr Charles Pannell (Leeds, West)) col 1091-1092; and (Mr William Wells (Walsall, North)) col 1080.
[1074] HC Deb 22 July 1966 vol 732: (Mr Angus Maude (Stratford-on-Avon)) col 1119; (Dame Joan Vickers (Plymouth, Devonport)) col 1110; (Mr Norman St John-Stevas (Chelmsford)) col 1153; and (Dr Dunwoody) col 1098.
[1075] Various members of the House of Commons discussed that a pregnancy should be terminated if the child was likely to be mentally or physically deformed and the child may not be viable: (Mr Edward Lyons (Bradford, East)) HC Deb 22 July 1966 vol 732 col 1089-1090 deformity in children; (Mr Charles Pannell (Leeds, West)) HC Deb 22 July 1966 vol 732 col 1092; and (Mr Kevin McNamara (Kingston upon Hull, North)) HC Deb 22 July 1966 vol 732 col 1128.
[1076] Stephen Brooke, *Sexual Politics: Sexuality, Family Planning, and the British Left from the 1880s to the Present Day* (OUP 2011) 170; and Melanie Latham, *Regulating Reproduction: A Century of Conflict in Britain & France* (Manchester University Press 2002) 93
[1077] Brooke (n 1076) 170

the Unborn Child in January 1967, in which many Catholics citizens were involved.[1078] The Society even launched an anti-abortion campaign and gathered half a million signatures on a petition it sent to the Prime Minister.[1079] Finally, Members of Parliament, such as Norman St John Stevas, and even newspapers such as The Times and the Daily Telegraph continued to oppose the change in the law.[1080] It is submitted here that the cultural landscape at the time was greatly influenced by religion, particularly the Christian faith, which was opposed to allowing abortion under any circumstance. This opposition was voiced by religious leaders and even reflected in the news media and public debate at the time.[1081] The theological opposition to reforming the law was also present in the Parliamentary debates. Both Houses of Parliament prioritised the tenets of the Christian faith on abortion.[1082] For example, Mr Bernard Braine Rose, in the House of Commons, stated that "There are thousands of Roman Catholic doctors who may well have a clear conscientious objection on religious grounds… to terminations of pregnancy".[1083] Since the Churches were vehemently opposed to reforming the law on abortions and wanted the Bill to be voted out on the basis that the doctrine of sanctity of life needed to be preserved.[1084] To this end, Dame Joan Vickers, a Conservative MP, stated that all the members of the House of Commons "…have the sanctity of life in mind".[1085] Based on the evidence found in the Parliamentary debates, it is argued here that the doctrine of sanctity of life was a paramount

[1078] Note that almost three decades after abortion was made lawful, the Catholic Church maintained its opposition to it. See: Pope John Paul II (n 136).
[1079] Brooke (n 1076) 170
[1080] Brooke (n 1076) 170; and Latham (n 1076) 93
[1081] The religious opposition to abortion is not traced in Biblical or Quranic texts since this issue is not in the scope of this thesis.
[1082] Various members of the House of Commons discussed the views of Christianity, particularly the Catholic Church HC Deb 22 July 1966 vol 732: (Dame Joan Vickers (Plymouth, Devonport)) col 1109 (who discussed a letter she received from St Paul's Union of Catholic Mothers); (Mrs Jill Knight (Birmingham, Edgbaston), a Conservative MP, col 1100; Mr William Wells (Walsall, North), a Labour MP who was educated at a Church of England independent school, Lancing College) col 1080 and 1096-1097; and (Mr David Steel, a Lib Dem MP and the son of a Church of England Minister) col 1077.
[1083] HC Deb 13 July 1967 vol 750 col 1323. In order to accommodate the non-religious and religious viewpoints of every citizen, particularly the Christian faith, a conscientious objection clause, contained in Section 4, was included in the 1967 Act.
[1084] Latham (n 1076) 93
[1085] HC Deb 22 July 1966, vol 732, col 1108

value that fuelled the debate on abortion in 1967.[1086] It is further argued that even though there was significant religious opposition to changing the law on abortion, the law was changed in order to reflect the social, medical and religious changes in society and of the changing public attitudes towards the issue of abortion and the doctrine of sanctity of life as it applied to an unborn fetus.[1087]

In the House of Lords, the Earl of Huntingdon, accurately encapsulated the effect a change in the law would have on individuals who have a religious objection to abortion by stating that it is vital for "people who have sincere religious beliefs on this subject to remember that this Bill is not going to interfere with those beliefs or their habits at all: it is merely extending a right to other people who think differently".[1088] Clearly, changing the law on abortion merely provides an option to women who do not have a religious or non-religious objection and want to access this option: every woman would not be compelled by law to terminate her pregnancy. Similarly, providing individuals with a lawful option would not mean that the law would require each citizen to seek an assisted suicide. It would merely be providing individuals a lawful option to end an undignified life at a time of their choosing in a limited set of circumstances, where all other treatment options have been exhausted including palliative care, and after a number of safeguards have been met – such as ensuring there is no mental illness, pressure or coercion – to ensure that their wish to end life is informed, voluntary, unchanging and autonomous.

[1086] Stockley rightly argues that the 1967 Act dealt with "…twin issues of sanctity of life and the provision of healthcare" (David Stockley, 'The increasingly strange case of abortion: Scots criminal law and devolution' (1998) 2(3) Edin LR 330, 335)

[1087] House of Commons Science and Technology Committee, *Scientific Developments Relating to the Abortion Act 1967: Twelfth Report of Session 2006-2007 Volume II* (The Stationary Office Ltd 2007) 199. Note: Even though multiculturalism was not prominent enough for minority religious groups, such as Islam, to be discussed in greater detail, the need to include the views of religious groups was based on the notion, as per (Mr Mahon) HC Deb 13 July 1967, vol 750, col 1324, that it was not only Catholic doctors or nurses who may have a religious objection, but "…there are thousands of people who are not Roman Catholics who have exactly the same objection". Similarly, (Mr Leo Abse, a Labour party MP, who identified with the Jewish faith) HC Deb 22 July 1966, vol 732, col 1148 felt that "Respect for life is the cornerstone of our society".

[1088] HL Deb 30 November 1965, vol 270, cols 1220-1221

It should be noted here that a far greater number of individuals access the option to terminate a pregnancy than assisted dying. For example, the number of abortions in 2010, in the Netherlands – where abortion and assisted dying are allowed – was 26,724.[1089] In contrast, the number of deaths from euthanasia was 3859 and assisted suicides were 192.[1090] These numbers have increased over the years, with 30,803 abortions reported in the Netherlands;[1091] and 5277 euthanasia cases via doctor administered death and 208 assisted suicide cases in 2015.[1092] It is contended here that even though it may seem that these numbers are high and have significantly risen over the years, the number of assisted suicide cases is still fairly low and has not risen considerably over this time. It is further contended here that assisted suicide would only be an available option to a very small number of individuals, who have no religious or non-religious objection to requesting assistance, in a limited number of circumstances and only after a significant number of safeguards have been met. Thus, abuse of legislation and risk of unwanted deaths is greatly reduced. Since abortion has been allowed – despite vociferous theological opposition and created an exception to the doctrine of sanctity of life – a lawful option of assisted suicide also ought to be created in order to relieve the pain and suffering of the small number of people who are unresponsive to palliative care and is their only option to end, what they perceive to be, an undignified life.

It is concluded that even though the issues are not analogous – as they concern an unborn fetus and ending the life of patient – the religious belief that fuelled the debates, on abortion and euthanasia and assisted suicide, is the same, namely the doctrine of sanctity of life; and this section examined the role of faith in policy-making in comparison to assisted suicide

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[1089] Wm Robert Johnston, 'Historical abortion statistics, Netherlands' (27 December 2014) <www.johnstonsarchive.net/policy/abortion/ab-netherlands.html> accessed 21 May 2017. For a similar opinion: Mary Warnock, *Dishonest to God: On Keeping Religion Out of Politics* (Continuum 2010) 60

[1090] Statistics Netherlands, 'Deaths by medical end-of-life decision; age, cause of death' (11 July 2012) <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLen&PA=81655ENG&LA=en> accessed 21 May 2017

[1091] Johnston (n 1089)

[1092] Dying for Choice, 'Netherlands – 2015 Euthanasia Report Card' <http://www.dyingforchoice.com/resources/fact-files/netherlands-2015-euthanasia-report-card> accessed 21 May 2017

and extracted the religious values that influence public debates. Furthermore, judicial acceptance of patients being allowed to refuse or request the withdrawal of artificial nutrition and hydration, decriminalising suicide in 1961 and allowing the medical termination of pregnancies in in 1967 are all exceptions to the doctrine of sanctity of life, which English law has historically protected.[1093] Even though the debates reflect a concern to protect this doctrine, allowing assisted suicide would only add to the list of exceptions to this doctrine and is not an unprecedented action being sought to be done by Parliament.

6.8.2 Same-Sex Marriage

This subsection analyses the inclusion of faith when the recent same-sex marriage Bill was being debated in Parliament in order to determine the extent and role of faith in policy making in contemporary, increasingly secular England and contrasts it to the amount of inclusion and role it plays within the modern debate on assisted suicide.

The main purpose of the 2013 Act was to bring gay citizens on an equal statutory footing with heterosexual couples. Laverack rightly argues that "…the Marriage (Same Sex Couples) Act 2013, is one of several laws passed in recent years that have gradually brought the legal position of LGBT people into parity with the rest of society".[1094] The 2013 Act was formulated to extend equal marriage to same-sex couples.[1095] Wilson et al argue that "In July 2013, the United Kingdom Parliament passed the Marriage (Same Sex Couples) Act 2013, which states in section 1 that 'marriage of same sex couples is lawful'. This marked a major extension to the previous definition marriage in English law, which has been limited to opposite couples".[1096]

[1093] Blackburn (n 564) 78

[1094] Peter Laverack, 'Recent LGBT-friendly legislation and the House of Lords' use of "wrecking amendments"' (2014) 2 EHRLR 89, 89

[1095] Jonathan Herring, 'Making family law more careful' in Julie Wallbank and Jonathan Herring (eds), *Vulnerabilities, Care and Family Law* (Routledge 2014) 50

[1096] Steve Wilson, Rebecca Mitchell, Tony Storey and Natalie Wortley, *English Legal System* (OUP 2014) 59. Also see: *Hyde v Hyde* (1865-69) LR 1 P & D 130, which established the common law definition of marriage, "as understood in Christendom… as the voluntary union for life of one man and one woman, to the exclusion of all others" (as per Lord Penzance).

When the Marriage (Same-Sex Couples) Bill was being debated in Parliament, almost all the members of the House of Lords extensively discussed the position of the Church of England on same-sex marriage.[1097] The Archbishop of Canterbury stated that "…the majority of faith groups remain very strongly against the Bill, and have expressed that view in a large number of public statements… [such as] The House of Bishops of the Church of England".[1098] The Archbishop opined that the opposition to legalising gay marriage was based on the notion that as a result of the new Bill:

> Marriage is abolished, redefined and recreated… The concept of marriage as a normative place for procreation is lost. The idea of marriage as a covenant is diminished. The family in its normal sense, predating the state and as our base community of society, as we have already heard, is weakened.[1099]

There were similar concerns, in relation to the definition and institution of marriage being devalued, in the House of Commons. Jim Dobbin felt that "Changing the definition of an institution that has served society well is hasty and destructive".[1100] Furthermore, William McCrea opined that:

[1097] Almost all the members of the House of Lords discussed the views of Christianity (particularly Church of England) on the issue of gay marriage HL Deb 3 June 2013 vol 745: (Lord Cormack) col 993; (Lord Black of Brentwood) col 987-988; (Lord Blair of Boughton) col 994; (The Lord Bishop of Chester) col 994-996; (Lord Edmiston) col 1003-1004; (Lord Deben) col 1026-1027; (The Lord Bishop of Exeter) col 1038-1040; (Lady Saltoun of Abernethy) col 1040-1041; (Lord Alli) HL Deb 4 June 2013, vol 745, col 1061; and (Viscount Colville of Culross) HL Deb 4 June 2013, vol 745, col 1078-1080. Also see HL Deb 3 June 2013 vol 745: (Baroness Richardson of Calow) col 1002-1003 who spoke about the views of the Methodist Church; (Baroness Neuberger) col 999-1000 even discussed the views of Judaism on the issue of gay marriage; and (Lord Singh of Wimbledon) col 1008-1009 spoke about Sikh teachings on gay marriage; and (The Duke of Montrose) HL Deb 4 June 2013, vol 745, col 1090.

[1098] HL Deb 3 June 2013, vol 745, col 953

[1099] HL Deb 3 June 2013, vol 745, col 953-954. Also see: (Robert Flello) HC Deb 5 Feb 2013, vol 558, col 146-147; and (Lord Bishop of Leicester) HL Deb 3 June 2013, vol 745, col 962-963.

[1100] (Jim Dobbin (Heywood and Middleton) (Lab/Co-op)) HC Deb 5 February 2013 vol 558, col 152

> Most people, even to this day, regard the United Kingdom as a Christian country… For thousands of years, in almost all cultures, marriage has been defined to be a lifelong union between a man and a woman… and has been the bedrock institution of family and society, but today our Government intend to sweep away a definition that has served our nation well for centuries and to impose new standards and values on the whole of society, irrespective of religious beliefs or personal convictions.[1101]

It is submitted here that the idea that the definition of marriage would change was at the heart of the debate. Barker notes that in 2001, the world's first legally recognised same-sex marriage took place in the Netherlands after the law was reformed to amend the definition of marriage to include same-sex couples.[1102] Both Houses of Parliament was opposed to a change in the law based on the notion that the definition of marriage would change that would lead to an institution that has been consistent for centuries being weakened and subsequently the moral fabric of society would also change. It is further submitted that even though the aforementioned Members of Parliament used non-religious language to express their opposition, other Members extensively discussed the effect of the Bill on the Christianity.[1103] In the House of Commons, Helen Goodman stated that:

> The reason why the Church of England, unlike the other faiths, needs special mention is not to introduce a new hurdle, but to reflect its position as the established Church… Canon law, which embodies the teaching of the Church, is also part of the law of England… the Church of England is not, in the foreseeable future, going to change its teaching on marriage, so this statute needs to reflect that position if the Church of England is not going to be subject to successful legal challenges. To put it another way, we need to balance people's rights under articles 12 and 14 in the European convention of human rights to marry and be free from discrimination

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[1101] (Dr William McCrea (South Antrim) (DUP)) HC Deb 5 Feb 2013, vol 558, col 198
[1102] Nicola Barker, *Not The Marrying Kind: A Feminist Critique of Same-Sex Marriage* (Palgrave-Macmillan 2012) 67
[1103] HC Deb 5 Feb 2013 vol 558: (Jim Dobbin (Heywood and Middleton) (Lab/Co-op)) col 151; (Nick Herbert (Arundel and South Downs) (Con)) col 154; (Mr Ben Bradshaw (Exeter) (Lab)) col 156; (Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op)) col 158; (Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-opcol 175; and (Steve McCabe (Birmingham, Selly Oak) (Lab)) col 183.

against the equally important right under article 9 to freedom of religion. Consequently, it is vital that that part of the Bill is not weakened in Committee.[1104]

It is argued that Helen Goodman's opinion accurately noted that the Christian faith has deep-seated historical ties with England, which is why it receives special consideration in Parliamentary debates. Furthermore, the Church wanted to preserve the institution of marriage by refusing to change the definition of marriage by extending it to include same-sex marriage. Given the deep-rooted ties of Christianity with English law, Parliament felt the need to provide it with special protection in order to protect the rights and freedoms of individuals who wanted to have a same-sex marriage and the protect freedom of religion of others, especially the Church of England and its clergy members, who would refuse to participate in or conduct same-sex marriages.[1105]

In contrast, Geraint Davies noted that "When considering in detail the position of the Church in Wales and the Church of England, we should be under no illusion that those Churches are under an obligation to marry all comers. Therefore, when this Bill goes through they will, as an arm of the state, be open to legal challenge in Strasbourg".[1106] However, Margot James explained that the Church of England issued a statement in which it felt that "…it was not realistic or likely that churches would be forced to conduct same-sex weddings" if the Bill was allowed.[1107] Furthermore, Toby Perkins pointed out that "…there is no compulsion on faith groups to do anything and that, while the Church of England will have the opportunity to opt in, it will not be forced to do something that it does not want to do".[1108] It is submitted that allowing same-sex marriage brought same-sex couples on an equal legal footing with heterosexual couples that have always had the option to get married. However, providing same-sex couples with this option did not mean that the law would require every same-sex couple to get married neither would it compel religious

[1104] (Helen Goodman (Bishop Auckland) (Lab)) HC Deb 5 Feb 2013, vol 558, col 177-178
[1105] This special protection came in the form of a "quadruple lock", which is discussed below in this subsection.
[1106] (Geraint Davies (Swansea West) (Lab/Co-op)) HC Deb 5 Feb 2013, vol 558, col 203. Mr Davies went on to state that "we are taking to create more stable families and a better society will be enhanced by this Bill to bring about equality in marriage (col 204)".
[1107] (Stourbridge) HC 5 Feb 2013 vol 558, col 131
[1108] (Toby Perkins (Chesterfield) (Lab)) HC Deb 5 Feb 2013, vol 558, col 148. Also see: (William Fittall Marriage (Same Sex Couples) Bill Deb 12 February 2013, col 20

institutions or their members to conduct or participate in same-sex marriages. Similarly, if assisted suicide were a lawful option in England, it would merely provide individuals, in a limited set of circumstances after a number of safeguards have been met, an option to end their life at the time and manner of their choosing: not every individual would be compelled or required to seek an assisted suicide.

Even though the position of the Church of England received the most consideration of all the religious and non-religious views on gay marriage, minority religious groups also received significant attention in the Parliamentary debates, especially the Islamic faith.[1109] Lord Dear noted that "Quakers, Unitarians and Liberal Jews of course support the Bill but we should remember that together they represent less than 1% of the religious community. The largest bodies – the Church of England, Roman Catholics, Sikhs, Muslims and others – all adamantly oppose it".[1110] Similarly, The Lord Bishop of Norwich pointed out that "It is no secret that the majority of Christian churches and other world faiths do not believe that same-sex marriage accords with their understanding of marriage itself".[1111] Lord Flight even pointed out that:

> …all the faiths came together – not just the Anglican church, but the Catholic, Muslim, Jewish, Hindu, Sikh and Buddhist faiths sent a letter with 53 signatures to the Prime Minister urging caution and that he should think again before he pushed through this legislation to rewrite the meaning of marriage. In the world of faith, this is not just an Anglican issue; it is fundamental for all faiths, going back into the mists of history, that whether one likes it or not marriage is essentially about a man and woman getting together to have children and to bring them up as securely as possible. Just redefining, like that, what marriage means will understandably upset a large number of people.[1112]

[1109] (Rehman Chishti (Gillingham and Rainham)) HC Deb 5 Feb 2013, vol 558, col 127; and (Maria Miller) HC Deb 5 Feb 2013, vol 558, col 127-129
[1110] HL Deb 3 June 2013, vol 745, col 946
[1111] HL Deb 15 July 2013, vol 747, col 537
[1112] HL Deb 3 June 2013, vol 745, col 1047

It is argued that this is a significant step taken by religious groups. Leaders and representatives of various faiths, from both the dominant culture and minority subcultures, came together and publically voiced their unified opinion against same-sex marriage. Same-sex marriage is a significant issue for religious groups as it goes to the centre of each faith.[1113] Leaders and clergyman of all these faiths would be conducting same-sex marriage ceremonies, in worship places such as churches and mosques. Their opposition is based on the opinion that allowing same-sex marriage would affect every individual in society, particularly members of their respective faiths, as it would change the nature of the institution of marriage and even the foundation of society. In contrast, as traced throughout this chapter, there have not been similar significant reactions to assisted suicide Bills by Christian or minority faiths. This lack of involvement or submission from religious groups can be attributed to the fact that assisted suicide is primarily an individual choice, a matter of that person's conscience and does not affect the entire religious (or non-religious) community. Furthermore, assisted suicide does not require clergyman and places of worship to be involved in the process; it does not adversely affect them by distressing their congregation or followers, unlike same-sex marriage that supposedly alters the moral fabric and norm of society by negatively changing the definition of marriage and requires direct involvement from religious institutions and their representatives.

It is accepted here that the main themes that emerged from the Parliamentary debate in the House of Lords were whether the Bill protects individuals and faith groups and their religious freedom; and that English society has evolved to become more tolerant and now accepts the notion of same-sex marriage.[1114] The Parliamentary debates also reflect the considerable amount of concern for various religious groups and the need to include their

[1113] MCB voiced their opposition to gay marriage, on the basis of it being against Islamic doctrine, but did not oppose the Act. Society and even faith and its representatives, seem to be demonstrating a great degree of tolerance for religious and moral diversity. A further reason behind the greater degree of tolerance on this issue could be that ecclesiastic members and mosque officials have the option to refuse to conduct gay marriages. See: Tim Ross, 'Muslims and Sikhs attack Cameron's gay marriage plan' *The Telegraph* (19 March 2012) <http://www.telegraph.co.uk/news/uknews/9154043/Muslims-and-Sikhs-attack-Camerons-gay-marriage-plan.html> accessed 21 May 2017

[1114] For example: (Baroness Stowell) HL Deb 3 June 2013, vol 745, col 938-940 ("…the majority of people in this country are now ready to open up marriage to everyone").

views in the debate on same-sex marriage.[1115] The need to protect the religious or non-religious views and conceptions of conscience were a priority in the Parliamentary debate. To this end, the Act contains a "quadruple lock" which protects the religious freedom of individuals who oppose same-sex marriage. A same-sex religious marriage ceremony can only be conducted if the governing body of the relevant religious organisation has opted in by giving explicit consent and their premises are registered for marriages of same-sex couples.[1116] Furthermore, the individual minister of the relevant organisation does not object to conducting the marriage ceremony.[1117] No religious organisation or minister can be forced to opt-in or conduct a same-sex marriage ceremony.[1118] Lastly, the Act protects the Canon law which states that marriage is the union of a man with a woman by ensuring that the common law legal duty on members of the Church of England and the Church of Wales to marry their church parishioners does not extend to same-sex couples.[1119] This freedom to choose – through a conscientious objection clause, which allows individuals and organisations to choose whether or not to opt-in and conduct same-sex marriages – is what provides freedom of religion.[1120] To encapsulate, religion continues to play a part in societal issues and subsequently receives consideration during policy making as is evident from the above the analysis of the Parliamentary debates around the Same-Sex Bill. Different religions – such as Islam and Judaism – receive inclusion due to their stabilised presence in society; yet the Christian faith receives much greater consideration, along with special accommodation during policy making, to protect its doctrines and beliefs. Clearly, even with modern English society being increasingly secular and multicultural, religion

[1115] Also see: (Sir Menzies Campbell (North East Fife) (LD)) HC Deb 5 Feb 2013, vol 558, col 141; and the (Second Church Estates Commissioner (Sir Tony Baldry)) HC Deb 5 Feb 2013, vol 558, col 143-145 (who mentioned that the Church of England, Islam, and the Roman Catholic Church do not support the Bill).
[1116] Department for Culture, Media and Sport, 'Equal Marriage a step closer as legislation published' (25 January 2013) <https://www.gov.uk/government/news/equal-marriage-a-step-closer-as-legislation-published--6> accessed 21 May 2017
[1117] ibid
[1118] ibid
[1119] ibid
[1120] Brian Leiter, *Why Tolerate Religion?* (Princeton University Press 2012); and Roger Trigg, 'Why Tolerate Religion: Publication Review' (2014) 16(10) Ecc LJ 106. Note: Religious and non-religious conscientious are protected by Article 9 (Gwyneth Pitt, 'Taking Religion Seriously' (2013) 42(4) ILJ 398. For a detailed discussion on Article 9, and the role of the human rights movement in this debate, refer to ch 5).

continues to play a vital role in society and various public debates, especially the recent debate on same-sex marriage. However, religion plays an intermittent and increasingly diminishing role in the debate on assisted suicide due to the nature of assisted suicide being very individualistic and entirely a matter of a person's own conscience and not an issue that affects an entire religious or non-religious community. Furthermore, even though the historic debate significantly included theological viewpoints, the contemporary debate on assisted suicide is greatly influenced by the human rights movement and is driven by non-religious principles such as the notions of autonomy and dignity.

6.9 Conclusion

This chapter analysed the historical and contemporary movements to reform the law on assisted dying. Even though the aim of the Voluntary Euthanasia Society, in 1935, was to separate religion from this debate, in order to be able to reform the law, religion continued to play a central role in informing this debate. This influence of religion was not only seen in the 1936 and 1969 Bills but also the Lord Joffe Bills from 2003 to 2005. However, over the past decade, the debate has moved into a different direction. Even though the influence of religion did not completely detach from this debate, non-religious values – such as dignity and autonomy – began to take over and are the most significant principles that are extensively discussed throughout the public debate, such as in Parliamentary debates and statements from religious and non-religious groups.

The aforementioned presence of religion in this debate is due to the doctrine of sanctity of life – which is historically rooted in the Christian religion but is also a principle found in various minority faiths particularly the Islamic religion – acting as the most significant obstacle against reform. As the language in the Parliamentary debates evidences, even though the terminology has remained the same, this doctrine has lost its religious attachments and has transformed into a non-religious, secular idea that attaches an intrinsic value to human life rather than a religious holiness. This doctrine has evolved even further in recent years, particularly over the past decade, which is reflected in the Joffe Bills and especially the Lord Falconer Bill, into an idea that takes on quality of life considerations and absorbs the notions of dignity and autonomy, which are the main non-religious values that influence the modern debate and movement to reform the law.

The notion of human dignity, which was identified as an influencing value in the 1969 Parliamentary debate, was present throughout the years and even included in the 2015 Parliamentary debate, is another significant principle that drives the momentum to reform the law on this area. According to the traditional conception of dignity, every individual's life has value and dignity by virtue of being human. Disease or illness cannot decimate or destroy dignity as it is attached to life. Thus, opponents of reform argue that the only way to preserve dignity is by protecting human life (and rejecting the idea of assisted death). However, similar to the doctrine of sanctity of life, this concept has also gone through modernisation. It is now seen as a principle that allows individuals to determine the value of their life, according to its quality, and gives them the right to self-determine when to end life if they deem their life to be of very low quality and in a deplorable and undignified state.

The right to self-determination or autonomy, which is guaranteed under human rights law and was discussed in the previous chapter, is the most influential value in the debate and reform of the law. It began gaining ground when significant exceptions were being made to the doctrine of sanctity of life, by decriminalising suicide in 1961 and allowing the medical termination of pregnancies in 1967, which suggests that the relationship between this doctrine and the idea of death was changing around that time. This shift ought to have led to a change in the law when the next Bill was debated in Parliament, in 1969. However, theological opposition, particularly from the Christian faith, in the form of the doctrine of sanctity of life, did not let the 1969 Bill succeed. This theological opposition continued over the years and when the Lord Joffe Bills were introduced into Parliament, there was opposition not only from the Christian faith but also minority faith groups such as Islam, Judaism, Hinduism amongst many others. However, their opposition to the Joffe Bills was entirely in neutral language with no religious terminology or references to theological principles. Furthermore, the concerns raised by these faith groups were the need to protect vulnerable individuals especially those who have mental illnesses, changing the doctor patient relationship and promoting palliative care instead of allowing assisted suicide (and not traditionally theological opposition). This shift in language and approach towards the issue of assisted suicide also clearly demonstrates the changing relationship of religion and the law; and that the societal and governmental approach towards assisted suicide has

changed from theological to an increasingly secular, non-religious one. Historically, the debate on assisted suicide was predominantly influenced by religious tenets, particularly of the Christian faith, which sought to protect the religious sanctity of human life. However, with the significant change in the cultural landscape, brought on my multiculturalism and secularism, which were traced in Chapter Three, the religious undercurrent diminished from this debate and non-religious values began to drive it into a new direction. Unlike religious tenets, which tend to exclusively relate to the followers of that faith; these secular values include the notions of dignity and autonomy, which are protected by human rights law and were discussed in the previous chapter, are perceived by society as being common and shared amongst different individuals and communities. Clearly, the debate has moved away from its religious ties and is now a predominantly secular matter.

Even though all three Lord Joffe Bills were defeated, the opinion polls and surveys at the time demonstrated a considerable amount of public support for a change in the law, from both religious and non-religious groups and individuals. These polls reflect the shift in public attitude and societal approach towards allowing assisted suicide. This public support along with the failure of the Joffe Bills, cases such as *Pretty* and *Purdy* and media attention, led to the Commission on Assisted Dying being set up in 2010, which established that physician-assisted suicide ought to be allowed for mentally competent terminally ill patients with a prognosis of 6 months, who are over the age of 18 as long as a significant number of safeguards that were suggested are met. As this chapter has established – by analysing the reports of the Walton Committee 1993-1994 and the Select Committee 2004-2005 – physician-assisted suicide is the only justifiable option, instead of euthanasia, since only a doctor can provide emotionally detached, objective, safe and effective assistance to end the pain, suffering and indignity of patients. Furthermore, the nature of the assisted suicide process, with the individual taking the final action that ends life, generally ensures voluntariness and autonomy, and, thus, acts as a safeguard against individuals being killed off against their will.

The Commission received very little evidence from faith groups and its representatives and even though their views were considered, the influence and amount of inclusion was greatly reduced. The Bill that was produced by the Commission, and debated in Parliament in

2015, also reflected this detachment of religion: allowing assisted suicide was viewed as diminishing the "fundamental belief in the intrinsic value of every human life" compared to it being regarded as "sacred in the eyes of God" in 1969. Furthermore, the main values that influenced the Parliamentary debates were the need to protect the intrinsic value of life that needed to be balanced with the demand to respect the autonomous decisions of individuals to seek an assisted suicide in order to end their pain and suffering and preserve their dignity. An innovative value that was extensively discussed in the 2015 debate was the notion of compassion. An individual's request to receive an assisted suicide is entirely dependent on the person providing the assistance feeling compassion for that individual. It is an emotional response, upon seeing the pain and indignity of another individual, which leads a person to providing compassionate assistance. Compassion is a separate, independent idea from the notions of autonomy and value of life. However, since this idea does not have any legal grounding in national law or human rights provisions, it cannot form the basis for a change in the law and the right to self-determination, which is guaranteed under Article 8 and was discussed in the previous chapter, becomes the most significant value in favour of reform. Clearly, the contemporary debate on assisted dying, particularly assisted suicide, has become secular in nature and is no longer influenced by religious tenets. Thus, when an individual views their life and its quality to no longer have any value and makes an autonomous, informed and consistent wish to end life, which can be separated from mental illness and coercion, assisted suicide ought to be a lawful option.

Chapter 7. Conclusion

7.1 Introduction

This chapter returns to the key themes explored throughout this thesis. It explains how the three central research questions were answered during the course of this thesis and recapitulates the main arguments developed throughout the previous chapters.

7.2 Is there a discursive shift in language, over time, which demonstrates the changing relationship of law and religion in assisted suicide policy implementation?

Religion is one of the most important ingredients of a multicultural society. Depending on the degree of religiosity of an individual, religion may greatly impact their important life decisions such as seeking an assisted suicide. Thus, their views and beliefs on the issue need to be included in societal and governmental activity.

Christianity and Islam are the two largest religions in England and Wales. The belief in protecting the doctrine of sanctity of life, can be found in both religions, as established in Chapter Two, and directly emanates from religious texts namely the Bible and Quran. This doctrine is rooted in religious ideology, which attaches a holiness and sacredness to life. This can be seen by former Archbishop Geoffrey Fisher's 1948 statement where he views human life to be a "sacred thing" and it ought not to be ended through (suicide or) assisted suicide. Even though the Church has maintained its stance against assisted suicide, the manner in which this position is expressed is significantly different to 55 years ago. The current Archbishop, Justin Welby, has explained that human life garners "respect" and allowing assisted suicide would not only alter the moral fabric of society by devaluing life but would also put vulnerable individuals at great risk of being given unwanted or premature deaths. This comparison, between the statements of the two Archbishops, found in Section 2.2, clearly demonstrates that even though the terminology has largely remained the same, the meaning and understanding attached to it has significantly changed. The religious undertone and Biblical references can no longer be found in statements, announcements and declarations made by the Church, its official bodies, institutions and representatives, such as bishops and reverends. Non-religious, neutral wording is increasingly being used to communicate its stance on assisted suicide. Even though the

Church of England has maintained its opposition to reforming the law on assisted suicide, in recent years, it has clearly changed its approach towards this issue. Even the Islamic faith has adapted to the changing society with the Muslim Council of Britain explaining that "Life should be preserved, cherished and protected" instead of setting out religious texts and references to explain their opposing stance to assisted suicide.[1121] Faith and its representatives are adapting to changing multicultural English society by attempting to relate to, not only those who are followers of their faith but also all other Christian and Islamic denominations, individuals of other faiths and even those who do not identify with any faith group.

This shift in language can also be attributed to the fact that, as discussed in Chapter Three, in a multicultural, liberal democratic society, the worth of human life has become a non-religious, secular concept as there has been a reinterpretation of the relationship between the doctrine of sanctity of life and dying (rather than a detachment of this doctrine from the issue of assisted suicide). This shift in understanding has created two principles based on the doctrine of sanctity of life. The first is the historical understanding that human life has an intrinsic value, or even religious sacredness, attached to it and should be preserved at all costs. The second is that it takes on quality of life considerations and cannot be viewed in isolation from the pain, suffering and indignity that individuals feel that their illness or disease is causing them. This second, newer understanding dictates that the value of human life is a subjective commodity; deciding its worth is solely a matter of a person's own conscience and autonomy. If an individual feels that their life is undignified and appropriate safeguards can be put in place, there ought to be a lawful option to receive an assisted suicide.

Even some notable members of religious faiths, particularly the Church of England, have even gone on to change their opinion to incorporate the new understanding of the doctrine of sanctity of life, which now takes on quality of life considerations, such as the former Archbishop, George Carey, who now opines that human dignity ought to come before religious dogma and compassion ought to be administered by allowing individuals with a lawful option to a dignified death. The notion of protecting the doctrine of sanctity of life at

[1121] MCB (n 845)

all costs has shifted to an idea that takes on quality of life considerations. This notion of quality of life includes the idea of respecting autonomous decisions, which allows an individual to end what they subjectively perceive to be an undignified life and is the most important value in the modern debate on assisted suicide. This idea of autonomy, which continually conflicts with the doctrine of sanctity of life and on which a law can be based as it is grounded in human rights law and is discussed in significant detail in Section 2.5.1 and Section 5.3.

7.3 What impact have human rights provisions had on reforming the law on assisted suicide in England?

The two contradictory notions of the right to self-determination and the inviolability of human life are held by many religious and non-religious groups and individuals within a pluralistic society, which all need to be included and protected. This protection of various beliefs and viewpoints is guaranteed under Article 9 and it ought to be extended to allow individuals who believe in assisted suicide for themselves to receive assistance to end their lives. At first glance, it seems that all the Conventions rights are separate and independent from each other, for example, Article 2 seeks to protect the right to life and Article 8, on the other hand, protects the right to self-determine how to live and even end life; and these two Articles do not have a congruent relationship. However, all these Articles are complementary and can be used in an interdependent manner. For example, an individual who believes in the doctrine of sanctity of life, which is protected under Article 2, can rely on Article 9 to protect their religious or non-religious belief in this doctrine to preserve life. Similarly, Article 9 ought also be allowed to be used to uphold the right to self-determination, under Article 8, to protect an individual's belief in assisted suicide for themselves.

Article 9 of the Convention is designed to protect the thought, conscience and beliefs of individuals and it ought to be extended to cover the belief of a person in assisted suicide for themselves. In a multicultural, liberal democracy, where the Church and State are separate entities, the government ought not to use one religion as a constitutive device to control societal issues. This separation also prevents the State from exerting influence and controlling or even challenging the validity and legitimacy of an individual or community's

conscientious decisions and belief in assisted suicide for themselves. Furthermore, religious and non-religious groups need to have an independent, free and autonomous existence and no one religion ought to be allowed to impose their beliefs – against assisted suicide – on everyone else, when so many individuals and communities do not share the same faith or even identify with a religion.[1122] Thus, the need to preserve the doctrine of sanctity or value of human life ought not to be allowed to act as an obstacle against the popularly held belief of others in assisted suicide for themselves by the State's refusal to provide them with a lawful option of assisted suicide.

Some religious groups, particularly the Church of England and Islamic faiths, institutions and individuals oppose such a suggestion. Non-religious individuals, and even a significant amount of members of religious communities, hierarchise the right to self-determination for disabled or terminally ill individuals, tend to support a change in the law, as they do not view the value of life to be an absolute principle: respecting an individual's autonomous choice, by allowing them to end their indignity, pain and suffering upholds the modern, secular understanding of this principle. Thus, the right to self-determination – or autonomy, guaranteed under Article 8 – is based on the subjective valuation of life that is defined in terms of its quality rather than ideal set by a religion and is the most important value on which a change in the law can be based.

Not every individual would seek an assisted suicide, and, generally, it is not difficult to end life by committing suicide. However, this option is only available to able-bodied individuals. A small handful of persons who are physically incapacitated – because they have a certain terminal illness or disability that causes a considerable amount of pain and suffering, renders them incapacitated and leads them to become non-responsive to palliative and medical treatment – ought to be allowed the freedom to end their life, which able-bodied individuals already enjoy, by having the lawful option of assisted suicide. This option can be provided under Article 8 of the Convention, which guarantees the right to self-determination that allows every individual to choose the time and manner of their death.

[1122] Unless it is a matter of maintaining national security, public order etc.

Autonomy has become a trump card, under the human rights movement, for reforming the law on assisted suicide. Strasbourg jurisprudence on end-of-life cases is a reflection of the evolution of the legal understanding of the immense, non-restrictive power of Article 8. The Strasbourg's decision in *Pretty*, which was the first assisted suicide case it adjudicated on, was applied by the House of Lords, now the Supreme Court, in *Purdy* and *Nicklinson* respectively. The *Purdy* decision led to the publication of the DPP policy and now, arguably, an individual who provides compassionate assistance in the suicide of another is no longer prosecuted, which is evidenced by the fact that of approximately 110 cases recorded as assisted suicide only one conviction, in the *Howe* case, was handed down where the vulnerable victim, who was able-bodied and physically healthy, did not have the mental capacity to make an informed decision to end their life and, thus, the assistor could not have had compassionate motives or merciful intentions.[1123] The *Nicklinson* decision extended this notion – of tolerating compassionate assisted suicides – to holding that the absolute prohibition on assisted suicide, under every circumstance, is an infringement of the freedoms and rights of individuals. However, as discussed in Section 5.3.3, there was a need to protect vulnerable people since there is a lack of safeguards in place to allow assisted suicides and the Supreme Court had to constitutionally ask Parliament to reform the law, but did strongly hint that the Court would strike down the criminal embargo on assisted suicide at the next opportunity if Parliament did not do so. The "Noel Conway Case" is worth noting here.[1124] A man with motor neuron disease sought judicial review that could have ultimately changed the law on assisted suicide as contained in the Suicide Act 1961. However, the High Court decided that since Parliament had already considered this issue, in line with the Supreme Court's decision and decided not to change the law, it would be inappropriate to strike down the criminal prohibition on assisted suicide. Even though the High Court decided not to change the law in this instance, if this case or a

[1123] Another case, in July 2015, where the defendant was given a guilty conviction was the Lyndsay Jones case. The defendant provided and prepared heroin and a syringe for the suicidal and depressed defendant Philip Makinson. However, this has not been included in the thesis since the original charge was murder. The defendant denied that and accepted the lesser charge of assisted suicide. See: Ian Proctor, 'Killer overdose: Junkie jailed for sourcing heroin and preparing syringe for suicidal man' (*The Daily Star*, 5 July 2015) <www.dailystar.co.uk/news/latest-news/451968/heroin-assisted-suicide-murder-manslaughter-junkie-injection-self-administer-overdose> accessed 21 May 2017

[1124] *Conway* (n 682)

judicial review in the future reaches the Supreme Court, it is still a possibility, as per its powerful judgment in *Nicklinson*, that the criminal embargo on assisted suicide will be struck down.

There are other human rights provisions, such as Article 3 that prohibits torture or inhumane and degrading treatment, which have been invoked in assisted suicide cases but are not as significant in fuelling a reform of the law. However, Article 3 does protect every individual's inherent human dignity, which is an important principle that influences the debate on assisted suicide. Opponents of reform argue that the notion of dignity is an objective, innate state of being worthy of respect by virtue of being human. This innate dignity does not diminish or cease if the individual has a disease or disability. Nor is it dependent on the individual's own or others' subjective judgement of that person's quality or value of life. However, this argument does not take into consideration that the idea of dignity provides individuals with the right to decide the worth of their life based on their own perception of its quality and value. Thus, dignity consists of the ownership of a right to self-determination, or autonomy, to which allows individuals to make free choices and decisions on how to live their life and even when and how to end it. This idea of dignity is protected under Article 3 of the Convention. However, Article 3 is formulated to protect individuals against intentional and deliberate torture or inhuman and degrading treatment and, as per Strasbourg jurisprudence, cannot be claimed to have been breached when the perceived indignity and degradation has been caused by a disease or illness.

7.4 What role is there for faith in policy-making on assisted suicide in multicultural and increasingly secular English society?

This thesis established, in Chapter Three, that society has become multicultural primarily through immigration (3.3). This pluralism has led to the subjective perception that the way of life and values of subcultures, particularly the Islamic community (3.4.1), conflict with the dominant culture of the country (3.5), which has deep-seated ties with the Christian faith but is now increasingly secular (3.5.1). Even with the governmental accommodations made to integrate minority subcultures into society (3.4.2), there continues to be a negative perception of them, which has led to segregation and a loss of societal coherence and unity (3.4). As discussed in Section 2.4.1, in a multicultural English liberal democratic setting,

there ought to be a newer approach towards all governmental activities, particularly policy-making, which is much more open, transparent and inclusive of both religious and non-religious views in order to ensure that no one religion is favored over the other neither are non-religious, secular views given priority over religious ideology. It is essential to have societal cohesion and harmony in order to find mutual ground on public debates and issues, namely assisted dying, for the State to be able to regulate and reform the law. Since the law on this issue has the potential to directly affect the lives of every citizen in society, it is essential that the religious beliefs and non-religious viewpoints of every community are included in the debate.

The historic ties of this country with the Christian religion are evident in Parliamentary debates around abortion and suicide, traced in Section 6.8 and Section 4.3, where the principles and viewpoint of the Christian faith received a significant amount of inclusion. Even though it has deep-seated ties with the Church of England, the pluralism and fluidity that define multicultural, increasingly secular English society mean that it is no longer deeply tied to the tenets and historical traditions of the Church. However, a considerable majority of the population still identifies with it as their religion and the views of the Christian faith are still included in public debates as was reflected in the recent Parliamentary debates around same-sex marriage. Pluralism in society has also led to various minority religious views, such as those of the Islamic faith, being extensively discussed in these debates, particularly the same-sex marriage Bill. In spite of the extensive Christian theological opposition, and recently from the Islamic faith, during the debates on abortion and same-sex marriage, the law was changed. Clearly, a reform the law on issues that seem to go to the centre of these religions and inclusion of their views is not mutually exclusive. Firstly, there needs to be inclusion of religion, particularly minority groups, to ensure that there is no inequality within society and to deduce a homogenous opinion of the majority of citizens; it is necessary to include the views of both the dominant culture and minority subcultures on societal issues and debates. Furthermore, if the views of minority groups are excluded from public debates it would lead to them being further marginalised, discriminated against and isolated. In order to avoid this segregation and to promote equality, the government has attempted to assimilate minority groups into the culture of English society – through judicial and statutory acceptance of their beliefs and customs – to

bring them on an equal footing with individuals from the dominant culture. Secondly, in recent decades, with the cultural landscape transforming into an increasingly secular one, there has been a shift in society's perception, which favours common, shared non-religious values – such as the ideas of dignity and autonomy that are protected by human rights provisions – over exclusively religious principles. Thus, it is time to move away from religious principles and reform the law on assisted suicide, which is a very individualistic process and entirely a matter of each person's own conscience.

Various legislative attempts have been made to reform the law on assisted suicide, which are traced in Chapter Six, and all of them have been unsuccessful. However, in recent years, unlike between 1936 and 1961, the reasons behind this defeat were not predominantly theological opposition. For example, the criminal embargo is contained in section 2(1) of the Suicide Act 1961 and was updated by section 59 of the Coroners and Justice Act 2009. Religious beliefs did not receive any explicit consideration during the Parliamentary debates on the 2009 Bill, especially compared to the extensive consideration given to religious viewpoints, particularly through the inclusion of the opinions and doctrines of the Christian religion, in the debates in 1961. Even in the most recent Parliamentary debate on assisted suicide in 2015, there was a negligible amount of consideration of religious beliefs; and the need to preserve the doctor-patient relationship, the lack of safeguards such as ensuring that the decision to seek an assisted suicide is informed, autonomous and voluntary and the need to protect vulnerable individuals were the main reasons behind the defeat of the Bill as discussed in Section 6.6.2 and 6.6.3. However, these objections are flawed.

Firstly, physician-assisted suicide is the only option in which objectivity and, to a significant degree, benevolence can be guaranteed. The patient is safeguarded from pressure or coercion by family and friends and can end their life in a safe and sterile environment through medically prescribed lethal medication, which quickly and painlessly ends life as suicide has been traditionally known to be much more painful, and in some cases ineffective, than sanctioned lethal injections which are designed to cause death without any pain or prolonged suffering. Furthermore, even the family and friends of that patient are safeguarded from negative mental and emotional stress that would be caused if

they were required to provide the necessary assistance.

Secondly, allowing assisted suicide is an entirely voluntary and autonomous process, as the individual who requests the assistance always takes the final action that ends life. In contrast, even with safeguards, euthanasia is when another person assists that individual – for example, through actively injecting them with lethal medication to end their life – and there is a risk of the 'slippery slope' coming into effect with individuals being given unwanted deaths. Thus, assisted suicide only affects the individual seeking the assistance whereas euthanasia can affect every person within a community who is terminally ill, elderly or vulnerable and, thus, may be at risk of being given a premature death. Thus, allowing assisted suicide, instead of euthanasia, acts as a safeguard itself.

Thirdly, the paramount concern in Parliament was to protect vulnerable individuals, such as terminally ill patients. However, being terminally ill does not necessarily make patient vulnerable or susceptible to coercion and pressure. The significant majority of terminally ill patients have the mental capacity to make clear, settled and autonomous decisions to end their life. Thus, having an illness or disability does not mean that the entire group mandatorily becomes vulnerable and unfit to protect their wishes and interests. This number is further reduced, as not all of them would seek an assisted suicide on the basis of their conscientious decision or because the pain and suffering caused by their illness is manageable, for example, through palliative care.

The last objection to reforming the law was that Parliament did not want to send out the message that assisted suicide was being accepted or encouraged because human life was no longer of immense value. However, as explained throughout this thesis and earlier in this chapter, the understanding of the value of human life has significantly changed over the years and it now takes on quality of life considerations. Where an individual conscientiously opines that their life has no sanctity or value, as the quality of their life is so poor and deplorable, and that their dignity is deteriorated and irreparable, there ought to be a lawful option to receive an assisted suicide. Allowing individuals to make an autonomous decision to end an undignified life honours human life as it respects that individual's right to self-determination by providing them with an option to preserve their

human dignity by ending their pain and suffering. However, even a lawful option of assisted suicide would need to be carefully regulated. Firstly, the option ought to provide assisted suicide instead of euthanasia. For example, as discussed in section 1.3, if euthanasia were allowed, there would be a risk of the slippery slope coming into play and individuals being given premature or unwanted deaths. Secondly, the nature of assisted suicide is such that it is exclusively a matter of an individual's own conscience and autonomy rather than a decision that encroaches on the rights and freedoms of others. The final action that ends life is taken by the individual who seeks as assisted suicide (unlike active euthanasia, where another person takes the finals steps to end that individual's life) and only affects the individual requesting it. This personal nature of assisted suicide and the constantly transforming societal and cultural landscape of contemporary English society are also the reasons behind religion not receiving a significant amount of consideration in the Parliamentary debates on assisted suicide. Thus, lastly, assisted suicide ought only be acceptable under limited and definite circumstances, where there are a number of safeguards in place to ensure that the individual is not being coerced or pressured, is not vulnerable or mentally ill and has explored all treatment options including palliative care. If all the safeguards are met then a lawful option of assisted suicide ought to be provided to individuals who need assistance in ending their undignified lives.

7.5 Conclusion

Historically, society's belief in the doctrine of sanctity of life, which is rooted in both Islam and Christianity, has led to the cultural and legal landscape seeking to protect life at all costs. There is clearly a deep-rooted instinct that intentionally ending life is unacceptable; even if a human being is terminally ill or physically disabled and is living what they perceive to be an undignified life. All other rights and freedoms that an individual enjoys seem to be attached to the continued existence of life. Thus, prosecuting individuals who are willing to assist another to end their life raises a significant degree of public interest. Even though it seems that the movement to reform this area of the law has failed since every legislative attempt met with defeat; the medical, legal and religious attitudes have significantly shifted since 1936. Over the years, due to the shift in attitudes and the changing cultural landscape of English society, there has been a move away from the religious meaning of the doctrine of sanctity of life. The belief in this doctrine has clearly

survived in the absence of religious dogma. However, it is no longer the most powerful obstacle to the movement of reform. The newer, secular understanding of this doctrine takes on quality of life considerations and its value is dependent on the rights and freedoms every human being is able to enjoy; including the right to self-determination, which allows every individual the freedom to choose the time and manner of their death. Certain consequences have followed this newer understanding. The doctrine of sanctity of life is no longer absolute. There are a number of exceptions to this doctrine including allowing patient's to refuse or withdraw medical treatment and food and hydration, the notion of double effect and decriminalising suicide. Thus, allowing individuals a lawful option of assisted suicide would only add to this list of exceptions as long as it is under definite circumstances, where the individual perceives their life to have no value as their dignity is severely eroded; and after a number of safeguards have been met such as ensuring that the individual is not vulnerable, for example, with a treatable mental health illness, has a clear, settled and informed wish to end life, is not being coerced or pressured into making such a request, and every treatment option including palliative care, has been explored. Thus, under precise circumstances and after a significant amount of safeguards have been met, an individual's right to choose the time and manner of their death by receiving an assisted suicide ought to be a lawful option under English law.

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