Clause 49 : Encouraging or assisting suicide (England and Wales)

Amendment 172A not moved.

Clause 49 agreed.

Amendment 173

Moved by ***Lord Falconer of Thoroton***

173: After Clause 49, insert the following new Clause-

"Acts not capable of encouraging or assisting suicide

(1) An act by an individual ("D") is not to be treated as capable of encouraging or assisting the suicide or attempted suicide of another adult ("T") if-

(a) the act is done solely or principally for the purpose of enabling or assisting T to travel to a country or territory in which assisted dying is lawful;

(b) prior to the act, two registered medical practitioners, independent of each other, have certified that they are of the opinion in good faith that T is terminally ill and has the capacity to make the declaration under subsection (2); and

(c) prior to the act, T has made a declaration under subsection (2).

(2) A declaration by T is made under this subsection if the declaration-

(a) is made freely in writing and is signed by T (or is otherwise recorded and authenticated if T is incapable of signing it),

(b) states that T-

(i) has read or been informed of the contents of the certificates under subsection (1)(b), and

(ii) has decided to travel to a country or territory falling within subsection (1)(a) for the purpose of obtaining assistance in dying, and

(c) is witnessed by an independent witness chosen by T.

(3) "Independent witness" means a person who is not-

(a) likely to obtain any benefit from the death of T; or

(b) a close relative or friend of T; or

(c) involved in caring for T.

(4) D is not to be treated as having done an act capable of encouraging or assisting the suicide or attempted suicide of T by virtue of being with T when, in a country or territory falling

within subsection (1)(a), T takes steps (including steps taken with the assistance of D) to commit suicide by lawful means."

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Lord Falconer of Thoroton: It is not a crime to travel abroad to be assisted in dying in a country where assisted dying is lawful. Nobody proposes to change that position, either by amendment or suggestion, in this Bill. However, it is thought to be a crime to accompany your loved one to such a country abroad for assisted dying, and the maximum sentence for such a crime is currently 14 years. I say "thought to be" because, although the Court of Appeal in the recent case of Purdy proceeded on the basis that it was a crime, and the counsel representing the Director of Public Prosecutions and that representing Mrs Purdy accepted that it was a crime, in an appeal to the Judicial Committee of this House a point has been raised by the Law Lords to the effect that it might not be a crime. That matter is currently being debated before the Judicial Committee of this House. We have to proceed on the basis that it is a crime, because that is the latest ruling of the higher courts.

We know that in the past seven years, 115 people from this country have gone to Switzerland for an assisted suicide. Some of them have been investigated by the police, while some of those cases have been considered by the Director of Public Prosecutions. In none of the cases has a prosecution been brought under Section 2 of the Suicide Act 1961, despite the fact that the Director of Public Prosecutions has made it clear that he has considered in a number of cases that the evidential requirements of the Act have been satisfied. Nobody wishes to prosecute in those cases, because nobody, in my view correctly, has the stomach to prosecute in cases of compassionate assistance. The attitude of the police and prosecution authorities means that they have, for entirely understandable reasons, created a legal no man's land. The consequence is that there is no clarity.

The lack of clarity has a number of bad effects. The first bad effect is that some people do not allow their loved one to accompany them to a country where assisted dying is lawful, because they fear that after their death, their loved one may be investigated and prosecuted. With respect to them, I mention Mr and Mrs Syd Robbins, who had been married for 34 years. Mrs Dorothy Robbins had motor neurone disease; she travelled to Switzerland for an assisted dying and went alone, refusing to allow her husband, Mr Syd Robbins, to accompany her for fear that he would be prosecuted. There is no suggestion that that case was anything other than one of compassionate assistance. The problem that Mr and Mrs Robbins faced is the same problem that Mrs Purdy has faced, which is why she has brought proceedings, so far unsuccessfully, up to and including the Court of Appeal, to seek some indication that her partner, if he accompanies her to Switzerland for an assisted dying, will not be prosecuted.

There is, in my respectful submission, something wrong with a law that is never enforced, but has the effect of depriving people of the compassionate assistance that I believe every single Member of this House, including those who have written letters to the newspapers about this, would think these people were entitled to. The problem goes further than that. The second problem is that the current law offers no safeguard for those who go for an assisted dying mistakenly believing that they are more ill than they are. Looking at five of the

cases where people have gone to Switzerland, it has transpired that people in great distress and in great pain had in fact been suffering from such conditions as bad back pain or diabetes and had no underlying terminal condition. Because the law provides no safeguards whatever at the moment, no doctor had ever looked at those cases in the United Kingdom and the consequence was that those people went without any consideration of their medical condition.

The third problem in the law as currently enforced is that there may be cases of abuse-what the noble and learned Lord, Lord Mackay of Clashfern, and those who wrote to the *Times* referred to as "malicious encouragement to suicide". That is something we would all wish to stop. Currently, the only safeguard in that respect is the fear of prosecution. My amendment would not remove the fear of prosecution in those cases. Instead, it would add further safeguards. I say "my amendment", but the proposal that we make in our amendment is as follows. It should not be a crime if you accompany someone to a country where assisted dying is lawful if the sole purpose of your accompanying them is to assist them in going to the place where assisted dying is lawful. Two medical practitioners must have certified that the person you are accompanying is suffering from a terminal illness and those same two medical practitioners must have certified that the person going has the capacity to make a declaration to the effect that the medical certificates have been read by them or to them and that they freely wish to go for an assisted suicide.

A number of points have been made about these safeguards. In an incredibly well written article in the *Daily Telegraph* this morning, the noble Lord, Lord McColl, said that doctors do not want to have anything to do with it. No doctor would be forced to have anything whatever to do with this if they did not want to. However, if a defence is to be made that can be relied on, it would require that two doctors independent of each other had certified that someone was terminally ill. That is two doctors more than look at the matter currently.

The second point that has been made in relation to the safeguards proposed is that our amendment contains no definition of terminal illness. I am prepared to leave it to the good sense of two doctors as to whether or not someone is terminally ill. I am more than happy to listen very closely to the views of this House about whether that is the right approach. By terminally ill, I mean something along the lines of the definition contained in the 2006 Palliative Care Bill of the noble Baroness, Lady Finlay, which states that,

> "terminal illness" means an illness, disease or condition which-
> (a) is inevitably progressive and fatal, and
> (b) the progress of which cannot be reversed by treatment".

The third point is how you deal with the passage of time after the granting of the declaration by the person. I thought very carefully about that before the drafting of the amendment. It is implicit in my amendment and that is why I did not think it was necessary to say that the safeguards-namely, the certificate of the two doctors and the declaration by the person travelling abroad for an assisted suicide-apply to the act of

going abroad and having an assisted dying. Otherwise, there would of course be no point whatever in the safeguards. I believe that to be implicit, and that the courts would unquestionably construe the amendment in that way.

5.15 pm

The fourth objection to the safeguards is there being no definition of capacity. Remember-one of my safeguards is that the person making the declaration must have the capacity to do so. My reason for not including a definition of capacity is that, as many noble Lords will remember, comparatively recently Parliament passed the Mental Capacity Act, which would without much doubt apply here. For the avoidance of doubt, I draw your Lordships' attention to the fact that Section 62 of the Mental Capacity Act says that the reference to capacity in the Act does not apply to murder, manslaughter or Section 2 of the Suicide Act 1961. Again, I considered that before tabling the amendment and took the view that it was obvious, as a matter of drafting, that that section would not apply to the amendment. I would very much welcome noble Lords' views on that.

The reason that I proposed this amendment, along with my noble friend Lady Jay of Paddington and the noble Lords, Lord Low and Lord Lester of Herne Hill, is that it is absolutely plain that the law is being marginalised. The law is not being applied by the Director of Public Prosecutions because it plainly no longer fits the current situation. The result of the law not being applied is that we have the horror of people going earlier to clinics abroad, without their loved ones being there on the day that they die. Equally, the law provides no protection or safeguard against abusive people, or for those under a mistaken impression of what illness they have. The only current safeguard is the fear of prosecution. That is not removed because the declaration must be made freely.

What are the objections to my amendment? First, it is said that this is a slippery slope; it is the beginning of a change. However, it is the law that people can go to Switzerland; that is the existing position. Is it fair and right to allow greater abuse than would be allowed if my amendment were passed by this House and the other place, and at the same time to have a situation where people go abroad to die without their loved ones? It is not a slippery slope. The amendment deals with the immediate position. Secondly, there are spiritual objections to my amendment. I do not seek to deal with these. They must be made, but in the context of the existing position. The third objection to my amendment is the idea that, before you make a change such as this, there should be a full-blown consultation. Of course, if we were making a change about assisted dying in this country, there should be a consultation. The difficulty is that the law has already been overtaken by events. It is, I believe, absolutely necessary for the law to reflect a situation that did not exist in 1961.

I very much welcome the debate that will now take place on the amendment. I have set out-I hope with clarity-my reasons for proposing the amendment. It is a very important debate and I greatly welcome the contributions that will be made. I beg to move.

Lord Mackay of Clashfern: I had assumed that the co-signatories to the amendment might wish to speak in support of the noble and learned Lord, Lord Falconer of Thoroton, but if they do not wish to do so I am very content to speak now. As your Lordships may have anticipated, I do not support the amendment that the noble and learned Lord has moved. I declare interests as a member of a variety of Christian organisations and as an honorary fellow of a number of royal medical societies.

In my view, respect for and protection of human life are a defining characteristic of a civilised society. This country has long had protection in place in one form or another against assisted suicide. I quite understand what the noble and learned Lord, Lord Falconer of Thoroton, said about his amendment, but any proposal to alter the current position involves a judgment that a certain kind of life, or a certain span of life, has become unworthy of support from that principle. If you attempt to alter the law on suicide and the law relating to attempted suicide, you immediately bring to the attention of those who suffer from serious disability the point that, if another type of life is thought to be unworthy of protection, or is deemed unnecessary to protect because of the degree of suffering or weakness that may result from it, that judgment can be applied also to disabled people. That is the reason, I believe, why so many disabled people object to any change in the relevant law. That aspect has to be kept in mind when we are considering a matter of this kind.

For the purposes of my remarks I shall assume that the law is as the Court of Appeal accepted that it was. As regards the appeal to the Judicial Committee of this House, the amendment tabled by the noble and learned Lord, Lord Falconer, may result in a case being brought before the new Supreme Court. However, the committee may be able to deal with it so quickly that that will not happen; if not, it may be one of the early cases in the new Supreme Court building. As I say, I am assuming that the law is as it was accepted by the Court of Appeal in England in the recent case. In that situation, the amendment tabled by the noble and learned Lord, Lord Falconer, proposes a procedure that in my view is unworkable. I leave the medical aspects to others, but senior members of the profession have said that the obligation placed on registered medical practitioners by the amendment is unworkable. The amendment refers only to "registered medical practitioners". They are not required to have any particular skill or expertise in relation to assessing capacity.

The main reason why I feel that this amendment is not justified is that the present law, with and on the assumption that what is involved is a criminal offence, permits the circumstances to be looked at by the criminal prosecuting authority. In recent times, there have been a comparatively small number of cases in which the Director of Public Prosecutions and the police felt that there was no obligation to raise a prosecution-I think that the thunder is giving emphasis.

A noble Lord: God is angry.

Lord Mackay of Clashfern: The fact that they felt that there was no obligation to raise a prosecution showed that the circumstances in their view made that

a proper decision. But that was done after consideration by the director. We all know that there are two stages in prosecution policy: first, the question whether there is evidence sufficient to justify a prosecution; and, secondly, the question whether it is in the public

interest that a prosecution should be brought. It was on the second of these questions, at least in some cases, that the decision of the director rested.

That could be a fundamental safeguard against the possibility that vulnerable people might be manipulated to go to Switzerland in order to end their lives. The cases in the books about undue influence show how a person can take a decision that, without the activities and information provided by, in particular, relatives, might not have occurred. I have thought of an example of how this might work. The son of a person suffering from a terminal illness, who had a considerable prospect of continued life, was affianced and decided that he would like to obtain a house. The deposit necessary for the house approximated to the savings that his mother, the terminally ill patient, had in the bank. In order to relieve her symptoms of pain for a time to come, obtaining a drug not authorised on the National Health Service by the National Institute for Clinical Excellence would require a substantial outlay of expense. In bringing these circumstances closely to the mother's attention and the possibility of her going to Switzerland to enable her to end her life there, the son brought the mother to conclude that this might be the right thing to do. In accordance with the procedure in the amendment tabled by the noble and learned Lord, Lord Falconer, and explained to her by her son, she went through with it. In such a case, the present law would allow the Director of Public Prosecutions to consider the conduct of the son in relation to the whole background of the case. A protection is afforded in that way to vulnerable people against exploitation.

There is one aspect that I want to mention in conclusion. When the committee of your Lordships' House that was investigating these matters some time ago was in Oregon, it was told that quite a substantial proportion of the people who made declarations sufficient to get the prescription for bringing their lives to an end did not, in fact, do so, despite having come to a settled conclusion that they wanted to. Quite a high proportion had the prescription given to them and never used it. That means that the person who signs the declaration in the amendment may nevertheless, at a later stage, wish to change his or her mind. The relative going with the individual could-I do not say "would"-have motives that were not altogether altruistic. It might be difficult for the person, in the face of that accompaniment, to change their mind.

The amendment constitutes a change in the law that would deprive vulnerable people, at a vulnerable stage in their lives, of a protection that the law currently affords. The fear of prosecution is quite an important aspect of the prevention of crime in many of our arrangements. The noble and learned Lord, Lord Falconer, suggested that he was proposing new safeguards, but they are of course optional. The present law is staying, so somebody who did not wish to take advantage of the amendment would simply proceed without it. Therefore, the amendment does not produce any more protection than the present system. On the basis that

the present law is in fact as the Court of Appeal thought that it was, my submission to your Lordships is that the amendment should not be agreed to.

5.30 pm

Lord Lester of Herne Hill: I have put my name to the amendment. The noble and learned Lord, Lord Falconer, has so completely described it that I would like to make just a couple of points and hope that I will be extremely brief in doing so.

I shall reply to the noble and learned Lord, Lord Mackay, with regard to whether the Bill provides safeguards. It is perfectly plain from the first subsection that the only conduct to be deemed not criminal is:

"An act by an individual ... done solely or principally for the purpose of enabling or assisting",

someone,

> "to travel to a country or territory in which assisted dying is lawful".

If anything more than that is done, it would not be covered by the amendment, so anything done in bad faith or in the way of improper pressure or coercion would be ruled out by the defence that the amendment provides. That is the only kind of conduct that is to be treated as not,

> "encouraging or assisting the suicide or attempted suicide of another adult".

The safeguard of two registered medical practitioners says that they must be,

> "independent of each other ... have certified that they are of the opinion in good faith that",

the person "is terminally ill"-that is a matter on which two independent doctors should be perfectly capable of certifying-and, as under the Mental Capacity Act,

> "has the capacity to make the declaration under subsection (2)".

Again, I see no problem in two independent doctors being able to decide whether someone has that capacity; I shall be corrected by those who are medically qualified, which I am not.

To deal with the next point made by the noble and learned Lord, Lord Mackay of Clashfern, I say that if the person changes their mind after making the declaration, of course they are entirely free to do so. Nothing in the amendment limits that in any way. The safeguard applies only to those who are terminally ill, have exercised free choice and wish to travel to a country where assisting suicide would be lawful. The question that I respectfully suggest should be asked and answered is: why is that not preferable to the present situation, where the loved ones of someone who wishes to end their life because they are terminally ill must risk prosecution, unless the Director of Public Prosecutions decides in that case that he will not prosecute? Why should the operation of the law have to depend on the DPP's discretion? The Court of Appeal indicated in the Purdy case that it is for Parliament, not the court, to answer those questions. If ever there were a case in which legislation needed to be reasonably clear, it is legislation of this kind, where one needs to know whether what one is doing is criminal.

I see the amendment as providing a safeguard that is now needed. A former client of mine-Annie Lindsell-had MND, did not wish to go into a hospice,

did not wish to have a peg put in her throat towards the end of her life and wished to exercise her personal autonomy as a disabled person to die when she chose. Were she now alive, she would know that, under the amendment, if she wished to end her life and was totally paralysed and unable to exercise autonomy in any other way, she could go to Switzerland, accompanied by the magnificent two men who looked after her at the end of her life, and die with dignity.

I entirely understand the concern expressed by many-including the noble Baroness, Lady Campbell, who I am sure will wish to speak to the amendment-that the right of everyone to life is fundamental and that the disabled are as worthy in all respects of life and all that it means as someone who is not disabled. If I thought that the amendment would make the rights of the disabled less worthy of consideration than now, I would be totally opposed to it. Someone who is terminally ill with MND is disabled, in the sense that there will come a time when they are totally paralysed and unable to do anything for themselves. If they wish to end their life, that is a personal choice for them. The disabled should not be treated less favourably in their personal choice and autonomy than those who are not disabled. We can all go to Switzerland and kill ourselves if we wish to do so and, since the Suicide Act, we can all commit suicide in this country if we wish to do so, but those who cannot exercise personal autonomy in the end are the most seriously disabled who are terminally ill. They would get support from the amendment in knowing that, if they wished to exercise their personal choice, they could do so with their loved ones around them.

I regard the amendment as a humanitarian measure of a limited and moderate kind. It does not seek to do what the Bill of the noble Lord, Lord Joffe, did. I agree with the noble and learned Lord, Lord Falconer, that if it did something of that kind it would be a matter for full consultation and full debate. All that the amendment would do is provide a safeguard in a narrow set of circumstances.

Lord Walton of Detchant: In opposing the amendment, I speak as a doctor, a retired neurologist, and someone who in my professional life spent a great deal of my time looking after people with progressive neurological diseases and many individuals who were terminally ill. I must also remind the Committee that in 1992 and 1993 I had the privilege of chairing your Lordships' ad hoc Select Committee on Medical Ethics, which spent a full 12 months in detailed inquiry into issues relating to whether it would be appropriate to legalise physician-assisted suicide and voluntary euthanasia. I do not intend to go into details about that inquiry, except to say that we considered with great care submissions from many different quarters, including those who favoured the question of legalising assisted suicide. I fully appreciate that three members of the committee, which I was privileged to chair, have subsequently changed their minds. I know that they have supported the Falconer amendment, but I do not, for reasons that I should like to explain.

In that inquiry looking at the issue of people who were terminally ill from progressive and fatal diseases, we recognised that there was a principle that had been

applied in many cases in the past by the medical profession and accepted by the legal

profession-the principle of double effect. What double effect meant was that if, in order to relieve pain, distress and suffering it was necessary for doctors to give such doses of medication as may have the secondary consequence of shortening life, this was acceptable in law and in medical ethics, but the intention must not be to kill. Since that time, I wholly appreciate that a number of philosophers and doctors have regarded that principle as being hypocritical. Some have said that it is a fudge; nevertheless I still believe that it served the medical profession well over many years.

I recognise what the noble and learned Lord, Lord Falconer, said about his opinion to the effect that, at the moment, the law on this issue is being abused. I remind him that one of the issues that arose out of that inquiry-incidentally, our report was accepted by this House-related to an amendment, which had been tabled earlier on this Bill, about the law relating to the offence of murder. The Home Office reported to us 23 cases where a family member had administered a fatal dose of medication to an individual with terminal illness because of their belief that they were assisting that person and that their motives were merciful. In all but one of those 23 cases the law was, in a sense, not accepted because each one should have been accused of murder. However, in every case but one, the offence was changed to one of attempted murder or manslaughter, because everyone knew that the motive was merciful and that, in consequence, no jury would ever be likely to convict. It was for that reason that we recommended a change in the mandatory life sentence, but that is another issue entirely. However, the law was, in our opinion and at that time, being abused and not accepted.

I turn to the issue of assisted suicide. Ludwig Minelli, who runs Switzerland's suicide facility for overseas visitors, is something of a fanatic. He has made no secret of his view that suicide is a marvellous opportunity for a human being and that he regards safeguards as unnecessary. I believe that Parliament would be abdicating its responsibility for the safety of British citizens abroad if it were to pass this amendment. Look at the cases that have gone to Dignitas in Switzerland. They include individuals with cauda equina syndrome-weakness in the lower limbs-individuals with inclusion body myositis, and a whole series of people who have been put to death in that so-called clinic, which is not really a clinic, when there was no evidence that they were suffering from a terminal illness.

I turn to the point that the noble and learned Lord raised on safeguards and the issue of getting two medical practitioners to confirm that these individuals were of sound mind and could make this declaration. We all remember what happened to the Abortion Act as regards the requirement that two doctors should confirm that the individual was suffering from a disorder such that the continuation of the pregnancy should not be allowed. What about the qualifications of these doctors? Any regulation or law of that kind must surely prescribe in detail the nature of the medical people who would be called upon to certify these cases as being appropriate to travel abroad in company with a loved one.

5.45 pm

Another issue came out of our report 17 years ago-I appreciate that in many respects the opinion of some Members of this House have changed and that the attitude of some members of the public may have changed. However, one of our major recommendations was that the facilities for palliative care for people in terminal illness should be vastly improved. Palliative care has changed out of all recognition. As a consequence of the law legalising euthanasia in the Netherlands, where we visited and saw that more than 1,000 people a year were being put to death by euthanasia when they were not capable of giving or withholding consent-the consent was given by others-there has been a decline in palliative care. In this country it has been extended considerably. Palliative care is provided not just by hospices but by doctors who are fully trained in general practice to administer palliative care. I believe that the situation is such that everyone in a terminal illness can be entitled to and can receive a quality of medical care to help them to die well.

I end with a quote from one of the papers I have received:

"If I were asked whether I would prefer to receive high quality palliative care in a terminal illness and would be enabled in the UK to die well, or whether I would rather go to Switzerland to be killed, I have no doubt which choice I would make".

Baroness Jay of Paddington: I, too, have signed the amendment and I had the privilege also of serving on the Select Committee chaired by the noble Lord, Lord Walton of Detchant. It was many years ago, as he reminded us. I say to him and to other Members of the Committee who raised some of the general points about palliative care and the Suicide Act in this country that, frankly, that is not what this amendment is about. It focuses exclusively on the particular circumstances of people who are terminally ill, who have mental capacity, and who have made a determined decision that they wish to travel abroad to have an assisted death.

The noble Lord, Lord Walton of Detchant, and others referred exclusively to the situation in Switzerland, but let us not forget that one could, for example-if one wished to-go to the Netherlands, Luxembourg, Belgium or, if one wished to make a long journey, Oregon or Washington State. Therefore, we are not in this amendment seeking to make judgments about a particular institution, which some noble Lords may feel has an unattractive presentation. That is not what this debate or this amendment is about. It is not about assisted suicide laws in this country. Frankly, it is not-except indirectly-about palliative care. I should also say, with great respect, although I took very clearly the points of the noble Lord, Lord Lester of Herne Hill, on disability, that it is not about disability. It is about a very narrow situation which my noble and learned friend Lord Falconer very adequately described in his introduction.

Taking the lay person's view on all of this, one is entitled to have as a citizen a clear view about whether one's individual conduct is criminal or not. In this respect, I refer the Committee to the point made by my noble and learned friend the Attorney-General in response to a previous amendment to the Bill. She said:

"One of the things that we aspire to achieve with these provisions"-

that is, with the Bill-

> "is a greater degree of clarity, certainty and, therefore, consistency".-[*Official Report*, 30/6/09; col. 169.]

That is precisely what my noble and learned friend's amendment is trying to achieve on a very narrow perspective. In supporting him, I should like not simply to reinforce that legal point, but to make a slightly more general, and perhaps more emotional, point about the nature of the people and their circumstances who would be affected-and, indeed, would be helped-if this amendment were agreed.

At Second Reading, I gave some examples of people who were faced with very agonising choices for their families and who would confront a situation whereby they could give one last act of loving kindness to a person who, as I said, is determined and of sound mind to travel abroad to somewhere where it is legal to get an assisted death. They can do that, but are then in the terrible situation that they may face prosecution. I mentioned people who defied the law to give that comfort and assistance. I mentioned those who felt terrible guilt for many years because they had been deterred from accompanying a loved one, and those who chose to keep their plans secret from a wider group. In one instance, a couple went to a place where they could effect a dignified death so that they would die together. In every circumstance, there was a clandestine nature to the activity and a sense that they were trying to keep something very quiet. I received a letter today from a woman with multiple sclerosis who said that she did not want to "sneak off" to another country to die earlier than she needed to. All of these people-and all of us who support the amendment-would like to see the desire expressed by the Attorney-General for clarity, certainty and consistency achieved by the amendment. That is what I would like to see.

The Lord Bishop of Exeter: With all due respect to the noble Baroness, I am not persuaded that this is a mere narrow and technical amendment. I see it as touching on concerns that ought to be at the heart of English law. I speak as the father of a 30 year-old woman with Down's syndrome. For much of her life, she and others like her have been the subject of countless government and other programmes, apparently intended to increase responsibility and choice. However, the lived experience of my daughter's life is that, for people like her, intention and reality often end up being far apart. With all respect to the noble and learned Lord, Lord Falconer, and the noble Lord, Lord Lester, speeches about freedom, choice and personal autonomy may be fine for those, including many of us in your Lordships' House, who are well educated, articulate and not totally economically dependent on others. We are used to shaping our lives through the autonomous choices that we make. However, I ask noble Lords to reflect for a moment on the many people, in this country and the world, whose experience of life is much more about being "done unto"-sometimes by those closest to them-and whose experience of professionals, including doctors, is not always of people of good faith, like you and me, but of remote, aloof and often faceless people who make decisions that may not immediately reflect, or appear to reflect, the client's interests or long-term needs.

I ask noble Lords to consider whether a person whose life experience is not all about being in control and making free choices is likely to see any loosening of a law that is designed to protect the vulnerable from others and from themselves as being the compassionate liberalism that we are told it is intended to be. For too many, the promise of more choice has so often turned out to mean pressure to choose that which suits others. People who have not led assertive lives, exercising their own choices, have often internalised the notion that others know best. They end up valuing their own lives far too cheaply. Are we to offer them the ultimate opportunity to give way to the will of those around them? I ask this in the context of the amendment, which by definition would involve the state in affirming the view of an individual life as being, in at least some circumstances, intolerable and not worth living.

One of the prime functions of law is to protect the weak. So let us be very wary of any changes to the law that are based on an assumption that all human beings are like us: confident, articulate and used to choosing the direction of their lives. For many others, choice is not always a promise: it can feel like a threat. Time and again, history has shown that once a principle is breached it becomes very hard to police the boundary. That is my greatest worry about the amendment. Its apparent modest provision to provide support for those who have determined to seek assisted death abroad will, I am certain, despite all that has been said, come to constitute a legislative milestone on that slippery slope to introducing assisted suicide here in the UK by incremental degrees. My concern, on behalf of the most vulnerable, is that what is presented as an extension of "my right to choose" can too quickly become an option that I am pressurised, however subtly, to accept.

The philosopher, Alasdair MacIntyre, says that the fundamental truth about human beings is not that we are autonomous individuals, but that we are dependent on one another. Through good palliative care, our nature as dependent creatures can be given an eloquent expression through the skill of the medical and nursing professions. Most doctors, and the BMA, understand the provision of palliative care as central to their calling but are extremely wary of assisted dying. The vision of our mutual dependency is surely better realised in a relationship dedicated to controlling pain and supporting life until death comes, than in the dry, consumerist image of a medical profession part of whose job is to respond to a patient's demand to die.

So often this debate about assisted suicide is presented in terms of a conflict between warm compassion and cold dogma. But this is a false antithesis and far from the reality that the debate needs to be about. The real debate is about how a compassionate society discerns and enshrines in law what "compassionate" means for all its citizens, but particularly for the weak and vulnerable, with all the complex reality of their lives, and in a way that appears to reduce neither the value of individual human life, nor the mutual responsibility of us all.

This is a matter that deserves thorough debate and scrutiny in a substantive measure of its own. It is far too important to be dealt with in the loosely drawn amendment that it is now proposed to attach to this already broadly drawn Bill.

Baroness Finlay of Llandaff: Last week, the BMA rejected the amendment's proposal, and also rejected supporting physician-assisted suicide generally. Why? Because it saw that this does not serve true choice in patient care. There are no safeguards of substance here. The two doctors have only to be registered-in other words, a year out of medical school. They need no training in the patient's condition, in assessing mental capacity or in detecting coercion. Each doctor has to do only a single assessment, which will inevitably miss some impairments in capacity and distorted thinking that may be fluctuant. The requirements would not have safeguarded the patients in the five cases highlighted by the noble and learned Lord, Lord Falconer, in his opening remarks.

This is a rubber-stamping exercise. The criteria are far less rigorous than those required for other serious assessments such as brain-stem death. What about the witness? Will they be a lawyer, or trained to detect coercion? How will the witness check the veracity of the doctors' statements? The declarations do not have to be formally registered with the Ministry of Justice; nor do they have a shelf life. There is no monitoring here, and the requirement that the patient has read or been informed of the contents of the doctors' certificates affords less protection than the informed consent required for major surgery.

Where will the registered medical practitioners come from? In Oregon, there is a culture of doctor-shopping. The pro-assisted-suicide organisations link patients to a compliant doctor. The Oregon health department's report showed that a tiny number of doctors provide all the lethal prescriptions. Such doctors from pro-assisted-suicide organisations are hardly going to be unbiased in their "in good faith" assessments. Let us not be fooled into thinking that a second, independent doctor is a rigorous check. I remind the Committee that Dr Shipman's cremation forms were all signed by doctors independent of him. That safeguard failed in several hundred cases. More than 90 per cent of doctors in palliative medicine in this country want nothing to do with this, as we work day in and day out with those with end-of-life diseases, on their management and care.

6 pm

The amendment certainly does not define terminal illness. Indeed, as stated, many of the Britons who have had assisted suicide at Dignitas were far from terminally ill. The definition which I used in my Palliative Care Bill related to an entitlement to care. If more than those who fitted the definition came within its ambit, they certainly would get more enhanced care than they were already receiving but that would not endanger the safety of anyone. They would simply receive that care and, subsequently, be discharged back to ordinary care.

Even when patients are thought by their doctors to be terminally ill, trying to predict time of death is notoriously inaccurate. In one in 20 post-mortems, misdiagnosis of a terminal illness has been shown to result in inappropriate treatment. I am afraid that I see enough patients every year who are thought to be terminally ill and dying to know that it is not easy to establish. Even, four years ago, when my mother was in a hospice, I and the doctors looking after her

thought that she was within days of her death, but we were proved wrong. She lived to see her two great-grandsons born and now says that she has a great quality of life. I never believed that I would have my mother now.

Assisted suicide does not guarantee a peaceful death. There are well documented cases from Oregon, Switzerland and Holland of patients waking up again, some in overwhelming distress, hours or days after taking their lethal prescription. Once immunity from prosecution is granted, there is no check whatever. As care becomes more burdensome and family funds dwindle, why not encourage a patient to travel? Such pressure could be brought to bear by a family free from any worry that they might face a severe penalty. The amendment is an invitation to those whose wish for their relative to be put out of their misery may be dubious. Indeed, relatives often feel that a patient should be dead before a patient is ready to die, yet this amendment naively assumes that relatives never stand to gain anything by a foreshortened life.

Remember the Court of Appeal's judgment last November in the Purdy case which stated:

"Cases of assisted suicide ... vary hugely in their criminality ... not all cases of assisted suicide represent the final act or acts of love or the culmination of a lifelong loving relationship".

Only too often, patients feel that they cannot or should not go on. Improved care and dealing with their concerns results in them subsequently saying that they are glad that they are alive and that they never believed that they could have such good quality of life.

Some months ago, a man referred to me was adamant that he would travel to Dignitas but he wanted better pain control for the journey. His wife fully supported his decision and I felt that it was inevitable that he would go. Tentatively, I asked whether he had any unrealised dreams. He said that he had always wanted to go on a cruise but that that was now clearly out of the question. I suggested that we controlled his pain and got him on the QE2, where he had the time of his life. Eventually, months later, he died at home after a winter trip to the beach and an overly large helping of fish and chips. He never went to Switzerland and his wife is clear that neither of them would have missed the last months for the world. How hard his care was for us all. It was not easy but it would have been easy to have simply processed his request.

People change their minds. The law as it stands dissuades relatives from readily taking people to commit suicide. It dissuades clinicians from going for the easy option which would be to acquiesce to such requests. Make no mistake, coercion is very subtle. This amendment is no simple tidying up of the law; it would provide immunity from prosecution, irrespective of the subsequent events around the death.

Finally, which "country or territory" is referred to in the amendment? It actually means Dignitas in Switzerland because it provides suicide for non-Swiss nationals. Oregon and the Netherlands certainly do not take non-nationals for suicide and Belgium and Luxembourg are extremely reluctant to because they do not want the label of "death tourism" which has applied to Switzerland. Despite the media hype, the Swiss suicides referred to represent fewer than one out of every 50,000 British deaths.

However, the articles in the British press, as well as highlighting those who have gone to Dignitas, have also importantly exposed just what has been going on at Dignitas. Ludwig Minelli, its founder manager, wrote to me and the letter is in the Library. He said that he felt that he should make sure that suicides were complete because of the healthcare costs of failed suicides. His nurse, Soraya Wernli, who was working for him when the Select Committee visited, has blown the whistle and gone to the Swiss authorities, having become so disturbed by what she has witnessed. The attorney-general of the canton of Zürich warned the Select Committee that there is no surveillance and no state control, yet this amendment encourages more British people to place their relatives in the hands of Mr Minelli.

The noble and learned Lord, Lord Falconer, said that at present there is nothing to stop people going off to Switzerland without any check on their mental or physical state. Therein he recognises that there are no adequate controls at Dignitas, yet he proposes that we facilitate people going there. In the past 10 years we have had 37,000 suicides in this country and 27,000 open verdicts. Suicides are tragic. Those were all people who felt that they would be better off dead. The amendment invites us to endorse the view that for some, the terminally ill, there should be assistance. Should we really be setting less value on the lives of those who are seriously ill than on those who feel that their lives, for whatever reason, hold for them no value and no future? The law sends a signal. This amendment will preferentially attract those whose motives are dubious in assisting the foreshortening of a relative's life through suicide because its so-called safeguards are illusory. I understand that this would be the only time someone would have immunity from potential prosecution in advance of an event.

No matter what you feel about assisted suicide or euthanasia, we have a duty to look very carefully at the words before us. The amendment provides far fewer safeguards than earlier assisted suicide Bills put forward by the noble Lord, Lord Joffe, and the House rejected those as unsafe. It should give the same response here.

Baroness O'Neill of Bengarve: Most of the arguments that I would have wished to put have already been put very much better by other noble Lords with medical and legal knowledge. The most impressive argument is that we have to take account not merely of compassionate assistance but of interested assistance and it is extraordinarily difficult to imagine any drafting that would do that.

I wish to draw attention to one aspect of the drafting of the amendment, about which I am still very unclear. In subsection (1)(a) the safeguard is that,

> "the act is done solely or principally for the purpose of enabling or assisting T to travel to a country or territory in which assisted dying is lawful".

An intention which is solely or principally for a certain purpose gives one the idea that what is at stake is one last holiday in Switzerland and is perhaps solely or principally for the purpose of travel. We all know that the circumstance which we are discussing is not solely or principally for assisting travel. It is principally for

assisting someone to reach a territory where they can have assisted dying. Therefore, I cannot see that there could be cases that would meet the provision of this amendment in its own terms.

Lord Elystan-Morgan: I should like to follow the point made by the noble Baroness, Lady O'Neill, and suggest that the most important word in subsection (1)(a) of the amendment is the word "travel". However, my point is slightly different from her point. As the noble Lord, Lord Lester of Herne Hill, said, the sole limit of this amendment is to exculpate those people who assist in making travel arrangements and who travel. I see the noble Lord nodding. If that is literally the case as the amendment has been drafted, as I believe it inevitably to be, then it must mean that the amendment will totally fail in its purpose of exculpating persons who go with their loved ones to a clinic in Switzerland or somewhere else for this purpose.

Imagine that the family has arrived in Zurich at Ludwig Minelli's clinic. The travel is over. They see a doctor; there is consultation. They are there to give moral support and presence to their loved ones. They are there at events leading up to death. They are clearly giving aid and comfort-as is their very purpose, the purpose of their presence there. But the travel is over. That means that all those acts-and they are the crucially important acts-would be beyond the scope of this amendment.

Lord Falconer of Thoroton: I apologise for interrupting the noble Lord. There are two separate answers to that and perhaps he would like to consider them in his reply. First, acts that take place outside Britain altogether at the moment are not thought to be a crime anyway under the Suicide Act. Secondly, subsection (4) of my amendment deals with it.

Lord Elystan-Morgan: Those two submissions raise a number of different questions and, in any event, it probably would have been possible by a very simple amendment to have corrected the difficulty. However, I raised that point because it is one that obviously calls for far greater consideration.

The main argument put forward by the noble and learned Lord is that the law, in relation to the 115 families that have gone to Zurich, has fallen into desuetude. I do not think I am doing them a disservice by summarising it in that way. The noble and learned Lord says the law has not been operating-but the law is being operated. Each and every one of those cases is examined by the Director of Public Prosecutions. He is not oblivious to what is happening; he is charged with a specific task. He is charged with a task and responsibility of acting in a quasi-judicial capacity to determine whether prosecutions should take place. That is not unique in any way to this particular law, nor indeed to dozens of other laws that we still have on our statute book. There is nothing capricious in the function of the Director of Public Prosecutions in that case: he is exercising a judicial role in a very disciplined and consistent way. Therefore, to pretend in some way that the law has fallen into desuetude and that consequently there is not only justification, but even demand, for this amendment is wholly fallacious.

Again, it is wholly fallacious to say that this is just a cosmetic change- a minor matter which acknowledges the situation as it exists at the moment. Not at all. Is there anybody in this House who believes that, if this amendment were carried, it would not inevitably lead to legalising physician-assisted death in the United Kingdom? Many slippery-slope arguments are less than worthy, but I believe it wholly inevitable that that is what would happen. What one has to consider are not the compassionate arguments-and there are compassionate arguments in relation to this huge problem. I saw my mother wither and die when I was a small boy and I saw my wife go through the same torture about two and a half years ago. I am not without feeling for people who are in the situation of being in extremis. But what we have to consider is the effect that it has.

John Donne said:

"Any man's death diminishes me, for I am involved with mankind."

He was not speaking as a priest of the Anglican Church, which he was: he was speaking as a humanist. He was saying that the institution of life itself is diminished by every single death. How much more is it diminished by a deliberate death? That is the situation. We have to ask ourselves, "What messages would reverberate from this House if this amendment were to be carried tonight?"

What of the hundreds of thousands of people who at this very moment may be saying, "Well, life isn't worth it. I'm hanged if I know if I can face the very next day, let alone the next week". What effect would it have on those people? Logically, there is no causal connection between this amendment and their state of mind, but one knows psychologically that there will be. Logically, there is no reason why palliative care should be regarded as less important than it is. Britain has made splendid and honourable strides in that field, but psychologically it could well have that effect because people could say, "There is a very clear exit that is an alternative to it". What would happen in the nightmare situation in a place like Bridgend? This amendment certainly will not help that.

6.15 pm

Lord Turnberg: I speak simply as a medical practitioner when I say I have every sympathy for those unfortunate patients and carers who find themselves in the horrible position of those examples we have been hearing about. However, when one hears of what goes on at Dignitas-where, in an unregulated hotel room, an unregulated non-medical enthusiast helps anyone who wishes it to commit suicide-it is difficult to have much confidence that this is what we should be encouraging.

I have another concern. I refer to the effect of accepting this amendment on any future Bills which are likely to come before this House along the lines of the assisted dying Bill that we have hitherto rejected. Imagine the discussion we will have, and the clearly illogical and somewhat ludicrous position we will then be in, where a relative can quite legally take a person abroad for assisted suicide, but could not do so in the United Kingdom. Passing this amendment here and

now would make it quite inconsistent of us not to pass such a Bill in the future. It would, in

effect, short-circuit the sort of detailed and considered debate that we will need about the pros and cons of an assisted suicide.

For that reason, I believe we should await a fuller consideration at that stage. If a new assisted dying Bill was to be passed after a full debate, then we would not need this amendment. For that reason, I oppose it.

Lord Goodhart: In 1961, we in the United Kingdom were humane enough to remove suicide itself from the list of crimes. That prevented the possibility that people who had failed in a suicide attempt could find themselves facing a trial in court. I doubt whether anyone would want to revert to making suicide itself a crime. The Suicide Act 1961 left aiding or abetting suicide as a crime. I believe it was quite right to do that. Most people who commit or attempt suicide do so because they are suffering from severe depression or because they have been overwhelmed by some crisis in their personal lives. These people should not be helped to commit suicide; they should be helped out of their wish to kill themselves and restored to normal life.

Terminal illness is not in itself a justification for assisting a victim's suicide. Most of us will, at the end of our lives, suffer from a terminal illness, but few of us, I suspect, will commit suicide. Many people who become terminally ill will receive palliative care. For many people, and many diseases, it works, and all of us respect the noble Baroness, Lady Finlay, for the work that she has done in that field. However, for a small number of people and a small number of diseases-notably, motor neurone disease-palliative care is in many cases insufficient. The last weeks of the people who suffer from those diseases will be grim, painful and degrading, and I do not believe that they are acting wrongly in wanting to commit suicide to cut short a horrible ending. If they need help, I do not think that their helpers are acting wrongly in giving them that help. That is why I support the amendment.

The noble and learned Lord, Lord Mackay of Clashfern, based his argument on respect for human life. My argument is also based on respect for human life. When someone close to the end of their life, in pain and distress, wants to die, it is no respect for their life to force them to stay alive. That is why I believe that the amendment is justified.

Baroness Campbell of Surbiton: Before I begin, I need to remind the Committee that the usual channels have allowed my noble friend Lady Wilkins to finish my speech should I be unable to do so, but I hope to be able to do it myself, as I have a lot to say on this issue.

I shall speak against the amendment moved by the noble and learned Lord, Lord Falconer. It is the overarching intention of the amendment that I want to address; I shall leave the detail of the legal implications to my noble and learned friends. The culture that the amendment will bring about is something that I think noble Lords need to think about. I simply point out that if we go with the amendment, we turn the traffic lights from red to green on state-sanctioned assisted dying, albeit in another country.

Be under no illusion that this is not about disability. It is. I tick every box of the definition of the noble and learned Lord, Lord Falconer, for going to Switzerland

to die. I could go tomorrow and, believe me, I would have no problem persuading two

doctors. Indeed, three years ago, two doctors persuaded me that my life was at an end and that it was time for me to go on my way, as they put a DNR notice on my medical records. So it is about disabled people, and it is about people with terminal conditions.

Many of your Lordships will remember that these issues were discussed in much detail when the Assisted Dying for the Terminally Ill Bill, introduced by the noble Lord, Lord Joffe, was debated in 2004. I did not have the honour of being a Member of your Lordships' House at the time, so I was not in the Chamber. However, I was not far away. I was across the road in Old Palace Yard with more than 100 other disabled people with terminal conditions-motor neurone disease, multiple sclerosis; you name it, we were there. We were protesting against that Bill. We were not alone. Many people joined us.

Why were the terminally ill there? Why were disabled people there? After all, the noble Lord, Lord Joffe, had stated time and again that his aimed was to help us. We were there for a very simple reason: because we feared for our lives and the lives of hundreds of other disabled people if the Bill were to become law. Our belief was that if the state were to sanction any person to assist another in the ending of that person's life, it would switch the mindset of doctors and those who would help us in this country to thinking that that is what we really want-the very people who need every encouragement to live and not to succumb to society's prevalent view that our situation is so tragic, so burdensome, so insufferable that surely we must want to die. It takes an extraordinary will to rise above such views, and many do not, especially when those views are held by our loved ones. That is when it is the hardest.

Concern about the Assisted Dying for the Terminally Ill Bill led to the formation of an organisation that we naughtily called, Not Dead Yet UK. I have T-shirts at home; you can have one if you like. The name is taken from the long-established group of disabled and terminally ill people in the United States. Their experience of Oregon, and the potential for other states to adopt similar legislation, has heightened the fear of disabled and terminally ill people in America. It has not lessened it. It does not bring comfort, as so many people think that the amendment will bring in this country.

Noble Lords will be aware that not a single organisation of or for terminally ill people or older people supports this assisted dying legislation. That includes organisations that advocate on behalf of people with motor neurone disease and multiple sclerosis-two disabling conditions that are often referred to when describing who would benefit most from the legislation. Today, an open letter imploring noble Lords to resist the amendment was delivered to a newspaper with more than 20 signatories from disabled leaders and organisations for disabled people, including the chief executives of Radar and the National Centre for Independent Living.

With the exception of a few vocal-and, I have no doubt, sincere-disabled individuals, assisted dying is not supported by the very people whom it is intended to benefit. Its advocates are people who fear disability

and terminal illness: people who have witnessed the progressive nature of disability or illness but who have not experienced it-a natural reaction, you may think, to any dramatic circumstance, but to suggest assisted dying or this amendment is to abandon hope and to ignore the majority of disabled and terminally ill people whose lives benefit us all.

6.30 pm

Baroness Wilkins: This House has repeatedly taken the view that it cannot support assisted dying. Proponents for a change in the law have brought several Bills to this House, each more tightly drawn than the last. However, your Lordships have seen through that tactic and held firm. I believe that these amendments are being used in another attempt to find a chink in your Lordships' armour. The justification given is that they are merely devices to bring the law into line with current practice. I do not believe that. I believe that they are intended to establish the precedent that assisted dying be sanctioned by the state. Where the deed is done is irrelevant.

I am sorry that some see this as merely a legal puzzle that can be solved with precise drafting of legislation and that it is possible to help the few while protecting the many. That is not the experience in either the Netherlands or Oregon, where the laws have been used to establish death as an option for all disabled and terminally ill people to consider. Legalising premature death as a treatment option plants a seed of doubt about one's right to demand help to live with dignity and undermines the state's responsibility to ensure that all citizens can live with dignity.

If this amendment were to succeed, it would place a new and invidious pressure on disabled and terminally ill people who think that they are close to the end of their lives. Some will consider death as preferable to fighting for support to live with dignity. It will be the cheapest, quickest and simplest option. Think of older people who are anxious not to cause their families any distress. Evidence from research in this country and abroad shows that most people who seek assisted suicide give "not wanting to be a burden" as the principal reason for seeking death. The increased-choice argument is not valid until we live in a society that values us equally, where we can live with dignity and do not feel burdensome-a society whose health system offers genuine pain relief for everyone.

Baroness Campbell of Surbiton: Lastly, if these amendments were to succeed, despair would be endorsed as a reasonable expectation for which early state-sanctioned death is an effective remedy. Is this really the message that we wish to give disabled and terminally ill people? Is this really the future that we wish to offer those who become terminally ill? Those of us who know what it is to live with a terminal condition are fearful that the tide has already turned against us. If I should ever seek death-there have been times when my progressive condition challenges me-I want a guarantee that you are there supporting my continued life and its value. The last thing that I want is for you to give up on me, especially when I need you most. I urge your Lordships to reassure us by rejecting this amendment.

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Baroness Kennedy of The Shaws: It may come as a surprise to many in this House that I am against the amendment. Although I am a great believer in individual liberty and in the autonomy of the individual, I also believe strongly in the symbolic nature of law. The laws of a nation say a great deal about who we are and what we value. One of the ways in which cultural shifts take place in a society is by changing law. Many of us who have argued that

changes in attitude follow changes in law did so particularly around issues of discrimination. We made arguments for changes in the law on racism and other discrimination such as gender, sexuality and disability. When others argued against us and said that racism was about beliefs and that the law could not bring about the changes that we sought, we countered by saying that the law sends out powerful messages. We know that in this House. The law matters and has the power of changing our society.

Before we introduce this legislation, therefore, I would like us to be sure of what the cultural implications might be. Legal changes made for benign reasons can have unforeseen and negative consequences. The consequence that concerns me, as it concerns the noble Baroness, Lady Campbell, is that with this legal amendment we create a climate in which the terminally ill, the disabled and the elderly who are sick feel even more profoundly vulnerable or feel that there is an expectation that they should take steps to end their lives.

As a criminal lawyer, I have acted for a family whose members were prosecuted for manslaughter. They were accused of failing to act to prevent the suicide of an elderly relative. I am conscious therefore of the anguish that cases of that kind can bring. As a criminal lawyer, however, I am also cognisant of the ways in which malign pressure is brought to bear on the vulnerable when they are at their most vulnerable and that this is done in criminal ways. We have well developed legal processes for making difficult and sensitive decisions about when to prosecute. The Director of Public Prosecutions has indicated that no prosecution in this area will be brought where there is no prima facie case of bad faith or ill intent. No prosecution has been brought against any accompanying person in the Swiss cases. In my view, it is right that the responsibility for commencing a prosecution should rest with the director.

For eight years, I chaired the Human Genetics Commission. We produced a report on reproduction and genetics, which, interestingly, picked up on one of the things that the right reverend Prelate spoke of. One of the alarming pieces of evidence that came through in producing that report was that genetic tests happened as, or were becoming, a matter of course and that pregnant women felt required to have genetic tests to determine whether they were carrying an embryo that was less than perfect. Many described to us in evidence a sense that somehow they were being required to consider whether they should proceed with a pregnancy where a baby would be born with a disability such as Down's syndrome.

Choice can, if we are not very careful, in the end mean no choice. Choice has real meaning in a society only if we really care for those who have disability and

really provide the right level of resource for those who are dying. The good society should be resourcing palliative care in the way that we have heard about.

I am opposing this amendment because I think that it could so readily lead to a coarsening of our societal values and a diminishment of our commitment to the ill, to the disabled and to those who are terminally ill. I understand the good intentions of those who presented this amendment but I am afraid that I think that it is ill-conceived. I hope that the Committee will vote against it.

Baroness Warnock: I entirely agree with the noble Baroness, Lady Kennedy, on the symbolic value of the law. We should try to return to the whole purpose of this amendment, which is very narrow. I know that many of your Lordships have said that, if this amendment were to be carried, it would inevitably follow that we would have another discussion on the much wider issue of assisted suicide becoming legal in this country. However, that is not inevitable. It is perfectly possible that somebody may put up such a Bill but it is entirely up to Parliament whether that Bill is even given a Second Reading. Last time in this House, the Bill was not given a Second Reading. That process can go on again and again.

This amendment, however, has a narrow purpose. It is highly focused on the position that we are in now with the law, which is that there is uncertainty. The general public who are neither lawyers nor doctors do not fully understand what is meant when the Director of Public Prosecutions says that it would not be in the public interest to prosecute. Why would it not be? If assisted suicide is wrong anywhere and if it is wrong in principle, he might argue that it would be in the public interest. We need more clarity about the reasons for which no prosecutions have been made and we need to have that clarity soon.

I want to make two other brief points. First, I have a deep interest in the well-being of the disabled at any stage of their lives and there is no doubt that they need protection still more when they reach the end of their lives, whenever that may be. However, I think that there is confusion if we run the disabled as a class of people, members of society, into another class of people, the terminally ill, although they may overlap. There are two different concepts and we should not bring them together under the general heading of the vulnerable about whom we hear, in my experience, all too much. Being vulnerable is a judgment made by somebody about another person; in my experience, it is not a judgment that one ever makes about oneself. To be classified as vulnerable is to be regarded from a great height by lawyers or doctors, above all, or nurses. They deem one to be vulnerable. There is a very small category of people, of whom we have heard today, to which belong some of those people who have gone to Switzerland to commit suicide, who do not want to be categorised as vulnerable. They therefore make their own decision.

Secondly, we have heard a great deal today about predatory, selfish relations who want to bump people off, but there is another class of relations-children, perhaps-who have been very difficult to persuade to help their parent or loved one to go to Switzerland. I

think of the case of Dr Anne Turner. She was completely determined that she was going to die. She had three children and had the greatest difficulty in persuading them that her decision was rational, best for her and, incidentally, possibly best for all of them, although she did not emphasise that. They came to the conclusion, with great difficulty, that she was right and knew her own mind and they went with her, helped her and stayed with her. I believe that people like Dr Anne Turner should not automatically be sacrificed for the sake of those people who genuinely do not want to die or who are incapable of making up their minds whether they want to die or not. Why should people like Dr Anne Turner be the ones who have to put up with it for the sake of other people who are in a quite different position, who may be disabled or under pressure from their nasty relations? As it happened, she did not have any nasty relations; she had nice ones, and there are those people in the world who are prepared to put themselves at risk for the sake of their parent, their spouse or whoever it is.

We should go back to what this amendment is about and not fear the slippery slope. We should aim for the positive result of clarifying the law as it now stands.

Lord Quirk: I think that we can all accept that the arguments that have been made opposing this amendment have been powerful, cogent and persuasive. However, it has struck me that some of them tend to bypass the present situation. We have legalised suicide; we have people going to Switzerland or wherever-if they can afford it, they go to Oregon. It seems to me that the question before the Committee is whether the amendment tabled by the noble and learned Lord, Lord Falconer, et al improves the position of those who want to go and have made up their mind to go to Switzerland. In my view, the lot of the unhappy is improved by this amendment.

6.45 pm

Lord Low of Dalston: I put my name to this amendment in the belief, which has been endorsed by others, that it is a comparatively narrow, targeted amendment. It is designed to remedy the lack of clarity about the current law and practice that gives rise to considerable anguish. I also believe that the safeguards in the amendment are by no means negligible. I say to the noble Baroness, Lady Finlay, and others who have questioned the robustness of the safeguards that the framers of the amendment would be more than happy to look at them further to see whether we can bring back something that would be more acceptable to noble Lords.

The main way in which I feel I can help the Committee is by making a different point. From the representations that we have received from people who have written to us in this House and from what we have heard at various times during the debate, it would be easy to gain the impression that disabled people are completely against the kind of legislation contained in this amendment. No doubt many noble Lords have received a letter from RADAR stating that many disabled people have expressed real fears that the amendment could open the door to people being coerced into

going abroad for an assisted death and pose a risk to the lives of many disabled people. I do not believe that that is a realistic fear. If that is what disabled people fear, I have to say to them, with the greatest respect, that they are mistaken. There is, no doubt, an argument to be had about assisted suicide and voluntary euthanasia, but I do not think that it is to be had on this narrowly drawn, focused amendment.

As has been made abundantly clear, the amendment is confined to those who two doctors are prepared to say are terminally ill, who have provided written evidence that this is the course that they wish to follow and that they know what they are doing and whose consent has been independently witnessed by someone who has no stake or vested interest in the patient's death. There is no way in which this amendment gives the slightest encouragement to anyone thinking of coercing the generality of disabled people into going abroad for an assisted death. It is a major act to go abroad in order to die with dignity. It is implausible to suggest that people can easily be conned into doing it. Tony Benn once told the story of somebody who wanted to go to Switzerland to be assisted to die with dignity, but in the end changed his mind because he could not abide the thought of being killed in an air crash. That illustrates

that it takes a certain amount of courage to undertake this course and it is not something that people can be easily bamboozled into.

As I said, it would be easy to gain the impression that disabled people are completely against this kind of legislation, but that is not the case. Disabled people do not speak with one voice on this issue and there are numerous opinion polls showing steady support for legislative change. Eighty-two per cent of the general public surveyed in a 1996 British Social Attitudes Survey thought that they should have the right to ask a doctor to end their life if suffering from an incurable and painful disease. Disabled people were just as likely to be supportive as the rest of the population. Younger people who had a disability were indeed more likely to support assisted dying than non-disabled people of all ages. The survey stated that those with a disability were more pro-euthanasia than those who were able-bodied. A possible explanation for that is that disabled people were more inclined to sympathise with those in pain or suffering, or with those wholly dependent on others who wished to end their own lives. However, the survey said that that disability effect applied only among the young. It said that, among older respondents, there was no significant link with attitudes towards euthanasia. By that it meant that disabled people were neither more nor less likely than the general public to support euthanasia.

In case noble Lords think that this evidence is too dated, a 2004 YouGov poll showed that, of disabled respondents, 80 per cent supported assisted dying legislation and 82 per cent believed that the current law discriminated against disabled people who wished to end their lives but could not do so without assistance. Seventy-six per cent felt that such legislation would have a positive impact or no impact on society's view of disabled people and 84 per cent said that they would trust their doctor the same amount or more.

I am afraid of being terminally ill, as I imagine most of us are. If I were, I think that I would hope to

be able to avail myself of the benefits of legislation such as that enshrined in the amendment. However, as a disabled person I am not afraid of disability and my support for this amendment does not stem from my fear of disability. It is an unworthy suggestion if it is thought that that is the origin of my support for the amendment. As a disabled person, I lead a full and fulfilling life, which I hope will go on for as long as possible. As I say, when the time comes for it to end, I hope that I could avail myself of the benefit of legislation such as is enshrined in this amendment. As someone who is not afraid of disability but, like many people, who is afraid of terminal illness, I urge noble Lords to support the amendment.

Lord Waldegrave of North Hill: It may be appropriate to have two or three sentences from someone who once held the huge and wonderful office of Secretary of State for Health. I want to associate myself warmly, which was not always the case when I was Secretary of State, with the views of the BMA, as so eloquently expressed by the noble Baroness, Lady Finlay.

We have to be realistic. We have heard the phrase "predatory families"; there are also such things as predatory bureaucracies. The noble Lord, Lord Turnberg, said most exactly what worries me. This would open the way to a shift in perception across the board, and it would begin to shift the perception within the appalling decisions that have to be made about

resource allocation within health services. It would open another front. The health service bureaucracy has to be able to rule out that kind of resource allocation by saying that that is not something that we will consider.

We have heard wonderful examples today from patients, doctors, nurses and lawyers. All the individuals who work within these bureaucracies are of course sanctified, particularly when they are in your Lordships' House. But bureaucracies do not have souls, and given broad signals, they can move quite quickly in ways that individuals looking at hard cases had originally not envisaged. I urge noble Lords to keep this light on red, as the noble Baroness, Lady Campbell, put it so eloquently.

Lord Warner: I support what we must remember is a narrow and focused amendment. This is not the day to have a wide debate on assisted dying, although I would welcome that in the not-too-distant future. This is a narrow, focused amendment that would rectify deficiencies in the legislation as presently presented. It represents a humane clarification and improvement on the current law, with appropriate safeguards to protect vulnerable people. It is much more in line with the 21st-century reality of a growing number of Britons who go abroad to end their lives, whether we like it or not. That is what is happening, and the law is inadequate to deal with it. It puts a great deal of responsibility on the Director of Public Prosecutions, so that is the reality of the issue in this amendment.

A number of noble Lords have raised issues that relate to the wider debate on assisted dying, and I want to correct one or two of them. I am no great fan of BMA polls, but the recent one shows that the majority of doctors are against assisted dying. About 45 per cent are actually in favour of the amendment, so medical opinion is mixed. It is not uniform, and not

all doctors are saying that they are against assisted dying. Not all doctors say that they are against this amendment.

On the issue of palliative care, no one is more supportive than me. I will march shoulder to shoulder with the noble Baroness, Lady Finlay, in support of more resources for palliative care but, on reaching a certain point, a minority of people-I include myself-want to make their own decision about when they die. They cannot always rely on the health and social care professionals providing the palliative care to respect their views and wishes. That is a sad fact of life. That is not to diminish the work that such people do, but it will keep us focused on the fact that a minority of people strongly believe that it is their decision to choose the time when they leave this world. We have to respect their views as well as those of vulnerable people who are disabled. We are trying to craft legislation that meets a diverse group of needs. We are not trying to change the world on assisted dying today, but are trying to focus on a humane amendment that would improve the lot of a small number of people, with adequate safeguards for disabled people.

Baroness Masham of Ilton: With pressures on our National Health Service, many people who are seriously disabled feel vulnerable now, but should this amendment be passed, they will feel even more vulnerable. All of us on the mobile Bench here today in your Lordships' House fall into the definition explained by the noble and learned Lord, Lord Falconer. It is quite possible that the legislation might open the door to doctors and nurses to feel that people who become disabled are not worth keeping alive. Legislation so often allows things

to happen that were not thought about, or meant to happen. That could happen with this amendment, should it be passed today.

7 pm

The Lord Bishop of Chichester: Several noble Lords have suggested that this is a narrow amendment. It is not a narrow amendment: it is about assisted dying. We heard this clearly from the noble Lord, Lord Low, a moment ago; he expressed with some passion what he hoped might be his options were he to become seriously and terminally ill. We heard this from a number of other noble Lords as well. This is clearly a question about what this country should be providing through its legal system; that is what is motivating the amendment.

The law may be unclear at the moment and some problems may need to be addressed, but there are many areas which are not clear in the amendment too. Attention has already been drawn to the lack of clarity about what terminal illness means, to the qualifications and nature of the doctors who have to provide the certification, and so on. If the law is unclear, tidying it up is not a reason for turning a major moral traffic light from red to green, to use the striking imagery that has been used. This is a stalking horse for a more fundamental moral question that we need to deal with head on in open and frank debates rather than in a way that almost makes that inevitable but in a hidden and stealthy way.

Baroness Williams of Crosby: The right reverend Prelate has pointed to a deep ambivalence running through the debate. That deep ambivalence is about whether the debate is fundamentally, as the noble Baronesses, Lady Warnock and Lady Jay, suggested, about a relatively narrow change in the law; one that would clarify where people stand when they attend with a beloved relative to take part in a ritual of assisted dying. It is also and has clearly been shown to be, as the right reverend Prelate says, a debate about assisted dying in a much broader sense. I will say one word about the argument that this is a relatively narrow proposal to deal with people who are trying to travel with a beloved friend or relative to a country that agrees to assisted dying. If that is correct, there should have been much deeper discussion in this debate about the major institution that has been involved. The noble Lord, Lord Walton of Detchant, pointed in his own remarks to the disturbing record of Dignitas, which has been the major provider of assisted dying, well known outside its own country.

We know that nearly a third of those who have died at the hands of Dignitas since 2002 who are British citizens did not have any form of fatal illness. We know that no psychiatric or palliative recommendation was required before the decision was taken to allow them to die. We know that Dignitas has been accused, wrongly or rightly, of being much more a private company in its ethics and incentives than a public body concerned with bringing to an end the lives of people who wish to die. In other words, it is in many ways an unsatisfactory institution to be given the kind of support that this amendment would give.

If we are arguing about the wider issue, I want to make a brief point that relates to what the noble Lord, Lord Waldegrave, had to say. There is inevitably, at a time of straitened public

expenditure, a battle to raise enough money for palliative care. Those members of the Committee who are distinguished proponents of palliative care would make it clear that there are some areas of the country in which such funding is desperately short and others where it is adequate. Deciding what to do in one's own case depends a great deal on the situation. The United Kingdom has been a pioneer of palliative care. I have visited a number of hospices and one of the most prominent was in my own constituency of Crosby in Merseyside when I was a Member of Parliament. It is amazing what has been achieved-a mood of happiness and contentment reigns in many of them.

One of the people who corresponded with me who for 23 years was a palliative care doctor, and, given the choice between entering a hospice or choosing to die-choices that were equally weighted because both were present and possible-many people would decide to choose a hospice. One of my correspondents who had also been a palliative care medical practitioner in the north of Scotland for 23 years used the phrase, "It is easy for the right to die to turn into a duty to die". That is what lies at the heart of many of the objections that some of us want to raise.

Like many of my noble friends and many noble Lords in other parts of the House, I oppose this amendment. It has not been sufficiently thought through

in terms of the present possibilities for assisted dying. As a basis for a wider principle, it should be eschewed on those grounds and on wider grounds.

Baroness Emerton: I rise not as a lawyer but as a nurse. I wish to say a few things that have not been said this evening. First, I find it strange that we are faced with these amendments in the midst of this complex Bill. It is even stranger since the Government's action in the Bill strengthens their suicide prevention strategy by dealing with the predatory internet sites, which has already been mentioned.

Government policy is being rapidly implemented to address inequity of end-of-life care across England and Wales, so that everyone, irrespective of diagnosis, can access specialist support. Yet the focus of publicity has been around the plight of a small number of patients, several of whom were not terminally ill, wishing to foreshorten their life by assisted suicide in Switzerland. We have already heard noble Lords' opinions of Dignitas.

We have to look at whether this is a suitable place for this proposal to be in the law. As a nurse, it is with great sadness that I admit that the care of dying patients has not always been gold standard. Here we are in 2009, with the report of the noble Lord, Lord Darzi, and end-of-life care strategy and qualify markers being introduced. Competencies required for all doctors and nurses are clearly set out. To support the amendment suggests that we are sending more people to Switzerland because the care that we give here is inadequate, and that does the people who live in this country no justice. The House of Lords should have a responsibility for the citizens of this country. The Government have taken steps to move steadily to correct the inadequate distribution of good end-of-life care and we should support that.

I suggest that those who advocate assisted suicide with loved ones accompanying should have the courage to bring a Bill to the elected House. It is irresponsible in my view to

introduce such a measure into this Bill. I end with the words of the late Dame Cicely Saunders, which is that how people die remains in the memory of those who live on. We live on but the memory of how people die remains with us.

Lord Carlile of Berriew: I start with something that has not been said as yet. As someone who is opposed to the noble and learned Lord's amendment I thank him for the measured way in which he spoke to it, as this can be a highly emotionally charged argument. However, I reject utterly two of his arguments. First, I suggest with great respect that the noble and learned Lord is deceiving himself if he believes that this is not part of a slippery slope situation. It is, and he must recognise that; the reasons were given eloquently by the noble Lord, Lord Elystan-Morgan, and I can certainly do no better than he. If the amendment is passed it will be seen as an approbation of Dignitas in Switzerland. I reject that point out of hand.

I want to talk more substantially about the noble and learned Lord's assertion, and the assertion of others, including the noble Lord, Lord Warner, that the present law lacks clarity. I suggest that the present

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law could not be clearer than it is. Our clear understanding for decades now-unless there is to be a decision in future to the contrary-has been that it is an offence to assist someone to travel to Switzerland or anywhere else to commit suicide. That is clearly understood. It is also clearly understood that, if you do that, you may be prosecuted. It is clearly understood-because the Crown Prosecution Service code test is there for every citizen of this country to see-that you may be prosecuted if, first, there is enough evidence to sustain a prosecution and, secondly, that it is in the public interest for a prosecution to occur. What could be clearer law than that?

The only area of uncertainty is in the consequences of the exercise of personal responsibility. My view, as a Member of this House and a former Member of another place, is that the exercise of personal responsibility is actually rather important, and that we should leave an element of personal responsibility to be exercised by the citizen and not try as a state to legislate for it. I offer your Lordships an entirely non-religious but, I hope, ethical judgment, that it is better to leave a decision of this kind in the sphere of personal responsibility than in an opaque-and, I have to say to the noble and learned Lord, and I shall return to it-pragmatic and poorly drafted criminal defence. In so saying, I offer this: we underestimate in this country, and sometimes we underestimate at our peril, that in our unwritten constitution, one of the greatest protections against arbitrariness and oppression is the discretion of the Attorney-General and the Director of Public Prosecutions to prosecute, or not to prosecute, on the application of the CPS code test, including the question whether it is in the public interest. It has proved to be sound under the stewardship of a number of noble Lords in this House over a very long period, and I prefer it to the amendment on offer today.

I say with respect to the noble Lord, Lord Low, that for me a place of greater safety is with the law that we have and the protection that I have described, rather than relying on this drafting or opinion polls, which by and large have been taken after a number of highly publicised cases. I say, too, that this is not any passing amendment; it has been prepared in a blaze of publicity. Everybody who knows anything about this issue, which is practically everybody in your Lordships' House-I hope everybody knows-knows that there has been

assistance on offer, drafting on offer and, believe it or not, even free lawyers on offer to enable a good amendment to be brought before this House. The noble and learned Lord is a former Lord Chancellor; we are entitled to expect in this House that when a former Lord Chancellor places before the House an amendment on a matter of this importance, it will be well considered, well honed and usable. I am sure that the noble and learned Lord would not have presented it if he did not think that.

We heard from the noble Lord, Lord Low, that noble Lords who put their names to this amendment would be willing to amend it, if it was thought that it could be made more practicable and useful. I am sure that that is the case-and I take that in the honourable spirit in which it was said. But the starting point is very important, given what we are dealing with. I shall not go through the amendment sentence by sentence,

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but I want to pick out for your Lordships a number of items from the drafting that frankly make me, as a lawyer, a parliamentarian and someone who has spent his life involved in public policy, shudder.

7.15 pm

First, the amendment contains a reference to approbation being given by two medical practitioners. From 1989 to 1999, I was a lay member of the General Medical Council. I sat on its conduct committee and its health committee. We heard processions of medical practitioners before those committees who had done outrageous things. We heard of private clinics, some of them in highly regarded streets of London, Manchester and Liverpool, that set themselves up to provide bogus cosmetic surgery, for example, from which to make money. I see absolutely nothing in this amendment that begins to approach the protection that the public need in this life or death situation. We have heard mention of Dr Shipman, but-and I am sorry to say this to the noble Lords who are doctors in this House, who are all extremely distinguished-there are many, many rogues in the medical profession. I had better say that I am sure that there are in the legal profession too.

Then we have the phrase "independent of each other". What on earth does that mean? Where did it come from? Does it mean that they work from different premises, or does it mean that two members of the Royal College of Physicians would not be allowed to give opinions in the same case? It is so broad as to flash up the twos and blues of danger in its drafting. I am astonished that the proposed new clause has reached this point without that kind of problem being addressed.

Then there is the phrase, "in good faith", used about the doctors. That really gives the game away, does it not? I do not know why it is there, as it is one of the most tautologous phrases that I have ever seen in a piece of statutory drafting, unless its purpose is to confirm in our minds that, among two entirely independent practitioners there will be some of bad faith. Well, amen to that-I am afraid that I agree.

Then there is the question of the independent witness, chosen by the person who wishes to die. People in that position can be so easily persuaded that a person who is not really independent is to be seen as independent. Subsection (3) of the proposed new clause says:

'Independent witness' means a person who is not ... likely to obtain any benefit from the death of T".

That does not mean that they can obtain no benefit, which raises the prospect that independent witnesses may indeed turn out to be beneficiaries from the death of the person concerned. Excluded from independent witnesses are a "close relative or friend" of the person concerned, but that does not exclude the partners of the close relative or friend.

I give those as examples of a clause that really does not bear serious legal or ethical examination. My final conclusion is, as was said by the noble Baroness, Lady Emerton, that if we are to address this issue in a serious way, it has to be as a piece of whole legislation. Furthermore, it has to be considered as a piece of whole legislation starting its life in the elected House of this Parliament and going through the democratic

procedure provided by this Parliament. The role of your Lordships' House-and it is something that we do very well-is simply to look at the legislation and make it more workable. I believe that it is contrary to our democratic principle that so significant a change in our law should be slipped in as an amendment in a Bill of this kind. I urge your Lordships to go with me into the Lobby opposing this proposed new clause.

Lord Neill of Bladen: I want to flag up a legal point. What do we know about this individual called D who appears in subsection (1)? Is he a friend or relative? The noble and learned Lord, Lord Falconer, plainly thinks that we are talking about a loved one. I ask what is no doubt an improper question. Can the loved one benefit from the death? Are there any words that rule out the loved one benefiting?

Benefits take different forms. It could be a financial benefit or relief from the endless burden of caring and visiting, and that aspect of life. There is nothing to exclude benefit from coming to D. Is that why subsection (1)(a) of the proposed new clause states that,

> "the act is done solely or principally for the purpose of enabling or assisting T to travel"?

What is the adverb "principally" doing unless it opens the door to some other motivation, which could be financial?

At the end of the day, what is the likely tendency of this amendment if carried? I agree with those who say that the likely tendency is a green light for a view about what is acceptable in respect of suicide. Suicide can be assisted. At the moment we have one route, which involves travelling abroad. But it will become an acceptable concept once it has been passed in the Lords and, let us suppose, adopted in the Commons.

I want to put this consideration to your Lordships. What do we know from what we read, the people we meet and the world we have moved in for many years about the quality of family care and support in this country? We have all visited countries where disabled people live in the family and are not sent off to homes. We have a rather different attitude from the Victorian age. Many people live alone. Their families do not support them. My perception is that families are broken up here compared with many other countries in the world. What can

we expect families to do? What is the probability over the vast range of the population 10 years from today if we have an enactment like this? To my mind, it is inevitable that people will be pressurised into signing up for death.

The argument that I used with the Bill introduced by the noble Lord, Lord Joffe, which I still believe to be true, is that elderly people can take a hint. It costs a lot of money to keep people in a home and pay the weekly or monthly bills. It costs a lot of money to have a carer at home. Meanwhile, daughters, sons, grandsons and granddaughters cannot afford university fees and cannot pay the mortgage, and there is granny carrying on a useless life in some home or hospice. I fear that this new clause will be used to pressurise people into signing up to an unwanted death.

Baroness Flather: I would like to go back to the beginning. Only 115 people have gone to Switzerland: that is not a huge flood of people. I would imagine

that they know what Dignitas is like. People do not make decisions to go to such places without finding out about them. I am sure that it is not perfect, but as those people have been given no option, it is the only place they can go to.

We heard about Dr Anne Turner. I watched that film and I hope that your Lordships also watched it. One had to keep a box of tissues by one's side when watching that film. There was no way that there was any problem of pressure; in fact the pressure, as has been stated, went the other way. The children did not want their mother to go. The older two children accepted it more easily, but the youngest one was distraught. However, they went with their mother because she was a doctor and she could tell them what was in store for her.

She is not alone: there are many people who know-and their doctors know-what is in store for them. It is not about being hastened to slip away. We have heard that death diminishes us and all the rest, but every one of us here is going to die. I do not believe that all of us are so sanguine about lingering for months and years and not being able to do anything. Even if we were in one of the hospices of the noble Baroness, Lady Finlay, we would still be lingering. Is that what we want? I would not like that. I speak only for myself. If any of your Lordships would like to spend your last months or a year in a hospice, that is your choice. My choice is not to do that. I would like to give effect to my choice. I am an individual and I should have control over my death as I have control over my life.

Medicine has made such huge strides. A lot of medical people like to keep everybody alive much longer than they used to. Now we are being told that they are killing people off, but they are letting people die a natural death instead of putting them on antibiotics when they cannot do anything. Their hearts keep beating and they do not have infection so they keep going. There are so many cases like that. I do not think that that is the future we want.

I have to say a word about disability. As time has gone on, disability has become a much more important issue for society. We can judge our society reasonably well by the way we now think about and care for disabled people. I do not think any one of us would ever want the disabled to be counted with people who take such decisions for themselves. This is a question for me. I am thinking of myself. I could be in a situation where I was going to die and linger in a half life. We have heard that pain can be controlled, but what sort of state are

you in when you are getting a cocktail of painkillers?-not a particularly wonderful one. We are also told that there is no double effect and that doctors can tell whether you are given too much or too little, but there is not much point in that for me.

That is how I feel. I want the right to be able to go to Switzerland and consult my family and friends. If two doctors told me that I was going to die badly from whatever I had-not just old age-what would be wrong about going to Switzerland? That is the way I feel, and I am sure that other people in this Committee think about these things carefully, because this is what is in store for all of us.

Lord Joffe: I support this humane amendment because it is about preventing suffering-not the suffering of the terminally ill patient who goes to be assisted to die; this new clause seeks to prevent the suffering of their loved ones. The loved ones go to Switzerland or wherever because they love the terminally ill person. It is against their instincts to help their father, wife or mother to die, but they believe that they cannot let them die alone and they go with them to a country where it is lawful. That is what the amendment seeks to achieve. It is, as has been said, a very narrow amendment. It talks only about clarifying the law and protecting some of the terminally ill people who might otherwise have gone overseas to be assisted in dying. It is not about the decriminalisation of assisted dying. So much has been said about that in the debate, which has focused in many ways on assisted dying, that I would like to touch on some of the points that have been made against it. I do so not to promote the Bill that I originally introduced, but to deal just with errors of fact and approach that have emerged during the debate.

7.30 pm

It is naturally impossible for the opponents of the amendment to provide direct evidence of the dangers of a slippery slope, which they allege the amendment would pose. Accordingly, they must rely on conjecture, speculation and, in some cases, their own experience of what they are totally confident will happen. However, because there is no direct evidence, surely it makes good sense to go to a country where assisted dying has been legal for 10 years, and to explore what is happening there. Is there indeed a slippery slope? Let me tell noble Lords the facts of the latest annual report of the Oregon public health department, which relates to the years 1998 to 2008. It shows that in 2008 there were 50 assisted deaths in Oregon, representing 0.2 per cent of total deaths. The previous year there were 49 deaths, and 48 deaths the year before. The year before that there were 47-hardly a slippery slope. The report also states that the Oregon medical board found no violation of good faith compliance with the Act. There is clearly no evidence whatever of a slippery slope in Oregon, so the question that the opponents of the amendment need to answer is: why should it be different in England and Wales? The noble Lord, Lord Carlile, says that there are scoundrels among the medical profession in this country. That may be so, but presumably there are scoundrels in all professions everywhere and this has not led to slippery slopes.

Talking about Oregon, I come to some of the facts. The noble and learned Lord, Lord Mackay, says that the amendment is unworkable. I was with him and the Select Committee in Oregon. The law there, on which the amendment is to some extent modelled, worked perfectly well. I think nine groups testified to the Select Committee, including the nursing association, the hospice association-a medical association that was neutral on the issue-the government department and the hospitals. Seven or eight groups out of nine felt that the law was working satisfactorily. The noble Baroness, Lady Finlay, talked about doctor shopping in Oregon and told us about the extraordinary number of prescriptions issued by particular doctors. If you

read the Oregon public health department's 2008 report, you see that 59 physicians wrote the 88 prescriptions that were issued, which does not sound very much like doctor shopping to me. The noble and learned Lord, Lord Mackay, mentioned that in Oregon there were a number of terminally ill patients who received prescriptions and did not exercise them. The evidence that we heard in Oregon was to the effect that this was so. Those patients who had prescriptions felt that, when they received their prescription, an enormous load was lifted from their shoulders because they knew that, if things got out of control, they could end their suffering by ending their lives.

The noble Lord, Lord Walton, spoke about his Select Committee finding that it was totally against euthanasia and assisted dying. There was an intervening Select Committee, which heard evidence from everywhere in the world where assisted dying and euthanasia were legal, and did not come to the same conclusion. We have heard much about safeguards. There were many safeguards in the several Bills that I have introduced. Those were Bills with a much wider remit than the present very modest amendment, and where opponents would argue that the safeguards were insufficient. I would go away and come back with new safeguards, only to be told that these new ones were insufficient, and so on. Then I posed the question of which safeguards would the opponents suggest including. The answer, I was told, was that no safeguards would ever be sufficient-clear evidence of a very open mind.

The noble Baroness, Lady Kennedy, talked about a cultural shift in the law. For hundreds of years, there was strong opposition to decriminalising suicide as its criminalisation was considered to be an essential law. In 1963, after all that opposition over so many years, the law was changed. If the message would be sent out to disabled people that their lives are not valued, as has been said by many Peers, why was suicide decriminalised? Surely that sent out the same message as that which, it is alleged, is now being sent out by legislation on assisted dying and, indeed, by this amendment. There is no intention to treat disabled people in such a way as to breach their human rights, or suggest that they are less worthy of care and attention than anyone else. The noble Baroness, Lady Campbell, said that I told her that I wanted to help disabled people. That is only part of what I said. I said that I wanted to help all people, and that I thought disabled people should have the same right to make decisions about their lives as every person who is able-bodied. I always understood that the battle for the rights of disabled people is for them to have equal rights.

I listened with great respect to everyone who spoke against the amendment. My name was mentioned several times, so I am entitled to raise the points that I wish to make. I come back to safeguards. The noble Lord, Lord Walton, gave evidence to the Select Committee. He was asked what further safeguards he thought could be inserted in the Bill. His answer was that he

could think of no further safeguards. We have a simple amendment before us concerned with the prevention of suffering. The Committee should focus on the fact that we are talking only about people who are acting out of love and affection for the people whom they are

accompanying to Switzerland or elsewhere in order to give those people whom they love care and support when they make their very final decision.

The noble Lord, Lord Elystan-Morgan, said that he was sure that, if this amendment were passed, assisted dying would inevitably be legalised. I say to him with respect that whether the amendment is passed or not is not relevant to the final decision that will be taken. In a democratic country, where 80 per cent of the population support assisted dying, it will eventually be decriminalised.

Lord Alton of Liverpool: I will be brief because I suspect that the feeling of the Committee is that we should now move quickly to a decision. The noble Lord, Lord Joffe, was right to remind us that we had a full Select Committee inquiry looking at assisted dying. In fact, there were 246 *Hansard* columns and two volumes of 744 pages and 116 pages respectively, 15 oral sessions, 48 groups or individuals giving evidence, with 88 giving written evidence, 2,460 questions asked and the committee receiving 14,000 letters. Under the distinguished chairmanship of the noble and learned Lord, Lord Mackay of Clashfern, that committee delivered a report to your Lordships' House. When we voted three years ago by a majority of 48, with 100 votes to 148 votes, the House decided against permitting assisted dying. It decided against taking what the noble Lord, Lord Joffe, described as the first step. I urge the Committee again tonight to have at the heart of this debate something that the noble Lord, Lord Carlile, identified during that previous debate-public safety and protection. It seems to me that above all the other considerations that many of us will have, such as resources, spiritual questions and so on, public protection and safety are crucial.

I welcomed this Bill at Second Reading-I set out then my substantive arguments against assisted dying and euthanasia and I have no intention of repeating them-because of what it does to reform the coroners service in the light of the 226 patients who were killed by Dr Harold Shipman. As my noble friend Lady Finlay said, those death certificates were signed by second doctors-the very point that we are being urged to consider today. I know that many noble Lords do not agree with me on some of the beginning-of-life issues-I would not expect them to-but we should think back to the 1967 debates. The noble Lord, Lord St John of Fawsley, is present. He spoke in another place during those debates, as did the noble Baroness, Lady Knight, who was present earlier. During those debates many warnings were given about how we could end up with doctors simply stamping certificates in order to agree things. That is precisely what happens today. Seven million abortions later, surely no one can doubt that that early decision, which was taken without due and proper consideration, has led to unimaginable consequences. Therefore, I simply urge that, before we take an enormously important decision of this kind, we give it proper thought and reflection. Indeed, the Director of Public Prosecutions, Sir Kenneth Macdonald, whom the noble and learned Lord, Lord Falconer, quoted in his introductory remarks, said precisely that-that there should be a profound debate and widespread public consultation before any change is made in the law.

7.45 pm

As regards public protection, I refer your Lordships to a report in the *Guardian* on 21 June, which stated that the *Guardian* had obtained a list drawn up by Dignitas revealing the medical conditions that had driven 114 Britons to end their lives at the centre for euthanasia in Switzerland. Professor Steve Field, chairman of the Royal College of General Practitioners, said:

"I'm horrified by this list ... I'm concerned because I know that many of the conditions outlined are conditions patients live with and can live with for many years and continue to have productive and meaningful lives".

Dr John Saunders, chair of the Royal College of Physicians ethics committee, said:

"The list does suggest that Dignitas is cavalier in arranging for people to end their lives".

As recently as last week at its annual conference in Liverpool, the BMA voted against any change in the law, putting it in line with all the royal colleges, which are opposed to any change in the law. Dr Tony Calland, chairman of the ethics committee of the BMA, said:

"This list raises considerable concern ... To go off and commit suicide simply on the basis of these conditions would be premature and unreasonable".

I refer your Lordships to the statement issued this morning by Professor Ian Gilmore, president of the Royal College of Physicians, and several other distinguished physicians. It states:

"The amendment as drafted provides insufficient guidance to doctors who might be asked to assess applicants for assisted suicide. It does not define terminal illness or capacity with any precision and the requirements prescribed for assessment are insufficiently rigorous to protect vulnerable patients seeking assistance with suicide".

I stress "insufficiently rigorous"-the point that the noble Lord, Lord Carlile, made earlier.

As my noble friend Lord Walton of Detchant said, in 1994 the Select Committee of your Lordships' House reported that,

> "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 which 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".

We heard from my noble friend Lady Campbell of Surbiton and the noble Baroness, Lady Masham, about the position of disabled people. I think of my childhood experience when an uncle who had returned from the Second World War in a state of deep depression took his own life. Consequences have followed within the family in all the generations since then.

These are not just individual decisions; they affect many others. We would do well to think much harder before agreeing to incorporate this amendment in the Bill. I urge your Lordships to reject it.

Lord Thomas of Gresford: I rise merely to say that we on these Benches will vote individually. It will not surprise your Lordships to hear that. The noble Lord, Lord Alton, referred to his experiences. Each of us has lifetime experiences that I am sure will greatly influence the way in which we will vote tonight. I shall vote against the amendment but I will not weary your Lordships with my personal experiences.

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Lord Henley: I, too, will speak briefly from these Benches. I merely echo what the noble Lord, Lord Thomas of Gresford, has said-namely, that I will make my own decision. I will vote against the amendment if the noble and learned Lord wants to press it to a vote. It is for each Member on these Benches to make up their mind as they so wish.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach): The Committee has been fortunate to have been able to listen to an outstanding debate on a matter of the highest importance. The debate and amendment raised complex and profound issues. This afternoon we have heard, to our advantage, passionately held views on all sides. For this, I congratulate my noble and learned friend on tabling this amendment. However, as I indicated at Second Reading, it is the Government's view that the Coroners and Justice Bill is not the appropriate vehicle to liberalise the criminal law as it applies to assisted suicide. I note from their letter in the *Daily Telegraph* on 29 June that the most reverend Primate the Archbishop of Canterbury, together with the Archbishop of Westminster and the Chief Rabbi, share that view. That said, my noble and learned friend Lord Falconer of Thoroton and his supporters are absolutely entitled to table this amendment and to ask the Committee's view on it if they choose to do so. It falls to me to briefly set out the Government's position.

As I indicated in the debate on the previous group-in fact, I did not, because the amendment was not moved-the provisions in Clause 49 do not change the scope of the current law. Our aim is to simplify the law by bringing together two existing offences and to modernise the language to add clarity and understanding. Assisting or attempting to assist suicide would remain illegal. In contrast, it is our view that this amendment seeks to make a decisive shift in the law.

The Government believe that any change to the law in order to decriminalise assisted dying is a matter of conscience and for Parliament to decide. As such, the Government do not of themselves have a position on the moral and ethical issues thrown up by the amendment. It follows that, on our side, too, this is a free vote, as it will be-and should be-across the Committee. However, taking a neutral position as the Government do on an issue of conscience is not the same as having no view. The Government must be concerned with the fitness for purpose of any legislation proposed. It is with that in mind that I turn to the detail of the amendment.

Everyone knows what my noble and learned friend Lord Falconer is seeking to do in Amendment 173; I do not need to go through that. As the law is commonly understood, an offence under Section 2 of the Suicide Act is committed even where the suicide occurs abroad but only if aiding, abetting, counselling or procuring takes place in this country. However, aiding or abetting abroad of suicide abroad is wholly outside our jurisdiction. So, in our view, proposed new subsection (4) is unnecessary, as indeed my noble and learned friend said in answer to the noble Lord, Lord Elystan-Morgan.

My noble and learned friend has suggested that the current law is not sustainable given that the Crown Prosecution Service has failed to prosecute over 100 cases where people have been given assistance to travel to the Dignitas clinic in Switzerland. However, in its

judgment in the Purdy case, the Court of Appeal referred to evidence given by the Crown Prosecution Service that, as far as it could ascertain, only eight such cases were ever referred to it and all but one of those failed to meet the level of evidence required for a prosecution. Since that evidence was produced, one further case has been considered and not prosecuted on public interest grounds. As noble Lords will know, that case concerned the very sad story of a young man who, although tragically injured, was not in fact terminally ill. We are not talking about a long line of cases where the CPS has decided that there was prima facie evidence of an offence but decided not to prosecute.

Everyone understands the motivation behind this amendment. We have nothing but sympathy with those who are faced with the sort of difficult choices that none of us would ever want to make. However, even the most limited step in this area is an important one-a crossing of a clear line.

Setting aside the wider ethical issue, we have concerns about the proposed clause as drafted. My noble and learned friend dealt with the term "terminally ill" but we still have some concerns about that definition and, indeed, about the definition of "capacity" and who would constitute a close relative or friend.

Moreover, while the debate on assisted suicide as a whole is, rightly, one of conscience, the Committee will want to reflect carefully on a number of important policy questions thrown up by my noble and learned friend's amendment. Can we be sure that legislating to allow assisted suicide in these particular circumstances would not set an awkward precedent? Would we not, in effect, perhaps be creating a situation where there is one law for those who can afford to go abroad for an assisted death and a different one for those who cannot? For these reasons, the Committee will wish to consider whether legislating to take advantage of other countries' laws is a sensible way in which to address this very complex issue.

There is one other suggested undesirable consequence of the amendment. If the amendment were passed, in the case of persons assisting others to travel abroad for suicide, the criminal law would appear to operate in different ways depending on where the suicide occurred. It would remain the case that a person who assisted the suicide of another in England and Wales would still be guilty of an offence. A person who assisted another to travel abroad for a suicide in a third country, such as Canada, where assisted suicide is unlawful, would also be committing an offence. However, a person who assisted another to travel abroad to

Switzerland, where assisted suicide is lawful, would not be committing an offence under the terms of the amendment. That would be a rather arbitrary outcome.

There is no doubting the commitment of noble Lords to this issue or the compassion that drives them and others who are similarly committed to changing the law in this area so that terminally ill, if not other, people have the right to seek assistance to die. Nor is there any doubt that there are others who are equally committed to opposing such legislation. Even if one accepts that the law should change, there is no consensus on where a line should be drawn and what safeguards should be in place and for whom.

7 July 2009 : Column 633

I end by reminding the Committee that the Government's view is that this Bill is not the appropriate vehicle for what would be a shift in the law on assisted suicide. We are the better for the debate today, but I ask my noble and learned friend to consider withdrawing his amendment. If he wishes to pursue the matter thereafter, I respectfully suggest that he do so through a Private Member's Bill in the next Session. This subject is certainly worthy of at least that. As I have said, if he seeks to test the views of the Committee, these Benches will have a free vote on what is fundamentally a matter of conscience.

8 pm

Lord Falconer of Thoroton: I am grateful to every Member of the Committee who has participated in this incredibly powerful debate. I go back to where I started-the current position. It is not unlawful to go abroad for assisted dying in a place where assisted dying is lawful. People go abroad to do that. Although huge passions were expressed during the debate, I never detected at any stage that anybody in the Committee wanted to prosecute the well intentioned person who went with their loved one to help them in their assisted dying; I did not get that flavour from anyone's expressions.

I also felt that practically everybody in the Committee was concerned to ensure proper safeguards against two situations-where the person who went for the assisted suicide was not terminally ill and where they were being overpersuaded to go. The current situation is that the DPP has made it clear that he will not seek out these cases to investigate. If the cases come before him, he will ensure that they are properly investigated and, as long as he is satisfied that there is good motivation, he will not prosecute. That is even though on two occasions, as my noble friend Lord Bach said, there was evidence.

That sensible signal that the DPP will not prosecute in those cases, dependent as it is on public interest, has two important impacts. It indicates that he is not prepared to apply the criminal law to its full rigour at the moment, because nobody has the stomach to give effect to the law in those cases-quite correctly. When the law was introduced in 1961, it never had these cases in mind. The DPP has had, in effect, to change the law to make it work properly.

The safeguards in the amendment would have two registered, qualified doctors and an independent witness looking at the matter. The noble Lord, Lord Carlile, and others

suggested what a large number of unsatisfactory doctors there were. Of course there are, but no doctors look at the matter at the moment. My amendment would ensure that two did before somebody went abroad. That must be better than the current position and it would help to deal with the situation where people who were not really ill at all went believing that they were. The noble Baroness, Lady Finlay, said that the two doctors would never have picked up the five cases where there was no underlying illness that would justify going. Why not? They probably would have, but I can tell your Lordships one thing-there would be more chance of it being picked up with two doctors than without.

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The debate has ranged far and wide and has addressed a range of philosophical issues. I have two points. First, I do not believe that the DPP, in saying that he will not prosecute where good motives are involved, has either undermined the position of disabled people in this country or put them at greater threat. Secondly, I believe that, if one introduced the amendment, it is much more likely that the abusive cases and the cases where there was no underlying illness would be caught. It is a much more effective way of dealing with the issue than relying on prosecutions, which never occur. The DPP has given the clearest indication that he will not prosecute.

Listening to the debate, I have wondered carefully whether I should test the opinion of the Committee. I am sure that I could improve on the safeguards but, having listened carefully in particular to the noble Lord, Lord Carlile, and the noble Baroness, Lady Finlay, about what is alleged to be wrong, I think that ultimately there was not sufficient detail, although I am more than willing to listen before Report. I am minded to test the opinion of the Committee.

8.03 pm

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Amendment 173 disagreed.

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8.17 pm

Clause 50 : Encouraging or assisting suicide (Northern Ireland)

Amendment 173A not moved.

Clause 50 agreed.

Clause 51 agreed.

House resumed. Committee to begin again not before 9.17 pm.

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