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SUICIDE KILLING OF HUMAN LIFE AS A HUMAN RIGHT

The Continuing Devolution of Assisted Suicide Law in the United Kingdom

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INTRODUCTION

Throughout its remarkable history, Great Britain's culture and law safeguarded the dignity of human life by refusing to recognize a "right" to suicide. Indeed, contemporary British statutes make it a serious crime even to assist in the commission of a suicide killing.¹ Recent parliamentary proposals² and a court decision,³ however, deliberately abandoned these deeply-rooted cultural, historical, and legal traditions. Most recently, in an

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1. Suicide Act, 1961, 9 & 10 Eliz. 2 (Eng.) [hereinafter *Suicide Act*].
2. See, e.g., Coroners and Justice Bill, 2008-9, H.L. Bill [96] (Eng.) (Proposed Amendments 173 & 174, 2009), available at <http://www.publications.parliament.uk/pa/ld200809/ldbills/033/amend/ml033-iv.htm> (last visited Sept. 30, 2011) [hereinafter *Coroners Amendment*].
3. *R (Purdy) v. Dir. of Pub. Prosecutions (Soc'y for the Prot. of Unborn Children Intervening)* [2009] UKHL 45, [2010] 1 A.C. 345 (appeal taken from Eng.) [hereinafter *Purdy*].

exercise of raw judicial power, five Law Lords made British history by declaring into existence a human right to kill human life via suicide.⁴ Prosecutorial guidelines promulgated pursuant to this court decision by the Department of Public Prosecutor (DPP), likewise abandoned the deeply-rooted inalienable standard. These guidelines provide prosecutors with factors they may use to justify a refusal to prosecute someone who assists in the killing of another human being via suicide. The trend continued with the formation of a Commission on Death and Dying, which was charged with studying how the United Kingdom should employ assisted suicide policy.⁵

In this article, we analyze the devolution of Britain's assisted suicide policy. We begin by reviewing current U.K. statutory law prohibiting assisted suicide. We then review recent pro-suicide parliamentary proposals and subsequent court action recognizing suicide as a human right. We also analyze the DPP guidelines and other relevant contemporary government actions concerning assisted suicide in the United Kingdom. This critical review reveals a disquieting jurisprudential shift, accompanied by a deteriorating respect for the value of human life. Finally, we review the implications that accompany such a shift in worldviews and how it affects a nation. In the end, we conclude that viewing the value of human life

4. *Id.* at 366, 390. Keeping the debate in the global spotlight, two particular doctors, each known as Dr. Death, publicly pandered their human life termination position throughout the world. Australian physician Dr. Philip Nitschke founded a right to die organization and campaigned to legalize euthanasia. Most recently, he brought suicide workshops to the United Kingdom, where he panders his suicide kits. *'Dr. Death' Brings First Suicide Workshop to UK*, THE TELEGRAPH (May 5, 2009, 7:11 AM), <http://www.telegraph.co.uk/news/uknews/law-and-order/5276368/Dr-Death-brings-first-suicide-workshop-to-UK.html>. The American Dr. Death, Jack Kevorkian, served eight years on a murder conviction. Kathleen Gray, *Kevorkian Paroled: "I'm Not Going to Do It Again,"* DETROIT FREE PRESS, Dec. 14, 2006, at A1. Upon his release from prison, Kevorkian immediately began campaigning for laws authorizing assisted suicide. Associated Press, *Kevorkian Released After 8 Years*, WASH. POST, June 2, 2007 at A2, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/01/>

AR2007060100179.html. Prior to his recent death, Kevorkian further advocated for human experimentation on individuals committing suicide, as well as for the experimentation on handicapped infants and incompetent elderly individuals. Jack Kevorkian, *The Last Fearsome Taboo: Medical Aspects of Planned Death*, 7 MED. & L. 1, 8-9 (1988). Nitschke, Kevorkian, and the five Law Lords view the world through a very different lens from those who oppose this lethal conduct.

5. *The Aim of the Commission*, COMMISSION ON ASSISTED DYING (Aug. 17, 2010, 3:02 AM), <http://commissiononassisteddying.co.uk/the-aim-of-the-commission>.

through the lens of human-centred, morally-relative legal positivism presents grave implications for the citizens of Great Britain.

PART I.

U.K. LAW ON ASSISTED SUICIDE

Current statutory law prohibiting assisted killing reflects an objective moral standard present in Great Britain's divine, natural, and common-law traditions. Pro-suicide proposals and court decisions, on the other hand, divorce and discard any moral reference point in the law and replace it with a human-centred, morally-relative approach to lawmaking.⁶

When formulating law concerning suicide killing, these two jurisprudential worldviews collide. Like other nations, the Parliament and the judiciary in the United Kingdom face a choice. On the one hand, they may look to the objective moral standard revealed in divine or natural law as the benchmark and promulgate provisions reflecting that standard. Alternatively, they may use subjective, morally-relative legal positivism to create law apart from any objective moral standard of right or wrong.

A. *The History and Tradition in Britain of Protecting the Sanctity of Human Life*

For most of British history, the idea that God endows all human beings with sacred, inalienable rights—including the right to life—was self-evident.⁷ British citizens, through the law, have historically acknowledged and respected the God-given, and hence, inviolable dignity of every human

6. Fundamentally, two jurisprudential views of the world exist. The first view sees God as the source of law and rights, while the latter makes man the measure of all things. Thus, one can embrace either that law is something God reveals for us to discover or that it is something we create solely by our own reasoning—apart from any divine revelation. Dan Crone, *Assisted Suicide and the U.S. Court of Appeals for the Ninth Circuit: A Philosophical Examination of the Majority Opinion in Compassion in Dying v. Washington*, 31 U.S.F. L. REV. 399, 422 (1997). See also Charles E. Rice, *Rights and the Need for Objective Moral Limits*, 3 AVE MARIA L. REV. 259, 260 (2005); Michael W. McConnell, *The Right to Die and the Jurisprudence of Tradition*, 1997 UTAH L. REV. 665, 667-69 (1997). For further jurisprudential worldview discussion, see WILLIAM WAGNER, *The Jurisprudential Battle over the Character of a Nation*, in JURISPRUDENCE OF LIBERTY, (Suri Ratnapala & Gabriel Moens eds., LexisNexis Butterworths 2d ed. 2011).

7. See Crone, *supra* note 6, at 422 (quoting THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776)).

being.⁸ This history acknowledges that one of the fundamental roles of a moral government is to protect human life.⁹ Thus, in Britain, we traditionally find divine or natural-law prohibitions on suicide and later see such traditions embodied in British common and statutory law.¹⁰ As we have noted elsewhere:¹¹

It is no coincidence that Western cultures uniformly discourage—if not condemn—suicide and those who assist in it.¹² These cultures based their ethical and legal systems on the Judeo-Christian tradition,¹³ which teaches that taking human life

8. *Id.* at 426.

9. See, e.g., Dwight G. Duncan & Peter Lubin, *The Use and Abuse of History in Compassion in Dying*, 20 HARV. J.L. & PUB. POL'Y 175, 177 (1996). Indeed, it has been said that “[t]he care of human life and happiness, and not their destruction, is the first and only legitimate object of good government.” THOMAS JEFFERSON, *Address to Republican Citizens of Washington County, Maryland, Assembled at Hagerstown on the 6th Instant*, in 16 THE WRITINGS OF THOMAS JEFFERSON 359 (Andrew A. Lipscomb & Albert Ellery Bergh eds., 1905), available at <http://www.constitution.org/tj/jeff16.htm>. Although government must also protect liberty, the interest in life is plainly superior. See e.g., *Washington v. Glucksberg*, 521 U.S. 702, 741 (1997) (Stevens, J., concurring). Life without liberty at least holds the potential for renewed liberty and other goods, but liberty without life is a nullity. No one has the “liberty right” to unnaturally terminate one’s life because terminating one’s life is inherently wrong, and that which is inherently wrong cannot be a right. Although this proposition is self-validating, Hadley Arkes provides an illuminating discussion of the matter in his book on this subject. HADLEY ARKES, *FIRST THINGS: AN INQUIRY INTO THE FIRST PRINCIPLES OF MORALS AND JUSTICE* 24, 168-73 (Princeton Univ. Press 1986).

10. See, e.g., *Cruzan v. Mo. Dept. of Health*, 497 U.S. 261, 294 (1990) (Scalia, J., concurring); see *supra* notes 1-2; see also Nelson P. Miller, *The Nobility of the American Lawyer: The Ennobling History, Philosophy, and Morality of a Maligned Profession*, 22 T.M. COOLEY L. REV. 209, 220-30 (2005) (discussing the traditions of English common law in the American legal system, and its strong reliance on natural and revealed law principles).

11. William Wagner, John S. Kane & Geoffrey Gismondi, *Physician-Assisted Killing Laws, Constitutional Authority, and the Conscience of a Nation: Two Worldviews*, 24 T.M. COOLEY L. REV. 123, 128 (2007).

12. See, e.g., Willard C. Shih, *Assisted Suicide, the Due Process Clause and “Fidelity in Translation,”* 63 FORDHAM L. REV. 1245, 1274 (1995).

13. Duncan & Lubin, *supra* note 9, at 185. Because of the respect for life imbued by the Jewish religion, suicide was rare in ancient Judaic culture. Daniel M. Crone, *Historical Attitudes Toward Suicide*, 35 DUQ. L. REV. 7, 10 (1996) (citing NORMAN ST. JOHN-STEVAS, *THE RIGHT TO LIFE* 59 (1964); and M. PABST BATTIN, *ETHICAL ISSUES IN SUICIDE* 31 (Prentice-Hall 1982)). Although one historian opines that suicide was generally considered the result of derangement and thus not punishable in Hebraic culture, it is also reported that suicide victims and their families were punished by denial of the customary burial rites (though this would hardly seem exculpatory toward an assister). *Id.* (citing NORMAN L. FARBEROW,

is fundamentally wrong. . . .¹⁴ Because God creates human life, only He can authorize the taking of it—and nowhere in His

Cultural History of Suicide, in SUICIDE IN DIFFERENT CULTURES 4 (Normal L. Farberow ed., Univ. Park Press 1975); and JACQUES CHORON, SUICIDE 13-14 (Scribner 1972)).

Hellenistic culture also may have influenced some later Jewish writers to relax their approbation of the act (e.g., in special circumstances, such as avoiding capture in battle), but Rabbinic and Talmudic writings after the Jewish exile included prohibitions on suicide and maintained funeral sanctions. *Id.* at 10-11 (citing BATTIN, *supra* note 13, at 32); *see also* Duncan & Lubin, *supra* note 9, at 187. Roman law forbade suicide and, at least under limited circumstances, forfeited the violator's personal and real property to the state, so it could not pass to the offender's heirs. Crone, *supra* note 13, at 16 (citing FARBEROW, *supra* note 13, at 6); *see also* Duncan & Lubin, *supra* note 9, at 192-94, 199-200 (highlighting that Roman law criminalized assisting in suicide, "mercy killing" was deemed murder, and forfeiture occurred only in limited circumstances).

Early Christian culture eventually came to influence Roman law with the conversion of the Emperor Constantine. Crone, *supra* note 13, at 17. Christian doctrine, as most famously expounded by Augustine and Aquinas, clearly forbade suicide, which, at the very least, implicitly prohibited assistance in suicide. *Id.* at 17-22; *see also* Duncan & Lubin, *supra* note 9, at 194-95, 197. Because of the dominant influence Christianity had on Western legal systems, the Judaic and Roman legal penalties for suicide persisted in Western cultures for many centuries after the fall of the Roman Empire. *See Glucksberg*, 521 U.S. at 741. *See generally* HAROLD J BERMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION (Harvard Univ. Press 1983); Crone, *supra* note 13, at 16.

Luther, Calvin, and the majority of influential Reformation Christian scholars continued the Christian condemnation of suicide, although there were a few Christian writers in the seventeenth century who questioned the extent to which suicide should be punished as a culpable act. Crone, *supra* note 13, at 22-24. Despite these debates, the law in Western countries continued to prohibit suicide. *Id.*

14. *See, e.g., Exodus* 20:13; *Deuteronomy* 5:17. In this regard, God reveals in His Word that the life He creates has worth, value, and significance. He declares His creation of human life good: "So God created man in his own image, in the image of God created he him; male and female created he them." *Genesis* 1:26, 27 (NIV); "God saw all that he had made, and it was very good." *Genesis* 1:31 (NIV). Moreover, God intimately communicates that He has a plan and purpose for each life He creates: "'For I know the plans I have for you,' declares the LORD . . ." *Jeremiah* 29:11 (NIV); "For we are God's handiwork, created in Christ Jesus to do good works, which God prepared in advance for us to do." *Ephesians* 2:10 (NIV); "For you created my inmost being; you knit me together in my mother's womb. . . . Your eyes saw my unformed body; all the days ordained for me were written in your book before one of them came to be." *Psalms* 139:13, 16 (NIV); "For in him all things were created: things in heaven and on earth, visible and invisible, whether thrones or powers or rulers or authorities; all things have been created through him and for him." *Colossians* 1:16 (NIV); "[E]very one who is called by my name, whom I created for my glory, whom I formed and made." *Isaiah* 43:7 (NIV); "The God who made the world and everything in it is the Lord of heaven and earth From one man he made all the nations, that they should inhabit the whole earth; and he marked out their appointed times in history and the boundaries of their lands." *Acts* 17:24, 26 (NIV); "[M]y only aim is to finish the race and complete the task the Lord Jesus has

Word does He authorize suicide or assisting someone to commit suicide.¹⁵ God's inviolable standard is expressed in His command: "*Thou shalt not kill.*"¹⁶

Historically, the United Kingdom never recognized a "right" to suicide—or assistance in committing suicide by physicians or others.¹⁷ On the contrary, the common law generally viewed suicide as self-murder.¹⁸ As with murder, assisting or attempting suicide were also criminal acts at common law.¹⁹ British common law continued the Judaic and Roman traditions of ignominious burial²⁰ and adopted a more expanded version of

given me—the task of testifying to the good news of God's grace." Acts 20:24 (NIV) (relating the words of Paul, just prior to facing humanly unbearable adversity).

15. See *Genesis* 1:27, 5:1-2, 6:7; *Job* 27:8; *Isaiah* 42:5; *John* 3:36; *Revelation* 22:19.

16. *Exodus* 20:13; *Deuteronomy* 5:17; see also *Genesis* 9:6 (NIV) (indicating that humans are not to be killed because "in the image of God has God made mankind"). Although the duty of those created to reverently respect the commands of the Creator is self-evident, it becomes especially compelling when one reads the commandment not to kill *in pari materia* with the First Commandment, "I am the LORD your God . . . You shall have no other gods before me." *Exodus* 20:2-3 (NIV); *Deuteronomy* 5:6-7 (NIV), and the greatest commandment, "Love the Lord your God with all your heart and with all your soul and with all your mind." *Matthew* 22:37 (NIV).

17. See, e.g., *Suicide Act*, *supra* note 1; *Purdy*, [2009] UKHL 45, [2010] 1 A.C. 345.

18. *Purdy*, [2009] UKHL 45 [5], 1 A.C. at 379 (citing *R v. Dyson*, [1823] Russ. & Ry. 523, 168 Eng. Rep. 930; *R v. Croft*, [1944] K.B. 295 (Eng.)); see also *Glucksberg*, 521 U.S. at 711 ("[F]or over 700 years, the Anglo-American common-law tradition has punished or otherwise disapproved of both suicide and assisting suicide.").

19. *Purdy*, [2009] UKHL 45 [5], 1 A.C. at 379 (citing *R v. Dyson*, [1823] Russ. & Ry. 523, 168 Eng. Rep. 930; *R v. Croft*, [1944] K.B. 295); see also *Shih*, *supra* note 12, at 1274. Interestingly, if the assister provided the assistance prior to the suicide act and was not present at the time of the act, then the assister escaped prosecution. This is because at common law an accessory before the fact could not be prosecuted until the government prosecuted and convicted the principal felon (here the person committing felonious suicide). *Purdy*, [2009] UKHL 45 [6], 1 A.C. at 379 (citing *R v. Russel*, [1832] 1 Moody 356, 168 Eng. Rep. 1302; *R v. Croft*, [1944] K.B. 295 (Eng.)). To rectify this problem Parliament enacted the Accessories and Abettors Act of 1861. Section 1 of the Act made clear that such an assister could be "indicted, tried, convicted and punished in all respects as if he were a principal felon." *Id.* at [7], 1 A.C. at 379-80 (citing Accessories and Abettors Act, 1861, 24 & 25 Vict., c. 98, § 1 (Eng.) [hereinafter *Abettors Act*]; *R v. Croft*, [1944] K.B. 295 (Eng.)). Although a provision of the Homicide Act of 1957 later mitigated to manslaughter certain factual circumstances involving a suicide pact, those assisting suicide generally still faced murder charges. *Id.* at [8], 1 A.C. at 380 (citing Homicide Act, 1957, 5 & 6 Eliz. 2, c. 11, § 4 (Eng.) [hereinafter *Homicide Act*])).

20. Thomas J. Marzen et al., *Suicide: A Constitutional Right?*, 24 DUQ. L. REV. 1, 63-64 (1985) [hereinafter Marzen I].

the Roman penalty of forfeiting the personality of one who committed suicide, although it discontinued the escheat of realty.²¹

Whether by common law, statute, or both, the American colonies also generally condemned suicide and essentially continued England's legal sanctions.²²

When natural-law theory dominated Western legal philosophy,²³ judges, lawyers, and scholars recognized God's existence and referred to His natural law as a source of human rights.²⁴ These judges, lawyers, and legal scholars widely agreed that the common law was an expression of natural or divine law.²⁵ The highest courts of Western nations cited the writings of Grotius, Puffendorf, and Vattel—three of Europe's greatest natural-law scholars.²⁶

21. *Purdy*, [2009] UKHL 45 [5], 1 A.C. at 379 (citing *R v. Dyson*, (1823) Russ. & Ry. 523, 168 Eng. Rep. 930; *R v. Croft*, [1944] K.B. 295 (Eng.)); see also Marzen I, *supra* note 20, at 64-67; Thomas J. Marzen et al., "Suicide: A Constitutional Right?"—*Reflections Eleven Years Later*, 35 DUQ. L. REV. 261, 264 (1996) [hereinafter Marzen II]; Duncan & Lubin, *supra* note 9, at 177.

22. *Glucksberg*, 521 U.S. at 712-13 & n.10; Marzen I, *supra* note 20, at 63-67.

23. R. H. Helmholz, *The Law of Nature and the Early History of Unenumerated Rights in the United States*, 9 U. PA. J. CONST. L. 401, 403-04 (2007); Douglas W. Kmiec, *Natural Law Originalism for the Twenty-First Century—A Principle of Judicial Restraint, Not Invention*, 40 SUFFOLK U. L. REV. 383, 385, 391 (2007).

24. Helmholz, *supra* note 23, at 404-07; Miller, *supra* note 10, at 217; see e.g., *Romans* 1:19-29; *Romans* 2:14-15. For a lucid discussion of divine law as natural law, see DAVID VANDRUNEN, *A BIBLICAL CASE FOR NATURAL LAW* (Acton Inst. 2008) (referencing THOMAS AQUINAS, *SUMMA THEOLOGIAE*, 1a 2ae Q. 91, art.2; JOHN CALVIN, *COMMENTARIES ON THE EPISTLE OF PAUL THE APOSTLE TO THE ROMANS* (John Owen trans., William B. Eerdmann Publ'g Co. 1947); DOUGLAS J. MOO, *THE EPISTLE TO THE ROMANS* 148-51 (William B. Eerdmann Publ'g Co. 1996); A. ANDREW DAS, *PAUL, THE LAW, AND THE COVENANT* 180-82 (Hendrickson Publishers 2001)).

25. Helmholz, *supra* note 23, at 416-18; Jonathan T. Molot, *The Rise and Fall of Textualism*, 106 COLUM. L. REV. 1, 7-8 (2006) ("[T]he Founders expected judges to draw upon natural law principles as sources of decision in both common law cases and in the course of interpreting legislative enactments."); Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: An Historical Framework—A History of U.S. Legal Education Phase I: From the Founding of the Republic Until the 1860s*, 39 J. MARSHALL L. REV. 1041, 1106-08 (2006); Russell Kirk, *Natural Law and the Constitution of the United States*, 69 NOTRE DAME L. REV. 1035, 1038-40 (1994).

26. Helmholz, *supra* note 23, at 407. David Hume prominently opposed the notion that suicide should be prohibited as a violation of natural law, arguing that we regularly "violate" natural law and that is not necessarily negative. See Marzen I, *supra* note 20, at 35-36. Hume's argument was cast, however, mostly in terms of the physical laws of nature and was based on his assertion that human life had no special sanctity or importance. See *id.* at 36 ("The life of a man is of no greater importance than that of an oyster."). Hume cannot,

Additionally, Blackstone, whose *Commentaries on the Laws of England* was once the “bible” for lawyers and judges,²⁷ characterized suicide as “self-murder” and “among the highest crimes.”²⁸ Thus, the divine law, natural law, English common law, and Britain’s statutory law traditions all historically embody an inviolable, objective standard that killing a human being by suicide is wrong.

B. Contemporary British Statutory Law: The 1961 Suicide Act

Reflecting the inviolable, objective standard, the United Kingdom enacted statutory law prohibiting assisted suicide.²⁹ As originally promulgated, the United Kingdom’s Suicide Act 1961 (“Suicide Act”), provided that “[a] person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment”³⁰

On its face, the Suicide Act broadly covered all aspects of assisted suicide. To be sure, like many other governments, the United Kingdom, in the Suicide Act, dropped criminal sanctions for the person attempting suicide.³¹

therefore, be said to represent the views of the majority of Western people or legal history, although more than a few prominent legal scholars have also fallen into that black hole and called it light. See, e.g., Crone, *supra* note 6, at 412-15.

27. Marzen I, *supra* note 20, at 62, 71, 72; Kirk, *supra* note 25, at 1038 (noting that Edmund Burke reported that by 1775, nearly as many copies of the Commentary had been sold in America as in England); Jones, *supra* note 25, at 1055-57; Kmiec, *supra* note 23, at 391-92; Miller, *supra* note 10, at 219.

28. 4 WILLIAM BLACKSTONE, COMMENTARIES ch. 14, available at http://avalon.law.yale.edu/18th_century/blackstone_bk4ch14.asp. Indeed, courts sometimes referred to “self-preservation” as “the first law of nature.” Helmholz, *supra* note 23, at 409 (quoting various cases).

29. *Suicide Act*, *supra* note 1; R (Pretty) v. Dir. of Pub. Prosecutions, [2001] UKHL 61, [2002] 1 A.C. 800 [35] (appeal taken from Eng.) [hereinafter *Pretty v. DPP*]; see also *Glucksberg*, 521 U.S. at 710 (noting that in almost every Western democracy it is a crime to assist a suicide).

30. *Suicide Act*, *supra* note 1, § 2(1). By enacting the Suicide Act 1961, Parliament displaced the common law offense. See, e.g., *Purdy*, [2009] UKHL 45 [25], [2010] 1 A.C. 345, 385. The Coroners and Justice Act amended the language of the Suicide Act so that a person commits an offense if he or she does an act capable of encouraging or assisting the suicide or attempted suicide of another person. See Coroners and Justice Bill, 2009, H.L. Bill [96], §§ 46-48. (Eng.), available at <http://www.bailii.org/uk/cases/UKHL/2001/61.html> [hereinafter *Coroners Bill*].

31. *Suicide Act*, *supra* note 1, § 1. In the late-eighteenth and early-nineteenth centuries, many governments abolished the penalties for suicide by statutory or constitutional

It is important to note, however, that neither the United Kingdom nor these other governments did so because they believed suicide was acceptable.³² Thus, after the United Kingdom statutorily decriminalized suicide, judicial opinions in the House of Lords described the change as a way to promote life.³³

The provisions of the Suicide Act acknowledged that legitimizing assisted suicide inherently threatens the most vulnerable among us. Similarly, in judicial opinions, the House of Lords historically recognized such risks.³⁴ Undeniably, many people in the final stages of life cannot communicate effectively. Whilst they may have once indicated a preference to avoid end-of-life suffering, no-one knows whether, at the time they cannot communicate, they still desire to extinguish their lives unnaturally.

Additionally, Britain's statutory proscriptions against assisted suicide reflect the notion that government-authorized suicide creates a frightening duty to die. Judicial opinions in the House of Lords also historically recognized that the elderly might choose suicide, "not from a desire to die

provisions. Marzen I, *supra* note 20, at 67-68. How governments treated those who assisted in suicides is unclear due to a lack of reporting and codification of case law and legislation. *Id.* at 70-76 (concluding that in the nineteenth century many governments prohibited assisted suicide). From a drafting perspective, the wording of the Suicide Act 1961 creates an interesting point of criminal law. This is because "the offence of aiding and abetting the suicide of another under section 2(1) Suicide Act 1961 is unique in that the critical act—suicide—is not itself unlawful, unlike any other aiding and abetting offence." *Purdy*, [2009] UKHL 45 [49], 1 A.C. at 393 (quoting Keir Starmer, *Decision on Prosecution – The Death By Suicide of Daniel James*, THE CROWN PROSECUTION SERVICE (Dec. 9, 2008), http://www.cps.gov.uk/news/articles/death_by_suicide_of_daniel_james/).

32. Rather, governments came to view the penalties as inappropriate either because they imposed unjustifiable hardship on the victims' families or because the act was deemed a manifestation of mental illness, and thus not punishable. Marzen I, *supra* note 20, at 67-100; Marzen II, *supra* note 21, at 264-65; *see also* *Glucksberg*, 521 U.S. at 774.

33. *See Pretty v. DPP*, [2001] UKHL 61 [106], 1 A.C. at 847-48 ("There were good reasons for wishing to decriminalise the act [suicide] itself. The removal of the fear of prosecution and of the stigma was likely to make it easier to deter those who were planning or attempting suicide. Broadly speaking, it was a measure in favour of saving life . . ."). Ironically, in *Purdy*, Lord Brown turns this underlying policy designed to protect life on its head by using it to legitimize assisting suicide. *Purdy*, [2009] UKHL 45 [82], 1 A.C. at 403-04 ("[T]he assistance criminalised by section 2(1) is assistance which those lawfully intent on suicide may require so as to enable them to fulfil their chosen end.").

34. *See Pretty v. DPP*, [2001] UKHL 61 [28], 1 A.C. at 822 ("The Government can see no basis for permitting assisted suicide. Such a change would be open to abuse and put the lives of the weak and vulnerable at risk.") (quoting the Government Response accepting the recommendation of the House of Lords Select Committee on Medical Ethics).

or a willingness to stop living, but from a desire to stop being a burden to others.”³⁵

C. Pro-Suicide Statutory Proposals: Advocates Unsuccessfully Attempt to Legalize Assisted Suicide Killings in the United Kingdom

Consistent with Britain’s cultural heritage and legal traditions, Parliament repeatedly defeated endeavours to undercut the protections provided in the Suicide Act. To be sure, several members of Parliament relentlessly sought to shift the political paradigm.³⁶ Lord Joffe, whose self-proclaimed life mission is to promote dying, led the attack.³⁷ In 2002 and 2003, Lord Joffe tried unsuccessfully to legalize assisted suicide by proposing the Patient (Assisted Dying) Bill—later known as the Assisted Dying for the Terminally Ill Bill.³⁸ Parliament again rejected the pro-suicide proposal in both 2005 and 2006.³⁹

The situation involving British pro-suicide advocate Debbie Purdy prompted another attempt to pass pro-suicide legislation.⁴⁰ Diagnosed with a terminal disease, Purdy wanted to kill herself after the illness progressed to a certain stage.⁴¹ She stated that she could not accomplish the act without assistance.⁴² When the time came, she wanted her husband to assist in her suicide killing by helping her travel to another country where suicide was

35. See *Pretty v. DPP*, [2001] UKHL 61 [29], 1 A.C. at 823 (“We are also concerned that vulnerable people—the elderly, lonely, sick or distressed—would feel pressure, whether real or imagined, to request early death.”) (quoting a report by the House of Lords Select Committee on Medical Ethics).

36. See Helene Mulholland, *A Matter of Life and Death*, THE GUARDIAN (October 24, 2005, 7:20 AM), <http://www.guardian.co.uk/society/2005/oct/24/health.politics1>.

37. *Id.*

38. *Id.*

39. See *Assisted Dying for the Terminally Ill Bill [HL]*, THE PUBLIC WHIP (May 12, 2006, 5:17 PM), <http://www.publicwhip.org.uk/division.php?date=2006-05-12&number=1&house=lords>.

40. See Aufua Hirsch, *Debbie Purdy wins ‘significant legal victory’ on assisted suicide*, THE GUARDIAN (July 30, 2009, 1:20 PM), <http://www.guardian.co.uk/society/2009/jul/30/debbie-purdy-assisted-suicide-legal-victory>; *Coroners Amendment*, *supra* note 2.

41. *Purdy*, [2009] UKHL 45 [17], [2010] 1 A.C. 345, 381-82.

42. *Id.*

legal.⁴³ While Purdy's situation gained the limelight, Parliament debated the Coroners and Justice Bill.⁴⁴

Consistent with the cultural heritage and legal traditions of the United Kingdom, members of Parliament originally introduced the Coroners and Justice Bill to strengthen British anti-assisted suicide law. The provisions included in the Coroners and Justice Act of 2009 clarified that Britain's proscription against assisting suicide: 1) extended to those who do not know the person who wants to die,⁴⁵ and 2) applied to assisters of attempted suicides regardless of whether an attempted suicide or suicide occurs.⁴⁶

Pro-suicide proponents in Parliament, however, attempted to use the Coroners and Justice Bill as a vehicle to legalize assisted suicide.⁴⁷ Using Debbie Purdy's situation as justification, pro-suicide proponents proposed various amendments. One amendment, intended to authorize assisted killing of British citizens in Purdy's situation, counter-intuitively indicated that

an individual . . . is not to be treated as capable of encouraging or assisting the suicide or attempted suicide of another adult . . . if . . . the act is done solely or principally for the purpose of enabling or assisting [another adult] to travel to a country or territory in which assisted dying is lawful⁴⁸

This proposed amendment would have codified the government-sanctioned killing of human life under prescribed conditions.⁴⁹

Thus, an individual in the United Kingdom could put another human being on a train, sending that person to another country to be killed. The proposed amendment cloaked the individual assisting in the killing with

43. *Id.*

44. Michael Hirst, *Assisted Suicide after Purdy: The Unresolved Issue*, [2009] CRIM. L.R. 870 (Eng.); *Coroners Bill*, *supra* note 30.

45. *Coroners Bill*, *supra* note 30, § 46(1A).

46. *Id.* § 46(1B).

47. *See, e.g., Coroners Amendment*, *supra* note 2.

48. *Id.*

49. *Coroners Amendment*, *supra* note 2. The act reads, in relevant part:

(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

Id.

complete immunity. Again, counter-intuitively, the proposed law continued to protect human life as long as the train did not leave the United Kingdom.

Another amendment proposed putting doctors, serving as coroners, in the position of authorizing the killing of a human being.⁵⁰ Upon “certification from a coroner,” the amendment would have allowed an individual to assist another in committing suicide if the person wishing to die was “suffering from a confirmed, incurable and disabling illness which prevents him from carrying through his own wish to bring his life to a close.”⁵¹

The pro-suicide proposal aggressively challenged long-established ethical elements of medical practice in the United Kingdom. The British Medical Association and other respected health care organizations nonetheless continued to affirm the moral proscription against assisted suicide as the very foundation of medical ethics.⁵² The Hippocratic Oath, written during the fifth to fourth centuries B.C., declares, “I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect.”⁵³ Such a standard is consistent with God’s revealed, inviolable standard reflected in the common law and other historical and legal traditions of the United Kingdom.⁵⁴ Indeed, assisted suicide is entirely irreconcilable with a doctor’s calling to heal.⁵⁵ Astonishingly, the pro-suicide proposals before Parliament failed to provide any ethical standards of implementation or enforcement mechanisms for compliance by physicians. Not surprisingly, therefore, no data-collection requirements that might provide some accountability even existed. Furthermore, despite vague, subjective requirements concerning the physical and mental state of the patient, no definitional safeguards

50. *Id.*

51. *Id.*

52. *End of Life Decisions: Views of the BMA*, BRITISH MEDICAL ASSOCIATION 4 (2009), available at http://www.bma.org.uk/images/endlifedecisionsaug2009_tcm41-190116.pdf; see, e.g., Brief for the Am. Med. Ass’n et al., as Amici Curiae Supporting Petitioners at 5, *Glucksberg*, 521 U.S. 702 (No. 96-110), 1996 WL 656263; accord A.M.A. CODE OF MEDICAL ETHICS, § 2.211 (1996), available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion2211.page?> (prohibiting physician assistance in assisted suicide or euthanasia).

53. LUDWIG EDELSTEIN, *THE HIPPOCRATIC OATH: TEXT, TRANSLATION, AND INTERPRETATION* 6 (Henry E. Sigerist ed., The Johns Hopkins Press 1943).

54. The creation of the Hippocratic Oath in ancient Greek culture has been foundational in Western medical ethics, and it remains centrally relevant in contemporary medical practice. See, e.g., C. Everett Koop, *Introduction*, 35 DUQ. L. REV. 1 (1996).

55. *Id.* at 2.

existed to protect vulnerable or elderly patients. Moreover, no duty to discuss other treatment options or palliative care alternatives for pain management existed anywhere in the proposed statutory scheme.

Thus, with virtually no protection for the most vulnerable of British citizens, the proposed pro-suicide amendments to the Coroners and Justice Bill expressly authorized individuals, in prescribed circumstances, to assist in the suicide killing of a human being.⁵⁶ Consistent with and informed by the deeply-rooted first principles reflected in Britain's legal history and tradition, a majority of those voting on the pro-suicide provisions voted against them.⁵⁷

D. The Purdy Decision: Surrendering Sovereignty and Conscience?

Not long after Parliament rejected pro-suicide amendments to the Coroners and Justice Bill, a court case initiated by Debbie Purdy came before five Law Lords. Although the Suicide Act broadly covered all aspects of assisted suicide, Purdy raised the issue as to whether an individual could assist someone to travel to another country where assisted suicide is legal and expect to escape prosecution.⁵⁸ Among other things, Purdy contended that the assisted suicide prohibition in the Suicide Act constituted an interference with her privacy rights under Article 8(1) of the European Convention on Human Rights ("European Convention").⁵⁹ Thus, Purdy asserted that she possessed a human right, grounded in privacy, to decide to

56. *Coroners Amendment*, *supra* note 2. The language of the proposed amendment is as follows:

Notwithstanding sections 49 to 51, no offence shall have been committed if assistance is given to a person to commit suicide who is suffering from a confirmed, incurable and disabling illness which prevents him from carrying through his own wish to bring his life to a close, if the person has received certification from a coroner who has investigated the circumstances, and satisfied himself that it is indeed the free and settled wish of the person that he brings his life to a close.

Id.

57. See *Coroners and Justice Bill—Committee (5th Day)—Assisted Suicide*, THE PUBLIC WHIP (July 7, 2009, 8:03 PM), <http://www.publicwhip.org.uk/division.php?date=2009-07-07&number=1&house=lords>; see also *Purdy*, [2009] UKHL 45 [58], [2010] 1 A.C. 345, 396.

58. See, e.g., *Purdy*, [2009] UKHL at [18-25, 90-93], 1 A.C. at 382-85, 405-06.

59. *Id.* at [28], 1 A.C. at 386. The European Convention on Human Rights (hereinafter "European Convention") in paragraph 1 of Article 8 provides: "Everyone has the right to respect for his private and family life, his home and his correspondence." See also *id.* at [29], 1 A.C. at 386.

kill herself, and that the statutory proscription against assisting suicide infringed this right.⁶⁰

To understand fully the context of *Purdy*, one must review what happened beforehand. Prior to *Purdy* came *Pretty v. DPP*,⁶¹ which involved a woman who also desired to kill herself with the assistance of her husband.⁶² When *Pretty* reached the House of Lords, the court confirmed that no right to commit suicide existed in the United Kingdom:

while the 1961 Act abrogated the rule of law whereby it was a crime for a person to commit . . . suicide, it conferred no right on anyone to do so. . . . The policy of the law remained firmly adverse to suicide⁶³

Moreover, on the issue raised by Mrs. Pretty, the Law Lords held that Article 8 pertained to protecting personal autonomy while the individual was alive, but *did not* confer a right to decide to commit suicide.⁶⁴

The *Pretty* case was then heard by the European Court of Human Rights (“ECHR”), now styled as *Pretty v. United Kingdom*.⁶⁵ Turning a blind eye to the cultural and legal traditions of Great Britain, the ECHR reached a very different conclusion from the British court. The ECHR concluded that exercising a choice to kill human life via suicide constituted a human right

60. *Id.* at [28-31], 1 A.C. at 386-87. She also contended that because the Government failed to provide an offense-specific prosecution policy for assisted suicide, such interference violated Article 8, paragraph 2 of the European Convention, which requires interference with a right to be “in accordance with the law.” *Id.*; see also Eur. Conv. on H.R. art. 8, para. 2. In this regard, Purdy contended that without such guidance she lacked enough information to make a decision—so as to be able to challenge a government authority if it arbitrarily interferes with rights safeguarded by the Convention. *Purdy*, [2009] UKHL at [28-31], 1 A.C. at 386-87. The European Convention in paragraph 2 of Article 8 provides: “There shall be no interference by a public authority with the existence of this right except such as is in accordance with the law” Eur. Conv. on H.R. art. 8, para. 2.

61. *Pretty v. DPP*, [2001] UKHL 61, [2002] 1 A.C. 800.

62. *Id.* at [29], 1 A.C. at 809; see also *Purdy*, [2009] UKHL 45 [71], 1 A.C. at 400.

63. *Pretty v. DPP*, [2001] UKHL 61 [35], 1 A.C. at 825; see also *Washington v. Glucksberg*, 521 U.S. 702, 711 (1997) (commenting on the common-law tradition of disapproval toward suicide and assisting suicide).

64. *Pretty v. DPP*, [2001] UKHL 61 [61], 1 A.C. at 835; see also *Purdy*, [2009] UKHL 45 [32], 1 A.C. at 387.

65. *Pretty v. United Kingdom*, 35 Eur. Ct. H.R. 1 (2002) [hereinafter “*Pretty v. UK*”].

under Article 8(1).⁶⁶ The ECHR also held that the Suicide Act interfered with this right.⁶⁷

With the dichotomy of the *Pretty* decisions serving as the prologue, *Purdy* began its journey through the British courts. The Court of Appeal faced the issue of whether, under Article 8(1) of the European Convention, Purdy possessed a human right to decide to kill herself.⁶⁸ Before deciding the issues, the Court of Appeal had to first determine whether to follow the British court precedent or the ECHR precedent. The Court of Appeal applied the former, confirming that Article 8(1) of the European Convention conferred no right to commit suicide.⁶⁹ Purdy appealed the decision to the House of Lords.

The five Law Lords began by relying upon the ECHR's analysis in *Pretty* to resolve the issues raised by Purdy, rather than standing by their previous precedent in *Pretty v. DPP*.⁷⁰ In so doing, the Law Lords discarded the deeply-rooted British cultural and legal traditions protecting human life against suicide killings. In its place, the Law Lords adopted the ECHR's construction of Article 8(1) of the European Convention⁷¹ holding that the decision to kill human life via suicide was a human right. Thus, each Law Lord concluded that Purdy possessed a human right under the European Convention to decide to kill herself. After the Law Lords held that Purdy had that human right, it further concluded that the assisted suicide prohibition in the Suicide Act constituted an interference with that right. Because the Government failed to provide an offense-specific prosecution policy for assisted suicide, the Law Lords further found that such interference violated Article 8, paragraph 2 of the European Convention

66. *Id.* at 37.

67. *Id.* at 37-40. The European Court of Human Rights ("ECHR") disagreed with the British Court, asserting: "The Court is not prepared to exclude that this constitutes an interference with her right to respect for private life as guaranteed under Article 8(1) of the Convention." *Id.* at 37. Given that a right existed, the Court then proceeded to evaluate whether this interference conformed to the requirements of Article 8, paragraph 2 of the European Convention. *Id.* at 37-40. The Court concluded the interference in this instance was justified. *Id.* at 39.

68. *Purdy*, [2009] UKHL 45 [32], 1 A.C. at 387. The Court of Appeal decision is reported at [2009] EWCA (Civ) 92 (Eng.).

69. *Purdy*, [2009] UKHL 45 [32], 1 A.C. at 387.

70. *Id.*

71. *Id.* at [29], 1 A.C. at 386. Article 8, paragraph 1 of the European Convention provides: "Everyone has the right to respect for his private and family life, his home and his correspondence." Eur. Conv. on H.R. art. 8, para. 1.

because the Government's interference with the right was not "in accordance with the law."⁷²

How could the five Law Lords in *Purdy* so inconsistently interpret existing pro-life law given the deeply-rooted first principles reflected in its nation's legal history and tradition? The answer lies in understanding the lens through which they view the world.⁷³ The Law Lords and other assisted suicide proponents reject the moral absolute of an inviolable standard. In its place, they employ a human-centred, subjective, morally-relative worldview of legal positivism. When the five Law Lords deemed the killing of human life via suicide a human right, they did more than defer to the ECHR. They shifted a nation's jurisprudential worldview. Before *Purdy*, British jurisprudence saw a moral absolute in the innate, positive value of vulnerable human life. Judges and lawmakers therefore viewed such life as worthy of governmental protection and proscribed conduct associated with assisted suicide killing. The five Law Lords in *Purdy*, instead, chose to view the matter through the subjective lens of morally-relative legal positivism, which enabled them to create law without looking to any moral standard of right or wrong. Viewed through the subjective lens of moral relativism, deciding to kill human life via suicide devolves into a matter of personal autonomy or convenience. Thus, the value of a particular human life in the United Kingdom now varies with the circumstances.

To completely comprehend the significance of this jurisprudential shift, it is helpful to analyze the mechanics of the court's analytical process. Under traditional notions of the rule of law, government can prohibit conduct.⁷⁴ Thus, consistent with an inviolable standard that human life has

72. *Purdy*, [2009] UKHL 45 [30-31, 40-56], 1 A.C. at 386-87, 390-96. The Court held that without such guidance, individuals like Mrs. Purdy lacked enough information with which to make a decision—so as to be able to challenge a Government authority if it arbitrarily interfered with rights safeguarded by the European Convention. *Id.* The European Convention, Article 8, paragraph 2 provides: "There shall be no interference by a public authority with the existence of this right except such as is in accordance with the law" Eur. Conv. on H.R. art. 8, para. 2); see also *Purdy*, [2009] UKHL at [29], 1 A.C. at 386.

73. See Wagner, *supra* note 6.

74. Herbert W. Titus, *The Bible & American Law*, 2 LIBERTY U. L. REV. 305, 311 (2008). Titus' descriptive analysis of this principle is a good example of the unalienable worldview:

Let us now look at the thirteenth chapter of the *Epistle to the Romans*. We can all certainly agree that verse four addresses the role of the civil ruler as a minister of God. In the Greek, he is a deacon of God, he is a servant of God. Notice carefully that verse four authorizes the civil ruler to wield the sword against *wrong doing*. Now, that is a very important first principle: The civil ruler has authority over *conduct*. Blackstone reflects this view in his definition of

value at all stages, the United Kingdom enacted laws prohibiting a person from assisting in the commission of a suicide killing. Using the evolving human-centered, morally-relative approach of legal positivism, the Law Lords took this prohibited conduct and judicially re-characterized it as an essential liberty interest cloaked with the status of a “human right”—i.e., a privacy right of personal autonomy to make end-of-life choices. It was no accident that the newly-created human right completely contradicted the inalienable, inviolable standard.⁷⁵

E. Purdy’s Progeny—Public Prosecution Guidelines

In response to the Law Lords’s discussion in *Purdy* criticizing the lack of an offense-specific prosecution policy, Britain’s Director of Public Prosecution (“Director”) drafted policy guidelines in conformance with the Law Lords’ decision declaring assisted suicide a human right.⁷⁶ Unfortunately, the new guidelines create more than a little uncertainty in the law. The guidelines begin by ostensibly suggesting that *Purdy* did nothing to change assisted suicide law in the United Kingdom:

The case of *Purdy* did not change the law: only Parliament can change the law on encouraging or assisting suicide.

This policy does not in any way “decriminalize” the offence of encouraging or assisting suicide. Nothing in this policy can be taken to amount to an assurance that a person will be immune from prosecution if he or she does an act that encourages or assists the suicide or the attempted suicide of another person.⁷⁷

Nevertheless, the guidelines provide that whether someone who assisted in suicide will be prosecuted is left to the discretion of the prosecutor:

[t]his was recognised by the House of Lords in the *Purdy* case where Lord Hope stated that: “[i]t has long been recognised that a prosecution does not follow automatically whenever an offence

‘municipal law,’ i.e., the law of civil society, describing it as ‘a rule of *civil conduct*.’

Id.

75. For a deeper discussion of the jurisprudential mechanics involved, see Wagner, *supra* note 6.

76. Director of Public Prosecutions, *Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide*, CROWN PROSECUTION SERVICE (Feb. 2010), http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html.

77. *Id.* at paras. 5-6.

is believed to have been committed”. . . . He went on to endorse the approach adopted by Sir Hartley Shawcross, the Attorney General in 1951, when he stated in the House of Commons that: “[i]t has never been the rule . . . that criminal offences must automatically be the subject of prosecution.”

Accordingly, where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.⁷⁸

Thus, the once inviolable standard, deeply rooted in the nation’s legal traditions and reflected in its statutory law, is no more. Instead, the value of any particular British human life rests in the hands of individual government prosecutors. In deciding not to protect human life against an assisted suicide killing, prosecutors now may arbitrarily rely upon ambiguous provisions in the guidelines to refuse to prosecute. Under the guideline’s factors:

- [a] prosecution is less likely to be required if:
1. the victim had reached a voluntary, clear, settled and informed decision to commit suicide;
 2. the suspect was wholly motivated by compassion;
 3. the actions of the suspect, although sufficient to come within the definition of the offence, were of only minor encouragement or assistance;
 4. the suspect had sought to dissuade the victim from taking the course of action which resulted in his or her suicide;
 5. the actions of the suspect may be characterised as reluctant encouragement or assistance in the face of a determined wish on the part of the victim to commit suicide;
 6. the suspect reported the victim’s suicide to the police and fully assisted them in their enquiries into the circumstances of the suicide or the attempt and his or her part in providing encouragement or assistance.⁷⁹

These factors create colossal excuses allowing for assisted suicide without fear of prosecution. Attempts to disprove these factors become problematic because, in the words of Dr. Peter Saunders, “[a]nyone who takes part in an

78. *Id.* at paras. 36-37.

79. *Id.* at para. 45.

assisted suicide is going to claim they were acting out of compassion. The only witness who really knows will be dead.”⁸⁰

The Director’s assisted suicide guidelines became effective in February of 2010. Thereafter, prosecutors did not file charges in twenty assisted suicides committed during 2010.⁸¹ According to the Director, many of the cases involved family members assisting in the suicide.⁸² The disturbing irony is that this increase in assisted suicides took place while assisted suicide was still illegal in Britain.⁸³

As the public debate on assisted suicide continues, it makes sense to review the national implications that accompany such a jurisprudential shift.⁸⁴ In the next section, therefore, we address the implications of turning down the road of morally-relative legal positivism.

PART II.

TURNING DOWN A DANGEROUS ROAD WITH DARK CONSEQUENCES

Suicide-killing proponents insist that the United Kingdom turn off the path of self-evident inalienable truth—embodied in its deeply-rooted natural, common, and positive law traditions—onto a path of legal positivism. Humankind has travelled down this immorally-relative road before with tragic consequences. Before the United Kingdom proceeds past a point of no return regarding its suicide-killing policy, we might consider whether the consequences are worth the supposed convenience.

Policy positions permitting assistance in suicide killings proceed from a mistaken premise that, in certain conditions, human life no longer has positive value or purpose. That presupposition has incalculably grave implications for every citizen in the United Kingdom. When government policy relegates the value of life to an immorally-relative individual choice, no benchmark exists against which to measure right from wrong or good

80. *DPP Fails to Charge over 20 Suspected Assisted Suicides*, CHRISTIAN CONCERN (Dec. 21, 2010), <http://www.christianconcern.com/our-concerns/end-of-life/dpp-fails-to-charge-over-20-suspected-assisted-suicides>.

81. Steve Doughty, *No Charges in 20 Assisted-Suicide Cases as Public Prosecution is Accused of Re-Writing Law*, MAIL ONLINE (Dec. 15, 2010, 8:41 AM), <http://www.dailymail.co.uk/news/article-1338700/No-charges-20-assisted-suicide-cases-public-prosecutor-accused-rewriting-law.html>.

82. *Id.*

83. *Id.*

84. See Crone, *supra* note 6, at 422; see also McConnell, *supra* note 6, at 667-69.

from evil. If no moral reference point exists for those governing in the United Kingdom, then nothing prevents taking human life in other ways, or for other people in different situations. History reveals terrible costs associated with such an approach. Once liberated from objective, moral standards by subjective relativism, the individual is completely subject to the will of any stronger individual or group; for no moral standard exists to prevent the imposition of that stronger subject's "morality."⁸⁵ Thus, instead of leading from the alleged "oppression of tradition" to the freedom it promises, the morally-relative legal positivist path leads to totalitarian tyranny.⁸⁶

Many scholars document that although present proposals protecting suicide proceed down this dangerous road, these proposals were not the first steps taken down the perilous path.⁸⁷ During the late-nineteenth and early-twentieth centuries, eugenics movements advocated for the elimination of "less valuable" human beings.⁸⁸ Germany subsequently legalized voluntary euthanasia.⁸⁹ Thereafter, the Nazis killed hundreds of thousands of the mentally ill—all prior to the unspeakable tragedy of the Holocaust.⁹⁰ The push to make assisted suicide, or "mercy killing," a normal and "compassionate" procedure was happening as early as the 1920s in Germany.⁹¹ This approach transformed the role of a physician from that of purely a healer to both healer and killer.⁹² The end result was Auschwitz and places like it. Dr. Jay Lifton conducted extensive research and interviews of the Nazi doctors who committed these mass killings.⁹³ Lifton established that the first step enabling the Nazis' mass killings was the removal of the barrier between healing and killing:⁹⁴ "Medicalization of killing—the

85. HADLEY ARKES, *NATURAL RIGHTS AND THE RIGHT TO CHOOSE* 31 (2002).

86. See Charles E. Rice, *Rights and the Need for Objective Moral Limits*, 3 AVE MARIA L. REV. 259, 270-71, 274 (2005). That it may be a tyranny of the majority is no comfort, for today's majority may become tomorrow's minority. See ARKES, *supra* note 85, at 31.

87. KATHLEEN M. FOLEY & HERBERT HENDIN, *THE CASE AGAINST ASSISTED SUICIDE: FOR THE RIGHT TO END-OF-LIFE CARE* 6-7 (1st ed. 2002).

88. *Id.* at 6. Thirty American states passed sterilization laws embraced by both Presidents Theodore Roosevelt and Woodrow Wilson. *Id.*

89. *Id.* at 7.

90. *Id.* at 7.

91. ROBERT JAY LIFTON, *THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE* 46-47 (1st ed. 1986).

92. *Id.* at 4-5.

93. *Id.* at 6-12.

94. *Id.* at 14.

imagery of killing in the name of healing—was crucial to that terrible step. At the heart of the Nazi enterprise, then, is the destruction of the boundary between healing and killing.”⁹⁵

The question must be asked, how could doctors reconcile the killing of people with their vow to uphold the Hippocratic Oath? When Dr. Fritz Klein was asked this question, he answered, “Of course I am a doctor and I want to preserve life. And out of respect for human life, I would remove a gangrenous appendix from a diseased body. The Jew is a gangrenous appendix in the body of mankind.”⁹⁶ Because of his morally-relative worldview, Dr. Klein reached the deluded conclusion that he was upholding the Hippocratic Oath and serving mankind by slaughtering thousands of Jews.

The perverted idea that killing a patient is compassionate and therapeutic first gained traction from the work of two German professors, Karl Binding and Alfred Hoche.⁹⁷ In 1920, they published their work entitled “The Permission to Destroy Life Unworthy of Life.”⁹⁸ This work postulated that some people are unworthy of life. Those unworthy of life included not only the incurably ill, but also many mentally ill and deformed children.⁹⁹ They stressed the therapeutic goal of destroying an unworthy life and described it as “purely a healing treatment” and a “healing work.”¹⁰⁰ Hoche insisted the policy was compassionate and consistent with medical ethics.¹⁰¹ He wrote that putting people to death “is *not* to be equated with other types of killing . . . but [is] an *allowable, useful act*.”¹⁰²

Hoche further justified the killing policy by deeming the mentally and physically ill a tremendous burden for society to bear.¹⁰³ He concluded: “single less valuable members have to be abandoned and pushed out.”¹⁰⁴ Dr. Lifton exposed Hoche’s “striking note of medical hubris in insisting that ‘the physician has no doubt about the hundred-percent certainty of correct selection’ and ‘proven scientific criteria’ to establish the ‘*impossibility of*

95. *Id.*

96. *Id.* at 15-16 (internal quotation marks omitted).

97. *Id.* at 46-47.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* (internal quotation marks omitted).

103. *Id.*

104. *Id.* at 47 (internal quotation marks omitted).

improvement of a mentally dead person.”¹⁰⁵ In other words, these doctors thought so highly of their knowledge and skill that they could be certain a “mentally dead” person will never recover. According to their morally-relative standard, therefore, no problem existed with destroying that life.

The supposed compassionate killing of mentally or physically “unworthy lives” eventually evolved into a justification for the slaughter of thousands of Jews, likewise deemed “unworthy.”¹⁰⁶ And so we learn from history where the path of killing as an accepted medical treatment leads. Hoche’s and Binding’s justifications validating “compassionate” killing of a patient are eerily similar to contemporary justifications for assisted suicide.

In the 1940s, euthanasia proponents like Dr. Foster Kennedy advocated, on eugenics grounds, compulsory euthanasia for retarded children.¹⁰⁷ By the 1970s, euthanasia proponents evolved their position to easing the “burden” of caring for the elderly, and then to easing suffering,¹⁰⁸ and now to “liberty of choice.”

A more recent example of the consequences of legalizing assisted suicide is found in the Netherlands. There, “safeguards” in the pro-suicide Dutch law failed to protect Dutch citizens. Evidence revealed that thousands were killed, including many unreported assisted suicides, that many failed to follow established guidelines for voluntariness or consultation, and that many lives were extinguished without consent.¹⁰⁹ Where did travelling

105. *Id.* (emphasis in original).

106. *See* Crone, *supra* note 6, at 422.

107. FOLEY & HENDIN, *supra* note 87, at 6-7.

108. *Id.* at 8. Remarkably, no suffering requirement exists in the pro-suicide proponents’ proposals that were before Parliament. *See Coroners Amendment, supra* note 2, at n.2. Nor do these proposals require anyone to advise the patient of palliative care and hospice options. *Id.*

109. FOLEY & HENDIN, *supra* note 87, at 10. Doctors consistently violated unenforceable legal restraints on “abuses” of the new “right.” At one point in time, sixty percent of Dutch assisted-suicide cases went unreported. *Id.* Most of the unreported cases involved physicians failing to follow established guidelines for voluntariness or consultation. *Id.* at 10-11. Worse, in several thousand cases, physicians ended patients’ lives without the patients’ consent. *Id.* at 104. Twenty-five percent of physicians terminated one or more lives without a request. *Id.* at 104-05. In a 1995 study, forty percent of the more than 6,000 cases in which physicians actively intervened to cause death involved no explicit request from the patient. *Id.* at 105; *see also* Zbigniew Zyllicz, *Palliative Care and Euthanasia in the Netherlands: Observations of a Dutch Physician*, in FOLEY & HENDIN, *supra* note 87, at 122-43. Each major Dutch measure enacted to control and regulate physician-assisted suicide—including informed consent, consultation, and reporting—failed, was modified, or was violated. FOLEY & HENDIN, *supra* note 87, at 103 (citing CARLOS F. GOMEZ, REGULATING DEATH: EUTHANASIA AND THE CASE OF

down the path of euthanasia take the Netherlands? A Dutch healthcare facility concedes it euthanized newborn infants, and a physician who killed the disabled babies unapologetically asserts his conduct is proper.¹¹⁰ Thus, society continues to slouch toward Gomorrah—and at an increasingly faster pace as it replaces God’s inviolable, moral standard with a morally-relative, individual convenience.¹¹¹

What can policymakers in the United Kingdom learn from the experience of its Western neighbours? One thing is that which United Kingdom pro-suicide proponents present as a limited right to assisted suicide will “likely, in effect, [lead to] a much broader licence.”¹¹² The most recent proponent and activist for legalizing assisted suicide in the United Kingdom is Lord Falconer.¹¹³ Leading a supposedly unbiased Commission on Death and Dying, Falconer’s commission is studying if and how assisted suicide policy should be implemented in the United Kingdom.¹¹⁴ The commission is made up of twelve members, most of whom favor legalized assisted suicide.¹¹⁵ Nine of the twelve members already work in the field and support assisted suicide.¹¹⁶ The remaining three on the commission are not known to oppose assisted suicide.¹¹⁷ The chair of the commission, Lord

THE NETHERLANDS (Free Press 1991)). A more recent report indicated an increased number of “terminal sedation deaths.” Agnes van der Heide et al., *End-of-Life Practices in the Netherlands under the Euthanasia Act*, 356 NEW ENG. J. MED. 1957, 1960 (2007). The report further documented that “[i]n 2005, the ending of life was not discussed with patients for a variety of reasons. . . .” *Id.* More recently, Dr. François Primeau stated, “[i]n 2009, in the Netherlands, there were 2,636 deaths by euthanasia . . . [and] [t]hey don’t count in this total the 550 cases of euthanasia without consent, nor the 400 cases of assisted suicide, nor the 20% of euthanasia cases that were not reported, nor the infants that died.” Matthew Cullian Hoffman, *Abuse of Assisted Suicide Laws Inevitable, expert warns Quebec government*, LIFE SITE NEWS.COM (Feb. 22, 2011, 5:34 PM), <http://www.lifesitenews.com/news/abuse-of-assisted-suicide-laws-inevitable-expert-warns-quebec-government>.

110. Steven Ertelt, *Dutch Doctor Who Engages in Euthanasia of Newborns Unapologetic*, LIFE NEWS, (Dec. 27, 2004, 9:00 AM), <http://www.lifenews.com/bio623.html>.

111. See ROBERT H. BORK, *SLOUCHING TOWARDS GOMORRAH: MODERN LIBERALISM AND AMERICAN DECLINE* 173-92 (1st ed. 1996).

112. *Washington v. Glucksberg*, 521 U.S. 702, 733 (1997).

113. *The Aim of the Commission*, *supra* note 5.

114. *Id.*

115. Peter Saunders, *Lord Falconer’s Commission on Assisted Dying*, CHRISTIAN CONCERN (Dec., 1 2010), <http://christianconcern.com/our-concerns/end-of-life/lord-falconer%E2%80%99s-commission-on-assisted-dying>.

116. *Id.*

117. *Id.*

Falconer, is a long-time proponent of assisted suicide, campaigning to legalize assisted suicide in the United Kingdom.¹¹⁸ Far from balanced, Lord Falconer is using this commission as a vehicle to drive the pro-assisted suicide policy in the United Kingdom.¹¹⁹ How far down the terrible path we have trod.

CONCLUSION

Since the beginning of its existence, the United Kingdom's divine and natural law traditions embodied God's sacred standard. That standard requires us not to assist in the killing of human life He created. Discerning the truth of this ancient, inviolable benchmark, the common and statutory law of Britain reflected its moral reference point and prohibited assisted suicide. In the name of progress, *Purdy* and its pro-suicide progeny reject the inviolable standard underlying current statutory proscriptions against assisted killing. Instead, *Purdy* and its progeny take the United Kingdom down the morally-relative road of legal positivism. The grave implications for a nation that accompany such a choice are historically clear and profoundly frightening. C.S. Lewis noted,

“We all want progress. But progress means getting nearer to the place where you want to be. And if you have taken a wrong turning, then to go forward does not get you any nearer. If we are on the wrong road, progress means doing an about-turn and walking back to the right road; and in that case the man who turns back soonest is the most progressive man.”¹²⁰

Only by turning around and walking back to the right road will the United Kingdom ever again find the inherent value of human life worthy of government protection.

118. *Id.*

119. *Id.*

120. C.S. LEWIS, *MERE CHRISTIANITY* 28 (HarperCollins ed. 2001).