No. SJC-13194

Supreme Judicial Court

SUFFOLK COUNTY

2022 SITTING

ROGER M. KLIGLER & ANOTHER,
Appellant,
v.
MAURA HEALEY & ANOTHER,
Appellee.

ON APPEAL FROM A JUDGMENT OF THE SUPERIOR COURT

BRIEF FOR AMICUS CURIAE
DR. Kevin Yuill
IN SUPPORT OF THE APPELLEE
AFFIRMANCE

KEVIN YUILL
Kevin.yuill@sunderland.ac.uk
University of Sunderland
Sunderland SR6 0DD
United Kingdom
+447950758713

Dated February 16th 2022

BRIEF OF AMICUS CURIAE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITIES

Hochmuth, *Spurensuche: Eugenik, Sterilisation, Patientenmorde und die v. Bodelschwinghschen Anstalten Bethel 1929-1945*, edited by Matthias Benad in conjunction with Wolf Kätzner and Eberhad Warns. Bielefeld: Bethel-Verlag, 1997, pp. 179-86.	
Burleigh, Michael, *Death and Deliverance: 'Euthanasia' in Germany, 1900-1945* (Cambridge: Cambridge Uni Press, 1994), 13-14.	22
Compassion and Choices, "Assisted Dying is Not Assisted Suicide, Suicide, or Euthanasia https://compassionandchoices.org/about-us/medical-aid-dying-not-assisted-suicide/	12
Curia Market Research, 'Euthanasia Issues Poll, November 2017 https://euthanasiadebate.org.nz/wp-content/uploads/2018/06/Euthanasia-Poll-Results-November-2017.pdf	12
Dowbiggin, Ian, 'A Prey on Normal People': C. Killick Millard and the Euthanasia Movement in Great Britain, 1930-55' *Journal of Contemporary History*, Vol. 36, No. 1 (Jan., 2001), pp. 59-85.	23
Ingersoll, Robert, *The Works of Robert Ingersoll* (New York: Dresden Publishing Co., 1900), Vol, 4, 389.	20
Martin, Thomas Q., "Euthanasia and Modern Morality: Their Moral Implications," *The Jurist* Vol. X (January-October, 1950), 437-464	23
Mencken, H. L., *Prejudices: Second Series* (New York Alfred A. Knopf, 1920), 155.	25
Mill, John Stuart, *On Liberty* (London: Longman, Roberts, & Green Co., 1869	17-18
Pernick, Martin S., *The Black Stork: Eugenics and the Death Of "Defective" Babies in American Medicine and Motion Pictures since 1915* (New York: Oxford University Press, 1996).	23

Shaw, David and Alec Morton, 'Counting the Cost of Denying Assisted Dying', *Clinical Ethics,* (March 10, 2020), 7.	24
Van Hooff, Anton J. L., 'Good Death and the Doctor in the Graeco-Roman World', *Social Science & Medicine* Volume 58, Issue 5 (March 2004), 975-985.	19
Weikart, Richard, 'Darwinism and Death: Devaluing Human Life in Germany 1859-1920', *Journal of the History of Ideas*, Vol. 63, No. 2 (Apr., 2002), pp. 323-344, 330.	21
Williams, Samuel D., "Euthanasia" in Essays of the Birmingham Speculative Club (London: William Morley, 1874): 210-237, 216, 230.	19-20
Yuill, Kevin 'A man should be permitted to go out of this world whenever he thinks fit." Suicide, euthanasia, and autonomy in the American press in the 1890s' *Journal of Policy History* (forthcoming).	7, 20
Yuill, Kevin, "Een liberale, humanistische kritiek op een "voltooid leven"-wet' ['A liberal, humanist critique of a 'completed life'-law"] *Filosofie en Praktijk* (Jaargang 42 – nr. 4 – December 2021), pp7-16.	7
Yuill, Kevin, "The unfreedom of assisted suicide: How the right to die undermines autonomy," *Ethics, Medicine and Public Health*, Vol. 1, Issue 4, October–December 2015, pp494-502.	7
Yuill, Kevin, *Assisted Suicide: The Liberal, Humanist Case Against Legalization* (Houndmills, Hants: Palgrave MacMillan, 2013, reprinted 2015)	7

DECLARATION OF AMICUS CURIAE

In accordance with Mass. R. App. P. 17(c), the undersigned declares that: (a) no party nor party's counsel authored this brief in whole or in part; (b) no party nor party's counsel contributed money that was intended to fund preparing or submitting this brief; (c) no person or entity other than the amicus curiae contributed money that was intended to fund preparing or submitting this brief; (d) the amicus curiae does not represent and has not represented one of the parties to the present appeal in another proceeding involving similar issue.

STATEMENT OF INTEREST OF AMICUS CURIAE

Dr Yuill is writing as an interested party. An atheist, he has written about the issue of assisted suicide/assisted dying for more than 25 years. He is a historian of ideas but also participates in ethical discussions and debates on this issue. His 2013 book, *Assisted Suicide: The Liberal, Humanist Case Against Legalization*, was cited in the Dutch government's Schnabel Committee's decision not to extend euthanasia to all people who are 75 and over. (Completed life: About assisted suicide for people who consider their lives complete) and in the American College of Physicians' position paper on Physician-Assisted Suicide, amongst other publications. His recent publications on the issue include "Suicide versus Euthanasia in the American press in the 1890s: 'A man should be permitted to go out of this world when he sees fit,'" "Een liberale, humanistische kritiek op een 'voltooid leven'-wet" ["A liberal, humanist critique of a 'completed life'-law," and "The unfreedom of assisted suicide: How the right to die undermines autonomy."

Dr Yuill hopes to bring an international and historical context to the discussion and to draw attention to the moral quagmire of legalizing assisted suicide/ dying.

SUMMARY OF ARGUMENT

For atheists, God may not ultimately determine when a person lives and dies. But neither is it desirable for the state to have such powers. In some rare – and becoming rarer – and invidious circumstances, a doctor acting to end the life of a patient can and should be tolerated. The harm is in the institutionalization of MAID, in making assisting a suicide a general rule. The court was correct in its rejection of the plaintiff's case in 2020.

MAID or, more accurately, assisted suicide, can never be implemented in a safe and limited way. It inappropriately values an individual's life by the length of time left to live, by the nature of afflictions limiting that life, and by the assessment of the individual themselves of the value of continued existence.

I will focus on four points.

The first is that **medical assistance in dying (MAID) is suicide**. The case for legal MAID in the United States rests upon an idea that terminal illness creates a unique moral situation whereby death is a better option than continued life and, therefore, that suicide is not the proper designation for the act of self-destruction. Proponents of MAID disingenuously argue that those who ingest deadly poison with an intent to die, if they have the approval of a doctor, are not suicides at all. This is an Orwellian corruption of our language and an attack on our obligation to prevent suicides.

There is no reason why the Commonwealth's interest in protection of its citizens should end simply because they are ill or because they have limited time left and

see no value in their lives. A prognosis of six months is arbitrary in relation to unbearable suffering. Each of us will die; determining the value of continued existence by how much time we have left is illogical and inaccurate. Allowing an exception to suicide prevention programs undermines them as well as the Commonwealth's protection of its citizens.

Nor can the arbitrary line of six-months-to-live hold. While the original limits stipulated in Oregon's legislation allowing assisted suicide remain, if a critical mass of states allow Medical Aid in Dying for the terminally ill, pressure will mount for more who suffer – determined subjectively, rather than by medical professionals – to be allowed this treatment. Every *nation* so far that has changed the law has extended eligible categories within ten years of legalizing MAID.

Second, **legalizing MAID would be harmful to equality**, precisely because it will divide the people of Massachusetts into two groups, one of which will benefit from efforts to prevent suicide and the other whose suicide will be tacitly encouraged and assisted. All will agree that the Commonwealth has an interest in equal protection of human life in law. This principle is reflected in homicide laws in Massachusetts and throughout the world. Taking the life of an 86-year-old man who does not value his life is no less wicked than killing a 24-year-old woman who loves her life. Why would this be different for suicide? Granting the right to die to some and not to others on the basis of "unbearable suffering" is arbitrary, unfair, and inherently unequal.

Third, **the liberty of citizens of Massachusetts is threatened by legalizing assisted dying**. For the atheist, suicide may be a rational act for an individual. The decision "to be or not to be" is a deeply private and individual decision rather than one that can be assessed and pronounced upon by doctors. Rather than liberating the individual, MAID would make the state the arbiter of the decision of whether to live or die.

The plaintiff's case rests heavily upon the idea that there is no meaningful distinction between MAID and other end-of-life options. By blurring the line between a deliberate action by a patient to end her life with the help of a doctor and important freedoms of citizens to refuse treatment and of physicians to end treatment they see as futile, MAID threatens these freedoms. If there is no meaningful distinction between MAID and other end of life options, as the plaintiffs insist, why should there be a meaningful distinction between MAID and euthanasia, where the doctor takes the final action?

Again because of this division, the Commonwealth may, if MAID is legalized, force those it believes should not die to live against their wills, removing their freedoms. Carter I[1] erroneously distinguished between a "mature adult" suffering from a terminal illness and Conrad Roy, who was 18 at the time of his death. Though it protests otherwise, MAID imposes a paternalistic attitude whereby the state determines who lives and who dies.

[1] *Commonwealth v. Carter*, 474 Mass. 624, 52 N.E.3d 1054 (2016).

Fourth, it is, as history shows, **dangerous to assess the value of human lives based on physical criteria**. The history of the euthanasia movement shows the undoubtedly genuine compassion expressed by those advocating euthanasia and MAID is twinned with a frighteningly utilitarian and technical view of humanity that seeks to streamline society and make it more efficient. Euthanasia springs from the same mistaken worldview as eugenics and 'racial hygiene'.

MEDICAL AID IN DYING IS SUICIDE

Many proponents of MAID insist that aid in dying is not suicide.[2] Yet MAID implies assisted *suicide* in the United States. The Netherlands, where both euthanasia and assisted suicide are legal, has no qualms about using the term suicide in order to distinguish the two acts. It would be an entirely new definition of suicide that does not include ingesting poison with intent to die, even if a doctor approves and prescribes the deadly drug.

Do the terms 'assisted dying' or MAID help public understanding? In fact, evidence shows that their murkiness confuse the public. In a 2017 poll, New Zealanders were asked whether the term included turning off life support, the stopping of medical tests, treatment and surgeries, making a 'Do Not Resuscitate' (DNR) request, stopping food and/or fluids, or receiving as much medication as needed to treat pain and other symptoms – all of which are currently legal. 66 percent thought it did include turning off life support, 51 percent imagined stopping all medical treatment was assisted dying, 59 percent thought DNR requests were assisted dying, 46 percent stopping food and drink, and 51 percent pain treatment.[3] When considering that the majority of Americans support 'assisted dying' it is useful to bear this in mind.

---

[2] The leading US organization for legalization, Compassion and Choices, which used to be the Hemlock Society, states: "Physician-assisted suicide, suicide, and euthanasia are often terms that popular media and our opposition use to describe the practice of medical aid in dying. This is misleading and factually incorrect." In 2006, Oregon, which legalized assisted suicide in 1997, removed all reference to suicide in its legislation in 2005. A judge in Washington refused to allow the term 'assisted suicide' on Washington State's Death with Dignity Act ballot measure in 2008, saying that suicide is a "loaded" term.

[3] https://euthanasiadebate.org.nz/wp-content/uploads/2018/06/Euthanasia-Poll-Results-November-2017.pdf

The term MAID is overly broad and lacks specificity. Capital punishment is, in a sense, "assisted dying" or "medical assistance in dying" in states where a doctor must attend the execution. Moreover, terminology for the same set of actions varies from place to place. Whereas in Canada, an assisted death is normally accomplished by the doctor, the more accurate term assisted suicide continues to be used in the Netherlands to delineate between who takes the final action – doctor (euthanasia) or patient (assisted suicide or *hulp bij zelfdoding*). In Switzerland, where assisted suicide has been legal since the 1940s, it is referred to as such in current legislation. Despite protests that what Switzerland does is very different than MAID, the majority of assisted suicides take place because of terminal illnesses.[4]

MAID is a euphemism. Rather than dying, many will say "passed away" or "fell asleep" to shield themselves from the awful reality. Someone ingesting deadly poison with the intent to die who has, in the assessment of a doctor, five months to live, is, in the eyes of most people, a suicide, just as much as is someone who ingests deadly poison with the intent to die with seven months to live, or as is someone who kills themselves using a different method.

It is necessary to question the term "dying" used by proponents of MAID. "Dying" is our word for the particular way a person lives as life approaches cessation. It is as individual as the rest of a person's life just as it is our universal fate. It is difficult to justify separating this part of life from the rest, particularly in our

[4] Christine Bartsch, Karin Landolt, Anita Ristic, Thomas Reisch, and Vladeta Ajdacic-Gross, 'An Analysis of Death Records From Swiss Institutes of Forensic Medicine' *Dtsch Arztebl Int*. 116(33-34) (2019): 545–552.https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6794705/

obligation not to do violence to ourselves or others. Rather than seeing dying in holistic or existential terms, as the last phase of life, MAID reduces it to a medical option.

ASSISTED DYING WOULD INSTITUTIONALIZE INEQUALITY

The justification for MAID is the idea that someone with a terminal prognosis suffers in a unique way that means she is excused from the normal prohibition against doing violence to ourselves or others. The Commonwealth of Massachusetts, as is universally acknowledged, is entrusted with protecting human lives. Dividing the population between those for whom suicide is seen as a deeply undesirable act that the community is bound to prevent, and the "dying." whose lives are judged to be of less worth, creates an invidious inequality.

We can see the value of human life – and the strong prohibition against taking a life – reflected in homicide laws. The law does not differentiate between lives of victims. Whether rich or poor, black or white, young or old, the protection of homicide laws is for all. Why should this be different for suicide? Common law ensures equal protection for all lives. Changing the law on MAID would separate out those with less time left to live but it would not be acceptable to have differential sentences based on the age and health of the victim. There is no differentiation between homicide victims in relation to sentences. Nor is consent any defense of murder. Mass. Gen. Laws Chapter 265 § Section 3 ensures that

those inflicting a mortal wound in a duel where both parties had agreed to duel will be tried for murder.

Yet MAID would institute differential assessments of the value of the lives of the victims of suicide. This is not equal protection of the law. As Chief Justice Rehnquist noted in *Washington v. Glucksberg*, argued that despite the decriminalization of suicide, banning "assisted suicide" was "rationally related to legitimate government interests" (Ref. 4, p 728). Such interests include the preservation of human life and the promotion of suicide prevention, especially among vulnerable at-risk groups: the young, the elderly, the terminally ill, and the mentally ill.

It would be wrong to sentence those assisting or aiding a suicide based on the length of life left and the consent of the victim. Nor are doctors uniquely qualified to make judgements about whether or not a patient has an interest in continuing to live. Physicians are specialists in their fields and must make prognoses based on the progress of a physical illness. But, unless they are intimately acquainted with someone who requests MAID, they cannot judge the value of the life they are about to help to end.

LEGALIZED ASSISTED DYING THREATENS LIBERTY

Legalizing MAID would threaten the liberty of citizens. There are coercive implications to MAID. This is ironic, given that Counts III and IV of the

Plaintiff's case allege that applying common law manslaughter to such a physician impermissibly restricts a patient's constitutional right to privacy "by interfering with [their] basic autonomy in deciding how to confront their own mortality and choose their own destiny."

The plaintiff's case rests heavily upon the idea that there is no meaningful distinction between MAID and other end-of-life options. By blurring the line between a deliberate action by a patient to end her life with the help of a doctor and important freedoms of citizens to refuse treatment and of physicians to end treatment they see as futile, MAID threatens these freedoms. If there is no meaningful distinction between MAID and other end of life options, as the plaintiffs insist, why should there be a meaningful distinction between MAID and euthanasia, where the doctor takes the final action?

More importantly, this blurring of lines between deliberate interference by a doctor, as MAID is, and the exercise of freedoms threatens the right of all competent adults to refuse medical treatment as well as the right of doctors to discontinue medical treatment that they see as futile. It leaves the decision of whether an individual should live or die in the hands of two physicians rather than with the individual herself. Though the state has an interest in preventing suicide, it only has interest in preventing an individual from violence; in the absence of specific actions, the state may not interfere with the possession of private preferences. If a competent adult refuses food and water or medical treatment, the state should not interfere.

The SJC was in error in distinguishing between Conrad Roy and a "mature adult" with a terminal illness and a settled wish to die. All adults must have equally fulsome rights. A case in the UK indicates the dangers to liberty of entrusting the state with the decision about whether a person should live or die. "E" – a 32-year-old woman from Wales suffering from anorexia nervosa, alcoholism and other complaints – had requested, with the support of her parents, that her feeding tubes be removed. She was put on the "end of life pathway at a community hospital. However, a request from a local authority appealed to the Cout of Protection to intervene for her protection. Justice Peter Jackson stated that E was "not a child or a very young adult, but an intelligent and articulate woman and the weight given to her view of life is correspondingly greater" but justified his decision to force-feed E by saying that she was "a special person whose life is of value. She does not see it that way but she may in future. It is lawful and in her best interests for her to be force-fed if necessary."[5] It is not so much the specific law involved – MAID in all its forms remains illegal throughout the UK – but the fact that Jackson's justification was based on a differential assessment of human life dependent upon her future is surely significant.

Legalization will subject the choice to strict criteria by insisting that the decision to die is validated by the state. The state — rather than the individual — is then the "final judge," to use John Stuart Mill's term, of whether a person lives or

[5] http://www.bailii.org/ew/cases/EWHC/COP/2012/1639.html

dies.[6] Replacing the option of causing our own deaths with the option of assisted death means that our private inclinations and preferences are continually tested by officialdom.

MAID: LESSONS FROM HISTORY

The history of mercy killing and voluntary euthanasia indicates that there are two essential justifications for euthanasia and MAID, if we discount autonomy and the "right to die" which, as indicated above, is illusory because of the necessity of doctors to the process. The first is a genuine and often-deeply felt sense of compassion for those who are suffering at the end of life. The other, which has been present from the very first and is still in the background today, is utility. The resources used in prolonging the lives of those who do not value them might be better used elsewhere.

This concern with saving resources has been at the heart of arguments for assisted dying since they were first heard. A glance at the history of the euthanasia movement indicates that there is no real relationship with ancient societies. "Euthanasia," of course, literally means "good death" but in ancient

[6] "Considerations to aid his judgment, exhortations to strengthen his will, may be offered to him, even obtruded on him, by others; but he himself is the final judge. All errors which he is likely to commit against advice and warning, are far outweighed by the evil of allowing others to constrain him to what they deem his good." John Stuart Mill, *On Liberty* (London: Longman, Roberts, & Green Co., 1869), 68. Famously, Mill argued obliquely against allowing suicide when he discussed the non-permissibility of selling oneself into slavery:

> Considerations to aid his judgment, exhortations to strengthen his will, may be offered to him, even obtruded on him, by others; but he himself is the final judge. All errors which he is likely to commit against advice and warning, are far outweighed by the evil of allowing others to constrain him to what they deem his good. (189)

societies there were no connotations of mercy killing. Rather, there was a broader conception of dying well that often referenced a good life preceding the death. As Anthon Van Hoof has argued, there was no involvement by doctors in a good death in classical societies.[7]

Only in the nineteenth century did a modern conception of euthanasia emerge as part of an attempt to rationalise society and apply scientific methods to what had been natural or moral problems. Closely related to eugenics – which, of course, means good birth – euthanasia, which later developed into "voluntary euthanasia," then "assisted suicide," and finally MAID, ended lives inconvenient to the dying person but also to the rest of us. Rather than leave God or fate to determine when people died, science, in the interests of the dying and wider society, could rationalise the process.

Samuel D. Williams first called for euthanasia in its meaning of mercy killing in a paper given to the Birmingham Speculative Club and published in 1870. He suggested that people facing grim ends could be chloroformed but his compassion was accompanied by utilitarian concerns: "Why, it must be asked again, should all this unnecessary suffering be endured? The patient desires to die; his life can no longer be of use to others…" Williams also noted that not all who suffered

[7] See Anton J. L. Van Hooff, 'Good Death and the Doctor in the Graeco-Roman World', *Social Science & Medicine* Volume 58, Issue 5 (March 2004), 975-985.

should receive euthanasia: "But of other suicide than this no defense is offered here."[8]

Some freethinkers did think there was a *right* to die. The famous secularist Robert Ingersoll, who published a pamphlet in 1894 entitled *Is Suicide a Sin?*, answering with a resounding "no," called attention to a dilemma: "So I insist that the man being eaten by the cancer—a burden to himself and others, useless in every way—has the right to end his pain and pass through happy sleep to dreamless rest."[9] Yet neither he nor anyone else at the time ever imagined that suicide – a solo act – ever should be or needed to be assisted. Chief Justice of California, William H. Beatty, agreed with Ingersoll in 1896 that existing law prohibiting suicide was wrong: "I think every man ought to be allowed to decide the question for himself whether he should take his own life." But he rejected aiding and abetting – now called "assisting" – a suicide: "I think it would be a crime for anyone to advise or encourage another to commit suicide."[10]

Only in the early part of the twentieth century did euthanasia become a serious proposition. In the United States, France, Great Britain and Germany, various legislative attempt to legalize euthanasia occurred, though none were successful. The scene was dominated by eugenics, a practical science and popular crusade.

---

[8] Samuel D. Williams, "Euthanasia" in Essays of the Birmingham Speculative Club (London: William Morley, 1874): 210-237, 216, 230.

[9] Robert Ingersoll, *The Works of Robert Ingersoll* (New York: Dresden Publishing Co., 1900), Vol, 4, 389.

[10] Cited in Kevin Yuill 'A man should be permitted to go out of this world whenever he thinks fit." Suicide, euthanasia, and autonomy in the American press in the 1890s' *Journal of Policy History* (forthcoming).

While "Social Darwinism" implied that the fittest would survive if nature weeded out society's losers, eugenics favoured active intervention to assist natural selection. A crossover between racial hygiene, eugenics and euthanasia could be found in figures such as Ernst Haeckel in Germany. The aims were similar. As the zoologist Robby Kossmann expressed it at the end of the nineteenth century, the state "must reach an even higher state of perfection, if the possibility exists in it, through the destruction of the less well-endowed individual… The state only has an interest in preserving the more excellent life at the expense of the less excellent."[11]

The history of euthanasia often skips awkwardly over the infamous T4 Aktion programme, responsible for 70,000 deaths of mentally and physically disabled patients. Of course, no one should infer that campaigners today – who are, in general, sincerely compassionate in their motivations – bear any relation to the cold and brutal killers who murdered so many 80 years ago. But neither should we view the T4 Aktion programme as entirely separate from euthanasia and MAID campaigns before and since.

First, euthanasia was proposed before the organization of the National Socialist Party. In 1913 Roland Gerkan, who was dying at the time, suggested in a petition to the German parliament that those in his situation should be dispatched by a physician. He insisted that it be voluntary but insisted "examining doctors" should determine whether or not "the patient would recover

[11] Cited in Richard Weikart, 'Darwinism and Death: Devaluing Human Life in Germany 1859-1920', *Journal of the History of Ideas*, Vol. 63, No. 2 (Apr., 2002), pp. 323-344, 330.

permanent ability to work." He further noted that euthanasia should be "equally applicable to the elderly and crippled."[12]

In 1920 Karl Binding and Alfred Hoche published the pamphlet "Permitting the Destruction of Life Unworthy of Living." In it they argued that "there are indeed human lives in whose continued preservation all rational interest has permanently vanished." Binding and Hoche thought that euthanasia "must always be joined by the longing for death or the acquiescence to it."[13] Nor were these sentiments restricted to Nazis during the Third Reich. Psychiatrist and neurologist Robert Gaupp – remembered for his principled defense of a man with Jewish associations in opposition to the Nuremburg Laws in 1935 – spoke of mentally disabled people when he said that it was time to remove "the burden of the parasites."[14]

These sentiments were not restricted to Germany. In the United States, supporters of euthanasia were vocal. "Our puny sentimentalism has caused us to forget that a human life is sacred only when it may be of some use to itself and to the world," said the famous deaf, dumb and blind woman, Helen Keller.[15] In the

[12] Cited in Michael Burleigh, *Death and Deliverance: 'Euthanasia' in Germany, 1900-1945* (Cambridge: Cambridge Uni Press, 1994), 13-14.
[13] Karl Binding and Alfred Hoche, tr. Thomas Dunlop, 'Permitting the Destruction of Life Unworthy of Living' (Die Freigabe der Vernichtung lebensunwerten Lebens: Ihr Maß und ihre Form) (1920), in Anneliese Hochmuth, *Spurensuche: Eugenik, Sterilisation, Patientenmorde und die v. Bodelschwinghschen Anstalten Bethel 1929-1945*, edited by Matthias Benad in conjunction with Wolf Kätzner and Eberhad Warns. Bielefeld: Bethel-Verlag, 1997, pp. 179-86.
[14] Burleigh, *Death and Deliverance*, 37.
[15] Cited in Martin S. Pernick, *The Black Stork: Eugenics and the Death Of "Defective" Babies in American Medicine and Motion Pictures since 1915* (New York: Oxford University Press, 1996), 92.

early years of the twentieth century, Dr Ella K. Dearborn cheerfully called for "euthanasia for the incurably ill, insane, criminals, and degenerates."[16] In the UK in 1931 Sir James Purves-Stewart, a physician at Westminster Hospital and future member of the Voluntary Euthanasia Legislation Society – the forerunner of the British proponents of MAID, Dignity in Dying, enjoined his countrymen to give euthanasia "most serious consideration" because of "a grave menace to the future of the state" and "race." Another prominent member, psychiatrist and eugenicist A. F. Tredgold, told the British Medical Journal that euthanasia should "also be extended to include incurable low-grade defectives. It is true that these would be incapable of consent, but their inclusion would appear to be a logical sequence of the proposal."[17]

However, the exposition of Nazi atrocities associated with euthanasia whereby some 70,000 suffering from mental and physical deformities were eliminated forced a change in terminology. In 1950 the New Republic, a euthanasia proponent called for new expressions: "If we call these situations 'assisted suicide' rather than 'mercy killing,' the moral content would be considerably changed."[18] Assisted suicide, though, had to wait until the 1980s to enter common parlance.

---

[16] "Would slay criminals, insane, incurably ill, and degenerates: For the good of Society: famous women physicians offer some startling ideas," *Seattle Star*, August 24 1905, 3.

[17] Ian Dowbiggin, 'A Prey on Normal People': C. Killick Millard and the Euthanasia Movement in Great Britain, 1930-55' *Journal of Contemporary History*, Vol. 36, No. 1 (Jan., 2001), pp. 59-85, 69, 70.

[18] Cited in Thomas Q. Martin, "Euthanasia and Modern Morality: Their Moral Implications," The Jurist Vol. X (January-October, 1950), 437-464, 460, fn73

Today, of course, the campaign is restricted to asking for "assisted dying". But the same utilitarian concerns about resources lurk beneath the surface. in the Netherlands, where euthanasia and assisted suicide have been legal since 2001, mainstream political parties have expressed support for the Completed Life Initiative, based on a campaign in 2010 campaign that boasted 117000 supporters, promises euthanasia for those over the age of 74 who are "tired of life". That this age group is the least productive in society is surely important. The widespread use of quality-adjusted life years (QALYs) reflects an attempt to rationalize resources and proves a useful approximation when it comes to comparing the benefit of life-extending drugs versus the cost to a health system. However, proponents of assisted suicide seek to employ "negative" QALY measurements to assert that human lives in certain conditions are not worth living. As two researchers argue, "denying access to assisted dying means that patients remain alive (against their wishes), and this can often necessitate considerable consumption of resources."[19]

CONCLUSION

It is necessary to undertake deeper exploration of some of the assumptions behind the campaign for assisted dying. Legalizing assisted dying cannot be regarded as a small and simple step to bring relief to a very few. It is a dramatic

[19] David Shaw and Alec Morton, 'Counting the Cost of Denying Assisted Dying', *Clinical Ethics,* (March 10, 2020), 7. A QALY is a measure of health which involves multiplying the time in a health state by a factor which represents the quality of life experienced in that state of health.

step that regulates the most intimate and private decision – whether to be or not to be – limiting it to those whose existences are judged to be negative by virtue of their physical, or sometimes mental, condition. It is harmful to the most important precepts of humanists – liberty, fraternity and equality. Rather than seeing the debate in the simplistic terms of outdated religious precepts versus secularism, we should analyse the value of so-called Christian precepts such as Thou Shalt Not Kill before we jettison them entirely.

The hope of this brief is to give context to the immensely important decisions being made by the court in relation to MAID. It has shown how to regard MAID as anything other than the fulfilment of a suicidal wish of a patient is to misuse the English language. It has shown how the equal regard for the lives of victims reflected in our homicide laws is threatened by MAID's creation of two tiers of society – those who qualify for assistance in suicide and those for whom strenuous efforts are employed to prevent their suicide. The brief argued that by blurring the lines between deliberately taking a life and discontinuing treatment, important freedoms are threatened. Finally, the brief traced the history of MAID back to the nineteenth century, showing that the utility of human life – not autonomy or choice – dictated who was eligible for death as medical treatment and who was not.

As H. L. Mencken noted, "there is always a well-known solution to every human problem—neat, plausible, and wrong."[20]

[20] H. L. Mencken, *Prejudices: Second Series* (New York Alfred A. Knopf, 1920), 155.

Respectfully submitted,

DR. KEVIN YUILL
UNIVERSITY OF SUNDERLAND
SUNDERLAND SR6 0DD
UNITED KINGDOM
+447950758713
Kevin.yuill@sunderland.ac.uk

Dated: February 16th, 2022