A Philosophical Examination of the English Laws Relating to Assisted Suicide: Resurrecting Emotion

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Abstract

Happiness is the meaning and the purpose of life; the whole aim and end of human existence.[1] *This study seeks to jurisprudentially analyse the statutory English laws relating to assisted suicide, so as to advance a justifiable re-articulation of their moral framework. Currently based on emotionless principles, that framework necessarily denies ethics. Particular attention is paid to a conceptual study of assisted suicide and particularly the notion of 'assistance'. This analysis is made against a background of the traditional Natural Law, which is supported as the correct, albeit under-developed legal theory defining the scope and logic of English suicide laws. Knowledge and reason jointly constitute the correct yardstick by which morality and therefore justice in this area should be measured; not solely the latter. The re-articulation of this framework shall be primarily achieved by resurrecting human emotions through a study of fine art, supported by English common law developments so as to distinguish various extra-jurisdictional anomalies. It shall be concluded that the laws in this area, as they are currently enacted, are immoral and therefore unjust and legalisation through Parliament (with the necessary safeguards) is justifiable in the eyes of the traditional Natural Lawyer.*

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[1] Aristotle, *Nicomachean Ethics* (Sarah Broadie and Christopher Rowe eds, Oxford University Press 2002) Book I

Introduction

As humans we are emotional and rational beings. I also concede that we can value emotions. A 'right valuing' of emotions can say 'I want to die' and the humane response is to help me. I would not want to suffer. How dare Professor Finnis compel me to suffer because he has a religious belief and it is good for my (non-existent) immortal soul?[2]

As it is currently enacted, s 2(1) of the Suicide Act 1961 provides that it is a criminal offence in England and Wales to 'aid, abet, counsel, or procure the suicide of another', despite the fact that the previous law, whereby suicide itself was a crime, has been abrogated.[3] It is suggested that this rather illogical concept of *illegality* in assisting an essentially *legal* act is what breeds recurring questions and doubts as to the morality and ethics in this area of law. The statutory prohibition is a hard and fast rule, permitting no manoeuvre on grounds of compassion, sympathy or love, in allowing one to assist in the dignified death of an individual seeking it, at a time before living becomes unbearable. The most a desperate Briton can do in pursuance of their liberty and right of self-determination in having their family or friends assist in ending their suffering is to flee to the ironically named *Dignitas Clinic*[4] in Switzerland,[5] to obtain anything other than a dignified departure from this life. At best, a loved one might accompany their friend or relative on their

[2] Statement by Professor Robert A Watt (Personal email correspondence 24 January 2013)

[3] The Suicide Act 1961, s 1

[4] <http://www.dignitas.ch/> accessed 1 May 2013

[5] And, most recently, in Germany, see <http://assisted-dying.org/blog/2007/06/24/swiss-dignitas-expands-to-germany/> accessed 1 May 2013

final journey, only to face an uncertain and inconsistent body of case law on their return, which may or may not incarcerate them.[6] At worst, said Briton will continue to suffer the unimaginable horrors of tragic conditions such as locked-in syndrome[7] or Progressive Multiple Sclerosis,[8] only to succumb to a painful, humiliating death. The question begged is why, in a society so apparently concerned for human rights, might an individual be permitted by law to take their own life but their assistant be legally implicated for as little as acquiescing to their final request to help them 'take the exit they don't have the means to go through by themselves'?[9]

The issue, as is so often the case, is a great deal more than that publicised in the media; the sanctity of life versus personal autonomy dichotomy. Whilst it is acknowledged that religious and freedom of choice arguments dominate the public arena,[10] it is the foundation of these rules, the heart of the *legal framework* itself prohibiting assisted suicide which is the culprit. Legislators have failed to take their time.[11]

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[6] *R (Purdy) v. DPP* [2009] UKHL 45 (*Purdy*). See <http://www.dignityindying.org.uk/personal-stories/uk/yorkshire-the-humber/bradford/debbie-purdy-story-7.html> accessed 1 May 2013

[7] *R (on the application of Nicklinson) v. Ministry of Justice*) [2012] EWHC 2381 (Admin) (*Nicklinson*). For insight into the enduring suffering of this illness, see Nicklinson's reaction to the High Court's verdict: <http://www.independent.co.uk/news/uk/home-news/lockedin-syndrome-sufferers-lose-legal-challenge-over-assisted-dying-8053451.html> accessed 1 May 2013

[8] *Purdy* [2008] UKHL 45

[9] Julian Baggini, 'Individuals? Or members of society?', *The Independent* (17 August 2012)

[10] Though see the apparent shift in certain religious attitudes: 'Assisted Suicide Supported by Religious Britons', BBC News (1 May 2013) < http://www.bbc.co.uk/news/uk-22362736> accessed 1 May 2013

[11] Taking time to conceptually analyse the criminal sanctions prohibiting assisted suicide through both linguistic and artistic philosophy is required. These concepts are discussed in Parts 2 and 3.

In an attempt to alter the UK's inherently divine, Natural Law framework, right-to-die campaigns such as Demos[12] have littered our press over recent years in advocating their preferred 'mechanisms of legal change':[13] compassion, dignity and autonomy (to mention a few). It could even be said that public opinion is becoming more sympathetic to the idea of assisting suicide in light of recent media contributions such as 'Way to Go'[14] and the Oscar-winning 'Amour'.[15] Additionally, there has been growing support for movements such as Lord Falconer's Commission on Assisted Dying.[16] However, in spite of these attitudes, we have yet to see any definitive changes to the English laws in this area, so as to halt what can only be described as a deteriorating respect for the value of human life.[17]

This paper will initiate its philosophical exploration of the laws prohibiting assisted suicide by establishing, as far as possible, what the legal understanding of notional 'assistance' is. This will be followed by a critical examination of these laws through the traditional and stoic Natural Law as advocated by St Thomas Aquinas.[18] Whilst this will reveal an indestructible resistance to the *justification* of laws permitting assisted suicide (confirming

[12] See <http://www.demos.co.uk/projects/commissiononassisteddying> accessed 1 May 2013

[13] Penney Lewis, *Assisted Dying and Legal Change* (Oxford University Press 2007)

[14] BBC 3 Comedy series, first broadcast January-February 2013.

[15] 'Armour', directed by Michael Haneke (2012). See <http://www.guardian.co.uk/film/2012/nov/04/michael-haneke-amour-director-interview> accessed 1 May 2013

[16] The British Humanist Association <http://humanism.org.uk/campaigns/public-ethical-issues/assisted-dying/> accessed 1 May 2013

[17] William Wagner, John S Kane and Lauren Prieb, 'How Suicide Killing of Human Life Became a Human Right In the United Kingdom', *Christian Concern* (19 October 2010) 4 <http://www.christianconcern.com/sites/default/files/docs/Assisted_Killing_Pamphlet.pdf> accessed 1 May 2013

[18] 1225 – 1274 AD

the inherent Natural foundation of our jurisdiction), further discussion will sideline this error of logic by articulating a requirement of knowledge over reason in a quest for true morality; that is, humanity's true goal of 'happiness' as advanced by Aristotle.[19] This will be most usefully facilitated by an exploration of two paintings by Poussin:[20] *Landscape with a Storm* (1651) and *Landscape with Pyramus and Thisbe* (1651), in an effort to extract the plausibility of emotion as a by-product of knowledge within the Natural Law, in agreement with Watt.[21] Moving onto a study of the common law courts' treatment and interpretation of the Suicide Act, the presence of such emotion (as subtle as is it may be) will serve to expound a theory of our current legal system which, as will be concluded, *can* be reformulated (and which, incidentally, is already being seen to be done) so as to satisfy the traditional Natural Lawyer on points of morality, whilst maintaining a necessary and obligatory *ought* in legalising assisted suicide.

This paper's brief linguistic study of notional 'assistance' and artistic investigation of emotion provide an alternate view of the Natural Lawyer in the ongoing debate surrounding assisted suicide. This paper may make you cry. Lawyers should cry – it helps us recognise wickedness. Herr Eichmann behaved perfectly rationally when drawing up his timetables – when we think

[19] Aristotle, *Nicomachean Ethics* (n1)

[20] 1594 – 1665 AD

[21] Robert A Watt, 'To Everything There is a Season and a Time To Every Purpose Under the Heaven – A Time to be Born and a Time to Die: Natural Law, Emotion and the Right to Die' (2012) 24 DLJ 89

of the innocent Jews and gypsies murdered by this foul man all we can do is weep. That is the healthy response.[22]

The Notion of 'Assistance': A Jurisprudential Enquiry

When one commits (or attempts to commit) suicide, there is no consequence under the criminal law of England and Wales. This is not to say that other rules of law will not be engaged, such as those relating to the mental health services for example,[23] but it remains that an individual who has attempted suicide will be free to continue life (or not as it may be) as they choose. How then does the law justify a criminal sanction for the 'assistance' of an otherwise legal act? The answer must surely lie in how assistance is legally defined and how it has been interpreted since its introduction into English law. Before addressing these issues however, it is imperative to immediately establish the difference in England and Wales between 'assisted suicide' and 'euthanasia' for the avoidance of any confusion[24] and to clarify that this paper advocates only the former.[25]

For reasons of brevity, it will suffice to say that euthanasia is legally understood in two forms: active euthanasia constituting a doctor's positive and deliberate act of bringing about a patient's death (such as injecting a deathly substance)[26] and passive euthanasia requiring the withdrawal or withholding of treatment such as a life support system from one in a

[22] Watt (Personal email correspondence) (n2)

[23] Notably sectioning: under ss 2 or 3 of the Mental Health Act 2007

[24] Many academic opinions from outside our jurisdiction refer to 'assisted suicide' but not as it is defined in English law

[25] Though the author in fact advocates euthanasia, it rests outside the ambit of this paper

[26] *R v Cox (*1992) 12 BMLR 38

persistent vegetative state (PVS).[27] This paper neither advocates nor condemns such action or inaction. At the other end of the spectrum we find 'assisted suicide' which necessarily precludes any act of an individual in killing the victim; one acts only to aid, abet, counsel or procure[28] the suicide of another (which, incidentally, may be constituted by an omission).[29] The confusion between this and euthanasia is most commonly found in the branding of active euthanasia as 'physician-assisted suicide' (PAS) in jurisdictions such as the Netherlands[30] and the USA,[31] which tends to misrepresent the English use of the term 'assisted'.[32] In summary, the notion of 'assistance' in English suicide laws (and English laws in general which denote secondary liability) is essentially a doctrine of omission rather than action; punishment for failing to prevent an act, *per se*.[33] It is noted that though 'assistance' does not appear in the Suicide Act 1961, it is loosely used in the legal sector to connote 'complicity' (per s 2 of the Act).[34] The Law

[27] *Airdale NHS Trust v Bland* [1993] 1 All ER 821

[28] The Suicide Act 1961, s 1

[29] See below

[30] For a descriptive account of the Dutch laws in this area, see Hilde Buiting et al, 'Reporting of Euthanasia and Physician-Assisted Suicide in the Netherlands: Descriptive Study' (2009) 10(18) BMC Medical Ethics

[31] Most notably Oregon, see E Dahl and N Levy, 'The Case for Physician Assisted Suicide: How Can it Possibly be Proven?' (2006) 32 Journal of Medical Ethics 335

[32] Though note the reference to both 'assisted suicide' and 'euthanasia' generally as a 'right to die' as noted in Watt, 'To Everything There is a Season' (n 21). PAS relating to preparation/prescription of medication is correctly labelled 'assisted suicide' in English law, though this is less often the case than that involving withdrawal of life-sustaining treatment.

[33] For a comprehensive and international view on 'aiding and abetting', see Jason D Keck, 'The Demise of the Aiding-and-Abetting Law at The International Criminal Tribunal For the Former Yugoslavia: The Mens Rea' (2009) < http://ebookbrowse.com/jason-keck-aiding-and-abetting-paper-doc-d19973410> accessed 1 May 2013

[34] Hansard HL vol 469 cols 288-318 (December 1985); 'Memorandum from the Attorney General', House of Lords Select Committee on Assisted Dying for the Terminally Ill Bill (2004-05) <http://www.publications.parliament.uk/pa/ld200405/ldselect/ldasdy/86/5012004.htm> accessed 1 May 2013

Commission itself has been seen to accept the 'special nature of the offence of assisting suicide'[35] insofar as it treats the assistant who *aids* suicide as a principal rather than secondary party; a defiance of the general rule of secondary liability which first requires an illegal act to be perpetrated by the principal. It is useful for our purposes, therefore, to regard 'assisted' suicide as a misnomer according to the accepted rules on secondary liability.[36]

In pinpointing the origin of 'assistance', Blackstone's 18th century commentary serves somewhat in establishing a link with the modern laws on accessory liability: And it is likewise a rule; that he who in any wise commands or counsels another to commit an unlawful act,[37] is accessory to all that ensues upon that unlawful act.[38]

Whilst we see the use of 'counsel' up to 250 years ago in the context of commanding, instigating or 'assisting' a felon, it is here advocated that it is in fact through the development of the English laws on treason[39] that we begin to fully understand the historical use and interpretation of 'assistance' in a criminal setting. In his book written for Queen Ann,[40] Samuel Daniel explains the demise of Edward IV thus: '[t]hat the French King had in an insufferable fashion given an affront to the King of England, in aiding and abetting Queen

[35] Law Commission, *Inchoate Liability for Assisting and Encouraging Crime* (Law Com No 300 CM 6878, 2006) [B.6]

[36] See, generally, Accessories and Abettors Act 1861

[37] Though note the legality of suicide, as above

[38] William Blackstone, 'Of Principals and Accessories', *Commentaries on the Laws of England (1765-1769)* (Routledge Cavendish 2001) Book IV Chapter 3, para 2

[39] Traceable at least as far as the Roman law of *maiestatis crimen.* See RA Bauman, *The Crimen Maiestatis in the Roman Republic and Augustan Principate* (Witwatersrand UP 1967)

[40] Of Denmark, England, Ireland, Scotland and France (r: 1603 – 1625)

Margaret, and her traitorous accomplices, against him'.[41] Despite the fact that this direct reference to 'aid and abet' can, unfortunately, only be traced back to Daniel himself in around 1650, its usefulness remains twofold in advancing the connection of 'assistance' with treason: firstly, it frames the notion of aiding or assisting in a criminal context[42] (that of treason) and, secondly, links these notions to a modern understanding of accomplice liability; for one to be 'complicit',[43] as referenced in the 1961 Act. But this is an insufficient argument as to the definitive origin of 'assistance' and its jurisprudential development, not least because it emanates from a secondary source. Let us then see if we cannot strengthen the claim that notional 'assistance' in fact derives from English treason laws, and enquire to what end they were drafted.

We shall commence with a most insightful discovery: in Tudor English the verb 'to comfort', as derived from the Latin *fortis* (to 'strengthen'), was used to describe the treasonous crime of aiding or assisting the King's adversaries; to 'comfort the King's enemies'.[44] It is accepted that such 'comfort' encompassed any 'Preparations for the Commencement of Hostilities against the King'[45] and so it is clear that the term was intended to include all instances of aiding and abetting treason.[46] More accurately framed,

[41] Samuel Daniel, *The Collection of the History of England* (5th edn, F Leach Printing 1685) 205

[42] For a tortious comparison see Richard C Mason, 'Civil Liability for Aiding and Abetting' (2006) 61 The Business Lawyer 1135

[43] Both 'complicit' and 'accomplice' share lexical roots in the Latin *complice*

[44] John Lawson, *Introduction to Christian Doctrine* (Zondervan Publishing House 1986) 116

[45] Matthew Bacon and Sir Henry Gwilliam, *A New Abridgement of the Law: Alphabetically Digested under Proper Titles*, Vol 5 (6th edn, Luke White 1793) 123

[46] Lawson (n 44)

the first legislated use of 'aid and comfort' in the Treason Act 1351[47] categorises such action (or inaction) as: 'if a man do levy war against our Lord the King in his realm, or be adherent to the enemies of [said] King, giving to them aid or comfort...that ought to be adjudged treason.'[48] But to what end were these laws drafted? To protect the King and his court from harm? Undoubtedly. But to encompass such a multitude of possible actions and inactions as (inevitably) interpretable from terms as broad as 'aid and comfort' goes some distance further than merely preventing harm. Herein lies the answer to that question of ends, for it was, quite obviously, not only the death or injury of the King or Lords which was sought to be prevented by these treason laws, but the mere planning, encouraging[49] or, as King Alfred[50] himself codified, 'plot[ting] against the life of the King', even where it was only the plotting of the outlaws which the defendant knowingly harboured.[51] Synonymously, even our modern laws do not require the presence of an accessory when the principal commits the offence (or not, as established above for suicide). In the context of assisted suicide, this would render the compassionate defendant liable, for example, for preparing travel documents to Switzerland for the principal (who is unable to do so himself due to his

[47] Treason Act 1351, s II

[48] *The King v Casement* [1917] 1 K.B. 98, headnote

[49] Closely associated with 'procurement', perhaps most notoriously in the indictment of Anne Boleyn, which charged that she did 'procure by...kisses, touching, gifts...the King's servants to be her adulterers...and procured her own natural brother...[though] sometimes by his own procurement...': 15 May 1536, RO 876, Trial of Anne Boleyn and Lord Rochford, para 7 <http://www.british-history.ac.uk/report.aspx?compid=75430> accessed 1 May 2013. See also Law Commission, *Criminal Law: A Criminal Code for England and Wales* (Law Com No 177, 1989) Vol 1 [27]

[50] 849 – 899 AD

[51] 'The Laws of King Alfred (r 871 – 899)', S 4, ed and trans FL Attenborough, in *The Laws of the Earliest English Kings* (Russell & Russell Inc 1963) 65

crippling physical state) and absconding before the final deed (to put a crude point on it) is even done. With this in mind, it is surmised that the breadth of both those laws on treason and our current laws on assisted suicide, which criminalise mere 'assistance', can most appropriately be said to be directed towards common ends: the protection, at any and all lengths, of human life so that humans may flourish.[52] This end, it will be discovered below, is the most poignant constituent of our Divine and Natural legal order as established by the Eternal Law.

With the above information in mind, it is noted that a philosophical understanding and exploration of the notion of 'assistance' is likely the most useful opportunity we have of understanding this term in the context of assisted suicide. This is only supported by the fact that the legislature itself remains somewhat uncertain: In the draft paper we seek to define the elements of what is meant by 'aiding and abetting'. For present purposes it is probably sufficient to say that 'aid and abet' generally is considered to refer to assistance and encouragement given at the time of the offence, in this case at the time of the suicide or attempted suicide, and 'counsel or procure' usually refers more to advice and assistance given at an earlier stage. [53]

[52] '*Eudamonia*' according to Aristotle, *Politics*

[53] House of Lords Select Committee on Assisted Dying for the Terminally Ill Bill, Minutes of Evidence, Examination of Witnesses (Questions 2073) (20 January 2005) per Rt. Hon. Lord Goldsmith QC and Mr. David Perry

'Lex Iniusta non est Lex'[54]

Having stated that English suicide laws are founded on Divine Natural Law, let us now establish an evidentiary basis on which to explore how this foundation has influenced and continues to influence that notion of 'assistance' and prohibitions on suicide. What constitutes Natural Law and how does it shape our suicide laws?

The Latin maxim above, '[a]n unjust law is not law' (or, an unjust law *seems not* to be law),[55] articulates a charge through natural rights by asserting that whilst a citizen is obliged to obey just laws when in accordance with Plato's 'interest of the common weal of the whole state',[56] they are free to depart from an unjust regime based on the fact that its very nature (being unjust) renders it a mere 'feudality'.[57] Though understood as the basic foundation of the stoic natural lawyer's philosophy,[58] we require an elucidation of what is 'unjust' for the facilitation of our over-arching examination.

The most succinct formulation of the natural lawyer's position, offered by Cicero,[59] is his categorisation of 'higher' or 'just' law as true law in

[54] St. Augustine, *De libero arbitrio*, Book I, Vol. V

[55] Whether Aquinas incorrectly omitted 'to me' will not here be discussed but is duly noted. See Norman Kretzman, *Lex Inuista Non Est Lex, Laws on Trial in Aquinas' Court of Conscience* (1988) 33 AJJ 99, 101; Brian Bix, *Jurisprudence: Theory and Context* (6th edn, Sweet and Maxwell/Thompson Reuters 2012) 17

[56] Plato, *Laws*, Book IV, part 175b

[57] ibid

[58] Notably, see Kretzman (n 55)

[59] 106 BC – 43 BC

agreement with nature, as promulgated and judged by God.[60] St Thomas Aquinas goes further and provides a more insightful account of 'just': a higher 'Eternal Law' which operates through everything working in nature, and thus, through Natural Law itself. This Eternal, divine law is thus imprinted on us as human beings, as creatures of God[61]. Our internal, natural instinct to do good and avoid evil breeds the very principles of justice, which are a virtue discoverable by our intrinsic reason as rational beings:[62] 'This participation of the eternal law in the rational creature is called the natural law. It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law.'[63]

Thus, Natural Law is a result of the Eternal Law's participation within man *in essentialibus*, enabling us to discern virtuous good and evil through that inherent reason. Therefore, anything contradicting this Eternal Law, or which amounts to contingents which do not partake of reason,[64] is a perversion of the law[65] and therefore invalid. Such invalidity is and must be consistent with immorality, for good and evil are nothing if not the foundations of those moral principles inherent in man according to Aquinas.

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[60] Bix (n 55), referencing Cicero, *Republic* III.xxii.33, in *De Re Republica; De Legibus* (trans CW Keys, Harvard University Press 1928) 211

[61] Despite the often religious appearance of Aquinas's theory, acknowledgement is paid to the scholarly opinion that 'taken in itself, there is nothing religious or theological in the Natural Law of Aquinas': Thomas E Davitt, 'St. Thomas Aquinas and the Natural Law' in Arthur L Harding, (ed), *Origins of the Natural Law Tradition* (Southern Methodist University Press 1954) 39. The mistaken requirement of God in Aquinas's Natural Law Theory is perhaps best explained by John Finnis in *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011) 48-49

[62] Thomas Aquinas, *The Treatise on Law*, Question 93, Art 4

[63] ibid, Question 91, Art 2

[64] ibid, Question 93, Art 5

[65] ibid, Question 95, Art 2

Morality, those questions of good and bad, therefore permeate Aquinas' Natural Law and underpin our rational judgement of what is 'just' by presupposing that an immoral rule is also unjust; not a rule at all. We shall pause here to frame Aquinas' classic theory in context.

One of the most fundamental rules of natural law derived of human nature is that *thou shalt not kill.*[66] This murderous sin, prohibited by God when handed to Moses in the Ten Commandments, is embedded in the human conscience and is most certainly discerned as evil. Aquinas himself addresses it thus: Because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law.[67]

This basic reading of Aquinas quite clearly portrays that preservation of life or human flourishing is good and so we *ought* to preserve it. It is the moral content (inclination to good) of these laws, inherent in humanity, which determines that we ought to abstain from any acts threatening the preservation of life; that is, that *ought* moves us to such actions. This must certainly mean that we ought *not* move to action the extinguishment of human life, even where only 'assisting' such an act. Any law prohibiting such evil would thus be advocated by the traditional Natural Lawyer who would

[66] Exodus 20:13 (King James Version)

[67] Aquinas (n 62) Question 94, Art 2

there cease the discussion, and we would assume that he or she could never fathom the notion of assisted suicide.

Yet to accept that this Natural Law formulation is necessarily definitive would render this paper redundant. Rather, it is the purpose of this examination to gain further insight into the linguistic significance of 'ought' as well as 'good' in their moral context, as espoused by the (arguably) more progressive philosophers who will, to the satisfaction of those such as Watt,[68] evidence a somewhat more embracing and sympathetic approach towards assisted suicide laws. The importance of such insight is that it contributes to this discussion the idea that we are necessarily faced with a cardinal obligation to choose between the lesser of two (apparent) evils – that is, between allowing an undignified and often painful death and assisting a requested and 'justified' death – having necessarily dispelled any ideas of 'good' under Thomist theology in allowing an individual a right to die. It will be most useful to discuss both 'ought' and 'good' in tandem in this regard.

Before doing so, however, note should be taken of Professor Finnis' so-called 'new natural law theory',[69] despite the fact that this paper's focus is the traditional Thomist perception of Natural Law. Though often praised as a welcome modernisation of Aquinas' work, it is suggested that Finnis' contribution does little more than sub-divide that prominent 'good' of human flourishing into several 'basic human goods',[70] thereby producing a confusing

[68] 'To Everything There is a Season' (n 21)

[69] See, particularly, Russell Hittinger, *A Critique of the New Natural Law Theory* (University of Notre Dame Press 1989)

[70] Craig Paterson, 'Aquinas, Finnis and Non-Naturalism' in Craig Paterson and Matthew Pugh, *Analytical Thomism: Traditions in Dialogue* (Ashgate Publishing Ltd 2006) 176

array of preordained conclusions.[71] Moreover, these 'goods' he separates from 'moral values'.[72] This necessarily convolutes the ability to draw a sustained connection between 'ought' and 'good' due to the fact that 'basic goods' such as 'life' are necessarily separated from any 'moral value' which we would otherwise derive from the 'ought' under the traditional Natural Law. That connection between ought and good is arguably of lesser importance to Finnis; betraying the traditional Natural Law.

Moral Obligation: When Knowledge Trumps Reason

Though we need not be reminded, Hart indulges us with his observation that the moral content of Natural Law (inherently obliging us to do good) is an 'area of vagueness'.[73] This is nothing short of a euphemism when, in reality, our tendency to tar all issues remotely linked to morality with the same brush (that of controversy), serves only to shroud morality in complete mystery as an altogether 'taboo' area. This is most conveniently evidenced by apprehensive discussions of, or abstention altogether from debates which raise points as morally or ethically sensitive as racism, sexuality, abortion or, increasingly, a right to die. This is only exacerbated by the fact that these topics also exhibit some of the most powerful consensus in society![74] It is really of little surprise that we find such controversy here when moral precepts, if we accept Aquinas' view, appear to belong to the Natural Law in

[71] For Finnis' 'basic goods' see John Finnis, *Aquinas* (Oxford University Press 1998) 103-129

[72] Finnis, *Natural Law and Natural Rights* (n 61)

[73] Herbert LA Hart, *The Concept of Law* (2nd edn, Oxford University Press, 1994) 164

[74] Society is quicker to agree that allowing a person to die is always wrong, than to agree on the date that Queen Elizabeth I died!

different ways.[75] This is so based on Aquinas' distinction between those good morals which, by virtue of man's natural reason, are immediately recognisable as belonging to the Natural Law absolutely, and good morals which require further consideration, wisdom and Divine instruction in order to be deemed obligatory.[76] Let us pause here, for this is a contradiction in terms by the Saint who earlier opined that human nature is rooted in its ability to reason the good from the bad, and hence was in accordance with the natural order of things as laid down by the Eternal Law. To introduce the idea of 'wisdom' or cognitive ability to appreciate 'instruction' fractures that originally objective position of the Natural Law by injecting an element of subjectivity, and stirs something uncertain at the core of this 'higher' law. To clarify, both divisions of Thomas' 'good morals' maintain an obligatory 'ought', which moves us to action but, importantly, the difference between the two lies in the classification of 'good'; the first based on our natural instinct to reason, and the second influenced by wisdom and therefore knowledge. In effect, a 'good moral' (according to Aquinas) would be that we ought not to assist in the killing of another, as to do so would be absolutely morally wrong (as according to our inherent reason). One could go so far as to say that this is an analytic proposition instilled in us by the Eternal Law and, as such, has a true functionality by its very nature. Nothing more is required to discern such functionality.[77] Conversely, we can have a 'good moral' that we ought not to assist in the killing of another but in this instance based on the fact that our

[75] Aquinas (n 62) Question 100, Art 1

[76] ibid

[77] To be discussed below; analogous to the premise that 'all bachelors are unmarried men'

knowledge, our cognitive ability to consider such a moral (killing someone is bad), tells us so. Both examples, if we accept them, tell us that we ought not to assist in the killing of another because it would contradict the 'good moral' that obliges us not to.

Though this is acknowledged, the instant question is then, 'what if your knowledge, your ability to consider Divine instruction, differs from mine?' Indeed, such a conundrum advocates the existence of a subjectivity which the traditional Thomist theory of Natural Law refutes, yet which is advocated as a more realistic and welcomed approach towards an informed understanding of morality. This provides an opportunity of reformation or reinterpretation of the Stoic view as a theory based on something other than reason.

It should here be asserted that this is by no means the first paper to propose that the existence of knowledge necessarily influences the 'good morals' which move us to act as we do; indeed the idea is central to various Legal Positivist arguments,[78] but it is not a proposal commonly expressed through the jurisprudence of Natural Law.[79] Hume, for example, states that 'Moral distinctions, therefore, are not the offspring of reason. Reason is wholly inactive, and can never be the source of such an active principle as conscience, or sense of morals.'[80] Oh, how Cicero would turn in his grave to hear such blasphemy! Hume's correct statement, nonetheless, supports the plausibility of an articulation of knowledge over reason, in a quest for true

[78] Such as those of Hume and, interestingly, Aristotle

[79] Though note Professor Watt

[80] David Hume, *A Treatise of Human Nature* (Penguin Publishing 1985) Book III, I, I, 510

morality. With that being said, there would be little purpose to this paper if the only conclusion to draw is that Hume's Positivist account is the preferred legal theory over Natural Law, and our laws on assisted suicide should simply be based on positive law. On the contrary, this paper seeks to maintain that aspect of the Natural Law which permits the derivability of an obligatory *ought* from an *is*, in defiance of Hume: In every system of morality, which I have hitherto met with...I am surprised to find, that instead of the usual copulations of propositions, is, and is not, I meet with...an ought, or ought not. This change is imperceptible...and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceived by reason.[81]

Though applauded as a welcome objection to the premise that vice and virtue or justice are necessarily only perceived by reason, Hume's rejection of prescriptive statements of *ought* (in the context of moral conclusions) leaves us with the resounding question of whether 'good' is necessarily a virtue at all. This is so having accepted that 'good' as one regarding the goal of humanity: 'inasmuch as every substance seeks the preservation of its own being, according to its nature'.[82] For if a person can only find descriptive value in a virtue, even through their own experiences as Hume requires, we can only reasonably conclude that they have attained moral sense or moral evaluation of justice, not a concrete moral conclusion[83]

[81] ibid 335

[82] Aquinas (n 62) Question 94, Art 2

[83] Piotr Lichacz, 'Did St. Thomas Aquinas Justify the Transition from "Is" to "Ought"?' (2008) <http://ethesis.unifr.ch/theses/downloads.php?file=LichaczP.pdf > accessed 1 May 2013

as to what is in fact just. This cannot be correct. Put succinctly, Hume is correct in establishing that injustice/justice ('good' and therefore 'good morals') is not only discoverable through reason (that merely metaphysical essence), but can be based on more than mere relations of objects and reason. Yet he goes too far by insisting on the merely descriptive *is* which, by its very nature, forbids the valuing of facts, without which one cannot be moved to action. We are in need of a few examples if this summation is to be clearly understood. Hume insists that:

Premise A: Only a purely factual conclusion can be drawn from a purely factual 'is' statement.

Statement 1: There is a cat on the table.

Conclusion 1: We ought to call this a cat on the table.

Correctly, Hume insists that 'our sensations are strong and vivid'[84] and as such I am able to conclude, through the wonders of sight, that there is in fact a cat on the table. It is from the physical, factual impression of the cat on the table that I may derive the idea that a cat is there.[85] My sensory experience with both objects gives my conclusion validity as an intellectual representation.[86] Additionally, Hume is careful to insist on the need for causative experience in its entirety if we are to fully comprehend our senses, which enables us to draw a conclusion from it. He uses an admittedly powerful example: Let an object be presented to a man of ever so strong natural reason and abilities; if

[84] David Hume, 'Of the Origin of Ideas, Part I' in *An Enquiry Concerning Human Understanding* (2nd edn, Hackett Publishing Company 1993)

[85] Lichacz (n 83)

[86] ibid

that object be entirely new to him, he will not be able, by the most accurate examination of its sensible qualities, to discover any of its causes or effects. Adam, though his rational faculties be supposed...could not have inferred from the fluidity and transparency of water that it would suffocate him.[87]

Just as Adam could not draw the ultimate conclusion of drowning without a first physical experience, despite his sense of sight detailing the water, so too should I make a physical inspection of the cat. I could approach the cat and stroke it. If I have never seen a cat before I can at least now associate its purring or tendency to knead me with a cat as opposed to, for example, a small dog.

Though Hume's first premise initiates our understanding of his is/ought theory, his second premise is what attracts criticism:

Premise B: No moral obligatory conclusion can be draw from a purely factual premise.

Statement 2: God exists.

Conclusion 2: We ought to do good.

From my inherent reasoning as a Christian I hold that a) God exists, and b) God is good. Based on 'Hume's Law' I cannot draw a moral conclusion from a purely factual premise, whether established by reason or knowledge or, indeed, both. This we refute. If I insist that I have in fact experienced God, whether through feeling his love, witnessing his miracles or touching his creations, I have attained at least a sense of that moral virtue of 'goodness'.

[87] David Hume, 'Cause and Effect, Part I' in *An Enquiry Concerning Human Understanding* (2nd edn, Hackett Publishing Company 1993)

Though this is through a combination of reason and knowledge/experience (it is not suggested that merely knowing God exists through reason, without sensory experience, is sufficient), Hume would insist that my moral conclusion is invalid due to its nature as a moral obligation. What can be the point of a moral enquiry if, having found a moral sense of justice, we are not obliged to move to gain a concrete conclusion of it?

Despite having used God as an example, let us here dispel the notion of religion which is often (incorrectly) associated with Aquinas and adopt a similar statement from Aristotle regarding 'happiness'. It is important that we do not confuse this discussion, pertaining to the Natural Law and our human experiences within it, with monastic arguments, for the Natural Law does not pre-suppose the existence of or interference by God. Secularism does not negate morality, so let us continue in a secular fashion and leave religious discussions of a right to die to the clergy. The Aristotelian maxim below serves also to remind us that what is sought in this paper is not a just legal system of assisted suicide which is based on religion, rather a just legal system of assisted suicide based on our natural experiences through nature.

Premise B: No moral obligatory conclusion can be draw from a purely factual premise

Statement 3: 'Happiness is the meaning and the purpose of life; the whole aim and *end* of human existence.'[88] (emphasis added)

Conclusion 3: We ought to/should[89] ensure happiness.

[88] Aristotle, *Nichomachean Ethics* (n 1)

[89] The adverb, so long as it is synonymous with *ought*, is irrelevant

This is a more acceptable statement, yet we are still faced with *why* we ought to move to ensure happiness? Why *ought* we value this virtue? Though this author is tempted plainly to insist that there can be a no more blindingly obvious statement about the meaning of life than that put forward by Aristotle, 'happiness' must be evaluated and explained as a goal for human existence; a 'good' and therefore a moral justice, so as to provide a solid argument and dispel Hume's error in claiming that an 'is' statement cannot have moral value. It follows that through establishing such a goal we are able to justify our *ought* as this will flow automatically. In establishing this goal of happiness, we could start simply by asking the person on the street whether their goal in life is happiness. Though even the pessimist may find that their life goals of being successful and prosperous are, in reality, manifesting themselves in a mundane and tiresome occupation, upon further reflection they might admit that whilst these goals, these 'goods' of life are not themselves an incarnation of 'happiness', their 'chief goals' of providing for their family, of securing a future for their children, indeed of buying a sports car, are the epitome of the happiness they seek. We might ask this question of a countless number of people, and they may respond that their goal in life is to retire in the sun; travel to exotic islands; perhaps work for the UN and promote world peace. The point is that regardless of what we value as key to our happiness (and therefore an automatic 'good'), whether it be material items, charitable giving, etc., that 'is' statement is what guides us to attain that descriptive happiness by instigating our endeavours towards it. With that being said, this is a jurisprudential and therefore philosophical paper, and the

juris component will no doubt require stronger evidence of the aforementioned goal, and certainly more than mere hypothetical hearsay. It is argued that we are able to validly assert Aristotle's 'happiness' premise through our ability, as sentient and knowledgeable beings, to experience and comprehend emotion.

Once asserted, we will be able to define moral justice, leading to the justified statement that we *ought* to ensure human happiness by any means possible; to fail to do so would be immoral, therefore unjust and, it would follow that any rule prohibiting such justice is not law.[90] Through our own individual epistemology, our ability to know what it good and bad, coupled with our life experiences, we shall establish that 'happiness' pervades both living that life and ending it.

Let us now consult Poussin in an effort to add prescriptive value to our otherwise descriptive virtue of 'happiness' through the power of emotion.

Authority and Adversity; Poussin's Portrayal of Emotion

In accepting what we can now term our necessarily 'mechanical' and largely emotionless system of suicide laws, it is worth establishing to what end we have selected fine art to facilitate a rehabilitation of emotion[91] which, it is hoped, will add substance to our understanding of happiness both in life and

[90] Accepting the Aristotelian maxim above

[91] Watt, 'To Everything There is a Season' (n 21)

death.[92] What use is artwork to us and how (if at all) are the emotions captured by Poussin portrayed as anything more than ephemeral?

It will be noted that this emotional justification (as expounding and re-articulating the Natural Law) is similarly advanced by Watt in an effort to correctly establish humans as creatures of feeling. Though Watt employs music and poetry as assistants in his thesis, fine art has been selected as the vehicle of understanding here so as to engage[93] the reader with something tangible which, in agreement with one former director of Le Louvre,[94] is an opportunity we must grasp in order to relearn how to take our time: '[w]e have lost the habit of taking time to study paintings. We look at them in the same way we leaf through a book…distractedly.'[95] The relevance of such a claim is that, in particular, Poussin's paintings demand effort,[96] effort to contemplate his work; his recounting of human passions. This must be done with the same attention, concentration, reflection and emotional engagement as we might employ in reading and absorbing a text,[97] indeed as we must approach the subject with which this paper is concerned. The diligence required in approaching such artwork is advocated as synonymous with that required for assessing our laws on assisted suicide as well as judging associated cases. In following Rosenberg's instructions, it is hoped that those

[92] It is submitted that Aristotle's reference to 'life' encompasses happiness to its end.

[93] For the importance of engaging with Poussin's work, see Andrew Butterfield, 'The Magical Painting of Poussin', *New York Review of Books* (April 2008) <http://www.nybooks.com/articles/archives/2008/apr/17/the-magical-painting-of-poussin/?pagination=false > accessed 1 May 2013

[94] Pierre Rosenberg

[95] Pierre Rosenberg and Keith Christiansen, *Poussin and Nature, Arcadian Visions* (Yale University Press 2008) 6

[96] ibid 7

[97] ibid

with a genuine interest in the jurisprudence of assisted suicide, and indeed, who have troubled themselves to read this far, will suffer from an acute stirring of the conscience[98] through engagement with Poussin's work.[99] Particularly for this reason landscapes have been selected which, (it is vehemently insisted) encompass the most ignorant and organic passions both of nature and subsequently of humanity (save the psychopath perhaps).[100] It is hoped that such stirring, resulting from engagement with both prose and art, will culminate in a more informed conclusion than that most abhorrent conformity.

Yet why is Poussin particularly relied upon? Why not make a study of landscapes by Monet or Lorrain? The answer is quite clearly found not only in the essential connection that is made by Poussin between nature and humanity but, as we shall see, his portrayal of the actual and not merely inferred existence of nature within humanity,[101] which is experienced throughout life and death. This point is pivotal as it is this existence of nature within every person which evidences us as epistemological beings capable of instilling in virtues a value. Poussin's dedication to stoicism[102] and his simultaneous obsession with mythological texts are the most valuable

[98] To borrow a most useful expression from Equity.

[99] Our failure to reflect on our existence and being consumed by what is happening *now* are synonymous with the claim that the tense of today's age is, regrettably, the *present continuous*, evidenced, for example, by slogans such as MacDonald's', 'I'm loving it'. Rosenberg's comments are therefore applauded.

[100] Watt, 'To Everything There is a Season' (n 21) 97

[101] In fact, there are no known landscape paintings of Poussin's without a human presence: Rosenberg and Christiansen (n 95) 187

[102] Though this is widely accepted, see Howard Hibbard, *Poussin: The Holy Family on the Steps* (Allen Lane Publishers 1974) 43-47

constituents of his artwork;[103] they tie so usefully to our resurrection of emotion within the Natural Law. Even a superficial study of either *Storm* or *Pyramus and Thisbe* will, with the required effort, draw one's attention to the human characters presented by the artist. Quite abruptly they offer us the opportunity to witness at least two emotions: anguish and suffering, the undeniable offspring of adversity. We shall commence with a brief examination of the 'riotous nature'[104] of *Storm* as existing within humanity before moving onto a more detailed application of our findings to *Pyramus and Thisbe* in justifying happiness as the chief goal and therefore 'good' of us all. The reader is invited, nay, encouraged, to turn to both paintings repeatedly throughout this discussion.

For the sake of art historians, it is acknowledged that *Storm* was painted as one of a pair. Its twin, *Landscape with a Calm*,[105] shall however be neglected as we are here concerned with those end of life decisions (and indeed rights), which affect the most passionate and violent of human emotions: love, anger, suffering, and fear; the antithesis of that portrayed by *Calm.*[106] Poussin was 'above all, opposed to the quietude and serenity of an impassive nature – an eternal nature – to a...nature "seized with a violence utterly like that of the human passions."'[107] *Storm* will therefore be used to

[103] See <http://www.artble.com/artists/nicolas_poussin> accessed 1 May 2013

[104] Rosenberg and Christiansen (n 95) 261

[105] Both paintings were produced for Jean Pointel in 1651. The former is currently housed in the Musee des Beaux-Arts, Rouen; the latter is displayed at the Getty Museum, Los Angeles.

[106] For a thorough and moving exploration of this landscape see Timothy J Clark, *The Sight of Death, An Experiment in Art Writing* (Yale University Press 2009)

[107] Rosenberg and Christiansen (n 95) 261

establish the framework of Poussin's correct account of nature's authoritative existence within humanity and *Pyramus and Thisbe* will then reveal human adversity suffered when rejecting that most natural law. For fear of contradiction, let it be clarified that the Eternal Law of nature, according to Aquinas, exists through us as rational beings, differing from that raw nature within us as natural beings, which Poussin portrays and Hume confuses. The Thomist theory puts reason on a pedestal and through this so-called innate ability, we magically discern good from evil. As discussed, Aquinas was incorrect. As natural beings we employ reason *and* knowledge to experience emotions in order to establish what is moral and therefore just.

Landscape with a Storm

In *Storm* we are confronted first by darkness, and then a man cowering beneath a tree during a gale. Moving across the canvass, framed by the threatening sky,[108] we see two oxen and several shrouded figures similarly bending to the laws of nature, which have let loose and dominated man and beast.[109] In this context the word 'dominate' is importantly interpretable in two ways. Firstly, we can take it to mean that the laws of nature constitute humanity and secondly, that the laws of nature rule humanity. In justifying humanity's emotional existence, we accept the former. In advancing that humanity is necessarily moved to happiness as a result of experiencing such emotions, we accept the latter. *Storm* accomplishes the first of these

[108] Incidentally, the original landscape contained a fork of lightning in the centre of the canvass.

[109] Rosenberg and Christiansen (n 95) 261

premises. How? The reactions of the individuals in the landscape validate this conclusion: the man who throws his hands up against the wind, the farmer on his knees, the figure in the middle-ground fleeing towards the sunshine. These reactions are of fear. Just as Adam's reaction is to keep away from the fire which, having now *experienced* a burn, he fears, so the figures in *Storm* shy away from that rage conducting the wind and rain. Rage, or anger, is that emotion, which we experience in life through love, loss, betrayal, etc[110] and which therefore exists within us.[111] It is our knowledge and experience of anger, its destruction, indeed its unexpectedness, which produces fear in us; for fear is that pain which arises in us from the anticipation of evil.[112] To avoid risking too fluid a statement let us consult Adam once more. Suppose a person had never experienced anger, though they may have heard of it or seen it in another. They would not fear it. It would be too fluid an argument to assert that based on mere hearsay or witnessing as a bystander a person would necessarily avoid or fear something.[113] Such a claim is analogous to the conclusion that Adam would fear fire simply because he had seen or heard it; indeed the heat and light would likely attract him. He would, however, fear anger as violent and unpredictable as that of the storm once he had himself experienced it, just as he would fear fire, having burned himself. This 'unpredictability' or unknown is an important component of anger and our resultant fear, for it is that which leads to an anguished state. Aristotle

[110] Aristotle, *Rhetoric*, Book II, Chapter II, 1378b – 1380a

[111] As emphasised with Adam, once experienced we retain those emotions through memory.

[112] Aristotle, *Rhetoric* (n 110)

[113] In fact, it is more akin to human nature to seek such an experience oneself.

supports this statement by reminding us that the anguish we feel is that of uncertainty;[114] our distress and suffering, both physically and mentally, are all part and parcel of that original fear and anger.[115]

The conclusion sought by employing *Storm* is to evidence that those emotions which move us to action (as we shall see below), are not a mere product of internal reasoning. Based on that Thomist assumption, we would be compelled to conclude that our emotions are all the same because we share an identical ability to reason. Instead they are, and must be, based on our experiences with each other, with the world around us, with nature. Every

[114] Aristotle, *Rhetoric* (n 110) Chapter V, 1383a

[115] Note that 'anger' and 'anguish' share the Greek root *ankhone*.

person may experience anger or rage; that organic existence of nature's storm within us. Our experiences, combined with our knowledge inevitably lead to differing manifestations of that emotion; we will never have one hundred identical answers to one hundred questions of 'what makes you angry?'[116] Placing this idea in the wider framework, a father may feel rage as violent as a storm when his child is killed by a drunk driver, or he may feel such rage when that child, suffering incontinence, ataxia, or neuropathic pain,[117] is denied her dignity in having her loved one/s present when she chooses to end that ordeal.[118] Both situations are of death, yet anger manifests itself in condemning the former and advocating the latter.

Our current suicide laws promote a criminalisation of our emotions (not actions) which, with the assistance of Poussin, we can now clearly appreciate constitute our very being. We would not incarcerate that man who, for love of his daughter, shouts at her to avoid the oncoming drunk driver. That child is not suffering. Why then do we deny those emotions, the very sentience that separates us from beasts, in criminalising in/actions of that father in helping his daughter avoid suffering, which could be as little as preparing her travel details?[119] This study of our emotional experiences does little if it does not bring home to the reader that our passions manifest themselves in different ways. This is of course the core difference between

[116] As above.

[117] Symptoms of Multiple Sclerosis.

[118] The wishes of Debbie Purdy.

[119] Until recently, requesting a patient's medical records may have constituted 'assisting' under s 2(1). This was altered by the GMC earlier this year. See J Bingham, 'Assisted suicide: GMC signals doctors safe to provide medical records to Dignitas patients', *The Telegraph* (1 February 2013)

reason and knowledge. Just as that father would not want to suffer, for he comprehends anguish, anger, and pain, so he would not want his daughter to suffer; emotions are self-determining and attained through personal experience.

To ignore the proposed alternatives though would hardly make for an informed discussion. So we implore critics: if not death, then what is the answer to my loved one's suffering? The automatic (and arguably tiresome) response of groups such as Care Not Killing[120] is 'better palliative care and more funding for hospices'.[121] In a perfect world such care would ease or even eradicate the suffering of individuals such as Tony Nicklinson and Diane Pretty.[122] The hard truth is that it does not. Pretty's last days were riddled with pain and fits of choking; an end she feared most.[123] Nicklinson died blinking letters of communication to his wife, dribbling incessantly[124] and shunning visitors[125] due to what he called an undignified way of living. In a perfect world free-flowing funding would finance drastic improvements in palliative care so as to provide a realistic alternative to ending the life of sufferers who wish it. In the interim, however, and under the glaring obviousness that we cannot expect such generosity in the immediate

[120] <http://www.carenotkilling.org.uk/about/> accessed 1 May 2013

[121] ibid.

[122] *R (Pretty) v DPP* [2001] UKHL 61; *Pretty v. UK* (App no. 2346/02) ECHR.

[123] Though Pretty sought euthanasia, her suffering is relevant to similar sufferers with the same illness seeking an assisted suicide.

[124] Lee Stone, 'Tony Nicklinson: The trapped man', BBC News (August 2012) <http://www.bbc.co.uk/news/uk-england-wiltshire-19348267> accessed 1 May 2013

[125] Interview with Gezz Higgins <http://www.bbc.co.uk/news/uk-england-19341722> accessed 1 May 2013.

future,[126] mere calls for an extension of palliative care will achieve little more than an extension of suffering. The term here is not restricted, as it often is, to physical suffering; there is no care that can ease the anguish of a person locked in the labyrinth of his own mind.

Our emotional existence as facilitated by our natural experiences does not, however, explain entirely how we are then moved to action. We shall now employ *Pyramus and Thisbe* to fully justify that second premise; that we are moved to gain 'happiness' in life.

Landscape with Pyramus and Thisbe

It is not mere coincidence that *Pyramus and Thisbe* is Poussin's largest artwork, some having gone so far as to describe it as 'pushing easel painting to the limit'.[127] That Poussin dedicated in excess of 8000 inches to the portrayal of one of the most infamous tragedies of all time is testament to its timeless relevance as a connector between humanity and nature, and the emotions which flow from that connection. Indeed, Poussin's landscape is based on the tragic love story from Ovid's Metamorphoses which sees two lovers (forbidden by their parents to be together) run away, only to then take their own lives due to a tragic sequence of misunderstandings (it is no secret then as to what inspired Shakespeare's *Romeo and Juliet*).[128] What is paramount to draw from this painting is the adversity suffered by its

[126] See, for example, the 2013 Budget.

[127] Clark (n 106) 102.

[128] Indeed, even *A Midsummer Night's Dream.*

characters in their outright refusal to obey the authority of nature, that is, that authority or law of nature which governs love and therefore humanity.

It is refuted outright that Poussin 'ignores the conflict between the natural law of love and absolute authority'.[129] No doubt Poussin has focussed on the adversity suffered by both Pyramus and Thisbe, as suggested by Batschmann, but to assume that this is wholly disconnected from nature's authority is and must be incorrect. Poussin himself wrote to a fellow artist, Jacques Stella:[130] I have tried to create a tempest on earth...[a]ll the figures that one can see act out their part in relation to the weather: some flee through the dust and go with the wind that sweeps them along; others, to the contrary, go against the wind and walk with great difficulty, putting their hands before their eyes...others...try to escape. In the foreground of the painting we see Piramus dead...and near him Thisbe, who gives way to grief.[131]

This passage enables us to engage in much more than the otherwise obvious pathetic fallacy pervading Poussin's canvass, for Poussin gives us that exact connection we seek: by going against the wind, against that authoritative power of nature, Pyramus mistakenly believes Thisbe to be dead[132] and is moved to kill himself. Though Poussin's landscape does not capture it, his letter to Stella certainly paints a picture in our minds of what

[129] Oskar Batschmann, *Nicolas Poussin: Dialectics of Painting* (Reaktion Books Ltd 1990) 102

[130] 1596 – 1657

[131] Quoted by Pierre Rosenberg, 'Catalogue' in Keith Christiansen et al, *Poussin and Nature, Arcadian Visions* (Yale University Press 2008) 264

[132] Upon seeing her bloodied scarf, believing the lioness in the background of the landscape to have killed her.

follows: Thisbe 'gives way to grief'; the tragedy is that she too is moved to end her life by throwing herself on Pyramus' blade.[133]

In the absence of any apparent joy, it is difficult to see that there has been any movement to gain *happiness*. Admittedly so, for Poussin offers not a 'paint by numbers', which readily maps out the essence and meaning of his work, but rather he hands us an opportunity to take time and engage.[134] It must be remembered that our happiness takes differing forms than that most obvious joy, owing to our different experiences of it, as well as our differing ethical dispositions.[135] There is a philosophical opinion that between a work of poetry and the thinker there is created a dialogue.[136] Let us be so bold as to borrow this and supplant it between Poussin's artwork and the viewer,[137] for this ability to communicate humanity's natural existence through artwork is a condition of this paper's goal.

[133] A full reading of Ovid's Metamorphoses will also reveal such a conclusion.

[134] A similar attitude is shared by GFW Hegel (1770 – 1831) who also advocated taking time in philosophising about fine art

[135] Generally, Aristotle, *Nicomachean Ethics* (n 1) 20

[136] Adam Gearey, 'Where the Law Touches Us, We May Affirm it: Deconstruction as a Poetic' (2005) 27 Cardozo Law Review 767, 773.

[137] For we have advanced the importance of engaging with such work and therefore *thinking.*

That authoritative power in this landscape, governing love as it governs fear or anger, draws Pyramus and Thisbe together only to be denied by their parents. Let us call this the 'paternal authority' as Batschmann's reference to it as 'absolute authority' dilutes the supremacy of the Natural Law. There is a conflict. We watch the lovers, ambassadors of Nature, battling against that paternal authority by 'try[ing] to escape',[138] and Poussin's tempest encapsulates that war. When the lovers flee they deny their love by concealing it and therefore allow the paternal authority to triumph. That authority has succeeded in denying the Natural Law as being natural at all by

[138] Batschmann (n 129)

circumventing the most organic emotion which the lovers, like all people, experience. Love, like fear, anger or suffering, exists in us as the storm does. Batschmann was incorrect; the lovers' adversity was not a result of misunderstanding and misfortune;[139] these are merely hypothetical answers injected to waive the value of love, and therefore happiness. Their adversity was a result of a breach of law: the Natural Law.

It is not in human nature to seek adversity. Pyramus and Thisbe were denied happiness by the paternal law and, as with *Romeo* and *Juliet*, could not sustain a life of love and happiness on Earth without one another, so they too took their lives.[140] As constituents of our being, these emotions rule our existence and therefore actions. When Pyramus sought Thisbe in the storm he sought out his love, his happiness. When he knew he could never experience that again, knew that continuing life would be an extension of *un*happiness,[141] he killed himself as did Thisbe. The lovers' actions justify Aristotle's claim that happiness is the purpose of life; we are moved to attain it.

We have therefore drawn a moral conclusion from a purely factual premise. That 'is' statement has gained moral value because we value it as a goal; our movement towards it is facilitated by our emotional existence as reflected in nature. That 'good', and therefore moral justice of the virtuous 'happiness' is permitted prescriptive and not merely descriptive value. To

[139] ibid

[140] It is mere coincidence that *Pyramus and Thisbe* depicts suicide. It was chosen as an aid in this paper merely to portray humanity's movement to action through emotion.

[141] Watt, 'To Everything There is a Season' (n 21) 95

advocate a human existence bereft of emotion is therefore, without doubt, no existence at all.

The notion of 'assistance' *can* be interpreted against a compassionate background, and therefore leaves behind its mould of treason. Our laws prohibiting assisted suicide are a feudality. It is strikingly obvious that genuine time and engagement are rare in this area, and though there is evidence of some in the categorisation of 'basic goods', it is with all due respect to Professor Finns that this is regarded as contributing little, if anything, to an understanding or justification of our laws which criminalise assisted suicide.

Common Law Reasoning: Treating Like Cases Alike

We have dedicated much thought to (and directed much criticism at) the current enactment of s 2(1) of the Suicide Act, and have poured the foundations on which we envisage change. Yet we have finally to look at how our courts have, in reality, dealt with what can only be termed 'tragic cases'.[142] Though the ultimate outcomes of *Pretty* and *Nicklinson* were outright denials of humanity's very existence, we find that such failings of justice are not necessarily a result of the courts' inability to recognise that chief human goal, but rather of their hands being tied by Parliament.

Following the devastating judgement in *Pretty*, the House of Lords reached a landmark, compassionate decision[143] in *Purdy* in 2009 by ordering the Director of Public Prosecutions (DPP) to clarify the 'facts and

[142] *Nicklinson* [2012] EWHC 2381 (Admin) [1] per Toulson LJ

[143] Surprising many commentators; see, eg Nick Cartwright, '48 Years On: Is the Suicide Act Fit for Purpose?' (2009) 17 MLR 467, 467

circumstances which he would take into account in deciding whether to…prosecut[e] under s 2(1)'.[144] The order was a welcomed advancement on the DPP's decision in December 2009[145] not to prosecute the parents of Daniel James, which left much clarity to be desired. Daniel, a 23 year old who suffered tetraplegia in a rugby accident, journeyed to Switzerland in 2008 to end his life. Despite his parents' 'joint enterprise'[146] in assisting their son with his travel and *Dignitas* documents, and a 'realistic prospect of conviction',[147] charging Mr and Mrs James was ultimately deemed contrary to the public interest as according to the Code for Crown Prosecutors. That Code, however, applies to criminal offences generally[148] and so it was in fact Purdy's success in obtaining a declaration specifically regarding assisted suicide which was deemed victorious. The 'offence-specific'[149] Guidelines then published in 2010 broke ground by listing factors for and against prosecution.[150] Perhaps most interestingly, paragraph 45(2) of the Code regards assistance motivated by *compassion* as a mitigating factor.

If the DPP is then willing to 'overlook' cases of compassion, we have surely found that moral framework which we seek, for it clearly recognises the emotional existence of humanity and acknowledges that virtuous goal of

[144] *Purdy* [2009] UKHL 45 [56] per Lord Hope

[145] <http://www.cps.gov.uk/news/articles/death_by_suicide_of_daniel_james/> accessed 1 May 2013

[146] *Purdy* [2009] UKHL 45 [24]

[147] ibid [26]

[148] See House of Commons Library, *Assisted Suicide* (Standard Note SN/HA/4857, 2012) 9

[149] Per Saimo Chahal, solicitor for Debbie Purdy, <http://www.bindmans.com/news-and-events/news-article/landmark-victory-for-debbie-purdy-in-the-house-of-lords> accessed 1 May 2013.

[150] Director of Public Prosecutions, 'Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide' (February 2010) <http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html> accessed 1 May 2013.

happiness. On the contrary, the Crown Prosecution Service (CPS) has been quite clear in reminding us that 'the case of *Purdy* did not change the law: only Parliament can [do that]'.[151] In fact, it is difficult to establish which part of the Code can be referred to as a 'landmark victory'[152] at all. We seem to be no closer to any definitive policy on whether one will or will not be incarcerated, despite initial thoughts that the 2010 Code was conclusive. We are provided only with a maybe, depending on many circumstances. Let us call this policy an 'Enlightened Limbo' for on its face it seems to provide certainty, though only a veil of obscurity materialises. What then has been accomplished? The DPP has merely codified what was already somewhat accepted practice,[153] whilst insisting that such acceptance is not necessarily definitive. It remains that whilst increasing cases of suffering individuals, and indeed their families, come before the courts, the judiciary is torn between an outdated and unethical piece of legislation, and looking to the DPP for clarification; clarification which we have seen fails to clarify much at all. Whilst Parliament talks idly[154] the DPP is forced into a position as legislator as opposed to prosecutor.[155]

The lack of dedicated engagement with this subject renders Parliament's actions, and therefore the Suicide Act, unjust. In the eyes of the Natural Lawyer we see an ignorance of humanity's true emotional and natural existence which side-lines the valuing of life itself. Both the courts and the CPS

[151] ibid, para 5

[152] Above n 149

[153] Cartwright (n 143) 474

[154] Rejecting Lord Joff's Bill and Lord Falconer's Bill particularly.

[155] Cartwright (n 143) 474

have exhausted their powers of recognising that true virtue of happiness, and until Parliament steps up to meet their ambitions with binding law, suffering individuals cannot be sure of the fate of their assistants when they choose to end their lives. That compassion alone would see that sufferer continue their ordeal for the sake of another.

Though we see some consistency in the outcomes of these cases, there is no guarantee as to this continuation. The Suicide Act bears down on the courts as the paternal love bore down on Pyramus and Thisbe; it conflicts with the Natural Law (emotions) of the presiding judges and restrains true morality and therefore justice.

Conclusion

Philosophy is not an idle study. We cannot look to our laws prohibiting assisted suicide and through a nonchalant reading gauge their morality and therefore legality, the two being inextricably linked. Even to open our minds and listen to both the campaigners for and against this right does not do it justice. Philosophy is an activity, an engagement, an experience. That such involvement is lacking is blindingly obvious upon a finding that 'physician-assisted suicide', correctly defined as euthanasia, is mistaken for assisted suicide again and again.[156] Those philosophers, academics and legislators who condemn this right to die readily import the conclusion that all forms of

[156] Hugh V McLachlan, 'Assisted Suicide and the Killing of People? Maybe. Physician-Assisted Suicide and the Killing of Patients? No: The Rejection of Shaw's New Perspective on Euthanasia' (2010) 36 JME 310

suicide are immoral and therefore illegal.[157] At the heart of this problem is that these distinguished men and women are in fact talking *past* each other. They have lost sight, firstly of what notional 'assistance' truly means,[158] and secondly of humanity's existence as an emotional being.[159] They have failed to take the required time and effort. There is no consensus of what aiding, abetting, counselling or procuring suicide truly encompasses,[160] nor is there any apparent drive to establish one. Where are the discussions of the jurisprudence of 'assisted' suicide as defined in English law? We are confronted by a glaring academic gap, exacerbated only by extra-jurisdictional conundrums. Additionally, there is insufficient homage paid to humanity as something other than a one-dimensional being.[161] Dictates of what is 'good'[162] for us impose on us all a set of standards demanded by those out of touch with our very existence. And so is the object of this enquiry. Until such further engagement with life experiences, insufficient differentiation between paramount notions and concepts renders our laws both pernicious and manifestly unjust.

This paper does not advocate the simple adoption of systems of legalised assisted dying from jurisdictions such as the Netherlands or Oregon. It advocates an adoption of a system legalising the assisting of suicide on the grounds of emotion.

[157] Notably Finnis, Aquinas, Hume, Professor David Currow, Professor Tim Maughan and Lady Campbell.

[158] A complete and utter misnomer in the context of suicide, as discussed.

[159] Being completely absent from our legislation.

[160] House of Lords Select Committee (n 53)

[161] Watt, 'To Everything There is a Season' (n 21) 91

[162] With particular reference to Professor Finnis.

Though dignity and autonomy are convincing defences raised by many, we need not look much further than the compassion within us to know that our suicide laws deny something natural. Yes, dignity is infringed. Yes, autonomy is denied. But looking even closer to home, within ourselves and our engagement with nature, we find that these laws impede our very existence. Our laws do not protect those suffering, they condemn them to a life of extended suffering.[163] Though this subject warrants and indeed deserves continuous debate and statutory reform, this study *is* now accomplished and so *ought* to end.

[163] For a recommended draft Act, see Watt, 'To Everything There is a Season' (n 21) 112

Bibliography

Aristotle, *Nicomachean Ethics* (Sarah Broadie and Christopher Rowe eds, Oxford University Press 2002)

Aristotle, *Politics*.

Aristotle, *Rhetoric*.

'Assisted Suicide Supported by Religious Britons', BBC News (1 May 2013)

Attenborough, FL (ed and trans), *The Laws of the Earliest English Kings* (Russell & Russell Inc 1963)

St. Augustine, *De libero arbitrio*.

Bacon, Matthew and Gwilliam, Sir Henry, *A New Abridgement of the Law: Alphabetically Digested under Proper Titles* (6th edn, Luke White 1793)

Baggini, Julian, 'Individuals? Or members of society?', *The Independent* (17 August 2012)

Batschmann, Oskar, *Nicolas Poussin: Dialectics of Painting*, (Reaktion Books Ltd 1990)

Bauman, RA *The Crimen Maiestatis in the Roman Republic and Augustan Principate* (Witwatersrand UP 1967)

Bingham, J 'Assisted suicide: GMC signals doctors safe to provide medical records to Dignitas patients', *The Telegraph* (1 February 2013)

Bix, Brian, *Jurisprudence: Theory and Context* (6th edn, Sweet and Maxwell/Thompson Reuters 2012)

Blackstone, William, *Commentaries on the Laws of England (1765-1769)* (Routledge Cavendish 2001)

Buiting, Hilde, et al, 'Reporting of Euthanasia and Physician-Assisted Suicide in the Netherlands: Descriptive Study' (2009) 10(18) BMC Medical Ethics

Butterfield, Andrew, 'The Magical Painting of Poussin', *New York Review of Books* (April 2008)

<http://www.nybooks.com/articles/archives/2008/apr/17/the-magical-painting-of-poussin/?pagination=false> accessed 1 May 2013

Cartwright, Nick, '48 Years On: Is the Suicide Act Fit for Purpose?' (2009) 17 MLR 467

Cicero, *De Re Republica; De Legibus* (CW Keys trans, Harvard University Press 1928)

Christiansen, Keith, et al, *Poussin and Nature, Arcadian Visions* (Yale University Press 2008)

Clark, Timothy J, *The Sight of Death, An Experiment in Art Writing* (Yale University Press 2006)

Dahl, E and Levy, N, 'The Case for Physician Assisted Suicide: How Can it Possibly be Proven?' (2006) 32 JME 335

Daniel, Samuel, *The Collection of the History of England* (5th edn, F Leach Printing 1685)

Director of Public Prosecutions, 'Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide' (February 2010) <http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.html> accessed 1 May 2013

Finnis, John, *Natural Law and Natural Rights* (2nd edn, Oxford University Press 2011)

Finnis, John, *Aquinas* (Oxford University Press 1998)

Gearey, Adam, 'Where the Law Touches Us, We May Affirm it: Deconstruction as a Poetic' (2005) 27 Cardozo Law Review 767

Harding, Arthur L (ed), *Origins of the Natural Law Tradition* (Southern Methodist University Press 1954)

Hart, Herbert LA, *The Concept of Law* (2nd edn, Oxford University Press 1994)

Hibbard, Howard, *Poussin: The Holy Family on the Steps* (Allen Lane Publishers 1974)

Hittinger, Russell, *A Critique of the New Natural Law Theory* (University of Notre Dame Press 1999)

House of Commons Library, *Assisted Suicide* (Standard Note SN/HA/4857, 2012)

House of Lords Select Committee on Assisted Dying for the Terminally Ill Bill (2004-05)

Hume, David, *An Enquiry Concerning Human Understanding* (2nd edn, Hackett Publishing Company 1993)

Hume, David, *A Treatise of Human Nature* (Penguin Publishing 1985)

Keck, Jason D, 'The Demise of the Aiding-and-Abetting Law at the International Criminal Tribunal For the Former Yugoslavia: The Mens Rea' *(*2009) <http://ebookbrowse.com/jason-keck-aiding-and-abetting-paper-doc-d19973410> accessed 1 May 2013

Kretzman, Norman, 'Lex Inuista Non Est Lex: Laws on Trial in Aquinas' Court of Conscience' (1988) 33 AJJ 99

Law Commission, *Inchoate Liability for Assisting and Encouraging Crime* (Law Com No 300, Cm 6878, 2006)

Law Commission, *Criminal Law: A Criminal Code for England and Wales* (Law Com No 177, 1989)

Lawson, John, *Introduction to Christian Doctrine* (Zondervan Publishing House 1986)

Lewis, Penney, *Assisted Dying and Legal Change* (Oxford University Press 2007)

Lichacz, Piotr, 'Did St. Thomas Aquinas Justify the Transition From "is" to "ought"?'(2008)
<http://ethesis.unifr.ch/theses/downloads.php?file=LichaczP.pdf> accessed 1 May 2013

Mason, Richard C, 'Civil Liability for Aiding and Abetting' (2006) 61 The Business Lawyer 1135

McLachlan, Hugh V, 'Assisted Suicide and the Killing of People? Maybe. Physician-Assisted Suicide and the Killing of Patients? No: The Rejection of Shaw's New Perspective on Euthanasia' (2010) 36(5) JME 310

Paterson, Craig, 'Aquinas, Finnis and Non-Naturalism' in Craig Paterson and Matthew Pugh, *Analytical Thomism: Traditions in Dialogue* (Ashgate Publishing Ltd 2006)

Plato, *Laws*.

Rosenberg, Pierre and Christiansen, Keith, *Poussin and Nature, Arcadian Visions* (Yale University Press 2008)

Stone, Lee, 'Tony Nicklinson: The trapped man', BBC News (22 August 2012)

Wagner, William, Kane, John S and Prieb, Lauren, 'How Suicide Killing of Human Life Became a Human Right In the United Kingdom', *Christian Concern* (19 October 2010)

Watt, Robert A, 'To Everything There is a Season and a Time To Every Purpose Under the Heaven – A Time to be Born and a Time to Die. Natural Law, Emotion and the Right to Die' (2012) 24 DLJ 89