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On Slippery Slopes

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Abstract
I here discuss an argument frequently dismissed as a fallacy – the slippery slope or camel's nose. The argument has three forms – analogical, argumentative, and prudential. None of these provides a deductive guarantee, but all can provide considerations capable of influencing the intellect. Our evaluation of such arguments reflects our background social and evaluative assumptions.

> Is there a straight line leading from 'the shot heard round the world' to endemic divorce, gangsta rap, and the North American Man-Boy Love Association?
>
> W. McClay [1]

1. Introduction

Someone proposes to remove all penalties from the production, sale, possession and use of marijuana, but to forbid its producers to advertise (except by word of mouth). If such a proposal could be made to work, it might provide an attractive way of resolving disputes about the legal standing of a wide range of controversial practices, including the use of 'soft' drugs of all sorts. Even pro-life people would find legal abortion easier to accept if clinics were not advertised in the Yellow Pages.

But there is reason to doubt that such a compromise would be stable. First, the Supreme Court has struck down restrictions on commercial speech.[2] Second, even if the Court could be prepared to rescind or sharply limit its commercial speech doctrine, a profitable and therefore politically powerful marijuana industry would press in both the legislature and among the electorate for the removal of its disadvantages. They would charge unfairness, pointing out that neither the liquor nor the tobacco industry labors under a similar disability.

[1] McClay, 'Mr. Emerson's Tombstone', *First Things*, no. 83 (May, 1998), 20.

[2] *44 Liquormart Inc*. v. *Rhode Island,* 517 US 489 (1996).

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2. The Argument in General

We are here dealing with the slippery slope argument (SSA), as often scorned by philosophers, though often with such unhelpful qualifying phrases as 'if the likelihood of such trouble is exaggerated'[3] as it has been invoked by jurists[4] and political advocates. Many critics have dismissed the SSA as the last resort of the traditionalists bereft of better arguments.[5]

Textbook discussions of this alleged fallacy are systematically inadequate, in a way that reflects the authors' sympathy for proposals against which SSA's have been deployed. So far as I can see, their chief complaint is that SSAs are examples of the fallacious argument from fear, with some reference to the fallacy of the heap as well.

Thus the premier American logic textbook[6] cites a 'keen critic' for the following response to the SSA against physician assisted suicide.

> Physicians often prescribe drugs which, in doses greater than prescribed, would kill the patient. No one fears that the actual dose prescribed will lead to their use in lethal doses. No one objects to such prescriptions for fear of a 'slippery slope'.[7]

At the same time, it endorses the following SSA against punishing hate crimes more severely than ordinary crimes.

> There should not be a separate category for hate crimes. A murder is a murder; a beating is a beating. We should prosecute people for the crimes they commit, not why they commit them.

[3] B. Dowden, *Logical Reasoning* (Belmont, CA: Wadsworth, 1993), A8–9: R. Rafalko, *Logic for an Overcast Tuesday* (Belmont, CA: Wadsworth, 1990), 446.

[4] For a defense of the SSA by a legal scholar, see F. Schauer, 'Slippery Slopes', *Harvard Law Review* **99** (1985), 361ff; see also E. Volokh, 'The Mechanisms of the Slippery Slope', *Harvard Law Review* **116** (February, 2003); M. Rizzo and D. Whitman, 'The Camel's Nose Is in the Tent: Rules, Theories, and Slippery Slopes', *UCLA Law Review* **51** (2003), 539ff; and E. Lode, 'Slippery Slope Arguments and Legal Reasoning', *California Law Review* **87** (December, 1999), 1469ff.

[5] For a compendium, see Lode, op. cit. n. 4, 1473–74. For a polemic against the SSA in biomedical contexts, see J. A. Burgess, 'The Great Slippery-slope Argument', *Journal of Medical Ethics* **38** (2012); 531–532 http://dx.doi.org/10.1136/jme.19.3.169,

[6] I. Copi, C. Cohen, and K. McMahon, Introduction *to Logic*, 14th edition (Boston: Prentice Hall, 2011), 131–32.

[7] E. van den Haag, 'Make Mine Hemlock', *National Review*, June 12th 1995.

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> If we start to categorize crimes by their motivation, we start down a very slippery slope.[8]

But the first of these quotations ignores the line, salient on any view of which I am aware, between acts that intentionally take human life and acts that do not. And the second fails to specify bad effects arising from motive-defined criminal laws comparable to a doctor's deliberately killing his unprofitable patients or pressuring them to kill themselves. (Like most bad arguments it can be improved.)

I here argue that SSA's, though they do not provide a deductive guarantee, sometimes give us strong reasons to reject an initially attractive proposal. Such a proposal need not be acceptable in itself.[9] But unless someone finds it appealing, there is no need for an SSA. If an otherwise seemingly acceptable A (in my initial example, legal marijuana without advertisement) threatens to lead to an unacceptable B (dealers aggressively marketing marijuana to children), this is a reason, though not always a decisive reason, for rejecting A. That the argument is non-deductive, and sometimes leads us astray, is no argument against my thesis. The same could be said of induction.

Slippery slopes happen, even if sometimes we welcome their results. They are always contextual: if we have hit bottom (say we are living in Germany under the Nazis)[10] they cease to be relevant. And different countries will be in different places on various slippery slopes. Hence I use mainly American examples, though my audience is all philosophers interested in applied logic. Legal scholars do not need instruction, since lawyers (and political advocates) invariably use or respond to SSA's as their advocacy requires. If they reject the argument as 'pernicious nonsense'[11] or 'obscurantist flimflam',[12] the suspicion that they are in fact trying to push us down the slope will be acute.

If a white Southerner argued in 1860 that abolishing slavery would lead to legal intermarriage and an African-American President, his historical prophesies would have been correct. *We* might not think

[8] Z. Simpser, 'A Murder is a Murder', *New York Times*, May 3rd 2002.

[9] As Lode, op. cit. n.4, 1481, points out against Schauer, op. cit. n.4, 369.

[10] Actually even Nazi Germany could have got worse. Hitler wanted all Germans to follow his example and kill themselves. C. Goeschel, 'Suicide at the End of the Third Reich', *Journal of Contemporary History* **41** (2006), 153–173.

[11] M. Kohl, *The Morality of Killing* (New York: Humanities, 1972), 50.

[12] A. Flew, 'The Principle of Euthanasia', in A. B. Downing (ed.) *Euthanasia and the Right to Death* (Los Angeles: Nash, 1972), 47 n.14.

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that the bottom of the slope was a bad place, but that – my hypothetical pro-slavery writer would say – is exactly what we should expect. And those who promoted this development appealed to benign slippery slopes: Frederick Douglass, urging his fellow African-Americans to enlist in the Union Army maintained, correctly, that the limited emancipation proclaimed by President Lincoln made general emancipation inevitable.[13]

Anneli Jefferson has observed:

> Arguments like this that predict a change in our values for the worse are somewhat odd conceptually… They predict that we will become unable to draw a moral distinction between cases that we currently see as clearly different. But if we are currently able to see that A is acceptable and B is inacceptable, why should it seem plausible to us that we will lose this ability in the future? In other words, bracketing the issue whether this prediction is correct or not, why should it seem convincing to us?[14]

But in fact the values of individuals, as well as of groups, do change, sometimes in ways that support SSAs. To give an old-fashioned example, someone brought up by socially conservative parents may come to accept heavy drinking, marijuana use, sex outside of marriage, abortion, 'open' relationships, bisexuality, and orgies. Whether we regard such a person as debauched or liberated, the phenomenon is real. And at each stage it may seem clear to him or her that the next one is plainly wrong, but habits and associations operate powerfully to undermine such perceptions. And so at the end of the slope the person will accept things that, at the beginning, he or she would have regarded as utterly unacceptable. And each step down the slope will involve a shift of moral perceptions, while seeming too small to worry about. The person at the beginning of the slope will view the person at the end with horror; the person at the end will look back to the person at the beginning with contempt, perhaps tinged with nostalgia.

Moreover, the outcome of some slippery slopes is bad by any standard. The erosion of constitutional government in Weimar Germany proceeded from more and more extensive use of emergency decrees to circumvent legislative deadlock, through the overthrow of the

[13] F. Douglass, 'Why Should a Colored Man Enlist?' in L. Kass, A. Kass, and D. Schaub, (eds) *What So Proudly We Hail* (Wilmington, DE: ISI: 2011).

[14] Jefferson, 'Slippery Slope Arguments', *Philosophy Compass* **9/10** (2014): 672–680, at 674.

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Prussian state government, through the summary killing of Hitler's rivals in the Nazi Party in Night of the Long Knives, through the euthanasia campaign, and lastly to the Holocaust. The doctrines of the jurist Carl Schmitt facilitated this development.[15]

We may also observe the slippery slope at work in areas of contemporary controversy. The Supreme Court of Vermont, by way of establishing same-sex (quasi-) marriage in the state, turned the sour conservative maxim, *Give some people an inch and they will take a mile*, in to an imperative of constitutional jurisprudence. The court reasoned,

> The State asserts that [the goal of promoting child rearing in a setting that provides both male and female role models] could support a legislative decision to exclude same-sex partners from the statutory benefits and protections of marriage. … The argument, however, contains a … fundamental flaw, and that is that is the Legislature's endorsement of a policy diametrically at odds with the State's claim. In 1996, [the Legislature removed] all prior legal barriers to the adoption of children by same-sex couples. At the same time, the Legislature provided additional legal protections in the form of court-ordered child support in the event that the same-sex parents dissolved their partnership. In the light of these express policy choices, the State's arguments that Vermont public policies favors opposite-sex over same parents or disfavors the use of artificial reproductive technologies are patently without substance.[16]

And the slope has gone on to the full recognition of same-sex marriages. This particular slippery slope has been welcomed, or at least accepted, by many of my readers. But it is still worthwhile to observe the slippery slope at work. And whatever their views on marriage, my readers may be troubled by the story of euthanasia in the Netherlands.

> Dutch courts began by declining to punish doctors who assisted the suicides of the terminally ill. They then extended this principle to cover patients who were victims of 'unbearable suffering', without any requirement that the patients be terminally ill. They then extended to the principle to cover who was in seemingly irremediable mental pain, caused by chronic

[15] E. Kennedy, *Constitutional Failure* (Durham, N. C.: Duke University Press, 2004).

[16] *Baker v. State*, 744 A 2^{d} 864, 884–885 (Vt., 1999).

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> depression, alcohol abuse, on the theory that the suffering of the mentally ill is 'subjectively experienced as unbearable' by them, comparable to how the physically ill experience physical suffering. Dutch courts then extended this principle to cover a fifty-year-old woman who was in mental pain partly caused by the death of her two sons, again the theory that her suffering was unbearable.[17]

To spell the matter out, we may be confronted with an audience favorably disposed toward assisted suicide by the terminally ill, but horrified by the suicide of emotionally troubled adolescents. If all forms of assisted suicide are illegal, then such people will be disposed to change the status quo. The question then is, how likely it is that change in favor of some suicides will lead to the general licensing of suicide. One crucial element in our reasoning will be the vague expression *unbearable suffering*, which in any event cannot be limited to physical pain (or at any rate is not so limited in practice).

In any event, the central questions raised by SSAs are those of evaluation and of real-world effects. If the status quo before the proposed change is bad enough, or the condition at the bottom of the slope is relatively acceptable, then the SSA will fail. To recur to my original example, someone who finds the present 'War on Drugs' intolerable, or views with aplomb the aggressive marketing of recreational drugs to children, will not be troubled by the difficulty of maintaining a ban on marijuana advertising in practice. Likewise, if the supposed causal relations do not obtain – and they are likely to be highly controversial – the SSA will fail.

Bernard Williams is wrong to distinguish 'horrible result' from 'arbitrary result' SSAs.[18] Slippery slopes trouble us only because their results can be horrible (though some possible results, such as endless litigation, are horrible only relatively speaking). In no case do we require horrors of the Nazi variety; there are many unpleasant states of society that do not go that far.

The question of historical causation from the top to the bottom of the slope is complicated. Ideas have consequences, but they are not the only thing that has consequences. Nor are the consequences of

[17] Volokh, op. cit. n.4, 1058–1059. Much the same thing has happened in Belgium. B. Mason and C. Weitenberg, 'Allow Me to Die', *SBS,* November 24th 2015, http://www.sbs.com.au/news/dateline/story/allow-me-die.

[18] B. Williams, 'Which Slopes are Slippery?' in M. Lockwood, (ed.) *Moral Dilemmas in Modern Medicine* (Oxford: Oxford University Press, 1985), ch. 6.

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ideas in practice always what one might expect them to be in the abstract. Bad arguments can be historically influential. In practice, this means that when an acceptable change A is followed by an unacceptable result B, it is often uncertain that that it was A, rather than some other development within the society in question that is to blame for B. Which battles to fight, and which are the most important, is an inescapably prudential question. But the counsel to avoid bad results by opposing bad beginnings remains sound, however complicated its application in practice.

Even when we speak of actions rather than justifications, the SSA concerns, not bare behavior (if there is such a thing), but behavior understood and legitimated in certain terms – as the exercise of a constitutional right for example. Hence some legal or legal-like formulary is always in the background.

Some facts about language are therefore crucial. With one narrow class of exceptions, all language is open to interpretation. The exception is the rules of a game such as chess, in which the number of possible positions is both finite and precise, however enormous. Aside from such cases, legal formularies fall upon a continuum with respect to the extent to which they invite dispute about their application. That each State of the American Union is entitled to two Senators raises serious interpretive issues only under conditions of plague or civil war, where the issue is whether the relevant entity is entitled to act as a State. On the other end of the continuum, the notorious 'mystery' doctrine ('At the heart of liberty is the right to define one's own concept of existence, of the meaning of the universe, and of the mystery of human life')[19] is as indeterminate as a formulary can be without losing all content. For there is no conduct – whether suicide bombing or pursuing wealth in ways dangerous to the nation's economic stability – that could not be defended as a way of responding to the mystery of human existence.

Williams is correct to see that slippery slopes are inherent in some of our language, for example the word *person* as commonly used by bioethicists. In his own words,

> There are some absolute terms, the absolute character of which is only a verbal matter, a substantival wrap for a content which is basically comparative. … A very important and misleading example is 'person', as that term is sometimes used by philosophers

[19] *Planned Parenthood* v. *Casey*, 505 U.S. 833 (1992) (Kennedy, O'Connor and Souter, JJ).

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> in ethical connections.[20] It is formally true that no one can be more of a person than anyone else, but almost all the characteristics associated by these philosophers with being a person … come in degrees. … This concept, despite its absolute appearance, will provide no firm basis for rules about killing and similar matters, and those who place faith in it are deceiving themselves.[21]

This slope has in fact been exploited by some writers in bioethics.[22]

As Eric Lode has pointed out, 'People frequently remain steady in their application of vague terms.'[23] But this is true only when the background cultural and political understandings that govern their use are stable. Our legal system and our customary morality, however, have their home in a world where many different groups strive to push them in a direction they desire.

Vague doctrines cover up clashing agendas, in a way that can smooth a slippery slope. As Mario J. Rizzo and Douglas Glen Whitman point out,

> The existence of multiple theories can lead to the adoption of political, legal, and ethical doctrines that are deliberately vague. For instance, politicians will sometimes pass intentionally vague legislation in order to avoid having to make tough decisions, thereby passing the buck to bureaucratic agencies. Balancing 'rules' in the common law, which direct judges to weigh a variety of factors when deciding cases, are arguably a means of finessing the differences among judges' theories. … Even if vague terms are not deliberately adopted to cover up differences of opinion, they may nonetheless have the same effect.[24]

In many cases the demand for legal or policy consistency generates slippery slopes. If two elements of the law are in tension with another, then the inconsistency can be resolved in more than one way. But each of them will be regarded, by some parties to the dispute, as involving a slippery slope in an undesirable direction.[25] For these reasons, SSAs in real-life practical discourse are not

[20] His example is M. Tooley, *Abortion and Infanticide* (Oxford: Oxford University Press, 1988).

[21] Op. cit., n. 16, 136–37.

[22] For example J. English, 'Abortion and the Concept of the Person', *Canadian Journal of Philosophy* **5**(2) (October 1975).

[23] Lode, op. cit., n.4, 1509.

[24] Rizzo and Whitman, op. cit. n.4, 575–76.

[25] Ibid., 565–66 and n.74, discussing *People* v. *Kurr*, 654 N.W.2d 65 [Mich. Ct. App. 2002]).

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'sorties SSAs', which exploit the inevitable open texture of language to oppose the extension of a term even part of the way into a contested area.[26] For example, someone might argue against severe taxation of the top one percent that there is no clear line between rich and poor, and that everyone would then be at risk of expropriation. Or we should not exempt low income people from the income tax, lest we end up without any revenue. Such SSAs would bring practical reasoning to an end. In real SSAs, there is always some principle or social force pushing us down the slope; the issue is its intellectual or political power.

Logic is one thing, and social psychology another. As Lode puts it, 'Effective distinctions may fail to be reasonable. … Similarly, reasonable distinctions might not be effective.'[27] Again, bad arguments can be politically effective. The reason for this phenomenon is, as Rizzo and Whitman observe,

> The process by which arguments are accepted and decisions made is a social one that derives from the decisions of many individuals. …The person who makes an SSA does not necessarily claim that the listener himself will be the perpetrator of the future bad decision. Rather, he draws attention to the structure of the discussion that will shape the decisions of many decision-makers involved in a social process.[28]

Thus arguments and principles employed by people with one agenda may be captured by others whose agenda is very different and possibly even abhorrent to those who make the original argument.

> The general form of a prudential SSA is as follows.
> If we adopt proposal A, we will adopt proposal B.
> If we adopt proposal B, we will adopt proposal C.
> (These steps can be repeated.)
> Proposal C is very bad.
> Therefore, we should not adopt proposal A.

There are different versions of the understandings of the connective, *If … we will*. Most important is the question, whether the relation here is one of logic, however broadly construed, or only of social psychology. Or in terms of the more formal version, the question is whether the property P, which the person making the SSA asserts

[26] Despite A. Marmor, 'Varieties of Vagueness in Law', University of Southern California Law School, Legal Working Paper Series, no. 89 (2012), http://law.be.press.com/usclwps-lss/art892012:10.

[27] Lode, op. cit., n. 4, 1479.

[28] Rizzo and Whitman, op. cit. n. 4, 571.

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obtains throughout the series, is understood in consequenatialist or deontological terms – as bad in its social effects or offensive in itself. Sometimes the evaluation will switch from deontology (at the bottom of the slope) to consequentialist (at the top).

There are three different kinds of argument that go by the name *slippery slope*, depending on how these questions are resolved. One is an argument by analogy, the second looks to the nature of the justifications offered, and the third relies, not on intellectual considerations, but on the dynamics of social and political life.

3. The Analogical Slippery Slope

Arguments by analogy pervade discussion of practical issues, both in the law and in more informal contexts. Here are two influential examples:

(A)

(1) Legal and social distinctions based on race are obnoxious.
(2) Distinctions based on sexual orientation are, in relevant respects, similar to distinctions based on race.
(3) Therefore, legal and social distinctions based on sexual orientation are obnoxious.

(B)

(1) Discrimination against African-Americans, Hispanics, Asians, and Native Americans is unacceptable.
(2) Discrimination against white people is, in relevant respects, similar to discrimination against African-Americans, Hispanics, Asians, and Native Americans.
(3) Therefore, discrimination against white people, say in programs of preferential affirmative action, is unacceptable.

Neither (A) nor (B) ends the argument. Those who reject their conclusions argue that the cases are relevantly different; an argument by analogy can always be answered with a distinction. But neither are they are irrelevant: they present a case their opponents are obliged to answer. As Douglas Walton has pointed out,

> 'we must not take for granted, as the textbooks in the past have so often done, that a fallacy may be spotted simply by looking at the

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> type of argument it is, apart from how it was used in a context of dialogue.'[29]

Simple arguments by analogy like the above are dyadic; an analogical SSA involves a repeated use of analogy. Thus for example:

(C)

(1) Infanticide is immoral and ought to be illegal.
(2) Late abortion is in relevant respects similar to infanticide.
(3) Early abortion is in relevant respects similar to late abortion.
(4) Therefore, early abortion is immoral and ought to be illegal.[30]

Writers hostile to SSA's take (C) as their paradigm of the alleged fallacy. But there is nothing inherently wrong with it: it differs from (A) and (B) only in that it reiterates the analogy. And like them, while not decisive, it presents an argument its opponents are obliged to answer.

What (C) calls for is what is somewhat brutally called a 'cutoff point' – an intellectually and politically defensible line between a human being or person and pre-human organic matter. Its proponents also need such a cut-off point, in order to rebut the suggestion that they are committed to the absurd result that any abstention from reproduction is murderous. But, since 1827, we have known of at least one clearly defensible cut-off point: the moment of conception.[31] In all cases we need to know at what point there is a distinction that stops the series of analogies.

But why not draw an arbitrary line, as we do when we designate a speed limit?[32] The answer lies in the gravity of the issue at stake. The

[29] Walton, *Slippery Slope Arguments* (Oxford: Clarendon Press, 1992), xiii.

[30] For a detailed discussion of the SSA concerning abortion, see M. Wreen, 'The Standing is Slippery', *Philosophy* 79, (October 2004), 553–572, https://doi.org/10.1017/S0031819104000440.

[31] For present purposes I ignore the complications concerning the pre-embryo. See B. Smith, and B. Brogaard, 'Sixteen Days', *Journal of Medicine and Philosophy* **28,** no. 1(2003), 45–78, arguing for a cut-off point after conception: and G. Grisez, 'When Do People Begin?' in S. Heaney (ed.) *Abortion: A New Generation of Catholic Responses* (Braintree, MA: Pope John Center, 1993), for a defense of the decisive significance of the moment of conception.

[32] J. Glover, *Causing Death and Saving Lives* (Harmondsworth, Eng.: Penguin 1977), argues for an arbitrary cut-off point; Lode, op. cit. n. 4, 1497–1503, likewise rejects 'rational grounds' SSA's.

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'mistakes are fatal' argument against capital punishment is very popular, though it has its problems.[33] But a parallel argument against punishing minor traffic offenses would be grotesque. We can be unconcerned about arbitrariness in the voting age, since a sixteen-year old need only wait two years for full citizenship. And a similar point holds for jury size, since there is no reason to believe that six-person juries are especially likely to perpetrate miscarriages of justice. But if we were to establish a maximum voting age, whether that age were seventy-five or eighty would be a more sensitive issue. The issue would be more sensitive still, if we accepted the proposal that people beyond a certain age were to be killed or denied life-saving medical care. Likewise, the possibility that we define the line between persons and non-persons in such a way as to wrongly exclude some entities from personhood ought to give us serious concern.

In response, we can adopt a 'precising definition' of *person*, designed to remove or reduce its vagueness or open texture.[34] At this point analogical and sorites understandings of the SSA merge, since each step in the sorties is like its predecessor, and the question in either understanding is where to draw the line. But these definitions commonly have considerable open texture as well.

Another approach is to embrace the open texture of the relevant concepts, and adopt, for example, a 'gradualist' approach to the fetus question. The problem lies in establishing an intellectually and politically defensible correlation between stages of development and 'indications'. We lack the necessary conceptual equipment for this task, in part because the moral metaphysics of the West treats personhood as an on-off category, and affirms that all persons (however much inequality we may tolerate at the practical level) as inherently equal. A third approach is to brave the charge of 'speciesism' and formulate the relevant rules in terms of membership in the human species. Members of extraterrestrial species, or even chimpanzees and dolphins, might also end up getting recognized as, as was said in the sixteenth century of American Indians/Native Americans, as 'true men'.[35] But such recognition would not be automatic, and would require both deliberation and experience.

[33] See my 'Capital Punishment and the Sanctity of Life', *Midwest Studies in Philosophy* **24** (2000), 228–242.

[34] R. Fogelin, *Understanding Argumentation*, 3rd edition (San Diego: Harcourt Brace Jovanovich, 1987), 83–84.

[35] Pope Paul III, *Sublimis Deus* (1537). Cited in H. Thomas, *The Slave Trade* (New York: Simon and Schuster, 1977), 125.

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4. The Argumentative Slippery Slope

The analogical slippery slope focuses on the objective characteristics of the pertinent actions, to the limited extent that these can be distinguished from the agent's motives, intentions, and justifications. The argumentative slippery slope links forms of behavior that may look very different, but are linked by the justifications offered in their behalf. The form of the argument is as follows:

(1) All the arguments for A are also arguments for B.
(2) Therefore, those who accept A also should accept B.

Where such an argument is valid, refusing to accept it is to commit the 'taxicab fallacy'. Just as someone who has taken a taxi to the airport pays and tips the driver, and wishes him or her a good day, so one who commits the taxicab fallacy dismisses the argument when it has served its purpose. He behaves like a lawyer who is content to win the case and hand and feels himself entitled to neglect the possible wider consequences of a favorable ruling.

Here are two examples:

(D)

(1) All the arguments for recognizing same-sex marriage are also arguments for recognizing polygamy.
Therefore, any jurisdiction that, as a matter of principle, recognizes same-sex marriage should also recognize polygamy

(E)

(1) All the arguments for a woman's right to choose abortion are also arguments for a man's right to refuse to accept the obligations of paternity.[36]
(2) Therefore those who accept *Roe* v. *Wade* for women ought also to accept it for men.

These arguments both seem good, at least in the absence of persuasive considerations to the contrary. In defense of (E), it is true that those people who oppose *Roe* v. *Wade* for women demand a greater sacrifice of people who have brought about a pregnancy than do those who

[36] '*Roe* v. *Wade* for Men™', National Center for Men, Press Release, n.d., http://www.nationalcenterformen.org/page7/shtml.

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oppose *Roe* v. *Wade* for men. But the proponents of *Roe* v. *Wade* for women also demand more for women than their counterparts do for men – not only to have no part in the child's upbringing, but also to do something that prevents the child being brought up at all. Any kind of argument can be involved in an argumentative slippery slope, and the criteria of validity (or goodness) vary from argument form to argument form. What is essential to a valid argumentative slippery slope is that the critic uses the same kind of argument as did the original arguer: if a deductive argument, then a deductive argument, if an argument by analogy then an argument by analogy, and so on. If the argument used by the critic is weaker than the original argument, then the argumentative slippery slope is fallacious.

The strength of an argumentative slippery slope depends on the arguments advanced for starting the slope. The more proponents of voluntary euthanasia and assisted suicide emphasize the burden sick and disabled people create for society, the slipperier the slope will be.

When gay marriage is defended as the triumph of love over 'archaic' custom, then the slope toward incest and bestiality is very slippery. For we expect parents to love their children, and pet owners to love their companion animals. And since we are talking about marriage, the tradition that opposes love to marriage is irrelevant here. A more sophisticated argument for same-sex marriage is that marriage has no essence or nature, but designates whatever sort of relationship we choose to define as such (a 'social construction', if you will). The inevitable issue is why a polygamous family, a bisexual, polyamorous commune, two brothers living together as Platonic roommates, or a woman who has decided to wed herself,[37] should not be defined as married.

The strength of an SSA also depends on our reasons for rejecting the bottom. Consider a slope ending in incest. If our concern is defective offspring, then gay incest is no different from homosexual activity of other sorts. If our concern is the disruption of the patterns that provide the grammar of social relations, then we have considerable reason for alarm. If there is nothing wrong with incest, there is nothing wrong with a slippery slope with incest at the bottom. That there is at present no significant incest liberation movement pertains to the next sort of SSA.

[37] See http://www.selfmarriageceremonies.com/about-self-marriage/.

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5. The Prudential Slippery Slope

Prudential SSAs are of the following form:

(1) Policy P will (or may) lead to result R.
(2) Result R is bad.
(3) Therefore, we should not adopt policy P.

Two prudential SSAs, each of which can be taken as a sample of a far larger family are

(F)

(1) Voluntary euthanasia will (or may) lead to non-voluntary and even compulsory euthanasia.
(2) Non-voluntary and especially compulsory euthanasia are bad.
(3) Therefore, we should not accept even voluntary euthanasia.

(G)

(1) Holding aliens suspected of terrorism prisoner indefinitely without trial will lead to the internment of loyal American citizens (as happened to the Japanese Americans during World War II).
(2) The internment of loyal American citizens is bad.
(3) Therefore we should not hold aliens suspected of terrorism prisoner indefinitely without trial.

The same sort of argument applies to the assassination of alleged terrorist leaders.

Both (F) and (G) are consequentialist arguments, though they are both used – especially (F) – by writers whose approach to ethics is non-consequentialist. Consequentialist arguments cannot be avoided in ethics,[38] though to rely on consequences alone would produce a morality that we should reject on consequentialist grounds. Both also turn on the consequences of *policies*: not individual acts, but acts carried out under public authority more or less by the light of day. The Nazi euthanasia campaign was somewhat clandestine, and arguably contributed to the, also somewhat clandestine, Holocaust. But if clandestine operations have untoward implications, we are

[38] Despite G. Grisez, 'Against Consequentialism', *The American Journal of Jurisprudence* **23** (1978), 21–72.

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entitled to expect that public policy announced by the White House, the Congress, or the Supreme Court will have such implications as well (and even more so).

Whether a prudential slope is slippery depends on a host of socio-psychological mechanisms).[39] I here hit the high points only. The status quo in all societies outside the gates of Eden is the result of a compromise among a number of groups each having both their own distinctive material interests and their own distinctive understandings of the good society and the way to it. Some such groups are acutely unhappy with the status quo, and have a program for change. Sometimes accommodation or even alliance is possible but sometimes these programs clash deeply. The saying of Mao Tse-tung, 'We shall support whatever the enemy opposes and oppose whatever the enemy supports', has adherents these days all over the political spectrum.

Those who use the slippery slope defensively sometimes hope to exploit it as well. Disaffected groups would like to change things all at once, and some of their adherents have moral objections to incrementalism.[40] But political effectiveness requires a willingness to proceed 'step by step', if only to plant premises in the public mind that make possible more radical policies in the future.[41] And this means trying to push the larger society down a slippery slope.

As a result, a range of possibly attractive moderate positions becomes harder to defend. These range from moments of silence at the beginning of the school day, through proposals defuse the same-sex marriage issue by privatizing marriage,[42] measures of gun control short of total prohibition of private possession, artificially

[39] See Volokh, op. cit. n. 4.

[40] C. Harte, *Changing Unjust Laws Justly: Pro-Life Solidarity with 'the Last and Least'* (Washington, DC: Catholic University of America Press, 2005).

[41] H. Arkes, *Natural Rights and the Right to Choose* (Cambridge: Cambridge University Press, 2004), 247.

[42] For example, T. Metz, 'Why We Should Disestablish Marriage', http://academic.reed.edu/poli_sci/faculty/metz/metz-marriage.pdf; see more fully her *Untying the Knot* (Princeton: Princeton University Press, 2010); for rosters of other scholars who support this proposal, see Metz, *Knot*, 165n. 24 and 181–82n.38. For conservative religious support for this proposal, see G. Weigel, 'The Crisis of a Second Obama Administration', *Denver Catholic Register,* 2012, http://www.archden.org/index.cfm/ID/9360. For a symposium on Weigel's argument, see R. T. Anderson et al., 'The Church and Civil Marriage', *First Things* no. 242 (April, 2014), 33–34.

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induced coma as an alternative to euthanasia and assisted suicide, and attempts to find a middle ground between open borders and draconian immigration policies, to states' rights approaches to the abortion issue. At the constitutional level, they include the American compromise about religion: all religions are granted freedom, but none allowed dominance. Some of these proposals might be the best that can be done in an imperfect world. But we are constantly made conscious of the possibility that advocates of a moment of silence might, to put their opponents' suspicions as charitably as possible, have a program for using state power to pressure children to pray.

In view of the possibly pernicious uses of the SSA, we might mount an SSA against it. Once we start using SSAs, or so the argument goes, we will not stop until we renounce all attempts at rationally defended reform.

But, first, the SSA is directed against innovations, and the use of SSAs is part of the practice of advocates today.[43] Opponents of the SSA are proposing a reform of our argumentative practices. Second, the SSA gets its force from skepticism about our ability to predict and control the unintended consequences of our policy choices. If this skepticism were total, reasoning about questions of policy would come to an end, but it need not be so: all our decisions – including the decision to use or accept an SSA – must be made with appropriate humility, but this need not be paralysis.

Another version of this objection runs as follows. The SSA turns on the difficulty we may have in making distinctions (e.g. between voluntary and involuntary euthanasia, or between extrajudicial execution of fellow citizens suspected of being terrorists and rubbing out political opponents). But the SSA itself supposes that we are able to make the distinction between the (at least relatively) acceptable behavior at the top and the unacceptable behavior at the bottom. Hence the SSA undermines itself.[44] In reply: we are neither totally unable to make distinctions (say between killing an animal and killing a human being) nor perfectly good at making them (especially under conditions of stress, as in end-of-life decisions).[45] And we will

[43] Note the title of David Enoch's essay, 'Once You Start Using Slippery Slope Arguments, You are on a Very Slippery Slope', *Oxford Journal of Legal Studies* **21** no. 4 (2001), 629–641.

[44] Op. cit. n. 43.

[45] The slope from voluntary to non-voluntary (as opposed to strictly involuntary) euthanasia is particularly slippery. As Dr. F. Kennedy put it, 'If the law sought to restrict euthanasia to those who could speak out for it, and thus overlooked these creatures who cannot speak, then I say as Dickens did,

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be less good at making decisions when the distinction is not one embodied in existing practice. SSA is a conservative argument, though not every cause in which it is used is standardly conservative. Until just recently, civil liberties were considered a liberal cause, and SSAs are routine in their defense.[46] Everything depends on the contours of the particular issue.

6. Conclusion

Three further observations will conclude the discussion. First, the SSA depends on at least some moral worries about the behavior at the top. If I have no inclination to believe that playing cards without gambling is morally offensive, I will not be moved by the suggestion that it leads to gambling addiction. Second, slippery slopes operate against a background perception that society is changing for the worse at least in some respects, and that moving with the times in these contexts means accepting deeper and deeper depravity. Even an argumentative slippery slope has a prudential dimension, since it involves a degree of skepticism about our ability to stop a line of thought at an arbitrary point, pleading 'common sense'. But, third, the fact that slippery slopes appear everywhere, and if always accepted would lead to paralysis means that such arguments must be used with prudence, not that they are fallacious as such.

Some SSAs are powerful; some are mischievous; prudence is essential. All SSAs are based on fear, but fear is not necessarily irrational; if a neighborhood is dangerous at night, is not a fallacious appeal to fear to warn students away from it. On other hand, not every appeal to bad consequences is an example of the SSA: SSAs appeal to the existence of processes of reasoning of the form *If A why not B?* Whether such reasoning is good or bad is a secondary matter.

The greatest source of belief in slippery slopes is to have observed a number of them. The effect of SSA's is to put pressure on those who advocate moderate reform, to show that their proposed changes will not have the deleterious global effects their opponents fear.

"The law's an ass"', *New York Times,* February 14th 1939, quoted in Y. Kamisar, 'Euthanasia Legislation: Some Non-Religious Objections', Downing, (ed.) op. cit. n.12, 108.

[46] The Supreme Court has defended vulgar speech to protect serious political argument. *Cohen* v. *California,* 403 U.S. 15, 24–25 (1971).

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Thoroughgoing radicals can ignore such arguments since they welcome such global effects. In that sense the SSA is a conservative argument. But a believer in the SSA, and in this sense a conservative, can consistently regret the absence in our world of a genuinely participatory and democratic society within which the welfare of individual citizens is raised above theories and prejudices about alleged racial and ethnic superiority, and where individual interests have priority over economic dogmas and theories of social utility.[47]

At every stage of the evaluation of an SSA a prudential judgment is required, both of the importance of the interests at stake of the power of the forces pushing us down the slope. It matters, even among those who agree that the bottom of a slippery slope is bad, *how* bad we think it to be; arguments about practical matters cannot be isolated from questions of value. SSA's do not provide knock-down, drag out arguments, but it always a mistake, when dealing with an issue of human importance, to expect to settle a big question with a short argument. Philosophers impatient with the messiness of the social world should renounce their ambition to be philosopher-kings (or queens).[48]

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[47] So D. Lamb, *Down the Slippery Slope* (London: Croom Helm 1988), 20.

[48] I am indebted to Michael Wreen for his comments on a draft of this paper.

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