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Abstract	Opponents of medically assisted dying have long appealed to ‘slippery slope’ arguments. One such slippery slope concerns palliative care: That the introduction of medically assisted dying will lead to a diminution in the quality or availability of palliative care for patients near the end of their lives. Empirical evidence from jurisdictions where assisted dying has been practiced for decades, such as Oregon and the Netherlands, indicate that such worries are largely unfounded. The failure of the palliation slope argument is nevertheless instructive with respect to how slippery slope arguments can be appraised without having to await post-facto evidence regarding the effects of a proposed change in public policy. Close attention in particular to the norms operative in a given institution and how changes to policy will interact with those norms enable slippery slopes to be credibly appraised. Q2	

AUTHOR QUERIES

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Palliation and Medically Assisted Dying: A Case Study in the Use of Slippery Slope Arguments in Public Policy

Michael Cholbi

Whether in the form of active euthanasia or assisted suicide, the movement for physician aid in dying continues to gain ground worldwide. As of 2018, some form of physician-assisted dying is now legally available in Belgium, Canada, Colombia, Germany, Luxembourg, Switzerland, and in seven American states. Legislative bodies continue to debate assisted dying in several Australian states, with Victoria having approved an assisted dying bill in 2017. In addition to aid in dying becoming more available in more places, it is increasingly available to a wider spectrum of patients. Belgium, the Netherlands, and Switzerland now extend the legal right to assisted dying to those with mental or non-terminal illnesses, and Belgium allows assisted dying for minors under prescribed conditions.

As access to physician aid in dying has expanded, the body of empirical evidence concerning the practice's effects has grown significantly. With Oregon having implemented its Death with Dignity Act in 1997, the Netherlands having legalized euthanasia in 2001, and several other jurisdictions now permitting physician-assisted dying, we now possess nearly a generation's worth of empirical data by which to assess the effects of expansion of physician aid in dying. Many disputes concerning the morality or justifiability of physician aid in dying are essentially immune to empirical evidence. For instance, no amount of empirical evidence can logically controvert the claim that physician aid in dying violates a cornerstone principle of medical ethics, namely that physicians may not intentionally kill (or contribute to the intentional killing of) their

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27 patients. However, to whatever extent debates about the moral justifiability of
28 legalizing medically assisted dying turn on empirical questions, we are now bet-
29 ter positioned than ever to answer those questions. More specifically, oppo-
30 nents of medical aid in dying have long hypothesized that its legalization or
31 acceptance would harm patients and erode important elements of the culture
32 of medicine—that deviating from the status quo would place us on a ‘slippery
33 slope’ with unintended but terrible results.

34 This chapter has two objectives: The first is substantive, but modest. I will
35 muster evidence to show that one slippery slope posited by opponents of medi-
36 cal aid in dying—that its introduction would set back the provision of palliative
37 care at the end of life—has not materialized. The second is more methodologi-
38 cal: I will offer some reflections on what we can learn about the appraisal of
39 slippery slope arguments from the fact that these predictions concerning medi-
40 cally assisted dying’s effects on palliative care have not been borne out. While
41 the evidence concerning these effects is (to my mind) decisive, it would be
42 valuable to be able to credibly appraise slippery slope arguments before the
43 policies at issue are implemented. The palliation slope highlights several argu-
44 mentative burdens that proponents of a slippery slope argument must meet in
45 order for us to evaluate the argument’s credibility prior to a policy change.

46 THE ARGUMENTATIVE DIALECTIC SURROUNDING 47 SLIPPERY SLOPES

AU3

48 The literature on slippery slope arguments agrees on their general contours: An
49 initial, seemingly acceptable, deviation from the status quo is instigated that in
50 turn leads to an outcome morally worse than the status quo. We should,
51 according to such reasoning, therefore reject the initial deviation on the
52 grounds that it will culminate in a morally worse state of affairs overall. The
53 plausibility of slippery slope arguments thus turns partially on their empirical
54 predictions. In the case of assisted dying, these arguments are typically put
55 forth against a background in which the status quo allows for individuals to
56 refuse or forego treatments or medical interventions that may extend their lives
57 but disallows physicians (or anyone else) from assisting individuals in measures
58 intended to shorten their lives. The slippery slope arguments against assisted
59 dying thus predict that while allowing physicians to assist individuals to die
60 under certain conditions is not morally untoward, acknowledging such a ‘right
61 to die’ will set us on a slippery slope in which our practices evolve—or perhaps
62 *devolve*—in morally abhorrent directions.

63 The inherently speculative nature of slippery slope arguments has led many
64 philosophers to reject them as fallacious or at least *prima facie* suspect.¹ Still,
65 many will concede that even if slippery slope arguments are suspect as a class,
66 there may nevertheless be instances of such arguments that have merit and are
67 rationally persuasive.² With respect to slippery slope arguments then, how are
68 we to separate the rationally persuasive wheat from the sophistical chaff? In

order to endorse a slippery slope argument, we must have good reason to believe that the predicted bad outcome would represent a morally worse state of affairs than the status quo, and the deviation from the status quo must lead (or must be likely to lead) to the predicted bad outcome. Yet, these conditions are nevertheless insufficient to distinguish compelling slippery slope arguments from other arguments that merely posit negative effects of some change in policy or practice. For example, taxing tobacco might lead to a decline in business at small neighborhood grocers, but this negative effect would not likely be the result of any ‘slippery slope.’

Douglas Walton has recently offered a painstaking analysis of what further distinguishes slippery slope arguments.³ As Walton depicts them, slippery slope arguments tacitly assert that while the norms governing the status quo are stable and enjoy a high level of allegiance among those subject to them, the norms embodied in the deviation will not be stable in this way. In fact, individuals subject to the new norms will lose their bearings and become unable to stop themselves from sliding toward the morally untoward outcome. Walton’s analysis accords well with the image of the slippery slope (and similar metaphors): Deviating from the status quo unleashes a process wherein agents or institutions can no longer control the sequence of events initiated by that deviation. Though the initial deviation is benign, the ‘momentum’ unleashed via the initial deviation culminates in an irreversible and catastrophic state of affairs.

THE PALLIATION SLOPE 90

One slippery slope argument offered by opponents of medically assisted dying is that its introduction would lead to reductions in, or stymie recent progress in, the availability or quality of palliative care for terminally ill patients.⁴ Opponents argue that popular support for medically assisted dying stems from the inadequacy of existing palliative care. Allowing physicians to hasten death would allegedly make it “too easy ... for society to escape its obligation to render dying more comfortable.”⁵ It would be better all things considered for patients to opt for end-of-life palliative care instead of assisted dying, but because such care is often poor or inaccessible, many will opt for assisted dying instead.⁶ The legalization of assisted dying, these arguments contend, must await the day when societies have achieved “full availability and practice of palliative care for all citizens.”⁷

Opponents of assisted dying may not intend that the threats to palliative care posed by the introduction of legalized assisted dying turn result *entirely* from a slippery slope. Nevertheless, it seems apparent that they are utilizing slippery slope reasoning to some extent. The introduction of assisted dying, some opponents of assisted dying seem to believe, would inject into medical norms the prospect of physicians or other medical professionals willfully contributing to patient deaths. This deviation from existing norms would ostensibly result in a shift away from adequate palliative care provision to the use of assisted dying as a way to end, rather than therapeutically manage, patient

112 suffering at the end of life. Once medicine's menu of options is expanded to
113 include assisted dying, that option is supposed to crowd out palliative
114 alternatives.

115 Certainly no one could rightfully oppose improvements in palliative care.
116 But have the predictions suggested by this argument turned out to be correct?
117 There is little evidence to indicate that the introduction of medical assisted
118 dying has eroded the quality or availability of palliative care.⁸ The quality and
119 availability of palliative care varies significantly in the United States, for exam-
120 ple.⁹ But these variations do not track whether a state's residents have access to
121 medically assisted dying. A recent report from the Center to Advance Palliative
122 Care suggests that the relationship between the quality and availability of pal-
123 liative care and the legality of medically assisted dying is in fact the opposite of
124 what opponents of assisted dying have predicted: Many of the states with legal-
125 ized assisted dying (Oregon, Washington, Colorado, Montana, and Vermont)
126 were given among the report's highest grades for palliative care, and no state
127 that ranked in the bottom half has legalized assisted dying.¹⁰ In a similar vein,
128 a Scottish government report comparing the provision of palliative care glob-
129 ally indicates that those nations with histories of legalized assisted dying
130 (Belgium, the Netherlands, and Luxembourg most notably) are among the
131 world's best in providing such care.¹¹ Such findings should be taken with a
132 grain of salt: There are many more factors that influence palliative care provi-
133 sion besides the availability of assisted dying. But the accumulated evidence
134 does not support the contention of a slippery slope culminating in poor provi-
135 sion of palliative care. Rather than being incompatible, assisted dying and pal-
136 liative care appear complementary in practice.

137 In retrospect, that the introduction of assisted dying would not be likely to
138 harm palliative care seems less surprising once we attend to the possible effects
139 of its introduction on norms regarding end-of-life care. Here I believe propo-
140 nents of this slippery slope have erred in two ways.

141 First, proponents of the palliation slope argument likely overestimated the
142 extent to which the introduction of assisted dying represents a substantial devi-
143 ation from existing medical norms. For one, studies have indicated that assisted
144 suicide and medical euthanasia have long occurred even where they are ille-
145 gal.¹² There exists a "measurable, fairly consistent incidence of physician-
146 assisted suicide whether legal or not" across numerous jurisdictions.¹³ Hence,
147 legalization may not have altered norms so much as brought existing norms
148 out into the open. Moreover, many medical communities and practitioners
149 acknowledge that patients have a right to end their lives with medical profes-
150 sionals' help inasmuch as they have a right to passive euthanasia, including a
151 right to cease life-sustaining treatments. In this regard, introducing legalized
152 assisted dying, rather than challenging some putative norm *against* medical
153 professionals helping their patients to die, merely tweaks an existing norm
154 *allowing* medical professionals to help their patients to die by expanding the
155 palette of means by which such help can be provided. Thus, if those advancing

this slippery slope argument concede that existing medical norms are acceptable rather than catastrophic, and introducing legalized assisted dying does not significantly alter those norms, then there does not seem to be any grounds for their not conceding the acceptability of assisted dying as well. Adam Feltz has recently conducted experiments concerning popular attitudes toward medical aid in dying and found that such attitudes depend far more on whether the request for medical aid in dying is voluntary than on whether the request is for passive or active euthanasia. Feltz' findings corroborate the hypothesis that legalizing assisted dying does not challenge the widely accepted norm according to which it is ethically permissible to honor voluntary requests for aid in dying, in whatever form those requests may take.¹⁴

Second, advocates of the palliation slope argument appear to believe that a norm that introduces assisted dying as an option will alter the psychological machinations of medical professionals, motivating them either to encourage patients to choose assisted dying even when they ought to prefer palliative care or to provide substandard palliative care. A change in legal rules is thus supposed to bring about a change in behaviors. This is typical slippery slope reasoning, inasmuch as it contends that deviating from the status quo will undo long-standing processes of habituation and thereby bring about an undesirable change in our values.¹⁵

But here I note that changes to legal standards and changes to evaluative norms are different. Norms do more than generate practical prescriptions. They also encode values. And it does not follow, logically or causally, that giving individuals more legal options changes their underlying evaluative norms. Indeed, the new options will be received in light of or with reference to existing evaluative norms. This appears to be the case with respect to norms regarding end-of-life care after the introduction of a legal option of medically assisted dying. In those jurisdictions in which it has been introduced, it appears to have been incorporated into a system of norms oriented around respect for patient autonomy and a commitment to minimizing patient suffering. Assisted dying has thus come to serve as one among an expanding menu of options for individuals with serious or terminal illness, but it has not supplanted palliative care among those options. In fact, its arrival appears to have stimulated greater interest and concern for the quality of said care. Underlying palliation and medically assisted dying are values that stand in harmony, rather than in tension. These practices are therefore not antagonistic either at the level of theory or the level of practice.¹⁶

There is not, then, a compelling basis for supposing any deep incompatibility between quality palliative care and assisted dying of the sort that this slippery slope argument assumes. "The quality or availability of palliative care" is not in "any way undermined by the availability of [assisted dying]."¹⁷ Rather, the evidence suggests that the introduction of assisted dying does not alter existing medical norms surrounding end-of-life care or does not generate the necessary 'momentum' in the direction of poor palliative care. Instead of a

200 vast expansion in assisted dying at the expense of quality palliative care, assisted
201 dying has come to function as an end point of a continuum of methods
202 (including palliation) utilized to minimize end-of-life suffering. It thus appears
203 possible both to respect patients' desires for assisted dying while we "promote
204 the very best care for patients at the end of life."¹⁸ To suppose otherwise is to
205 succumb to a false dilemma.

EVALUATING SLIPPERY SLOPES: ~~THREE~~ ARGUMENTATIVE BURDENS

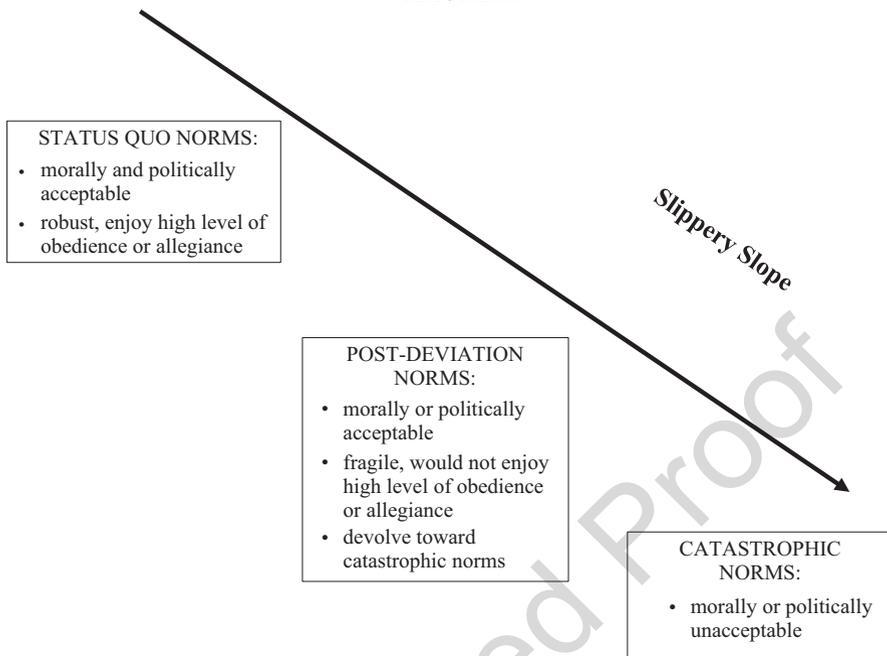
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208 Slippery slope arguments typically arise in particular discursive contexts, namely,
209 when the effects of a proposed policy change are uncertain or controversial.
210 Presumably, questions about such effects are empirical and so demand empiri-
211 cal methods and evidence. I have observed that, unfortunately, many disputes
212 about slippery slopes have a decidedly non-empirical flavor. Evidently comfort-
213 able in their proverbial armchairs, disputants rest content with advancing rival
214 a priori narratives about how persons and institutions will respond to a pro-
215 posed policy change.

216 Granted, human beings are not clairvoyant about how the social world
217 changes in response to policy changes. But a priori theorizing about the effects
218 of such changes is probably even less reliable. One possible 'solution' to the
219 challenge of evaluating slippery slope arguments is to actually implement the
220 proposed policy change and then measure its effects. This has the epistemic
221 advantage that it gives us concrete evidence about these effects. The proof is in
222 the public policy pudding, yes. But it would of course be salutary if we could
223 rationally appraise slippery slope objections to a given policy change *before*
224 implementing it. As section "The Palliation Slope" illustrated, relevant evi- [AU4]
225 dence accumulated over several decades has shown that the palliation slope was
226 an unfounded worry. Yet, regardless of whether one supports or opposes medi-
227 cally assisted dying, surely it would have been more rationally (and morally)
228 satisfactory to be able to appraise the palliation slope argument, however
229 imperfectly, prior to jurisdictions preceding forward with the legalization of
230 medically assisted dying.

231 Fortunately, there is a very wide evidential middle ground between the
232 empirically uninformed and the empirically infallible—between rank specula-
233 tion and factual guesswork. Our disputes about slippery slopes in public policy,
234 I contend, should take place on this middle ground. Such disputes occur
235 against a background of imperfect or limited information about the effects of
236 proposed policy changes, and in order for such disputes to be fruitful, parties
237 to these disputes bear certain dialectical burdens. Here I outline four burdens
238 that *proponents* of slippery slope arguments bear, burdens suggested by the
239 example of the palliation slope argument.

240 The following diagram illustrates the process by which slippery slopes are
241 supposed to unfold:

DIAGRAM 1



AU5 **Diagram 52.1**

In advancing such an argument, a slippery slope advocate must: 242

- a. *Couch the argument in terms of norms rather than rules.* Norms and rules are interrelated. Conformity to some rule sometimes occurs because of the acceptance of some norm, and norms sometimes emerge because of long-standing conformity to particular rules. But rules are not themselves norms, and advocates of slippery slope arguments err when they fail to focus on norms. The point of slippery slope arguments (at least in the public policy domain) seems to be that changing legal rules or institutional regulations will modify norms. If that were not what slippery slope arguments allege, they would have little argumentative force. For surely their proponents' worry is *not* with the new legal or institutional regime that will occur after some proposed reform is implemented. In the case of the palliation slope, their objection is not to assisted dying as such but to the hypothesized effects that it would have on norms concerning the provision of palliative care, namely, that the availability of assisted dying would erode those norms. 243
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- b. *Advance a plausible, empirically informed account of the existing norms relevant to the proposed policy change.* A proposed policy change does not occur in a normative vacuum. The rules it introduces will interact with 258
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260

261 extant institutional norms and attitudes. Thus, a credible slippery slope
262 argument must therefore begin with a fair and accurate representation of
263 the existing norms with which the new rules will interact and (possibly)
264 generate new norms. In the case of the palliation slope argument, its
265 proponents seem to have underestimated how entrenched two of the
266 four ethical pillars of modern medical practice—respect for patient
267 autonomy and beneficence concerning the relief of patient suffering—
268 are in those jurisdictions where medically assisted dying was legalized.

269 c. *Advance a plausible, empirically informed account of how the proposed pol-*
270 *icy change will interact with existing norms.* It is somewhat difficult to
271 reconstruct the assumptions on which the palliation slope argument is
272 based. But its proponents appear to have assumed that the legalization of
273 assisted dying introduces two clashing rules—*provide patients' adequate*
274 *palliative care* and *accede to terminal patient requests for assisted dying*—
275 that ground two distinct and clashing norms, where such clash would
276 ultimately be 'resolved' in practice by the latter triumphing over the for-
277 mer, that is, patients would be deprived of the palliative care to which
278 they are entitled because of the ascendance of medically assisted dying. In
279 retrospect, it seems clear that these rules were received against a norma-
280 tive backdrop in which larger norms regarding patient care were opera-
281 tive. The new rule ('accede to terminal patient requests for assisted
282 dying') was folded into these larger norms. As a result, the hypothesized
283 clash between palliation and assisted dying has not arisen.

284 d. *Provide a reasoned basis for supposing that whatever new norms are intro-*
285 *duced by deviation from the status quo would in fact be fragile and thereby*
286 *susceptible to devolution toward moral catastrophe.* Burdens a–c are largely
287 a prequel to the central premise of a slippery slope argument, namely,
288 that the proposed reform will introduce new fragile norms that are likely
289 to devolve in a catastrophic direction. The palliation slope argument
290 ~~does not, in my estimation, fail~~ at this precise point. Our best evidence
291 rather suggests that the introduction of medically assisted dying simply
292 did not generate a new norm that could even have served as the candi-
293 date for a fragile norm likely to trigger devolution toward poor palliative
294 care. All the same, the question of whether a norm is fragile and hence
295 susceptible to moral devolution cannot even be entertained unless we
296 have a clear sense of what that norm is and whether it is likely to emerge
297 as a new norm after the implementation of a proposed policy change.

298

CONCLUSION

299 Opponents of a given slippery slope argument may find it unconvincing for
300 reasons unrelated to its predictions regarding the likely consequences of a
301 policy change. Their reasons may be ethical instead of empirical: That the

hypothesized moral catastrophe either is not so catastrophic and/or its moral 302
deficiencies are less weighty than the moral deficiencies of the status quo. 303
Nevertheless, if opponents of a slippery slope argument wish to rest their case 304
on empirical considerations, then they should insist that the evaluation of the 305
argument operate from an empirically rooted 'middle ground,' one that does 306
not require us to actually implement a revision to the status quo in order to 307
evaluate its effects but also abjures a priori speculation about those effects. But 308
in order to do so, proponents of slippery slope arguments need to be exact and 309
forthcoming about how this devolution in norms is supposed to occur. 310

In the case of the palliation slope, had its proponents met burdens a–d, we 311
need not have awaited the growing body of evidence against the palliation 312
slope materializing. We could instead have insisted that proponents outline 313
what norms they believe existing medical practice surrounding palliation and 314
end-of-life care rest on, how assisted dying would introduce new norms, how 315
these norms would interact with existing norms to produce a new fragile norm 316
concerning palliation, and so on. While this is admittedly conjecture on my 317
part, I venture that were palliation slope proponents forthcoming in these 318
respects, the studies showing that this slope has not materialized would merely 319
have *confirmed* what we already had strong but defeasible reason to believe, 320
namely, that assisted dying would not undermine or slow the progress of qual- 321
ity palliative care. The fundamental mistake of the palliation slope argument 322
was to assume without further investigation that medical practitioners engag- 323
ing with patients at the end of life operate on a rather sinister set of norms, 324
according to which they are eager to end the lives of difficult or burdensome 325
terminal patients but these impulses are kept in check largely by the legal sanc- 326
tions against intentionally contributing to patients' death. I have a good many 327
reservations about the moral attitudes of the medical community, but I see no 328
reason to endorse the cynical hypothesis that contemporary medicine's com- 329
mitment to preserving quality life and relieving suffering through palliation is 330
this shallow. 331

These observations help us appreciate why, in retrospect, the palliation slope 332
argument, now largely refuted, ought not to have been taken as seriously as it 333
was. More generally, I am insisting that disputes about slippery slopes be 334
empirical and *particular*. It will not do for proponents of slippery slope argu- 335
ments to assert that deviations from the status quo will, somehow or other, 336
result in fragile norms. They must instead offer analyses invoking particular 337
norms rather than positing unnamed norms. In my observation, a good many 338
slippery slope arguments do not live up to this demand and thereby come to 339
enjoy greater credibility than they should. Proponents of such arguments enjoy 340
two unfair dialectical advantages relative to their opponents when they do not 341
invoke specific norms. First, to tacitly assert that somehow or other the hypoth- 342
esized devolution of norms will emerge exploits individuals' propensity to 343
devise some explanatory account, no matter how objectively implausible, to 344
account for the alleged slipperiness. Those already inclined to accept a given 345

346 slippery slope argument are likely to engage in motivated reasoning, wherein
347 the devolution is assumed and whatever norms or explanations they find
348 antecedently plausible are mustered to account for that devolutionary process.
349 Second, not specifying norms, and so on, enables proponents of slippery slope
350 arguments to hinder their opponents' ability to cast their own reform proposals
351 in the best light. Reformers who advocate for deviating from the status quo of
352 course wish to avoid morally bad consequences and so will want to craft their
353 reforms so as to mitigate those consequences. But without a specific explanatory
354 account of how deviation from the status quo will introduce fragile norms
355 that threaten catastrophic devolution, reformers are hamstrung in even considering
356 how to fashion norms that best mitigate those bad consequences. If we
357 lack knowledge of how the predicted consequences are supposed to ensue,
358 then how are reformers supposed to fine-tune their proposals so that good
359 outcomes obtain while bad consequences are avoided?

360 From the point of view of reformers, advocates of slippery slope arguments
361 sometimes unleash an army of phantoms, a collection of unstated or underdescribed
362 accounts of how deviations from the status quo will eventuate in catastrophe.
363 Reformers are not likely to fend off this army, but this simply illustrates that this
364 is not a fair clash of positions in the first place. Reformers—and those
365 of their opponents who rely on slippery slope arguments, to the extent they are
366 concerned with the truth and arguing in good faith—are owed more than just
367 a gesture in the direction of fragile norms, devolution, and the like. An intelligent
368 inquiry into the defensibility of a proposed reform in the light of slippery
369 slopes cannot take place if we have little idea as to precisely what lubricates the
370 hypothesized slope in the first place.

371 These observations regarding the argumentative dialectic surrounding slippery
372 slope arguments are offered in a constructive and forward-looking spirit.
373 Participants in such dialectics should insist that they be grounded in concrete
374 accounts of the emergence of dangerous norms instead of ill-defined bogeymen.

375

NOTES

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444 with Good End-of-Life Care?,” *Journal of Applied Philosophy* 26 (2009), p. 41.

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Author Queries

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AU4	Please confirm if cross-references of Section are correct throughout the chapter.	
AU5	caption is missing for Diagram 1. Please check and provide	

Uncorrected Proof