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Suicide - Criminal Aspects

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IV.

CONCLUSION.

An exemption should arise only after a careful balancing of the rights and interests involved. The legislature should weigh the right of a creditor to receive what is justly due him against the particular reason for the creation of the exemption. Unless the reason for the exemption is stronger it should not prevail against the creditor's claim. To create exemptions freely and arbitrarily is to create a real danger that credit will proportionately shrink and that the economy of the state will consequently suffer.

This is not the problem in Pennsylvania. In fact it might be said that the legislature has been too conservative in allowing exemptions. For example, the following are some important exemptions that might be considered by the legislature. Our rehabilitation and subsistence exemptions are far from adequate. There is no provision for shelter by way of a homestead or furniture exemption. But even more important there is no exemption for tools, autos, books, furniture, and other instruments which are necessary to the debtor's trade or profession. Another important exemption would seem to be the proceeds from casualty insurance on those things which are exempt in order to permit their repurchase.

Arthur S. O'Neill, Jr.

SUICIDE—CRIMINAL ASPECTS.

This comment will undertake to review the law in the United States on the criminal aspects of suicide. Although a few civil cases will be utilized for definition and historical background, insurance law or other civil aspects of suicide will not be considered.

Suicide has been defined as "the deliberate termination of one's existence, while in the possession and enjoyment of his mental faculties."¹ As a criminal law subject there are four general aspects to the problem, each of which will be treated separately. First, where the suicide is accomplished without affecting anyone other than the deceased; second, where the suicide is not successfully accomplished; third, where the would-be suicide injures or kills a bystander or a rescuer; and fourth, where one induces, encourages, or aids another to commit suicide. The so-called "mutual suicide pact" will be considered in the fourth category. In conclusion this Comment will seek to express the rules and considerations which should govern a court's decision in the situations outlined above.

1. BLACK, LAW DICTIONARY, 1602 (4th ed. 1951).

I.

ACCOMPLISHED ACT OF SUICIDE.

At common law, suicide was considered synonymous with *felo de se*, that is, where one of the age of discretion and *compos mentis*, voluntarily kills himself in any way.² A person who killed himself while insane or prior to reaching the age of discretion was not a suicide, although the accidental killing of oneself while attempting or committing another felonious act was considered suicide. Suicide itself was a felony and was punished by ignominious burial and forfeiture of goods and chattels to the King.³ An attempt to commit suicide was a misdemeanor but it is disputed whether attempted suicide was considered to be a crime in itself or was treated as an attempt to commit a felony.⁴ One who encouraged or induced another to commit suicide was guilty as a principal if present while the act occurred and as an accessory before the fact if absent.⁵ However, in the latter case, the accessory could not be punished due to the rule that a principal must be convicted before the accessories may be tried.⁶

Today, in the United States, there is a policy against forfeiture of goods or ignominious burial as a punishment for suicide.⁷ Because of this policy the majority of the states hold that suicide is not a crime.⁸ Obviously, in states having no common-law crimes nor a statute covering suicide, it is not criminal. Other states view it as a crime or an unlawful act, although not a punishable offense.⁹ However, in New York and Oregon, though suicide is not a crime, it is held to be a grave public wrong involving moral turpitude.¹⁰ The definition of suicide has remained the same, namely, intentional self-destruction by one of sound mind and of the age of dis-

2. Rudolph v. United States *ex rel.* Stuart, 36 App. D.C. 379 (1911); McMahon v. State, 168 Ala. 70, 53 So. 89 (1910).

3. Penn Mut. Life Ins. Co. v. Cobbs, 23 Ala. App. 205, 123 So. 94 (1929); McMahon v. State, 168 Ala. 70, 53 So. 89 (1910); Darrow v. Family Fund Soc'y., 116 N.Y. 537, 22 N.E. 1093 (1889).

4. May v. Pennell, 101 Me. 516, 64 Atl. 885 (1906); State v. Carney, 69 N.J.L. 478, 55 Atl. 44 (Sup. Ct. 1903).

5. Commonwealth v. Hicks, 118 Ky. 637, 82 S.W. 265 (1904).

6. *Ibid.*

7. McMahon v. State, 168 Ala. 70, 53 So. 89 (1910); Burnett v. People, 204 Ill. 208, 68 N.E. 505 (1903).

8. Royal Circle v. Achterrath, 204 Ill. 549, 68 N.E. 492 (1903); Prudential Life Ins. Co. of America v. Rice, 222 Ind. 231, 52 N.E.2d 624 (1944); State v. Campbell, 217 Iowa 848, 251 N.W. 717 (1933); Darrow v. Family Fund Soc'y., 116 N.Y. 537, 22 N.E. 1093 (1889).

9. Penn Mut. Life Ins. Co. v. Cobbs, 23 Ala. App. 205, 123 So. 94 (1929); McMahon v. State, 168 Ala. 70, 53 So. 89 (1910); Wallace v. State, 232 Ind. 700, 116 N.E.2d 100 (1953); Commonwealth v. Mink, 123 Mass. 422, 25 Am. Rep. 109 (1877); State v. Carney, 69 N.J.L. 478, 55 Atl. 44 (Sup. Ct. 1903); State v. Levelle, 34 S.C. 120, 13 S.E. 319 (1891).

10. Hundert v. Commercial Travelers' Mut. Accident Ass'n of America, 244 App. Div. 459, 279 N.Y. Supp. 555 (1st Dep't 1935); Wyckoff v. Mutual Life Ins. Co. of N.Y., 173 Ore. 592, 147 P.2d 227 (1944).

cretion,¹¹ but if self-destruction is the result of accident, mistake, insanity, or insane impulse, there can be no suicide in legal contemplation.¹²

Whether suicide is a crime in itself in a particular state is of little moment as the deceased obviously cannot be punished by the law. However, the answer to this question is far from academic insofar as the peripheral effects are concerned. This is well illustrated by the next section.

II.

ATTEMPTED SUICIDE.

As previously stated, attempted suicide was a misdemeanor and an indictable offense at common law.¹³ Whether that was because suicide was a felony or because attempted suicide was deemed a separate crime is a matter of dispute. Those states which hold that suicide is not a crime and which have no statutes declaring attempted suicide to be a crime hold that it is not an indictable offense.¹⁴ This result stems from the view that attempted suicide at common law was a misdemeanor only because suicide was a felony.¹⁵ Some states reason that since suicide is not a punishable crime, there can be no punishment for doing a lesser act, that of attempting suicide.¹⁶ Massachusetts, in a case interpreting a statute, arrived at the same conclusion.¹⁷ New Jersey, however, takes the opposite view and looks upon attempted suicide as a crime, without the benefit of a statute.¹⁸ This was based on the premise that attempted suicide was a separate crime at common law. A few states have made attempted suicide a crime by statute¹⁹ but there are no reported convictions in those states despite the number of attempted suicides yearly. Whenever suicide is accomplished, aside from

11. *Southern Life & Health Ins. Co. v. Wynn*, 29 Ala. App. 207, 194 So. 421 (1940); *Sampson v. Ladies of the Maccabees of the World, Inc.*, 89 Neb. 641, 131 N.W. 1022 (1911); *Hepner v. Dep't of Labor & Industries of State of Wash.*, 141 Wash. 55, 250 Pac. 461 (1926).

12. *John Hancock Mut. Life Ins. Co. v. Moore*, 34 Mich. 41 (1876); *Meacham v. New York State Mut. Ben. Ass'n.*, 120 N.Y. 237, 24 N.E. 283 (1890); *Conn. Mut. Life Ins. Co. v. Groom*, 86 Pa. 92 (1878).

13. *May v. Pennell*, 101 Me. 516, 64 Atl. 885 (1906); *State v. La Fayette*, 117 N.J.L. 442, 188 Atl. 918 (C.P. 1937).

14. *Prudential Life Ins. Co. of America v. Rice*, 222 Ind. 231, 52 N.E.2d 624 (1944); *May v. Pennell*, 101 Me. 516, 64 Atl. 885 (1906); *Commonwealth v. Dennis*, 105 Mass. 162 (1870); *Commonwealth v. Wright*, 26 Pa. County Ct. 666 (Q.S., Phila. 1902).

15. *May v. Pennell*, 101 Me. 516, 64 Atl. 885 (1906); *Commonwealth v. Dennis*, 105 Mass. 162 (1870). Generally, at common law, attempted felonies were a misdemeanor.

16. *May v. Pennell*, 101 Me. 516, 64 Atl. 885 (1906); *Commonwealth v. Dennis*, 105 Mass. 162 (1870); *Commonwealth v. Wright*, 26 Pa. County Ct. 666 (Q.S., Phila. 1902).

17. *Commonwealth v. Dennis*, 105 Mass. 162 (1870).

18. *State v. La Fayette*, 117 N.J.L. 442, 188 Atl. 918 (C.P. 1937); *State v. Carney*, 69 N.J.L. 478, 55 Atl. 44 (Sup. Ct. 1903).

19. OKLA. STAT. ANN. tit. 21, § 812 (Supp. 1954); WASH. REV. STAT. ANN. tit. 14, § 2386 (1949).

the obvious reason, it is the general rule that there can be no conviction for attempted suicide due to the doctrine of merger of offenses.²⁰

There is no difficulty if a person is convicted of attempted suicide under a statute. Only the propriety of having such a statute is debatable. Open to much more criticism is the New Jersey decision. Punishing an attempt to commit an act which is not punishable itself is to make the attempt a greater offense than the completed act. Generally, the more serious a crime, the greater the punishment, since that is the means used to determine the baseness of an offense.

III.

INJURING OR KILLING ANOTHER WHILE ATTEMPTING SUICIDE.

Though suicide is not a crime in Indiana, the courts of that state have held that a person who kills another while attempting suicide may be found guilty of either manslaughter or murder.²¹ They reason that both suicide and attempted suicide are unlawful acts, though not criminal, and that one who kills another while committing an unlawful act is guilty of a crime. Taking the opposite view is Iowa where a person is not guilty of a crime when he kills another while attempting suicide.²² The court restricted the meaning of "unlawful" to "contrary to law" and thus, attempted suicide is not unlawful since it is not a crime in Iowa. In South Carolina, suicide is an unpunished crime and attempted suicide is treated as an attempted felony. Thus, one who kills another while attempting suicide is guilty of murder.²³ Massachusetts, as previously stated, holds that, while attempted suicide may be unlawful or criminal, it is not punishable.²⁴ Nevertheless in Massachusetts a person is guilty of murder if he kills another while attempting suicide.²⁵

This particular problem arises only when one fails to accomplish the act of suicide. Once suicide is accomplished, the deceased cannot be punished though someone else is killed. In those states where attempted suicide is a crime by statute or where it is held criminal or unlawful, it is logical to hold that one who kills another while attempting suicide is guilty of a crime. But where suicide is not a crime and there is no statute concerning attempted suicide, it cannot be logically held that one is guilty of a crime when another is killed in the attempt. Since attempted suicide is not unlawful in those states, the killing of another is accidental and not criminal, unless some aspect of criminal negligence is present.

20. *Royal Circle v. Achterrath*, 204 Ill. 549, 68 N.E. 492 (1903); *May v. Pennell*, 101 Me. 516, 64 Atl. 885 (1906). It should be kept in mind that as stated previously one who accomplishes suicide cannot be punished by the law.

21. *Wallace v. State*, 232 Ind. 700, 116 N.E.2d 100 (1953).

22. *State v. Campbell*, 217 Iowa 848, 251 N.W. 717 (1933).

23. *State v. Levelle*, 34 S.C. 120, 13 S.E. 319 (1891).

24. *Commonwealth v. Dennis*, 105 Mass. 162 (1870).

25. *Commonwealth v. Mink*, 123 Mass. 422, 25 Am. Rep. 109 (1877).

IV.

INDUCING, ENCOURAGING, OF AIDING ANOTHER TO COMMIT SUICIDE.

The majority of states hold that one who incites, or helps another to commit suicide is guilty of murder, provided the causal connection between the incitement and the act of suicide can be proven.²⁶ This view is based on the premise that murder may occur though the victim desires death, and the defendant is as guilty as if he alone desired the death.²⁷ Illustrating this majority view is a Michigan case²⁸ in which the defendant placed a glass of poison within reach of his seriously-ill wife. He properly contended that she committed suicide and, since suicide is not a crime in Michigan, he could not be found guilty of murder for furnishing her the means to accomplish suicide. However, the court sustained his conviction for murder by means of poison.

An Ohio court in ruling the same way stated:

"If the prisoner furnished the poison to the deceased for the purpose and with the intent that she should with it commit suicide, and she accordingly took and used it for that purpose; or if he did not furnish the poison, but was present at the taking thereof by the deceased, participating, by persuasion, force, threats, or otherwise, in the taking thereof, or the introduction of it into her stomach or body; then, in either of the cases supposed, he administered the poison to her, within the meaning of the statute."²⁹

In Texas, one who furnishes a person with the means of committing suicide is not guilty of any crime.³⁰ Texas has further held that a person could be guilty of murder of a suicide only if he actually killed the victim or forced him to kill himself.³¹ Thus, in Texas, one who merely induces, encourages, or aids another to commit suicide cannot be found guilty of a crime.

Generally, a party who survives a "mutual suicide pact" is guilty of murder when the other dies.³² However, this view would not hold true in

26. *McMahon v. State*, 168 Ala. 70, 53 So. 89 (1910); *Burnett v. People*, 204 Ill. 208, 68 N.E. 505 (1903); *Commonwealth v. Hicks*, 118 Ky. 637, 82 S.W. 265 (1904); *Commonwealth v. Bowen*, 13 Mass. 356, 7 Am. Dec. 154 (1816); *People v. Roberts*, 211 Mich. 187, 178 N.W. 690 (1920); *State v. Webb*, 216 Mo. 378, 115 S.W. 998 (1909); *State v. Ludwig*, 70 Mo. 412 (1879); *People v. Kent*, 41 Misc. 191, 83 N.Y. Supp. 948 (Sup. Ct. 1903); *Blackburn v. State*, 23 Ohio St. 146 (1872); *State v. Jones*, 86 S.C. 17, 67 S.E. 160 (1910).

27. *Commonwealth v. Bowen*, 13 Mass. 356, 7 Am. Dec. 154 (1816); *People v. Roberts*, 211 Mich. 187, 178 N.W. 690 (1920); *Turner v. State*, 119 Tenn. 663, 108 S.W. 1139 (1908).

28. *People v. Roberts*, 211 Mich. 187, 178 N.W. 690 (1920).

29. *Blackburn v. State*, 23 Ohio St. 146, 163 (1872).

30. *Aven v. State*, 102 Tex. Crim. 478, 277 S.W. 1080 (1925); *Sanders v. State*, 54 Tex. Crim. 101, 112 S.W. 68 (1908); *Grace v. State*, 44 Tex. Crim. 193, 69 S.W. 529 (1902).

31. *Sanders v. State*, 54 Tex. Crim. 101, 112 S.W. 68 (1908).

32. *McMahon v. State*, 168 Ala. 70, 53 So. 89 (1910); *Burnett v. People*, 204 Ill. 208, 68 N.E. 505 (1903).

Texas unless the survivor actually killed the other or forced him to suicide.³³ Wharton, in agreeing with the majority, states:

"If two persons encourage each other to commit suicide jointly, and one succeeds and the other fails in the attempt upon himself, he is a principal in the murder of the other."³⁴

Whether the act of aiding or inducing a person to commit suicide is a crime should not depend on whether suicide is treated as criminal or not. As a rule, it is not a crime to aid another to commit an act which is not criminal. This is a generality, and Texas has gone very far in applying it. Suicide is a moral and social evil and to have one first plant the thought of suicide in another's mind and then to aid him in carrying the thought into action is likewise a social evil. Although the Texas courts do not accept this reasoning, the majority of the states do and their rulings consistently illustrate this opinion.

V.

CONCLUSION.

There is little that can be said concerning the classification of suicide as a criminal or non-criminal act in any one state. The common law punishments of ignominious burial and forfeiture of goods actually punished the suicide's family and probably failed as a deterrent or example to others. Today, at any rate, suicide will not be and certainly should not be punished.

Generally speaking, a person commits suicide because outside pressures have developed an intolerable inner tension which he believes can be relieved by killing himself. One who attempts suicide and fails is usually resentful because of such failure, and is more in need of psychiatric aid than punishment by society as a criminal. The majority of the states recognize this, and, consequently, hold that attempted suicide is not a crime. That this view prevails even in those states holding it to be a crime is evidenced by the frequent attempt at suicides compared to the lack of reported convictions in the past twenty years. Cases of attempted suicide simply are not prosecuted.

Regardless of whether suicide or attempted suicide is considered a crime, one who kills another while attempting suicide should not be punished solely because of the frustrated attempt at suicide. Modern notions of mental health would certainly indicate that these persons possess anything but the requisite criminal or felonious intent to commit a crime. The only situation which should lead to a contrary result is one where he would be guilty of a crime on another basis, for example, where the act amounts to criminal negligence. The case where one attempts suicide with a revolver

33. *Aven v. State*, 102 Tex. Crim. 478, 277 S.W. 1080 (1925); *Sanders v. State*, 54 Tex. Crim. 101, 112 S.W. 68 (1902).

34. WHARTON, CRIMINAL LAW § 448 (12th ed. 1932).

in a crowded area, with knowledge of the danger to others, will serve as an example. The danger to the public due to the act should be the controlling factor of whether attempted suicide resulting in another's death should be a crime.

A person who induces or aids another to commit suicide, should be treated as a murderer. The policy of the law should be to have the public dissuade or rescue one attempting suicide. Yet, in Texas, a person is permitted to persuade and actually cause another to commit suicide without punishment. This is a dangerous concept and fortunately there are few persons base enough to take advantage of it. It is, in fact, an invitation to murder by way of suicide. Most of the states, though having diverse views on other points, consistently hold that it is a crime for anyone to induce, encourage, or aid another to commit suicide. The more enlightened and humane approach of curing rather than punishing the person set on self-destruction, and the punishment of those encouraging such, should be the trend for the future in this area of the law.

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