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A BRIEF HISTORY OF ANGLO-WESTERN SUICIDE: FROM LEGAL WRONG TO CIVIL RIGHT

By: Helen Y. Chang*

INTRODUCTION

The act of self-killing and its legal, medical, religious, moral, social, and ethical implications present a complex and diverse range of response in social theory, philosophy, law, science, and judgment. By definition, "suicide" is a self-directed act that results in one's own death but in fact, there are wide variations in type and action.¹ Not all self-killing is considered a "suicide" as in the example of a soldier who sacrifices herself to save others.² Motivation and purpose are additional defining factors as to which acts are included within the common understanding of suicide.³

Worldwide, geographically and across cultures, the phenomenon of suicide has a complex history extending back to

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1. Suicide is "the act or an instance of taking one's own life voluntarily and intentionally." *Suicide*, MERRIAM-WEBSTER DICTIONARY ONLINE, <http://www.merriam-webster.com/dictionary/suicide>. The latin etymology of "suicide" is the "deliberate killing of oneself," 1650s, from Modern Latin *suicidium* "suicide," from Latin *sui* "of oneself" (genitive of *se* "self"), from PIE **s(u)w-o-* "one's own," from root **s(w)e-* (see idiom) + *-cidium* "a killing" (see *-cide*). ONLINE ETYMOLOGY DICTIONARY, <http://www.etymonline.com/index.php?term=suicide>.

2. ROBERT BECK & JOHN BOYD ORR, *ETHICAL CHOICE*, 51 (1970). ("Even ethical theories which teach principles of self-directed action and development can include reference to giving one's life for others or sacrificing one's life when such is the highest value of which one is capable.")

3. G. DESHAIES. *PSYCHOLOGIE DU SUICIDE*. (1947). (DeShaies proposed the following definition in 1947: "Suicide is the act of killing oneself in a continually conscious manner, taking death as a means or as an end.") (This definition does not require intent but does include consciousness and motivation. Thus "chronic suicide" (habitual harmful behavior e.g. drug abuse) and "partial suicide" (self-mutilation) would be included in this definition.) See also I. STENGEL, *SUICIDE AND ATTEMPTED SUICIDE* xx-xxi (1st Aronson ed. 1974).

primitive societies.⁴ There is a divergent spectrum of social response to suicide, ranging from glorification to horror, fascination to condemnation, and criminal wrong to legal right. This broad variance is often related to the specific type and form of suicide and the sociological, religious, and moral lens through which it is viewed. Contrary to its singular definition, suicide is not limited to self-directed acts but can include passive or active conduct by a third party and can result in the intentional deaths of innocent people,⁵ expanding the scope of at least certain types of “suicide” to homicide.⁶

Both the Hebrew Bible and the New Testament recount instances of accepted forms of suicide.⁷ In Roman times, there were different types of suicide which were positively commended, such as the institutional, honor, ritual, and immolation acts of self-killing.⁸ In ancient Japan, variations of seppuku were socially and

4. *Id.* at 68. (“Suicide has been practiced for thousands of years in primitive and historic societies. . . .”) GEORGE ROSEN, HISTORY, A HANDBOOK FOR THE STUDY OF SUICIDE 3. 27 (S. Perlin 1975).

5. *Id.* (Suicide bombing finds its origins in nineteenth century Russia when Ignaty Grinevitsky ignited a bomb killing himself and Alexander II, then leader of Imperial Russia.).

6. Tom Beauchamp, *The Justification of Physician-Assisted Deaths*, 29 IND. L. REV. 1173 (1996). (“Passive euthanasia involves allowing a patient to die by removing her from artificial life support systems such as respirators and feeding tubes or simply discontinuing medical treatments necessary to sustain life. Active euthanasia, by contrast, involves positive steps to end the life of a patient, typically by lethal injection.”); MERRIAM-WEBSTER DICTIONARY ONLINE, <https://www.merriam-webster.com/dictionary/homicide>. (“Homicide” is the killing of one human being by another”); See http://www.nbcnews.com/id/43265235/ns/us_news-life/t/jack-kevorkian-convicted-assisted-suicides-dies/#.WQDpFI61uhc. (Dr. Jack Kevorkian aka “Dr. Death” was well-known pathologist and activist for euthanasia. He was charged on several occasions for murder and served eight years for the second degree murder of a patient with Lou Gherig’s disease).

7. Rosen, *supra* note 5, at 4-5.

8. *Id.* at 5-6. (“Honor suicides to avoid capture, humiliation, and death are frequent in the conflicts among the Greeks, the Romans, and their neighbors.”); *Id.* (Suicides out of loyalty to a military leader or husband were a form of institutional or ritual suicide); *Id.* at 7-8 (Suicide by immolation was reported in Greco-Roman times. referencing the fiery and public suicide of philosopher Peregrinus Proteus in 165 A.D.).

positively sanctioned.⁹ Contemporary forms of suicide include state sanctioned suicide as part of a military offensive such as the Japanese kamikaze suicide pilots of World War II¹⁰ and the radical acts of terrorism by suicide bombers.¹¹ In the present, some forms of suicide are recognized as legal and arguably part of an individual's "rights."¹² Forms of suicide, recognized as a legitimate manner to take one's life today, are known as mercy killing, euthanasia, assisted suicide, physician-assisted suicide, an individual's right to die or end-of life-choice, and death with dignity.¹³

This article will examine the history of suicide from antiquity, where certain types of self-killing were socially acceptable, to its evolution as a criminal wrong and its modern reincarnation as a moral and legal right. In the early Common Era, suicide was not a criminal wrong, but with the spread of

9. GLENNYS HOWARTH & OLIVER LEAMAN, *ENCYCLOPEDIA OF DEATH AND DYING*, 231 (2014). (Seppuku is a ritual suicide by disembowelment. Fusé, T. *Soc Psychiatry* (1980) 15: 57. "Suicide and Culture in Japan: A Study of Seppuku as an Institutionalized Form of Suicide." Obligatory seppuku was used as a form of capital punishment for disgraced samurai in feudal Japan.) *Id.* at 230 (Kanshi was another form of seppuku in feudal times as an act in protest of a lord's decision.).

10. YUKI TANAKA, *JAPAN'S KAMIKAZE PILOTS AND CONTEMPORARY SUICIDE BOMBERS: WAR AND TERROR*, *THE ASIA-PACIFIC JOURNAL*, July 6, 2005 at 1 (The majority of kamikaze pilots were young, non-commissioned or petty officers.).

11. See LEWIS, *THE HUMAN USE OF HUMAN BEINGS: A BRIEF HISTORY OF SUICIDE BOMBINGS, ORIGINS CURRENT EVENTS IN HISTORICAL PERSPECTIVE*, April 2013 (the horrific September 11 attacks which used human hijackers to re-program and control the aircraft.).

12. See *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990) (recognizing a "general liberty interest in refusing medical treatment"); See also *Compassion in Dying v. Washington*, 79 F.3d 790 (9th Cir. 1996) (*en banc*), reversed by *Washington v. Glucksburg*, 521 U.S. 702 (1997). (holding that the Fourteenth Amendment Due Process Clause included a constitutional right to die.) (Although reversed by the Supreme Court, the 9th Circuit's recognition of a constitutional right to die represents a modern shift in the legal treatment of suicide.)

13. These types of suicide generally involve a third party, but can be further distinguished between: (1) passive conduct (the omission of life-saving conduct) and (2) active conduct (committing an act of killing). Passive and active euthanasia can be either: (1) voluntary (with the consent or at the request of the person who wants to die) or (2) involuntary (without consent).

Christianity, suicide became illegal. In the present day, a growing minority of states have legalized some forms of suicide or self-killing.¹⁴ In 2018, six states and the District of Columbia had legalized some form of physician-assisted suicide: California¹⁵, Colorado¹⁶, District of Columbia,¹⁷ Montana,¹⁸ Oregon,¹⁹ Vermont,²⁰ and Washington²¹ Twenty-three states are considering some type of death with dignity legislation in their 2018 session.²²

The rise of an individual's right to die has been concurrent with the rise and recognition of individual civil rights in the twentieth century, and more specifically an individual's right of privacy without state intervention. Part One explores the Anglo-Western historical treatment of suicide including its religious, legal, and social implications. Part Two focuses on the early American treatment of suicide. Part Three addresses the eugenic underpinnings of the early euthanasia movement and its legal transformation post-World War II as an individual right. Part Four concludes that the legalization of suicide is inevitable within a society which values individual autonomy and self-determination.

14. Rosen. *supra* note 5, at 12.

15. *Cal. Health & Safety Code §§ 443-* (California's End of Life Option Act went into effect on June 9, 2016. Upon its passage, a group of physicians challenged the constitutional validity of the Act. On May 25, 2018, California Superior Court Judge Ottolia issued a formal decision finding the Act void and in violation of the state's constitution on procedural grounds. On June 15, 2018, California's Fourth Circuit Court of Appeals stayed the lower court's ruling pending further hearing.) *People ex. rel. Xavier Becerra v. Ahn*.

16. COLO. REV. STAT. § 25-48-101 (2016).

17. D.C. CODE § 7-661.01 (2017).

18. *Baxter v. Montana*, 2009 MT 449, 354 Mont. 234, 224 P.3d 1211 (2009). Montana is the only state to legalize physician assisted suicide by judicial decision.

19. OR. REV. STAT. §§ 127.800 - 127.897 (Oregon was the first state to legalize physician assisted suicide in 1997).

20. VT. STAT. ANN. tit. 18, §§ 5281 - (2013).

21. WASH. REV. CODE §§ 70.245 - (2009).

22. TAKE ACTION IN YOUR STATE, <http://deathwithdignity.org/take-action/>.

ANCIENT AND EARLY VIEWS OF SUICIDE

The word “suicide” provides an inadequate and narrow scope to the full spectrum of acts that are considered suicidal. The etymology of the word “suicide” lays the foundation for its negative connotation in the English language and Western culture. In the English language, the word “suicide” gained more common acceptance and usage in Sir Thomas Browne’s *Religio Medici* in 1637.²³ In 1651, Walter Charleton used it in his *Ephesian and Cimmerian Matrons* (“to vindicate one’s self from inevitable Calamity, by Sui-cide is not . . . a Crime”).²⁴ Prior to the seventeenth century, the English terms for suicide included self-homicide, self-destruction, and self-murder.²⁵ The root “-cide” which means to kill is commonly connected to the wrongful and criminal acts of genocide, homicide, fratricide, and parricide.²⁶ Thus, Indo-European culture describes suicide as a mode of killing rather than a mode of dying which was how it was perceived in Roman culture.²⁷ Neither ancient Greek nor Latin had a single

23. MURRAY, ALEXANDER, *SUICIDE IN THE MIDDLE AGES VOL. 1: THE VIOLENT AGAINST THEMSELVES* p. 38 (Oxford Univ. Press 1998).

24. MARGARET BATTIN, *ENDING LIFE: ETHICS AND THE WAY WE DIE* 171 (Oxford University Press 2005). See also, Harris, Edward S., *The Moral Dimensions of Properly Evaluating and Defining Suicide*, *The Institute for Applied and Professional Ethics*, July 27, 2009. See, Murray at 39 (The word “suicida” was coined in a little-known Paris Augustinian canon of Walter of St. Victor: *De quatuor labyrinthos Francia*, “The Four Labyrinths of France.” in 1178 but was not in general usage and appears to have vanished until 1637.).

25. *Id.*, citing, Velasquez, Manuel, “Defining Suicide,” *Issues of Law and Medicine* 3 (1987. Pg. 48-49).

26. Suicide is spoken of as having been “committed” which reinforces a subtle negative judgment in reference to a crime that has been committed. See Gerry Holt, *When Suicide Was Illegal*, *BBC NEWS MAGAZINE* (2011). <http://www.bbc.com/news/magazine-14374296>. (“The connotation of ‘commit’ is that someone has committed a crime or committed a sin,” says Dr Caroline Simone. ‘If you buy into the religious perspective it is a sin to murder one-self. When you say commit you suggest that person is making a rational decision.’”).

27. *Id.*; see also Murray, *supra* note 24, at 39 (“What that preoccupation signifies for the history of the word ‘suicide’ - otherwise than for, say, the word ‘individual’ - is that men’s underlying moral conceptions were not at the stage of needing a word for so specific a definition, a definition founded, that is, on a particular compound of intention and act.”).

word that aptly translates into today's "suicide."²⁸ The ancient Greeks and Romans accepted and approved of at least three different types of suicide that were socially respectable: honor, institutional or ritualistic, and immolation.²⁹ Honor suicides to avoid capture, humiliation, and death were frequently reported among the Greeks and Romans. Hannibal the Carthaginian committed suicide by poison in approximately 183 B.C., when the King of Bithynia was about to surrender Hannibal to the Romans.³⁰ Institutional suicide was another common practice. There are historical accounts of soldiers committing suicide rather than be captured by enemies³¹ or out of loyalty for a fallen leader³² and women committing suicide upon the death of their husbands or masters.³³ Although suicide was never a crime in ancient Rome,³⁴ there were philosophical and social opinions in opposition which was reflected in cultural practices. For example, in Athens, the hand of the suicide deceased was chopped off and in Rome, a suicide by hanging was denied an honorable burial.³⁵ Under certain circumstances, suicide was penalized. If a suicide took his own life to avoid criminal conviction, his goods were forfeited.³⁶ A soldier who committed suicide to avoid military duty or without good reason was guilty of infamous conduct, and if the attempted

28. Battin, *supra* note 25, at 151; see also MICHAEL CHOLBI, SUICIDE, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <https://plato.stanford.edu/entries/suicide/>.

29. Rosen, *supra* note 5, at 5.

30. Rosen, *supra* note 5, at 3.

31. *Id.* In the civil war between Caesar and Pompey, the tribune Vulteius called on his soldiers to die by their own hand rather than fall alive into the enemy's hands. None survived to become prisoners of the Pompeians.

32. TACITUS, HISTORIES, (Loeb Classical Library, C.H. Moore trans. Har. Uni. Press 1952) ("Some soldiers slew themselves near his pyre, not because of any fault or from fear, but prompted by a desire to imitate his glorious example, and moved by affection for their emperor.").

33. Among the Thracians, when a man died, his wives vied for the honor of being the one most loved and the one selected would be slain and buried with her husband; *Id.*

34. Rosen, *supra* note 4, at 11.

35. *Id.*

36. ST. JOHN-STEVAS, NORMAN, LIFE, DEATH, AND THE LAW: LAW AND CHRISTIAN MORALS IN ENGLAND AND THE UNITED STATES 247 (1961).

suicide was unsuccessful, was ironically punished with death.³⁷ Plato opposed suicide as an act of cowardice or laziness, but still excused it in four instances: (1) when one's mind is morally corrupted and one's character can therefore not be salvaged, (2) when the self-killing is carried out pursuant to judicial order, as in the case of Socrates, (3) when the self-killing is compelled by extreme and unavoidable personal misfortune, and (4) when the self-killing results from shame at having participated in grossly unjust actions.³⁸ Suicide outside these exceptions were to be buried alone: "They must have no companions whatsoever in the tomb; for they must be buried ignominiously in waste and nameless spots on the boundaries between twelve districts, and the tomb be marked by neither headstone nor name."³⁹ Aristotle opposed suicide as "contrary to the rule of life."⁴⁰

Other early philosophers accepted and even recommended suicide under certain conditions⁴¹ Perhaps the most famous suicide among the ancient Greeks was Socrates, who chose to drink hemlock and end his life rather than renounce his teachings.⁴² According to the Diogenes Laertius, writing of Zeno, the founder of Stoicism, "the wise man will for reasonable cause make his own exit (exogoge) from life on his country's behalf, or for the sake of his friends, or if he suffer intolerable pain, mutilation, or incurable disease."⁴³ The Stoics had a cult of suicide with some

37. *Id.*

38. Cholbi, *supra* note 29, at 2.1.

39. PLATO, THE LAWS, IX:873 (A.E. Taylor trans., J.M. Dent & Sons 1934).

40. *Id.*

41. In ancient Greece, hemlock was used to poison condemned prisoners. TERRY BREVERTON, A BOOK OF REMARKABLE PLANTS AND THEIR USES 303 (2011); citing BRICKHOUSE & SMITH, THE TRIAL AND EXECUTION OF SOCRATES 243 (2001).

42. Socrates killed himself in 399 B.C. JUDITH M. STILLION AND EUGENE E. MCDOWELL, SUICIDE ACROSS THE LIFE SPANS: PREMATURE EXITS 4 (Routledge 1996).

43. *Id.*, citing 2 DIOGENES LAERTIUS, LIVES OF EMINENT PHILOSOPHERS 235 (Loeb Classical Library, R.R. Hicks trans. William Heinemann 1930); *see also* 7 PLINY, *Natural History* 23.

Stoics believing suicide was justified for any reason.⁴⁴ The Stoic philosopher, Empedocles, jumped into the volcano, Mount Etna, in a suicidal act of immolation.⁴⁵ Although some philosophers of that time opposed suicide, self-killing was widely accepted and even extolled during the Imperial period.⁴⁶

In the East, immolation was widely accepted among the Buddhists in China.⁴⁷ The Eastern origins of legitimate self-burning or auto-cremation, found in the Buddhist scripture the Lotus Sutra,⁴⁸ describing the sacrifice of the Bodhisattva Medicine King who poured “fragrant oil over his head, and, calling upon his transcendental power, set fire to his body.”⁴⁹ The burning of one’s body is still an accepted practice among some Buddhists in East Asia today.⁵⁰ Contrary to the current Western impression of some Muslims,⁵¹ Islam unconditionally condemns suicide.⁵²

There are at least six references to acts of self-killing in the Hebrew Bible and the New Testament.⁵³ However, they are factual

44. *Id.* at 10; See also Beck & Orr, *supra* note 2, at 54. Seneca (another Stoic philosopher) wrote: “For mere living is not a good, but living well. Accordingly, the wise man will live as long as he ought, not as long as he can.” 2 SENECA ON SUICIDE, (Loeb Classical Library, R.M. Gummere, trans., Epistulae Morales, Harv. Univ. Press).

45. David Lester, *Self-Immolation as a Protest*, in SUICIDE AS DRAMATIC PERFORMANCE.

46. Rosen, *supra* note 5, at 10.

47. Lester, *supra* note 46.

48. The first Chinese translation of the Lotus Sutra from Sanskrit was around 255 CE. Katarina Plank, *Burning Buddhists: Self-Immolation as Political Protest*, in SACRED SUICIDE 182 (Carole Cusack, 2014).

49. Soka Gakkai, *Former Affairs of the Bodhisattva Medicine King*, NICHIREN BUDDHISM LIBRARY, <http://www.nichirenlibrary.org/en/lsoc/Content/23>.

50. Katarina Plank, *supra* note 49, at 185.

51. See generally Piker, H., *Why Suicide Bombings Have Nothing to Do with Islam*, HUFFINGTON POST (Dec. 14, 2016), http://www.huffingtonpost.com/entry/why-suicide-bombings-have-nothing-to-do-with-islam_us_5851d905e4b0bae8bdcb290 (“...there is a widespread perception in the West that suicide bombings tend to be carried out by Muslims against non-Muslim targets and serve a religious purpose rooted deep within Islamic doctrine.”).

52. The Koran expressly forbids suicide on several occasions. Stengel, *supra* note 4, at 68.

53. Rosen, *supra* note 5, at 4-5. Norman St. John-Revas cites eight instances of suicide. “Judges, ix, 54 (Abimelech); T save disgrace of being killed

accounts without judgment or condemnation.⁵⁴ Self-killing did not have a name nor was it expressly prohibited.⁵⁵ Early Jewish perspective on self-killing as a sinful crime and moral wrong can be found in the writings of Josephus on the en masse deaths of the 960 remaining defenders of the Masada. Flavius Josephus, the Jewish general turned Roman historian, who wrote two books about the Jews in the first century CE and is the primary source for what might have taken place at Masada in 73 or 74 CE.⁵⁶ In discussing possible surrender to the Romans, Josephus noted that suicide was a crime⁵⁷ against God, concluding that the crime was justified “to sanctify the Holy Name. . . .”⁵⁸ Although scholars today disagree whether the deaths of the 960 Masada residents was a mass suicide or a mass slaughter by the Romans,⁵⁹ Josephus’ writings confirm that at least for the ancient Jews, religious

by woman at a siege. Judges, xvi, 30 (Samson): Destroyed the Philistines with him. I Sam., xxxi 4 (Saul): Fell on his sword. 2 Sam., xvii, 23 (Ahithophel: Hanged himself because his counsel was rejected. I Kings, xvi, 18 (Zimri): Burnt himself in his house. 2 Mac., xiv, 41 (Razis): Chose suicide rather than fall into enemy hands. Matt., xxvii, 5 (Judas): Hanged himself with a halter from despair. Acts, xvi, 27: Jailor of Paul attempted suicide fearing prisoners had escaped. *See also* St. John-Stevas, *supra* note 37, at 248.

54. *Id.*

55. *Id.*

56. Eric H. Cline, *The Masada Mystery*, as reprinted in *Three Stones Make a Wall: The Story of Archaeology* (2017), <https://aeon.co/essays/decoding-the-ancient-tale-of-mass-suicide-in-the-judaeen-desert>, (discussing the debate on the accuracy of Josephus’ accounts and whether the archaeological evidence supports his account of mass suicide).

57. “That is why this crime, so hateful to God, is punished also by the sagest of legislators.” 8 Josephus, (Loeb Classical Library, H. St. J. Thackeray trans., Library, William Heinemann; G. P. Putnam’s Sons (1926), 2: 681-683.

58. Josephus, 1:383; Philo, *Legatio and Caium*, ed. and trans. E.M. Smallwood, Leiden (1961), pp. 162, 192, 215, 233, 249, 266, 329.

59. *Id.* (“More likely what happened was exactly what we might have expected. When the Romans breached the wall, they poured in and massacred the Jewish defenders. It was not a mass suicide, but a mass slaughter. Josephus, writing later back in Rome and using notes and daybooks from the commanding officers who were present, was probably asked to whitewash the whole thing. In fact, Josephus took the story that he tells about the men killing their families, 10 men killing the others, and then one man killing the rest, from his own experience.”). By this account, one can dispute whether the men’s actions constitute assisted suicide or murder.

suicide was morally sanctioned and preferred over enslavement.⁶⁰ In contrast to the Hebrew Bible and the New Testament, the Koran expressly forbids suicide unconditionally and considers it a graver crime than homicide.⁶¹ Although the Talmud did not expressly prohibit suicide, the post-Talmudic booklet, *Semachot*, states that suicides are to be denied burial rites.⁶² Children were exempt from this sanction since they presumably lacked the requisite “clear mind” to commit the crime of suicide.⁶³

Two important factors led to the eventual criminality of suicide by the Romans: one was economic and the other religious.⁶⁴ In the fifth century, at the Roman Council of Arles in 452 CE legislation was passed prohibiting suicides by servants due to the numerous suicides committed by slaves and the resulting “property” loss.⁶⁵ Similarly, Roman military law treated attempted suicide by a soldier as a crime punishable by death.⁶⁶ The irony of treating a soldier’s attempted suicide as a capital crime can best be explained by the shared obligatory status of a soldier and a slave; their lives are owed to another.⁶⁷ A soldier’s suicide had the practical effect of a desertion, which was punishable by death because a suicidal soldier may prove untrustworthy and unreliable in the field.⁶⁸

As Christianity spread, so too did its influence and condemnation of suicide.⁶⁹ Early founders of the Christian Church

60. Rosen, *supra* note 5, at 5.

61. Stengel, *supra* note 4, at 68.

62. WALTER JACOB, AMERICAN REFORM RESPONSA: COLLECTED RESPONSA OF THE CENTRAL CONFERENCE OF AMERICAN RABBIS; 1889-1983”. (1983). (“He who destroys himself consciously (*lada-at*), we do not engage ourselves with his funeral in any way. We do not tear the garments, and we do not bare the shoulder in mourning, and we do not say eulogies for him; but we do stand in the mourner’s row and recite the blessing of the mourners because the latter is for the honor of the living.”).

63. *Semachot* (Evel Rabbati) 2:1–5; See, https://en.wikipedia.org/wiki/Evel_Rabbati.

64. Rosen, *supra* note 5, at 12.

65. *Id.* See also Stengel, *supra* note 4, at 70.

66. Murray, *supra* note 24, at 177.

67. *Id.*

68. *Id.* at 178.

69. Rosen, *supra* note 5, at 12.

and most notably St. Augustine condemned suicide on three grounds: (1) suicide violated the commandment "Thou shalt not kill;" (2) suicide precluded any opportunity for repentance; and, (3) suicide was a cowardly act.⁷⁰ St. Augustine did excuse those who took their own lives in divine inspiration for sainthood.⁷¹ Eventually, the religious prohibition against suicide became part of canon law.⁷² In 452 CE., the Council of Arles, denounced suicide as a diabolical inspiration and in 563 CE., the Council of Braga officially condemned suicide, denying funeral rites to suicides.⁷³ This was laid down in a canon of King Edgar of 967 CE.⁷⁴ In addition to this ecclesiastical penalty, it was customary to dishonor the corpse; this practice eventually became incorporated into the law.⁷⁵ Suicides were also subject to property forfeiture to the lord unless the suicide was the result of madness or illness.⁷⁶ Religion was not the only reason for the disdain of suicide. The human population was in decline from war, famine, and disease.⁷⁷ The Catholic Church and the Romans needed to replenish their followers and citizens.⁷⁸

By the Middle Ages, Christian doctrine in opposition to suicide had become the official state and prevailing social perspective in Europe. The increasing severity of the sanctions

70. St. John-Stevas, *supra* note 37.

71. *Id.* at 249.

72. Canon law is the code of rules and standards governing the Catholic church and its members. As Christianity spread, Councils were formed to issue guidance and norms on daily life. These norms were eventually compiled together by the scholar Gratian in the twelfth century. Gratian's Decretum was the predominant collection for canon jurisprudence until its replacement in 1917 by the Code of Canon Law. The 1917 Code was updated in 1983. *See generally* <http://diocese-tribunal.org/canonlaw.php>.

73. *Id.*; *See also* Rosen, *supra* note 5, at 12.

74. St. John-Stevas, *supra* note 37, at 233.

75. *Id.*

76. *Id.* at 234. *See also* Rosen, *supra* note 5, at 12 ("Indeed, throughout the medieval period there is a continuing recognition that mental and emotional disorder may lead to suicide.").

77. SARA K. GOLDSMITH, *REDUCING SUICIDE: A NATIONAL IMPERATIVE* (National Academic Press. 2002).

78. *Id.* ("The Romans outlawed all manners of reducing the population including contraception, infanticide, and suicide by the end of the fourth century, and instituted forfeiture of worldly goods of suicides by the government.").

against suicide of the medieval Church has been attributed in part to curtail religious self-sacrifice and the frequent suicides of female rape victims. The Council of Nimes of 1184 CE condemned suicide.⁷⁹ Thomas Aquinas greatly influenced the Church's continued condemnation of suicide. Born in 1225, Thomas Aquinas was a the principal theological authority within the Roman Catholic Church and progenitor of the tradition known as Thomism.⁸⁰ Thomas was influenced by Aristotle and was a prolific writer. His most influential work is considered the *Summa Theologiae* (1266–1273), where he attempts to integrate Aristotelian thought with Catholic doctrine.⁸¹

In *Summa Theologiae*, he denounces suicide as unlawful for three primary reasons: (1) self-killing is a mortal sin against natural law; (2) self-killing is injurious to the community; and (3) self-killing usurps God's power since God alone has the power over life and death.⁸² The Augustinian-Thomist perspective on suicide is still the prevailing view for Orthodox Catholics, as well as present day Christians in general.⁸³

The Church's proscription of suicide led to its eventual criminality in the common law of England. Although suicide may have been a crime as early as the tenth century, Henry de Bracton, writing in the middle of the thirteenth century, did not consider suicide a felony.⁸⁴ However, de Bracton noted that a suicide resulted in forfeiture of goods, yet a suicide to avoid a felony conviction, resulted in a forfeiture of goods and land.⁸⁵ This particular rule was necessary because a felony conviction resulted in a forfeiture of lands to the King; a suicide to avoid a felony conviction denied the King such forfeiture.⁸⁶ These rules led to the

79. Rosen, *supra* note 5, at 12.

80. See <https://ethicsofsuicide.lib.utah.edu/selections/thomas-aquinas/>

81. *Id.*

82. *Id.* citing, THOMAS, ACQUINAS, SUMMA THEOLOGIAE, WHETHER ONE IS ALLOWED TO KILL ONESELF. See also St. John-Stevas, *supra* note 37, at 249. The reference to Aquinas from the *Summa Theologiae* is 2a2ae, question 64, article 5.

83. St. John-Stevas, *supra* note 37, at 250.

84. Rosen, *supra* note 5, at 13.

85. *Id.*

86. St. John-Stevas, *supra* note 37, at 234.

view that suicide should be treated as a felony.⁸⁷ Certainly by the fourteenth century, self-murder or “felo de se” was well established as a crime.⁸⁸ Following a suicide, a post-mortem jury trial was held to determine whether the suicide had the requisite “malicious intent” for a felony conviction.⁸⁹ Thus, those who were deemed insane avoided the criminal stigma and forfeiture penalties from a self-murder.⁹⁰ In addition to the criminal sanctions, custom required that the corpse of the suicide be desecrated.⁹¹ A wooden stake was driven through the heart and the body carried to a crossroads at night and dumped into a pit.⁹² This practice of pinning down the body was believed to ensure that the spirit of the dead would not return to haunt or harm the living.⁹³ Crossroads were chosen, as it was believed that the ghost of a suicide would be confused by the choice of four paths and stay deliberating until dawn.⁹⁴

Self-murder as a grave sin and felony continued as the predominant view in England for several more centuries although there were emerging divergent views in literature and art.⁹⁵ Martin Luther, a controversial theologian and founder of the Protestant Reformation in the fifteenth century, proclaimed

87. *Id.*

88. *Id.* at 234-5. *See also*, Gerry Holt, *When Suicide was Illegal*, BBC NEWS MAGAZINE (Aug 3, 2011). <http://www.bbc.com/news/magazine-14374296>. Holt states that suicide was a crime by the thirteenth century.

89. Holt, *supra* note 88.

90. *See* St. John-Stevas, *supra* note 36, at 234. *See also* Rosen, *supra* note 5, at 13 (“This law of forfeiture remained in force in England into the nineteenth century but was not infrequently circumvented through the claim of insanity.”).

91. Rosen, *supra* note 5, at 14 (“This custom had a religious and magical background of great antiquity. As reported by Tacitus and confirmed by numerous bog burials, the practice of pinning down the body antedates Christianity among the Germanic peoples of Europe.”).

92. St. John-Stevas, *supra* note 37, at 234-5.

93. Rosen, *supra* note 5, at 14.

94. Holt, *supra* note 88.

95. Consider the many suicides in Shakespeare’s plays that were reasoned choices: Romeo, Juliet, Othello, Anthony, Cleopatra, Brutus, Cassius, Lady Macbeth, Portia, Goneril, and Timon.

suicide to be the work of the devil.⁹⁶ Criminal prosecutions for suicide peaked in the sixteenth century for several reasons.⁹⁷ Among them, population increases strained existing natural resources, coroners received a share of the forfeited goods upon a determination of suicide, the reigning Tudor government vigorously investigated all violent deaths, and the religious strife of the Reformation.⁹⁸ In addition, the financial incentive for coroners to find a suicide worked in the reverse for the wealthy who may have offered the coroner a share of the goods, escaping forfeiture, in exchange for a finding of non-compos mentis.⁹⁹ The criminalization of suicide was in keeping with the widespread religious and social condemnation of suicide, a remnant from St. Augustine's writings. When Sir James Hale drowned himself in 1554, his death was a public scandal.¹⁰⁰ Judge Brown declared the suicide a felony reiterating St. Augustine's position: (1) suicide was against nature; (2) suicide was an offense against God; and (3) suicide was an offense against the King.¹⁰¹

In the seventeenth century, the intellectual, scientific, and cultural progressive thought of the Enlightenment questioned the

96. See *Battin*, *supra* note 25, at 74. Sourced as MARTIN LUTHER, THE TABLE TALK OR FAMILIAR DISCOURSE OF MARTIN LUTHER 254, (William Hazlitt trans.1848) ("The saying attributed to Luther is 'It is very certain that, as to all persons who have hanged themselves, or killed themselves in any other way, 'tis the devil who has put the cord round their necks, or the knife to their throats.'") SHEILA MOORE, THE DECRIMINALISATION OF SUICIDE 30 (London School of Economics & Political Science 2000).

97. The rate of suicide prosecutions at least in England according to the King's Bench cases fell steadily after peaking in the 1570's. See Murray, *supra* note 24. Criminal penalties for suicide were increasingly avoided after 1670 through the use of the insanity defense. See 67 MACDONALD, MICHAEL, THE MEDICALIZATION OF SUICIDE IN ENGLAND: LAYMEN, PHYSICIANS, AND CULTURAL CHANGE 1500-1870, 69, (The Milbank Quarterly 1989).

98. *Id.* at 74.

99. *Id.* at 75.

100. Sir James Hale was one of the three jurists who refused to seal the documents for Lady Jane Grey to succeed to the crown. While in prison, Hale attempted suicide with a pen knife. After his release, he drowned himself. 5 DAVID PHINEAS ADAMS, SAMUEL COOPER, THE MONTHLY ANTHOLOGY, AND BOSTON REVIEW 310 (1808).

101. St. John-Stevas, *supra* note 37, at 235.

dogmatic religious denunciation of suicide.¹⁰² Three particular concepts emerged: (1) a renewed interest in Stoicism; (2) the Enlightenment's preference for rationalism over religion; and (3) the glorification of suicide during the Romantic period.¹⁰³ Perhaps due to the rules of forfeiture and the current cultural awakenings, post-mortem juries returned an increasing number of non-compos mentis verdicts.¹⁰⁴ Prior to 1660, a mere 2% of suicides were excused, that number rose to 8.4% in the 1660's and rose dramatically to 42.5% in the early 1700's.¹⁰⁵ By the 1750's nearly 80% of suicides were excused and by the 1800's over 97%.¹⁰⁶ Despite this cultural shift among the populace, the leading legal jurists of those times continued to reiterate the religious wrongfulness of suicide.¹⁰⁷ Blackstone wrote that suicide was:

[a] double offence; one spiritual, in invading the prerogative of the Almighty, and rushing into his immediate presence uncalled for; the other temporal, against the king, who hath an interest in the preservation of all his subjects; the law has therefore ranked this among the highest crimes, making it a peculiar species of felony committed on one's self.¹⁰⁸

102. The Enlightenment also known as the Age of Reason was a philosophical movement that took place predominantly in Europe from the late 17th century through the early 18th century. The Enlightenment was influenced by those who believed in reason, liberty, and science as opposed to religion. *See generally* Jessie Szalay, *What Was the Enlightenment* (July 7, 2016), <http://www.livescience.com/55327-the-enlightenment.html>.

103. *See generally* SHEILA MOORE, *THE DECRIMINALISATION OF SUICIDE* (London School of Economics & Political Science 2000), <http://etheses.lse.ac.uk/1573/1/U136493.pdf>; *see also*, Szalay, *supra* note 92; Giles Frase, *There's No Shame in Suicide. And There's No Glory Either* (Jan. 30, 2103), <https://www.theguardian.com/commentisfree/2013/jan/30/no-shame-in-suicide-no-glory-either>; *see also* A. Alvarez, Ch. 2 Literature, cited on p. 31 in Perlin, "A Handbook for the Study of Suicide," *supra* note 9.

104. MacDonald, *supra* note 97, at 75.

105. *Id.*

106. *Id.*

107. Coke, *Institutes*, 3:54, London 1797; MATTHEW HALE, *PLEAS OF THE CROWN: A METHODICAL SUMMARY* (1678).

108. 2 WILLIAM BLACKSTONE, *COMMENTARIES*, 189.

Nevertheless, juries continued to excuse many suicides on the grounds of insanity. This schism and disconnect between the law of suicide and general public sentiment is understandable since the juries of that time would have personally known the decedent, therefore, out of compassion or common sense nullified the severity of forfeiture by a finding of insanity.¹⁰⁹

Beginning in the middle of the eighteenth century, public attitudes about self-killing softened and became increasingly tolerant as evidenced by the rise in verdicts excusing the suicide as an act of insanity.¹¹⁰ Two factors contributed to this social shift: the secularisation of society and the emergence of the medical profession.¹¹¹ The modern decriminalization of suicide was underway. When the British Foreign Secretary, Viscount Castlereagh, slit his throat in 1822, his death was a cause celebre and presented an ironic dilemma.¹¹² Either the esteemed Viscount was a felon or an insane person had been in charge of Great Britain's foreign affairs.¹¹³ The jury quite conveniently returned a verdict of temporary insanity, allowing the Viscount a proper burial at Westminster Abbey, and avoiding the indignity of a staking and impaling of the body at the crossroads.¹¹⁴ The last reported English impaling burial took place in 1823.¹¹⁵ That year, a 22-year old law student, Abel Griffiths, killed his father and then killed himself.¹¹⁶ His profane crossroads burial caused a public

109. See SUSAN STEFAN, *RATIONAL SUICIDE, IRRATIONAL LAWS: EXAMINING CURRENT APPROACHES TO SUICIDE IN POLICY AND LAW* 14 (Oxford University Press 2016) ("Thus began, more than five hundred years ago, a long tradition of juries ignoring, nullifying, and distorting the law of suicide because it simply made no sense to them.").

110. See *supra* note 101.

111. Dr. David Wright, co-author of *Histories of Suicide: International Perspectives on Self-Destruction in the Modern World*. See Holt, *supra* note 88.

112. Stefan, *supra* note 109, at 15.

113. *Id.*

114. *Id.*

115. G. WILLIAMS, *THE SANCTITY OF LIFE AND THE CRIMINAL LAW* 259 (1957).

116. Mark Laskey, *Rites of Desecration: Suicide, Sacrilege, and the Crossroads Burial*, CVLT NATION (Sept. 8, 2014),

outcry and was resoundingly criticized as an “odious and disgusting ceremony” and “an act of brutal and malignant folly.”¹¹⁷ That same year, the medieval and cabalistic practice of staking, impaling, and burial at the crossroads was prohibited by statute.¹¹⁸

However, the continued criminalization of suicide and attempted suicide presented many inane and inapposite cases. For example, in 1860, a man slit his own throat in a failed suicide attempt.¹¹⁹ His neck wound was medically treated and bound so he could then be hanged.¹²⁰ The criminality of suicide especially under these circumstances, serves no legal, social, or moral purpose but remained as the law in England as a medieval remnant. The Forfeiture Act of 1870 discontinued the practice of escheat to the Crown, yet suicide remained a felony until 1961.¹²¹

Attempted suicide emerged as a misdemeanor in the nineteenth century when the crime of attempt became fully defined.¹²² There was no crime of attempt in early English law.¹²³ Although there are several early medieval canon references to attempted suicide, they are rare and “suggest that ecclesiastical law took only an occasional position on attempted suicide, and that when it did so, its reaction was marked by a mildness contrasting

<http://www.cvltnation.com/rites-of-desecration-suicide-sacrilege-and-profane-burial-at-the-crossroads/>.

117. MICHAEL MACDONALD AND TERENCE MURRAY, *SLEEPLESS SOULS: SUICIDE IN EARLY MODERN ENGLAND* 348 (Oxford Uni. Press 1990).

118. 4 Geo. 4, c. 52, § 1 (1823). (providing for a church burial but without religious rites, and a burial between 9:00 pm and midnight).

119. See J.D. DROGE AND A. J. TAYBOR, *A NOBLE DEATH: SUICIDE AND MARTYRDOM AMONG CHRISTIANS AND JEWS IN ANTIQUITY* 7 (1992).

120. *Id.* See also A. ALVAREZ, *THE SAVAGE GOD: A STUDY OF SUICIDE* (W.W. Norton Publish. 1990).

121. 33 and 34 Vict., c. 23, § 1, “No. . .felo de se shall cause any attainder or corruption of blood, or any forfeiture or escheat. . . .” The Suicide Act 1961 (9 & 10 Eliz 2 c 60); See <https://www.legislation.gov.uk/ukpga/Vict/33-34/23/contents>.

122. See *Rex v. Mann*, 2 KB 107 (1914); *Regina v. Burgess*, 169 Eng. Rep. 1387 (Crim.App.1862); *Regina v. Moore*, 175 Eng. Rep. 571 (1852).

123. Jerome Hall, *Criminal Attempt - A Study of Foundations of Criminal Liability*, 49 *YALE L.J.* 791 (1940) (“Criminal attempt is conspicuous for its absence in early English law.”). However, Hall points to a number of examples in early English law that criminalized inchoate conduct. *Id.* at 793.

with the severity with which it appears to have judged the completed offense.”¹²⁴ I am fine with a block quote or leaving as is. One explanation is that the English Crown was uninterested in prosecuting crimes for which there was no confiscation or gain.¹²⁵ Other explanations for the late development of criminal attempt include the availability of non-criminal means to deal with threats of objectionable behavior and the existence of crimes that punished inchoate behavior such as assault.¹²⁶ Perhaps the most significant explanation for the late development of criminal attempt is the medieval nascent comprehension of criminal mens rea. Medieval law focused on actual conduct and resulting harm, not on the nuances of mens rea.¹²⁷ Criminal attempt evolved as needed to punish undesirable conduct for which there were existing gaps in the law.¹²⁸

The addition of criminal attempted suicide illuminates the lack of a cohesive intersection between law, mental health, public opinion, and social policy.¹²⁹ The criminal punishment of a person who attempts to self-kill and fails does not serve the traditional retributive and utilitarian purposes of punishment as posited by Kantian ethics or Jeremy Bentham.¹³⁰ This is especially true since the circumstances leading up to a suicidal act are as complex,

124. 2 ALEXANDER MURRAY, *SUICIDE IN THE MIDDLE AGES* 402 (Oxford Uni. Press 2000).

125. *Id.* at 417.

126. See generally <http://law.jrank.org/pages/551/Attempt-History.html>.

127. Hall, *supra* note 122, at 793 (“And the precise import of mediaeval English law is that it knew nothing of thinking as “sub-vocal behavior”; it distinguished on a level of what was observable and on a common-sense grasp of damage done.”).

128. *Id.*

129. The law itself treats suicide inconsistently. Most cases of suicide fall within these areas of law: criminal, tort, insurance, probate, constitutional, and health care law. Stefan, *supra* note 107, at 12.

130. The traditional purposes of punishment are traceable to two principal philosophers: utilitarian Jeremy Bentham and retributivist Immanuel Kant and are well recognized as deterrence (specific and general), isolation, rehabilitation, and retribution. See David Markson, *The Punishment of Suicide - A Need for Change*, 14 VILL. L. REV. 463, 470-71 (1969). Scottish philosopher David Hume asked, “Why should I prolong a miserable existence, because of some frivolous advantage which the public may perhaps receive from me?” DAVID HUME, *ESSAYS ON SUICIDE AND THE IMMORTALITY OF THE SOUL* (1777).

divergent, and multifaceted as life itself. Although suicide and attempted suicide would eventually be decriminalized, third party assistance in a suicide would remain a crime.¹³¹

The nineteenth century also witnessed the birth of psychoanalytic theory by Sigmund Freud and social science theory by Emile Durkheim.¹³² Suicide became a research subject for scientists and doctors in addition to philosophers.¹³³ In 1838, French psychiatrist Jean-Etienne Dominique Esquirol maintained that suicide was the result of mental illness.¹³⁴ As the association between mental health treatment and suicide became more substantiated, the criminality of suicide became less defensible. Widely accepted as the founder of modern social science, Emile Durkheim published an influential and extensive study on suicide in 1897.¹³⁵ Durkheim concluded there were three basic types of suicide: egoistic, altruistic, and anomic.¹³⁶ Durkheim reasoned that an individual's suicide required an analysis of the individual's situation and the individual's integration or lack thereof into society.¹³⁷

Freud had a different theory for suicide based on an individual's alleged inherent death instinct or drive.¹³⁸ Existential

131. *Washington v. Glucksberg*, 521 U.S. 702, 729 (1997).

132. Psychoanalysis was founded by Sigmund Freud (1856-1939). Freud's psychoanalytic theory of personality argues that human behavior is the result of interactions between three component parts of the mind: the id, the ego, and the superego. Emile Durkheim (1858-1917) is regarded as the founder of modern French sociology.

133. Stillion and McDowell, *supra* note 43, at 10.

134. *Id.*

135. E. DURKHEIM, *LE SUICIDE* (1897).

136. The egoistic suicide occurs in those individuals who are not well integrated into society. By contrast, the altruistic suicide occurs in individuals who are overly integrated into a society that strongly controls customs and habits. The anomic suicide occurs in those individuals who are unable and fail to adapt to changes in society. *Id.*

137. Stillion and McDowell, *supra* note 43, at 12.

138. Freud's Death Instinct Theory was first introduced in 1920 in *Beyond the Pleasure Principle*. Freud concluded that humans have two basic instincts: The Eros a life-favoring instinct and the Thanatos a death instinct. Stillion and McDowell question whether Freud should be credited with "the death instinct" since that concept was raised by John Donne in *Biathanatos* in the mid-seventeenth century. Stillion and McDowell, *supra* note 43, at 8-9.

philosophers argued that individual freedom included a choice to self-kill.¹³⁹ These types of studies had the cumulative effect of viewing suicide as a sociological and medical phenomenon rather than a religious or criminal act. The industrial revolution in the nineteenth century contributed to the privatization of family life which became simultaneously, increasingly urban and paradoxically isolated.¹⁴⁰ These changes in social structure and family life resulted in rising instances of suicide¹⁴¹ Despite these social transformations and advances in the science of mental health, suicide remained a crime in England until 1961.¹⁴²

SUICIDE IN EARLY AMERICA

When the American colonies were first settled by the English, the colonists also imported the laws of England.¹⁴³ However, the early colonists did not wholly adopt the common law of England, instead colonists selectively applied only those

139. Nietzsche, Friedrich, *The Twilight of the Idols*. (“Death should not so much be something that happens to us beyond our control as a matter of chance or surprise, but something we choose freely and deliberately, a choice that becomes a defining act of our lives.”).

140. Ilana E. Strauss, *The Hot New Millennial Housing Trend is a Repeat of the Middle Ages*, *THE ATLANTIC* (Sept 26, 2016), <https://www.theatlantic.com/business/archive/2016/09/millennial-housing-communal-living-middle-ages/501467/> (“Industrialization made extended communities less vital for earning a living. When societies were mostly agricultural, production was centered near the home, and families needed all the labor they could get to run the farm during busy seasons. But as industrialization took hold, people started leaving home to go to work, commuting to factories and, later, offices. Something communal was lost, and by the early 20th century, industrial efficiency permitted a lifestyle of domestic privacy: Households shrank down to nuclear families, much more closed-off from relatives and neighbors than ever before.”).

141. “In all countries for which data existed, suicidal behavior increased throughout the 19th century, largely as a result of the industrial revolution.” Stillion and McDowell, *supra* note 42, at 11 (citing Chesnais, 1992).

142. The Suicide Act of 1961, *supra* note 120.

143. *State v. Campbell*, T.U.P. Charlton, Ga. 166. (“When the American colonies were first settled by our ancestors, it was held, as well by the settlers, as by the judges and lawyers of England, that they brought hither as a birthright and inheritance so much of the common law as was applicable to their local situation, and change of circumstances.”).

traditions of English law that were necessary and relevant.¹⁴⁴ Most colonial charters simply provided that the laws should not be “contrary to the Laws and Statutes of this our Realm of England.”¹⁴⁵

At that time, the English rule of law included the felony of suicide, a profane burial, and property forfeiture. However, the American colonies varied in their adoption of the common law and were also influenced by religion, geography, and occupation with the result that there was no uniform law among the thirteen colonies.¹⁴⁶ Some of the American colonies maintained the English criminalization of suicide, ignominious burial, and forfeiture rules.¹⁴⁷ In Rhode Island, (then known as the Providence Plantations) (if you prefer to remove that is fine), suicide was declared self-murder:

[s]elf-murder is by all agreed to be the most unnatural, and it is by this present Assembly declared, to be that, wherein he that doth it, kills himself out of a premeditated hatred of his own life or other humor: . . . his goods and chattels are the king’s custom but

144. R.C. Dale, *The Adoption of the Common Law by the American Colonies*, THE AMERICAN LAW REGISTER 554-555 (1882), citing *Wilford v. Grant*, Kirby’s Rep. (Conn.) 114. (“The common law of England, we are to pay great deference to, as being a general system of improved reason, and a source from whence our principles of jurisprudence have been mostly drawn. The rules, however, which have not been made by our own adoption, we may examine, and so far vary from them as they may appear contrary to reason or unadapted to our local circumstances.”).

145. William B. Stoebuck, *Reception of the English Common Law in the American Colonies*, 10 WM. AND MARY L. REV. 393, 396 (1968).

146. Keith Burgess-Jackson, *Legal Status of Suicide in Early America: A Comparison with the English Experience*, 29 WAYNE L. REV. 57, 58 (1982-1983).

147. MARGARET P. BATTIN, ROSAMUND RHODES, AND ANITA SILVERS, *PHYSICIAN ASSISTED SUICIDE: EXPANDING THE DEBATE*, ROUTLEDGE 379 (1998). Some of the colonies wholly adopted the English common law including the criminalization of suicide. See Burgess-Jackson, *supra* note 142, at 61. (“The first pattern is illustrated by the experiences of Virginia, North Carolina, South Carolina, Georgia, New York, and New Hampshire, all of which received the English common law without essential alteration. As in England, these colonies characterized suicide as a crime, and thus prescribed punishments for those who committed it.”). Other colonies criminalized suicide by legislation. “The second pattern in the colonial legal treatment of suicide is illustrated by the New England colonies of Rhode Island and Massachusetts, both of which made suicide a crime by legislative enactment early in their histories.” *Id.* at 63.

not his debts nor lands; but in case he be an infant, a lunatic, mad or distracted man, he forfeits nothing.¹⁴⁸

Under William Penn's Charter of Privileges for Pennsylvania and Delaware, suicide was expressly decriminalized.¹⁴⁹ In keeping with their revolutionary split from England, all of the colonies eventually rejected the rules of forfeiture finding little value in punishing the suicide's surviving family members.¹⁵⁰ However, suicide was still considered a grave social wrong.¹⁵¹

Although suicide was not a crime in all of the colonies, suicide was a social and political phenomenon for other cultural and ethnic groups in North America. The arrival of the European colonists to the shores of North America was the beginning of a profound and devastating subjugation of the existing indigenous peoples and to the slaves thereafter "imported" by the Europeans.

Along with the colonists came disease and epidemics which spread rapidly among the Native American peoples. Their populations decreased by more than ninety percent during that first century after contact with the Europeans.¹⁵² For example, in

148. M. GLAZIER, *THE EARLIEST ACTS AND LAWS OF THE COLONY OF RHODE ISLAND AND PROVIDENCE OF PLANTATIONS 1647-1719* 19 (J. Cushing ed. 1977).

149. "Eightly: If any person, through Temptation or melancholly, shall Destroy himself, his Estate, Real & Personal, shall, notwithstanding, Descend to his wife and Children or Relations

as if he had Died a natural death ' The effect of this provision was to decriminalize suicide, for forfeiture had been the primary means of punishing self-destruction in England and in those colonies which had followed the English practice." Burgess-Jackson, *supra* note 142, at 65, citing, JOHN CRUSHING, *THE EARLIEST PRINTED LAWS OF PENNSYLVANIA, 1681-1713* (J. Cushing ed. 1978).

150. *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 293 (1990) (Scalia, concurring) ("Although the States abolished the penalties imposed by the common law (*i.e.*, forfeiture and ignominious burial), they did so to spare the innocent family and not to legitimize the act."); *See also* Burgess-Jackson, *supra* note 142, at 67 ("Whereas before 1776 suicide had been characterized as a crime subject to an array of punishments, after 1776 it was a legally unobjectionable-and hence, unpunishable-act.").

151. *Washington v. Glucksburg*, 521 U.S. 702, 713-714 (1997). ("Nonetheless, although States moved away from Blackstone's treatment of suicide, courts continued to condemn it as a grave public wrong.") (citations omitted).

152. David S. Jones, *Epidemics in Indian Country, American History*, OXFORD RESEARCH ENCYCLOPEDIAS (Dec. 2014),

Hispaniola (in the Caribbean), the first region subjected to Spanish conquest, the Arawak population decreased from as many as 400,000 in 1496 to a mere 125 in 1570.¹⁵³ In response to the trauma and shock of these new diseases (smallpox, measles, influenza, cholera), there are historical records of Native Americans who responded to the disruption of their pre-Colonial lives with acts of suicide.¹⁵⁴

A discussion of suicide in early America would not complete without at least a consideration of suicides among those who were enslaved. The transatlantic slave trade in the seventeenth century is a grim and reprehensible example of human cruelty, immeasurable horror, and profound suffering. Beginning in the fifteenth century, many European countries actively participated in and profited from the commercial trade in African slaves.¹⁵⁵ The Europeans were able to exploit the pre-existing Trans-Saharan slave trade and ship routes to kidnap and enslave Africans.¹⁵⁶ The barbaric atrocities suffered by the captives are nearly incomprehensible by twenty-first century standards. Once captured by force, the slaves were branded, chained, shackled, and stuffed into crowded ship cargo holds without adequate ventilation, food, or water.¹⁵⁷ Forced to lie in their own and others excrement and urine, the conditions were grossly unsanitary and many died from disease.¹⁵⁸ Many Africans chose suicide over captivity.¹⁵⁹ Suicides among the enslaved had numerous

<http://americanhistory.oxfordre.com/view/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-27>. High mortality rates were also caused by violent conflicts between the Europeans and Native American Indians.

153. David S. Jones, *The Persistence of American Indian Health Disparities*, 96 AM. J. OF PUBLIC HEALTH 12 (Dec. 2006).

154. Jones, *supra* note 150. (“Historians have found countless reports from the 16th through the 19th centuries of parents killing their children, of husbands killing their wives, and of individuals committing suicide to be spared the horror of the diseases.”).

155. Patricia M. Muhammed, *The Trans-Atlantic Slave Trade: A Forgotten Crime Against Humanity as Defined by International Law*, 19 AM. U. INT’L. L. REV. 883, 889 (2004).

156. *Id.* at 889-892.

157. *Id.* at 895.

158. *Id.*

159. TERRI L. SNYDER, *THE POWER TO DIE* 32, (The University of Chicago Press 2015).

consequences. Suicides destabilized the order of the ship and often precipitated insurrection and revolt.¹⁶⁰ Because self-destruction by the enslaved also affected the commercial profit margin, the mariners devised a number of suicide prevention tactics.¹⁶¹ Slaves would be forced to eat to prevent self-starvation.¹⁶² Nets were attached around the gunnels of slave ships to prevent the enslaved from jumping overboard.¹⁶³ Threats were used to manipulate spiritual beliefs to prevent suicides.¹⁶⁴

The legal treatment of suicides by enslaved peoples is another example of their inherently conflicted status as persons versus property and the illogical criminality of suicide. Legislation in colonial America provided for state compensation to owners for suicides committed by slave felons, or those accused of felonies, in recognition of their property loss.¹⁶⁵ Simultaneously, the felony and the act of suicide were considered to be conduct by a sentient person with criminal *mens rea*.¹⁶⁶ “Over the course of the eighteenth century, the intertwined systems of plantation and criminal justice, the legal tensions in slaves as persons and property, and the choices of self-destruction by slaves may have laid the groundwork for the emerging criticisms of the institution of slavery itself.”¹⁶⁷ Suicide was a form of revolt against enslavement and a power to control one’s own destiny. Suicide became a central issue in anti-slavery politics and was portrayed

160. *Id.* at 34.

161. *Id.* at 37.

162. HUGH THOMAS, *THE SLAVE TRADE, THE STORY OF THE ATLANTIC SLAVE TRADE 1440-1870*, 412 (1997). An instrument called the *speculum oris* was designed to forcibly open the jaws for force feeding. Snyder, *supra* note 157, at 38.

163. Snyder, *supra* note 157, at 39.

164. “Attempting to control those beliefs was fundamental to suicide prevention aboard ship.” *Id.*

165. In 1810, a 16-year-old slave named Wiley was accused of buggery, a capital offense in South Carolina. While still in the owner’s custody, Wiley killed himself rather than face trial and hanging. The owner valued Wiley at \$400 and received full reimbursement for his property loss. Snyder, *supra* note 157, at 83.

166. *Id.* at 84.

167. *Id.*

symbolically and literally in art, literature, and culture.¹⁶⁸ Self-destruction as an expression of self-determination would continue in African-American cultural politics well into the twentieth century.¹⁶⁹ During the revolutionary period, the colonies increasingly decriminalized suicide to distinguish themselves from England.¹⁷⁰ By 1798, six of the 13 original colonies had abolished all penalties for suicide either by statute or constitution.¹⁷¹ Eventually suicide was eliminated as a crime for lack of an effective punishment.¹⁷² Oddly, attempted suicide remained a crime even when the completed act was no longer a crime. Per traditional criminal theory, attempted felonies were treated and charged as misdemeanors.¹⁷³ In general, a criminal attempt occurs when a person takes an action towards the commission of a crime with the intent to commit that crime.¹⁷⁴ Since suicide was no longer a crime in any of the colonies, logic would require that an attempted suicide could not be a crime yet some of the states continued to prosecute attempted suicide.¹⁷⁵ This disconnect between attempted suicide and the completed act is a common law remnant, however, it continues to impact the potential criminal liability of third persons who aid, assist, or abet in acts of self-killing.¹⁷⁶ In 1828, New York became the first state

168. *Id.* at 123.

169. *Id.* at 157.

170. Kathleen M. Brian, *Where Ends Meet: Suicide and Eugenics in America*, (2016) PROCESS HISTORY, <http://www.processhistory.org/suicide-sympathy-and-the-making-of-american-eugenics/>.

171. ELIZABETH PRICE, FOLEY, *LIBERTY FOR ALL: RECLAIMING INDIVIDUAL PRIVACY IN A NEW ERA OF PUBLIC MORALITY* 273 (2006).

172. Scott A. Fisk, *The Last Best Place to Die: Physician-Assisted Suicide and Montana's Constitutional Right to Personal Autonomy Privacy*, 59 MONT. L. REV. 301, 311 (1998).

173. Hall, *supra* note 122, at 809, citing *King v. Higgins*, 2 East Rep. 5, 102 English Rep. 269 (1801).

174. WAYNE R. LAFAVE, *CRIMINAL LAW* 537, (2017).

175. Stefan, *supra* note 109, at 16, citing *Royal Circle v. Achterrath*, 204 Ill. 549, 68 (1903).

176. David S. Markson, *The Punishment of Suicide - A Need for Change*, 14 VILLANOVA L. REV. 463, 465 (1969). ("Although there has generally been no punishment for suicide in the United States, there is, nevertheless, a split of authority as to whether suicide is criminal or unlawful, albeit unpunishable. Although this distinction is of no consequence with respect to suicide itself, it will

to criminalize assisted suicide.¹⁷⁷ Most states followed New York's lead and thus third parties who aided and abetted a suicide face potential criminal liability even though the principal actor had not committed a crime.¹⁷⁸ Assisted suicide remains controversial today.

Slave suicides in the early nineteenth century, preceding the Civil War, became politicized and used by the abolitionists to "expose the injustices of the Atlantic and domestic slave trades."¹⁷⁹ In narratives by former slaves, suicide was portrayed and heralded as a triumph - an escape from slavery and a personal act of liberty.¹⁸⁰ These narratives added a gendered layer to the political cause.

Women revealed the ugly sexual exploitation suffered at the hands of owners and the preference of death over rape and other sexual abuse.¹⁸¹ Post-Civil War, there were many accounts of suicide by men in the South which served as a "catalyst for shifting ideas about suicide and manhood, opening the door for a more empathetic treatment of suicide victims."¹⁸² The modern medicalization and clinical investigation of suicide was underway in the United States.

be seen it is often determinative of the criminality of attempted suicide and of suicidal acts involving another party.").

177. Act of Dec. 10, 1828, ch. 20, §4, 1828 N. Y. Laws 19; This reference is from the Supreme Court's (Rehnquist) opinion in *Washington v. Glucksburg*.

178. MICHAEL STINGL, *THE PRICE OF COMPASSION: ASSISTED SUICIDE AND EUTHANASIA* 28, (2010).

179. Snyder, *supra* note 157, at 145-146.

180. *Id.* at 146-147.

181. *Id.* at 149. ("These stories revealed the experiences of women in slavery and were effective in eliciting the sympathies of northern white women as well.").

182. Diane Miller Sommerville, *Disunion, A Burden Too Heavy to Bear*, N.Y. TIMES (April 2, 2012), https://opinionator.blogs.nytimes.com/2012/04/02/a-burden-too-heavy-to-bear/?_r=0. See also DAVID SILKENAT, *MOMENTS OF DESPAIR, SUICIDE, DIVORCE, AND DEBT IN CIVIL WAR ERA IN NORTH CAROLINA*, (University of North Carolina Press March 2011).

*SUICIDE IN THE MODERN ERA**A. Social Science, Darwin, and the Progressives*

In the nineteenth century, suicide was studied through a psychological and sociological lens versus a criminal and religious one. The rise of suicides during the Industrial Revolution galvanized the search for its causes and linked statistical data to correlate and analyze suicide as a social problem.¹⁸³ Social science in the late nineteenth century and in particular, Darwinism challenged traditional Judeo-Christian moral and ethical relativism and “demolish[ed] the reigning school of “natural theology” by espousing a theory of natural selection.”¹⁸⁴ Since minds and bodies are forever in a state of evolution, some post-Darwinian intellectuals used this scientific reasoning to justify suicide choices into what would become the euthanasia movement in the twentieth century.¹⁸⁵ Indeed, Darwin himself argued that asylums, hospitals, public charity, and even therapeutic medicine obstructed the natural selection process.¹⁸⁶

The industrialization and urbanization in the late nineteenth century resulted in a myriad of social challenges spawning the political and social Progressive movement. The early Progressives rejected social Darwinism for they believed that science could be utilized for positive social change.¹⁸⁷ While espousing democratic values, the Progressives supported what

183. Rosen, *supra* note 5, in the Perlin book at 23. J.P. Falret published the first study of suicide using statistical data in 1822. He classified the causal factors for suicide under four headings: (1) predisposing-heredity, temperament, climate; (2) accidental direct-passions, domestic troubles and the like; (3) accidental indirect-bodily pain, illness; and, (4) general-civilization, civil disorders, religious fanaticism. *Id.* at 24, citing J.P. FALRET, *DE L'HYPOCHODRIE ET SU SUICIDE*, Paris (1822).

184. IAN DOWBIGGIN, *A MERCIFUL END: THE EUTHANASIA MOVEMENT IN MODERN AMERICA* 8-10, (Oxford Uni. Press 2003) (referencing Darwin's *The Origin of Species and Descent of Man* (1871)).

185. “Whether people decided to kill themselves depended on the situation in which they found themselves. Absolute standards were irrelevant to the uniqueness of individual existence.” *Id.* at 10.

186. *Id.* at 14.

187. *Id.* at 7. See also *The Progressive Era (1890-1920)*, <https://www2.gwu.edu/~erpapers/teaching/glossary/progressive-era.cfm>.

would become known as eugenics and euthanasia as independent choices of individual freedom but also as a means of social control and order.¹⁸⁸ This paternalistic and elitist attitude would attain social and political momentum in the early twentieth century, but would ultimately be the undoing of eugenics and euthanasia after the atrocities of World War II.¹⁸⁹

The term “eugenics” was coined in 1883 by Darwin’s cousin Francis Galton, based on the Greek roots of “good,” “origin,” or “good birth.”¹⁹⁰ Galton’s positive eugenics theory was calculated to “improve” “stock” and “racial qualities.”¹⁹¹ Disturbingly, the eugenics movement in the United States took a negative turn focusing on eliminating “undesirable” traits and preventing the “unfit” from procreating.¹⁹² Not surprisingly, undesirable traits were found predominantly among the poor, the uneducated, and racial minority groups.¹⁹³ The eugenics movement gained momentum throughout the world, evidenced by legislation established in countries ranging from Sweden to Latin America restricting marriage, curbing immigration, and forcing sterilization of the disabled.¹⁹⁴ In the United States, in the 19th century Congress passed immigration legislation establishing nationality quotas, and a majority of the states prohibited marriage of the mentally disabled and had passed eugenic

188. Dowbiggin, *supra* note 182, at 6-8.

189. “Progressives were inspired by human motives, but their strong belief in elite, scientific leadership also meant that their paternalistic methods would often compromise the democratic goals they claimed to have sought.” *Id.* at 7. Today, “eugenics” is a dirty word. Sonia M. Suter, *A Brave New World of Designer Babies?*, 22 BERKELEY TECH. L.J. 897, 901 (2007). The Nazis modeled their sterilization program on the existing laws in the United States. See Black, Edwin., *The Horrifying American Roots of Nazi Eugenics*, HISTORY NEWS NETWORK. (Sept. 2003) <http://hnn.us/article/1796>.

190. Dowbiggin, *supra* note 182, at 15; FRANCIS GALTON, *INQUIRIES INTO THE HUMAN FACULTY & ITS DEVELOPMENT* 17, (1883); See also Suter, *supra* note 187, at 902.

191. Dowbiggin, *supra* note 182, at 15.

192. Suter, *supra* note 187, at 905.

193. Teryn Bouche and Laura Rivard, *America’s Hidden History: The Eugenics Movement*, (Sept. 18, 2014), <https://www.nature.com/scitable/forums/genetics-generation/america-s-hidden-history-the-eugenics-movement-123919444>.

194. Dowbiggin, *supra* note 182, at 15.

sterilization statutes.¹⁹⁵ No longer confined to scientists and politicians, eugenics spread throughout American pop culture with “better baby contests” and “fitter family” competitions at local fairs and exhibitions.¹⁹⁶ The eugenics fervor gave way to open discussions of “who should not be born and who was better off dead.”¹⁹⁷ Eugenics logically lead to euthanasia.

The etymology of the word “euthanasia” is Greek from “Eu” meaning good and “Thanatosis” meaning death, together making “good death” or “gentle and easy death.”¹⁹⁸ The first recorded use of the word was by Suetonius, a Roman historian, in his *De Vita Caesarum—Divus Augustus* to describe the death of Augustus Caesar: For almost always, on hearing that anyone had died swiftly and painlessly, he prayed that he and his might have a like euthanasia, for that was the term he was wont to use.¹⁹⁹ The concurrence of Darwin’s natural selection, the fervor of eugenics, and the fear of degeneracy culminated in a call for active euthanasia of those who were “unfit.”²⁰⁰

In the early nineteenth century, Friedrich Wilhelm Serturmer, a pharmacist’s assistant, isolated a yellowish-white

195. *Id.* Over 64,000 Americans were forcibly sterilized under these laws. Bouche and Rivard, *supra* note 191.

196. Rich Remsberg, Rich, *Found In The Archives: America’s Unsettling Early Eugenics Movement*, NATIONAL PUBLIC RADIO (2011), <https://www.npr.org/sections/pictureshow/2011/06/01/136849387/found-in-the-archives-americas-unsettling-early-eugenics-movement>. “Its cultural meaning extended far beyond the science of genetics to encompass public health concerns such as diet, exercise, parenting, pediatrics, and personal hygiene.” Dowbiggin, *supra* note 181, at 16.

197. Dowbiggin, *supra* note 182, at 17.

198. IAN DOWBIGGIN, *A CONCISE HISTORY OF EUTHANASIA: LIFE, DEATH, GOD, AND MEDICINE*. (Rowman & Littlefield 2007).

199. SUTONIUS, *THE LIVES OF THE TWELVE CAESARS* 145. (1726).

200. William J. Robinson was a socialist, urologist, sex radical, and Progressive who epitomized the links between eugenics and euthanasia. See Dowbiggin, *supra* note 182, at 19. In reference to deformed infants, Robinson wrote, “Such individuals have no rights. They have no right in the first instance to be born, but having been born, they have no right to propagate their kind.” WILLIAM J. ROBINSON, *EUGENICS, MARRIAGE, AND BIRTH CONTROL* 74-76, (2nd ed. New York: Critic and Guide, 1922). Euthanasia for terminally ill infants and infanticide discussed p. 26.

crystalline compound from crude opium.²⁰¹ After some experimental trials, Serturmer discovered that its pain relieving effect was ten times that of opium.²⁰² Serturmer named his compound morphine, after the Greek God of dreams, Morpheus.²⁰³ Commercial production began in 1827 by the company that would later become the pharmaceutical giant Merck.²⁰⁴ Morphine was widely and readily available over the counter.²⁰⁵ Physicians regularly used morphine to alleviate pain and sometimes to induce death to end suffering.²⁰⁶ Literature about the use of opiates circulated with spirited debate about medical care for the dying.²⁰⁷ In 1885, the American Medical Association expressly opposed euthanasia as an attempt to make “the physician don the robes of an executioner.”²⁰⁸ Eugenics and euthanasia were propelled into the twentieth century and would ultimately be litigated in the courts.²⁰⁹

201. Ananya Mandal, M.D., *Morphine History*, <http://www.news-medical.net/health/Morphine-History.aspx> (last updated Oct. 27, 2013).

202. *Id.*

203. *Id.*

204. David Clark, *Pain, 'Euthanasia' and the Nineteenth Century Roots of Palliative Medicine*, (May 28, 2014), <http://endoflifestudies.academicblogs.co.uk/victorian-britain-two-doctors-and-euthanasia/>.

205. *People v. Beardsley Law and Morals in the Industrial Age*, 88-JAN. MICH. B.J. S6 (Jan. 2009).

206. “Medical practitioners could also be liberal in their use of such formulations in pursuit of ‘euthanasia’, still understood in the classical sense of a calm and easy death.” Clark, *supra* note 203.

207. Physician William Munk wrote *Euthanasia: or, Medical Treatment in Aid of an Easy Death* about end-of-life pain management. William Munk, *EUTHANASIA: OR, MEDICAL TREATMENT IN AID OF AN EASY DEATH* (Longmans, Green, and co., 1887). In the 1870’s, non-physician Samuel Williams advocated for the use of opiates to intentionally end life. See MANNING, MICHAEL. *EUTHANASIA AND PHYSICIAN-ASSISTED SUICIDE KILLING OR CARING?* (Paulist Press. 1998).

208. Ezekiel Emanuel, MD, PhD. “The History of Euthanasia Debates in the United States and Britain,” *Annals of Internal Medicine*, Nov. 15, 1994.; See also “The Hippocratic Oath”, 2012, National Library of Medicine; See, <https://www.ncbi.nlm.nih.gov/pubmed/7944057>.

209. “The years on either side of 1900 witnessed a flurry of interest in these types of eugenic euthanasia. In addition to W. Duncan McKim, various Americans recommended selective infanticide, discouraged surgeons from operating on physically defective infants, called for mercy killing of epileptics,

B. *The Early Euthanasia Movement*

At the start of the twentieth century, eugenics was firmly embedded in the United States with private funding for education, scientific research, and legislation.²¹⁰ Support for the early euthanasia movement was established upon ranks of eugenicists.²¹¹ Their historical foundations are interconnected since the eugenic zealotry for biological fitness logically led to the question of preventing the birth of those “unfit.”²¹² Federally funded coerced sterilization took place in thirty-two states across the nation to control so-called “undesirable populations – immigrants, people of color, poor people, unmarried mothers, the disabled, the mentally ill.”²¹³ Systemic sterilization targeting the disenfranchised, in particular women, would continue well into the twentieth and twenty-first centuries.²¹⁴ Several important cases wound their way through the courts lending judicial fiat to the institutional control over female reproduction and coerced sterilization. One of the first was the 1927 United States Supreme Court decision in *Buck v. Bell*.²¹⁵ Carrie Buck was an eighteen-year-old poor white woman who was involuntarily sterilized after

alcoholics, and burglars, and urged gassing ‘the driveling imbecile.’ *Id.* at 17-18, citing, MARTIN S. PERNICK, *THE BLACK STORK: EUGENICS AND THE DEATH OF “DEFECTIVE” BABIES IN AMERICAN MEDICINE AND MOTION PICTURES SINCE 1915*, 23-24 (1996).

210. “By the 1920s, the United States had become perhaps the world’s most eugenic nation.” Dowbiggin, *supra* note 182, at 15. The Carnegie and Rockefeller Foundations funded eugenic research and in 1923 the American Eugenics Society was established. *Id.*

211. *Id.* at 15.

212. *Id.* at 15-16.

213. Lisa Ko, *Unwanted Sterilization and Eugenics Programs in the United States*, (Jan. 29, 2016), <http://www.pbs.org/independentlens/blog/unwanted-sterilization-and-eugenics-programs-in-the-united-states/>.

214. Nearly 150 women in California prison were sterilized between 2006-2010. *Id.* The poor and people of color were targeted for sterilization in California and other states. See Alexandra Minna Stern, *Sterilized in the Name of Public Health, Race, Immigration, and Reproductive Control in Modern California*, 95 AM. J. PUBLIC HEALTH 7,1128–1138 (2005).

215. 274 U.S. 200 (1927).

giving birth to a child out of wedlock.²¹⁶ *Buck* challenged the Virginia state sterilization law under the Fourteenth Amendment but an eight justice majority of the Supreme Court upheld the statute.²¹⁷ Under the guise of a public health rationale, Justice Oliver Wendell Holmes wrote the infamous line, "Three generations of imbeciles are enough."²¹⁸ *Buck* legitimized institutional eugenic sterilization. By 1963, over 60,000 persons had been forcibly sterilized under such laws.²¹⁹ The race and gender implications of coercive eugenic sterilization would set the political stage for abortion, reproductive rights, and euthanasia in the years to follow.

The eugenics movement, industrialization disaffect, social Darwinism, the Progressives, the advent of morphine, and the development of the modern hospital system all lead to open debates in favor of euthanasia at the turn of the century.²²⁰ In 1906, Ohio and Iowa introduced legislation to legalize euthanasia but the bills were unsuccessful.²²¹ Both proposals were based upon an individual rights platform permitting those suffering from a terminal illness or extreme pain to end life, provided that the

216. See Ko, *supra* note 211. See also Michael G. Silver, *Eugenics and Compulsory Sterilization Laws: Providing Redress for a Shameful Era in United States History*, 72 GEO. WASH. L. REV 862, 866 (2004); Jana Leslie-Miller, *From Bell to Bell: Responsible Reproduction in the Twentieth Century*, 6 MD. J. CONTEMP. LEGAL ISSUES 123, 123 (Spring-Summer 1997).

217. Silver, *supra* note 214, at 866.

218. *Buck*, *supra* note 213, at 207.

219. Elizabeth S. Scott, *Sterilization of Mentally Retarded Persons: Reproductive Rights and Family Privacy*, 1986 DUKE L.J. 806, 806 n.2 (1986). See also *Madrigal v. Quilligan*, 639 F.2d 789 (9th Cir. 1981); *Relf v. Weinberger*, 565 F.2d 722, 723 (D.C. Cir. 1977). Contrast with *Skinner v. State of Okl.*, 316 U.S. 535, 62 (1942), (holding sterilization of criminals is unconstitutional under the equal protection clause).

220. "These views spanning the years of the Progressive era underscore the point that American support for euthanasia was inspired more by shifting ideas, attitudes, and social forces than changes in medical practice or technology." Dowbiggin, *supra* note 182, at 22. See also Pappas, Demetra, *Recent historical perspectives regarding medical euthanasia and physician assisted suicide* 52 BRITISH MEDICAL BULLETIN 2, 386-393 (1996).

221. Jacob Appel, *A Duty to Kill? A Duty to Die? Rethinking the Euthanasia Controversy of 1906*, 78 BULLETIN OF THE HIST. OF MED. 3, 618. (2004).

decision was voluntary and competent.²²² The political paradigm shift from eugenics to individual constitutional rights would not happen until nearly fifty years later when the United States Supreme Court would specifically recognize the right of privacy in *Griswold v. Connecticut*.²²³

The foundation for the nascent euthanasia movement was principally eugenics as exemplified in the infant euthanasia cases. In 1915, Anna Bollinger gave birth to a “blue and badly deformed” baby boy who had no anal aperture.²²⁴ Dr. Harry Haiselden predicted that the baby would soon die from auto-intoxication without surgery and he specifically advised against surgery.²²⁵ Haiselden then held a press conference to justify his decision to “merely stand by passively” and “let nature complete its bungled job.”²²⁶ Infant eugenic euthanasia burst into the public limelight, becoming less of an extremely unpopular position and more of an acceptable mainstream one.²²⁷ Notable influential public figures including Helen Keller, Jack London, and Clarence Darrow applauded Haiselden.²²⁸ Although criminally charged with murder with the support of fifteen physicians, Haiselden was acquitted.²²⁹ Haiselden himself became a celebrity of sorts, welcoming the media, writing newspaper articles, lecturing, and

222. *Id.* The bills had similar safeguards to current end-of-life choice statutes such as physician oversight and witnessed consent.

223. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

224. Dowbiggin, *supra* note 182, at 23.

225. *Id.*

226. Baby Bollinger died five days after birth on November 17, 1915. *Id.*

227. Haiselden gladly welcomed the media to discuss his reasons for withholding medical treatment. As he told one reporter: “Eugenics? Of course it’s eugenics.” *Id.* at 25.

228. Helen Keller equated Haiselden’s campaign with Margaret Sanger’s birth control advocacy. *Id.* Clarence Darrow was also a supporter, “Chloroform unfit children. Show them the same mercy that is shown beasts that are no longer fit to live.” *Philadelphia Inquirer*, 18 November 1915, 7, cited by Dowbiggin, *supra* note 182, at 26, 32. The issue of course is what is “unfit” and who gets to decide unfitness.

229. Charges against Dr. Haiselden were eventually dropped by both the Coronors jury and the State of Illinois. Thane Josef Messinger, *A Gentle and Easy Death: From Ancient Greece to Beyond Cruzan Toward a Legal Reasoned Response to the Societal Dilemma of Euthanasia*, 71 *DENV. U. LAW REV.* 175, 190 (1993).

even writing and starring in a movie based on the Bollinger baby and his decision not to operate.²³⁰ The Black Stork was a feature film shown in the United States from 1916 until at least 1928.²³¹ Haiselden also had his detractors including the Roman Catholic Church. The Archdiocese of New Orleans asked, "Where will the line be drawn between the 'fit' and the 'unfit', between the 'defective' and 'non-defective'?"²³² The Catholic Church also raised the so-called wedge argument asking, "How long will it be until the weak-minded, the deformed, the infirm, and the aged will be disposed of according to the same theory?"²³³ These criticisms of euthanasia would be revived with especial vehemence after the atrocities of World War II. This very public discourse on involuntary euthanasia would open the door for voluntary euthanasia.

Euthanasia can be voluntary, involuntary, passive or active.²³⁴ Voluntary euthanasia is a self-directed choice to end life whereas involuntary euthanasia is a decision made by a third party for an incompetent or dissenting adult.²³⁵ The distinction between passive and active euthanasia is whether there is an affirmative act to end life or an omission to continue life.²³⁶ Whether active or passive, voluntary euthanasia which does not involve a third party is the equivalent of suicide.²³⁷ In these

230. Dowbiggin, *supra* note 182, at 25.

231. *Id.*

232. New Orleans Morning Star, November 20, 1915; See: <https://chroniclingamerica.loc.gov/lccn/sn88084007/holdings/>).

233. John P. Carroll, *The Moral Side of the Bollinger Baby Case*, 54 AM. ECCLESIASTICAL REV. 315, 320 (1916).

234. Steven J. Wolhandler, *Voluntary Active Euthanasia for the Terminally Ill and the Constitutional Right to Privacy*, 69 CORNELL L. REV. 363, 365-366 (1984).

235. *Id.*

236. *Id.* at 368 ("Although unplugging a respirator and switching off a dialysis machine are arguably acts of commission, an increasing number of judges and commentators have accepted these acts as permissible passive euthanasia in both voluntary and involuntary settings.").

237. Some might argue that the semantic distinction between suicide and euthanasia is based upon the reason or motive for ending life. Self-killing to end pain and suffering is euthanasia but self-killing for any reason is suicide. Messinger, *supra* note 228, at 179. Black's Law Dictionary defines euthanasia as "the act or practice of painlessly putting to death persons suffering from incurable

formative years of the euthanasia movement, the definitional scope of suicide became blurred and overlapped with voluntary euthanasia.

Suicide rates rose during the Depression leading to more open and public discussions about death and dying.²³⁸ Two public leaders chose to terminate their lives invoking public sympathy and further support for voluntary euthanasia. In 1932, George Eastman, founder of the Eastman-Kodak, shot himself with a revolver after a prolonged illness with a note stating, "My work is done. Why wait?"²³⁹ In 1935, feminist Charlotte Perkins Gilman committed suicide using chloroform, reasoning that she "preferred chloroform to cancer."²⁴⁰ Support for euthanasia became more formalized with legislative lobbying and organizations.²⁴¹ In 1938, the National Society for the Legalization of Euthanasia was founded and then quickly re-named the Euthanasia Society of America (ESA).²⁴² A significant majority of its founding members were eugenicists.²⁴³ The principal priority of ESA was to draft and propose a model voluntary euthanasia bill for terminally ill competent adults.²⁴⁴ Within ESA's membership, there were those who believed that the euthanasia laws should extend to the

and distressing disease as an act of mercy." Black's Law Dictionary 554 (6th ed. 1990). Wolhandler argues that there should be no legal distinction between passive voluntary and passive involuntary euthanasia. "It is legally inconsistent to honor a terminal patient's request that life support equipment be removed, but to deny a similarly situated patient's request for an immediate and painless end merely because a second party's active assistance is needed to implement the latter request." Wolhandler, *supra* note 233, at 366.

238. Dowbiggin, *supra* note 182, at 33-34. "The reported rate of people killing themselves went from 13.9 per 100,000 in 1929 to 17.4 in 1932." *Id.* at 34.

239. *Id.*

240. *Id.* at 35.

241. In 1937, Inez Celia Philbrick, a physician and professor at the University of Nebraska lobbied for a euthanasia bill which included voluntary euthanasia for competent adults suffering an incurable and terminal illness and involuntary euthanasia for "mental incompetents" and minors suffering from an incurable or fatal disease. *Id.* at 48. The bill was opposed by the Nebraska State Medical Association and most clergy. The bill was never considered by the state legislature. *Id.* at 49.

242. *Id.* at 53. The name change was to broaden the scope of the organization to include education efforts as well as legal change. *Id.* at 58-59.

243. 73 percent of the founders were eugenicists. *Id.* at 54.

244. *Id.* at 56.

unconscious elderly, the incurably insane, and disabled infants and children but these eugenicists finally compromised on proposed legislation limited to competent adults.²⁴⁵ Despite ESA's lobbying efforts, no state politician would publicly support any voluntary euthanasia legislation, in large part due to vocal religious opposition.²⁴⁶ Although the political climate was not yet ripe for euthanasia legislation, ESA remained optimistic that the time would come. Instead, World War II erupted and would dramatically change the public, social, and political climate on euthanasia.

C. *World War II and the Racial Hygienists*

Prior to the Third Reich's mass murders of the sick, the elderly, and the many ethnic groups deemed unworthy, most notably the genocide of hundreds of thousands Jewish people, German physicians and scientists were espousing their own brand of eugenics called "racial hygiene."²⁴⁷ In the aftermath of harsh World War I sanctions, increasing numbers in state-funded asylums, the collective German mood was ripe for the needs of the country to take priority over any one individual dependent.²⁴⁸ Under the all-encompassing guise of public health, racial hygiene was justified as a form of preventive medicine to aid the process of natural selection and prevent reproduction by "inferior individuals."²⁴⁹ The underpinnings of Hitler's racial cleansing program began with certain key relationships between American and German eugenicists.²⁵⁰ Although a majority of German physicians opposed euthanasia, the 1933 appointment of Adolph

245. *Id.*

246. The Catholic Church and Protestant groups opposed euthanasia. *Id.* at 58.

247. *Id.* at 65. ("Between 1924 and 1929, the number of psychiatric patients in Weimar Germany rose from 185,397 to more than 300,000, and despite extensive efforts to release patients back into the community, the number of long-term, chronically ill patients jumped, turning asylums into primarily custodial institutions."). *Id.* at 68.

248. *Id.* at 67.

249. *Id.* at 65.

250. Paul A. Lombardo, *The American Breed: Nazi Eugenics and the Origins of the Pioneer Fund*, 65 ALB. L. REV. 743, 747-8 (2002).

Hitler as chancellor was a cataclysmic pivotal change in Germany's collective social attitude towards eugenics and euthanasia as a justification for institutional sterilization and murder.²⁵¹ Within months, the Law for the Prevention of Offspring with Hereditary Diseases authorizing compulsory sterilization laws was enacted.²⁵² Nine broad categories of those to be sterilized were set forth in the statute:

Anyone suffering from any of the following diseases is considered hereditarily diseased under this law:
 1. Congenital mental deficiency, 2. Schizophrenia, 3. Manic-depression, 4. Hereditary epilepsy, 5. Hereditary St. Vitus' Dance (Huntington's Chorea), 6. Hereditary blindness, 7. Hereditary deafness, 8. Serious hereditary physical deformity. Furthermore, anyone suffering from chronic alcoholism can be sterilized.²⁵³

About 400,000 Germans equaling approximately one percent of the population at the time was sterilized; thirty to forty percent of them were asylum patients.²⁵⁴ In 1939, Hitler issued a secret so-called euthanasia program called Aktion T-4 to kill "useless eaters" and those "unworthy" of living.²⁵⁵ The Third Reich would kill over 300,000 mentally ill and disabled under T-4.²⁵⁶ New evidence compiled in 2013 suggests that the Nazis may have murdered nearly twenty million people during their reign of terror, including five to six million Jewish people.²⁵⁷ As the world

251. Dowbiggin, *supra* note 181, at 68-69.

252. *Id.*; See also Richard F. Wetzell, *Inventing the Criminal: A History of German Criminology, 1880-1945*, 254-56, (Uni. of N.C. Press 2003).

253. German History in Documents and Images, 7 Nazi Germany 1933-1945 (Law for the Prevention of Offspring with Hereditary Diseases 1933), <http://germanhistorydocs.ghi-dc.org/pdf/eng/English30.pdf>.

254. Dowbiggin, *supra* note 182, at 69.

255. Olga Khazan, *Remembering the Nazis' Disabled Victims*, THE ATLANTIC (Sept. 3, 2014), <https://www.theatlantic.com/health/archive/2014/09/a-memorial-to-the-nazis-disabled-victims/379528/>.

256. In 2014, a 79-foot memorial wall was unveiled at the original site of the T-4 building. *Id.*

257. Matthew Day, *Shocking' New Holocaust Study Claims Nazis Killed up to 20 Million People*, THE TELEGRAPH,

collectively recoiled in horror at the Nazi atrocities, the American euthanasia activists were surprised that the American public viewed their pro-euthanasia movement as the equivalent of Nazism.²⁵⁸ World War II set the American euthanasia movement reeling backwards with the majority of Americans now in firm opposition.

D. *The Rise of Individual Privacy Rights*

The latter half of the twentieth century was a period of profound and striking transformations in American law affecting traditional cultural and legal perspectives on a broad range of issues such as gender norms²⁵⁹, sexual autonomy²⁶⁰, education²⁶¹, racial equality²⁶², sexual orientation²⁶³, and individual rights of privacy.²⁶⁴ Chief Justice Earl Warren presided over “a remarkable period of judicial history, beginning with the Court’s deliberations and decision in *Brown v. Board of Education*, and culminating in a series of landmark rulings in the 1960’s, dramatically extending the reach of the Bill of Rights and revolutionizing the right to vote.”²⁶⁵ The Supreme Court was not alone in its endeavors to protect civil rights and outlaw invidious discrimination. In 1964, Congress passed the landmark Civil Rights Act prohibiting discrimination based upon race, color, religion, sex, or national

<http://www.businessinsider.com/shocking-new-holocaust-study-claims-nazis-killed-up-to-20-million-people-2013-3>.

258. Dowbiggin, *supra* note 182, at 63. (“Euthanasia defenders in the United States discovered to their horror that many Americans associated their movement with these murders. For a group that prided itself on its liberalism, humanitarianism, and progressive views, the stigma of Nazism was particularly embarrassing.”).

259. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 (1989).

260. *Loving v. Virginia*, 388 U.S. 1, 87 (1967); *Eisenstadt v. Baird*, 405 U.S. 438, 92 (1972); *Roe v. Wade*, 410 U.S. 113, 93 (1973).

261. *Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483, 74 (1954).

262. *Id.*; *Loving v. Virginia*, 388 U.S. 1, 87 (1967).

263. *Bowers v. Hardwick*, 478 U.S. 186, 106 (1986).

264. *Mapp v. Ohio*, 367 U.S. 643, 81 (1961); *Griswold v. Connecticut*, 381 U.S. 479, 85 (1965); *Katz v. United States*, 389 U.S. 347, 88 (1967).

265. Akhil Reed Amar, *The Warren Court and the Constitution (With Special Emphasis on Brown and Loving)*, 67 SMU L. REV. 671 (2014); *See also* the 1964 Civil Rights Act.

origin.²⁶⁶ During this counter-cultural revolution, there was a proliferation of young idealism in direct opposition to the Vietnam War, race discrimination, and paternalistic gender roles, and sexual norms. These new idealists challenged the existing establishment and forever changed the fabric of American culture. What was radical in the 1960's is today widely commonplace or at least not unfamiliar: yogurt, granola, vegetarians, bi, pan, and same sex orientation.²⁶⁷ Amidst this emerging era of individual rights, was the euthanasia movement ready for its own metamorphosis from political elitist embarrassment to an individual's freedom of choice in the timing and manner of one's own death. The interchange and transposition of medicine, law, and ethics raised new and unsettling questions about the meaning of life and when life begins and ends. A woman's right to choose to terminate an early pregnancy became the center of a nationwide and continuing debate about the beginning of life.²⁶⁸ Almost simultaneously, courts were faced with decisions about ending life. In 1975, Joseph and Julia Quinlan filed a lawsuit asking the New Jersey court to disconnect their daughter Karen Ann Quinlan from a life support respirator to allow her to die "with grace and dignity" since there was no hope for her to recover.²⁶⁹ Although the trial court refused their request, the New Jersey Supreme Court unanimously reversed and gave legal credence to an individual's right of privacy in choosing to disconnect life support when there is "no reasonable possibility of recovery."²⁷⁰

Self-directed actions to refuse or terminate medical treatment have been upheld as within an individual's constitutional right of privacy.²⁷¹ Following *Roe v. Wade*, the courts

266. Civil Rights Act of 1964, PUB.L. 88-352, 78 Stat. 241 (1964).

267. See *Flower Power*, <http://www.ushistory.org/us/57h.asp>; See also Kenneth T. Walsh, *The 1960's: A Decade of Promise and Heartbreak*, US NEWS AND WORLD REPORT (March 9, 2010), <https://www.usnews.com/news/articles/2010/03/09/the-1960s-a-decade-of-promise-and-heartbreak>; Nancy L. Cohen, *Delirium: "How the Sexual Counterrevolution is Polarizing America"*, (Counterpoint Press, 47 2012).

268. *Roe v. Wade*, 410 U.S. 113, 93 (1973).

269. *Matter of Quinlan*, 70 N.J. 10, 355, 44 (1976).

270. *Id.* at 47.

271. *Cruzan v. Director*, 497 U.S. 261, 271 (1990). ("[M]ost state courts have based a right to refuse treatment on the common-law right to informed

have consistently upheld an individual's right to refuse medical treatment even if necessary to prolong life as a balancing of an individual's right of self-determination and the state's interests in the protecting the sanctity of life.²⁷² The Quinlan case set the stage for later legislation and debate on the definition of death to mean brain death rather than the cessation of respiratory function.²⁷³

The advent of life sustaining medical technology and an aging American population has contributed to a national obsession about death and terminal illness.²⁷⁴ The so-called Baby Boomer generation "that has refused to go quietly into any life stage" is getting old and now insisting to age and die on their own terms.²⁷⁵

consent, or on both that right and a constitutional privacy right.") (citations omitted).

272. Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 370 N.E. 2d 417, 426 (1977). (stating that the right to privacy "is broad enough to encompass a patient's decision to decline medical treatment under certain circumstances, in much the same way as it is broad enough to encompass a woman's decision to terminate pregnancy under certain conditions."). *Quinlan*, at 39. "The constitutional right to privacy . . . is an expression of the sanctity of individual free choice and self-determination as fundamental constituents of life." Superintendent of Belchertown State School v. Saikewicz, 373 Mass. 728, 370 N.E. 2d 417, 426 (1977).

273. Robert D. McFadden, *Karen Ann Quinlan, 31, Dies; Focus of '76 Right to Die Case*, N.Y. TIMES, (June 12, 1985), <http://www.nytimes.com/1985/06/12/nyregion/karen-ann-quinlan-31-dies-focus-of-76-right-to-die-case.html?pagewanted=all>. ("In 1981, a Presidential Commission recommended that states endorse the concept that human life ended when the brain stopped functioning.").

274. Somewhat ironically although life expectancy is at an all-time national high, suicide rates have significantly increased. See Larry Copeland, *Life Expectancy in the US Hits a Record High*, USA TODAY (Oct. 8, 2014), <https://www.usatoday.com/story/news/nation/2014/10/08/us-life-expectancy-hits-record-high/16874039/>; See also Nell Greenfieldboyce, *CDC: U.S. Suicide Rates Have Climbed Dramatically*, on ALL THINGS CONSIDERED, NPR (June 7, 2018), <https://www.npr.org/sections/health-shots/2018/06/07/617897261/cdc-u-s-suicide-rates-have-climbed-dramatically> ("Suicide rates have increased in nearly every state over the past two decades, and half of the states have seen suicide rates go up more than 30 percent.").

275. Dan Kadlec, *A Good Death: How Boomers Will Change the World A Final Time*, TIME MAGAZINE (Aug. 14, 2013), <http://business.time.com/2013/08/14/a-good-death-how-boomers-will-change-the-world-a-final-time/>. The Baby Boomer generation refers to the increased volume of babies born in the years after World War II. Between 1946-1964, there were 76.4 million baby boomers who constituted about 40 percent of

As the Boomers age, so do their parents. The Boomers have faced the debilitating diseases and devastating consequences of Parkinson's, Alzheimer's, diabetes, heart disease, and cancer, to name a few of the leading causes of death. As Boomers face these end of life consequences for their parents, they also wonder how they can control their own path to the end of life. "People are starting to think about aid-in-dying as the next civil rights movement. Death with dignity is the final frontier of human rights and freedom of expression."²⁷⁶

One of the most controversial figures to emerge in the 20th century "right to die" movement was pathologist Dr. Jack Kevorkian, also known as Dr. Death.²⁷⁷ For nearly a decade, Dr. Kevorkian and his suicide machine dubbed "Mercitron" or "Thanatron" helped 130 terminally ill people die.²⁷⁸ In 1999, Dr. Kevorkian's videotape of administering a lethal injection to Thomas Youk, diagnosed with amyotrophic lateral sclerosis, was shown on national television and caused a public outcry.²⁷⁹ Dr. Kevorkian was found guilty of second-degree murder and sentenced to ten to twenty-five years.²⁸⁰ Dr. Kevorkian was released after serving eight years upon his promise that he would never again assist in any suicides.²⁸¹ Although his confrontational and pugnacious persona produced powerful adversaries including the American Medical Association, Dr. Kevorkian was an iconic figure who challenged the medical profession's ethics on dying and

the US population. See *Baby Boomers*, HISTORY, <https://www.history.com/topics/baby-boomers>.

276. Kadlec, *supra* note 272 (quoting Ruth Goldstein, a retired nurse in Baltimore who works with the elderly).

277. Dominic Rushe, *Dr. Death Jack Kevorkian Advocate of Assisted Suicide Dies in Hospital*, THE GUARDIAN (June, 2011), <https://www.theguardian.com/world/2011/jun/04/dr-death-jack-kevorkian-suicide>. See also *supra*, note 7.

278. *Id.*

279. Rushe, at 273.

280. Keith Schneider, *Dr. Jack Kevorkian Dies at 83; A Doctor Who Helped End Lives*, N.Y. TIMES (June 3, 2011), <https://www.nytimes.com/2011/06/04/us/04kevorkian.html>.

281. *Id.*

death.²⁸² “Jack Kevorkian, faults and all, was a major force for good in this society. He forced us to pay attention to one of the biggest elephants in society’s living room: the fact that today vast numbers of people are alive who would rather be dead, who have lives not worth living.”²⁸³ Dr. Kevorkian’s first assisted suicide patient was an Oregon school teacher who suffered from Alzheimer’s disease.²⁸⁴ Janet Adkins’ assisted suicide in 1990, became an impetus for state legislative action.

In 1994, by a slim majority of votes, Oregon passed Measure 16 becoming the first state in the United States to legalize physician-assisted suicide.²⁸⁵ Legislative and judicial challenges prevented its immediate implementation but nearly four years later, Oregon’s Death with Dignity Act went into effect.²⁸⁶ Oregon’s Death with Dignity Act allows physicians to prescribe life-ending medication to mentally competent terminally-ill Oregon residents.²⁸⁷ Only patients with six months to live are eligible to receive the lethal prescription and are required to make two verifiable medical requests for the lethal prescription.²⁸⁸ Following enactment, nearly 2,000 people have suffered lethal doses of prescriptions medicines and by February 9, 2018, 1,275 people have died from ingesting the medication.²⁸⁹ Other states have followed Oregon’s lead trending a steadily increasing minority position. By 2019, at least seven states plus the District

282. In 2010, HBO produced a movie about Dr. Kevorkian. Al Pacino earned an Emmy and a Golden Globe award for his portrayal of Dr. Death. See Keith Schneider, *Dr. Jack Kevorkian Dies at 83; A Doctor Who Helped End Lives*, N.Y. TIMES (June 3, 2011), <https://www.nytimes.com/2011/06/04/us/04kevorkian.html>.

283. *Id.* (quoting Jack Lessenberry, a prominent Michigan journalist who covered Dr. Kevorkian’s one-man campaign).

284. *Id.*

285. See *Oregon, DEATH WITH DIGNITY*, <https://www.deathwithdignity.org/states/oregon/>.

286. *Id.*

287. OR. REV. STAT. §§ 127.800 – (2011).

288. *Id.*

289. Center for Health Statistics, *Oregon Death With Dignity, Annual Statistical Report 2017*, (Oregon Public Health Division 2018), <https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Documents/year20.pdf>.

of Columbia will recognize a “right to die” or “end of life option.”²⁹⁰ According to a May 2017 Values and Beliefs Gallup poll, a majority of Americans have been in favor of physician assisted suicide for terminally ill patients since 1990.²⁹¹ Some advocates support an expansion of the current assisted suicide laws.²⁹² Current laws are limited to those patients who are within six months of death and they must be mentally and physically capable to administer the lethal medication.²⁹³ These restrictions can exclude those suffering from terminal illnesses such Amyotrophic Lateral Sclerosis (ALS) and Alzheimer’s Disease.²⁹⁴ Although controversial and ethically complex, the conceptual ideal of physician assisted suicide resonates with a modern United States that prides itself on individualism and independent personal rights. Physician assisted suicide will continue to find its way into state legislation in the years to follow.

CONCLUSION

Suicide is a fascinating, profound, and morbidly compelling topic. Although Everyone dies, as medical science extends the human life span, legions more individuals want to control the timing and manner of their own death. In the past one hundred years, life expectancy in the United States has nearly doubled for men and women.²⁹⁵ Nevertheless, the average life span for those

290. See *How Death with Dignity Laws Work*, <https://www.deathwithdignity.org/learn/access/>. (explaining that Hawaii’s “Our Care, Our Choice Act” was passed in 2018 and will go into effect on January 1, 2019. Hawaii joins: California, Colorado, Montana, Oregon, Washington, and the District of Columbia.); See *infra* notes 16-23.

291. Jade Wood and Justin McCarthy, *Majority of Americans Remain Supportive of Euthanasia*, (June 12, 2017), <https://news.gallup.com/poll/211928/majority-americans-remain-supportive-euthanasia.aspx>.

292. The Times Editorial Board, *California’s Right to Die Law is Working*, L.A. TIMES (April 5, 2018), <http://www.latimes.com/opinion/editorials/la-ed-expand-assisted-suicide-20180405-story.html>.

293. *Id.*

294. *Id.*

295. In 1918, the life expectancy in the United States for males was 36.6 years and for females 47.2 years. See

in the United States dropped in 2017 and 2018 placing it below other developed nations such as Mexico, Canada, France, Germany, Japan, and the United Kingdom.²⁹⁶ According to a study published in the BMJ journal (formerly known as the British Medical Journal), the reason for the decline is “despair.”²⁹⁷ Opioid addiction and a decline in emotional well-being have statistically affected life expectancy in the United States.²⁹⁸ In addition, the study points to a 24 percent increase in the number of suicides between 1994 and 2014.²⁹⁹ The rate of suicide is trending to dramatically increase in the United States and is the second leading cause of death among people between the ages of fifteen and thirty-four.³⁰⁰

The statistical data is perhaps misleading since “suicide” today can be a legal self-directed autonomous choice. The act of self-killing is not necessarily a desperate ill-conceived deed but sometimes a thoughtful temperate decision made after appreciable medical and legal consideration.³⁰¹ Life is no longer

<http://www.demog.berkeley.edu/~andrew/1918/figure2.html>; In 2018, the life expectancy in the United States for males was 76 years and for females was 81 years. See <https://www.statista.com/statistics/274513/life-expectancy-in-north-america/>.

296. “The new average life expectancy for Americans is 78.7 years, which puts the U.S. behind other developed nations and 1.5 years lower than the Organisation for Economic Cooperation and Development (OECD) average life expectancy of 80.3. The OECD is a group of developed countries that includes Canada, Germany, Mexico, France, Japan, and the U.K.” Grace Donnelly, *Here’s Why Life Expectancy in the U.S. Dropped Again This Year*, (Feb 9, 2018), <http://fortune.com/2018/02/09/us-life-expectancy-dropped-again/>.

297. *Id.*

298. *Id.*, citing Steven Woolf, an associate professor of emergency medicine at Virginia Commonwealth University and co-author of the report.

299. *Id.*

300. Amy Ellis Nut, *Suicide Rates Rise Sharply Across The United States, New Report Shows*, WASH. POST, (June 7, 2018), https://www.washingtonpost.com/news/to-your-health/wp/2018/06/07/u-s-suicide-rates-rise-sharply-across-the-country-new-report-shows/?noredirect=on&utm_term=.f5a666f20861.

301. On New Year’s Day 2014, Brittany Maynard learned that she had brain cancer. She was 29 years old and had been married for a year. Four months later, she learned that the cancer was advancing aggressively and that she had six months to live. After much research, she (and her family) made the decision to “die with dignity” and moved from California to Oregon. At that time,

measured by mere existence but by the quality of capability and capacity for individual autonomy, a life without debilitating pain, the enjoyment of interests and relationships, self-determination, and mental acuity. Essential freedoms of individual liberty also extend to life choices about one's own death. Legally regulated and with limited parameters, the right to die is fast becoming a cognizable civil right.

California did not have a legal physician assisted suicide law but Oregon did. Before she died, Brittany Maynard advocated strenuously for the right to die and made well-publicized videos and commentary. Brittany Maynard, *My Right to Death With Dignity* at 29, CNN (Nov 2, 2014), <http://www.cnn.com/2014/10/07/opinion/maynard-assisted-suicide-cancer-dignity/index.html>.