

SUICIDE AND THE LAW¹

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Introduction

As a subject, suicide has more unusual features than at first appear. Even the word itself is peculiar. It is said to have been formed on a false analogy of 'fratricide' and like words, by combining *sui*, the genitive of *se*, with *-cide*, a suffix derived from *caedere*, to kill.² As 'sus' is the Latin word for pig, it has been suggested that if Cicero had been confronted with such a formation as *suicida* he would presumably have thought it meant a pork butcher, and a female pork butcher at that. It first appeared in 1671, but Dr Johnson excluded it from his dictionary.³ It is found in Hale's *History of the Pleas of the Crown*, first published in 1736, but whether Sir Matthew Hale used it, or it was interpolated by his editor, Sollom Emlyn, to whom the posthumous publication of Hale's manuscripts was entrusted, can only be a matter of speculation. The passage is as follows: '*Felo de se* or *suicide* is, where a man of the age of discretion, and *compos mentis*, kills himself by stabbing, poison, or any other way.'⁴

The history of the law relating to suicide (even legally the word has now replaced the ancient *felo de se*) provides a fascinating illustration of the way in which a concept that has been devised for one purpose, but is not sharply defined, is taken by lawyers and misapplied to a superficially similar but essentially different problem.

Though we may be sure that from early times the killing of oneself was regarded as impious and anathematized by the Church, there is room for speculation about the way in which suicide became a crime. Some acquaintance with the feudal system is required for an understanding of some of the early criminal sanctions. The penalty for the grave crimes known as felonies was death after attainder. Attainder was the extinction of civil rights and capacities which occurred when judgment of death or outlawry was recorded against a person convicted of treason or felony. The two principal consequences of attainder were forfeiture of property and escheat of the lands of the criminal, and corruption of his blood. The latter meant that the

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¹ Text of an address on 5 June 1964 to the Symposium on Suicide held in the University of Melbourne, read in the author's absence by Professor D. P. Derham, Dean of Law School of Monash University.

² Concise Oxford Dictionary, *s.v.* 'suicide'.

³ Glanville Williams, *Sanctity of Life and The Criminal Law* (1958) 227.

⁴ Hale, *Pleas of the Crown* (1800) i, 411.

felon was legally incapable of holding or inheriting land or transmitting a title to it. A canon of King Edgar, in the year 967, provided that a suicide's goods should be forfeited to his lord, unless he was driven to kill himself by madness or illness. Forfeiture of some kind was thus a consequence of both felony and suicide, and this circumstance, allied with the cupidity of the King and his zealous officials, exercised a potent influence on the development of the law.

The object of the King's judges was to enrich their master, and their readiest argument to this purpose was that suicide was a felony. Since every felon forfeited his goods to the King, it had only to be decided that suicide was a felony to divert forfeiture from the suicide's immediate lord to the royal coffers.⁵

Suicide first appears in English law not as a crime *per se*, but as a confession of some other crime.⁶ Bracton, who died in 1268 and whose *De Legibus et Consuetudinibus Angliae* is the first attempt to treat the law in a manner at once systematic and practical,⁷ is the earliest English legal writer to deal with the legal consequences of self-killing. He seems himself to have been uncertain what the law was, and to have borrowed from the Roman law practically everything he has to say on the subject. But in time his distinctions and qualifications were disregarded, and with the development of the practice and doctrine of forfeiture of property as a criminal penalty, suicide took its place as a felony. The way in which it came about has been described by an American scholar:

So suicide, long regarded by the Church as a mortal sin, and punished by her with a denial of Christian burial, will easily take its place among English crimes; Bracton's degrees and distinctions will be forgotten or ignored, non-Christian burial will be exaggerated into an ignominious one, it will be punished by forfeiture, the only punishment the facts of the case and the rules of law make possible, and it will be called what Bracton called it—a felony.⁸

Whether suicide resulted in forfeiture of lands as well as chattels is said to be doubtful, and in general it seems to have been limited to chattels.⁹ There was, however, forfeiture of some interests in land—for example, leaseholds as chattels real were forfeited.¹⁰

There is good reason to believe that suicide became a felony by arguing backwards, thus: suicide attracts a forfeiture, forfeiture is a

⁵ Glanville Williams, *op. cit.* 245, and see 232, 235, and N. St John-Stevas, *Life, Death and the Law* (1961) 234.

⁶ W. E. Mikell, 'Is Suicide Murder?' (1903) 3 *Columbia Law Review* 379.

⁷ Dictionary of National Biography, ii, 1054.

⁸ W. E. Mikell, *op. cit.* 383.

⁹ *Beresford v. Royal Insurance Co. Ltd.* [1938] A.C. 586, 599, *per* Lord Atkin; and see N. St John-Stevas, *op. cit.* 234; Glanville Williams, *op. cit.* 235.

¹⁰ *Hales v. Petit* (1563) 1 Plowden 253, 75 E.R. 387.

consequence of felony, therefore suicide is a felony.¹¹ Once it was established as a crime, lawyers had to decide its character. There were two possible answers: that suicide was a distinct crime, *sui generis*, with its own distinct punishment, forfeiture of chattels, or that suicide was murder, attracting the same punishment as murder, namely death, attainder resulting in escheat of lands and forfeiture of chattels. But the punishment of death cannot be inflicted on a dead man, and attainder, an essential preliminary to escheat, could take place only during the life of the felon, so punishment only could not be the test. In resolving the problem, the judges and the legal writers seem to have been caught in the snare of false analogy. By the generally accepted definition, murder was committed 'when a person of sound memory and discretion unlawfully killeth any reasonable creature in being and under the King's peace, with malice aforethought, either express or implied, death taking place within a year and a day'. Note that the expression is 'any reasonable creature', not 'any *other* reasonable creature'. In the famous case of *Hales v. Petit*,¹² Sir James Dyer, Chief Justice of the Court of Common Pleas, regarded the argument founded on the definition as satisfying and irresistible. Sir James Hales, a judge of the Common Bench (or Common Pleas), was found by the coroner to have feloniously and voluntarily drowned himself in a river, and his widow challenged the forfeiture of certain leaseholds to the Crown. She failed in her action, and in the course of his reasons for rejecting the widow's writ, Dyer C.J., stated 'murder is the killing of a man with malice prepense. And here the killing of himself was prepensed and resolved in his mind before the act was done'. Shakespeare knew the case and satirized its sophistical reasoning in the clowns' disputation in *Hamlet*, Act V, scene 1, which it will be remembered is as follows:

SCENE I.—Elsinore. A Churchyard.

Enter two Clowns, with spades and mattock.

First Clo. Is she to be buried in Christian burial that wilfully seeks her own salvation?

Sec. Clo. I tell thee she is; and therefore make her grave straight; the crowner hath sat on her, and finds it Christian burial.

First Clo. How can that be, unless she drowned herself in her own defence?

Sec. Clo. Why, 'tis found so.

First Clo. It must be *se offendendo*; it cannot be else. For here lies the point: if I drown myself wittingly it argues an act; and an act hath three branches; it is, to act, to do, and to perform: argal, she drowned herself wittingly.

¹¹ T. F. T. Plucknett, *A Concise History of the Common Law* (5th ed. 1956) 445.

¹² *Hales v. Petit* 1 Plowden 261, 75 E.R. 399. For Sir James Dyer see Edward Foss, *Biographical Dictionary of the Judges of England 1066-1870* (1870) 226.

Sec. Clo. Nay, but hear you, goodman delver —

First Clo. Give me leave. Here lies the water; good: here stands the man; good: if the man go to this water and drown himself, it is, will he, nill he, he goes; mark you that? but if the water come to him and drown him, he drowns not himself: argal, he that is not guilty of his own death shortens not his own life.

Sec. Clo. But is this law?

First Clo. Ay, marry, is't; crowner's quest law.

Sec. Clo. Will you ha' the truth on't? If this had not been a gentlewoman she should have been buried out o' Christian burial.

First Clo. Why, there thou sayest; and the more pity that great folk should have countenance in this world to drown or hang themselves more than their even Christian.

In truth, whether considered historically or from the standpoint of the evil prohibited, the killing of oneself is not within the concept of murder. The word 'murder' comes from '*murdrum*', which is derived from the Old English *mordhor*, cognate with the Latin *mori*, to die. *Murdrum* was the name of the fine levied on the district known as the hundred, after the Norman conquest, if a Norman was found slain and the slayer was not apprehended. In its original sense it applied to the crime of secret slaying. In time the word became linked with *malitia excogitata*, or malice aforethought.¹³ The fundamental notion was the intentional killing by one human being of another human being, and it was a sophistical use of a false analogy that led to the conclusion that the killing of oneself was self-murder. But once suicide was established as murder, lawyers' logic produced a variety of consequences. At common law 'an instigator of suicide is a principal in the second degree to murder (*i.e.*, to the self-murder of the person committing suicide) if he is present when it takes place, and an accessory before the fact if he is absent'.¹⁴ Hence a survivor of a suicide pact is at common law guilty of the murder of the successful party to the pact. Legally analysed, there is a difference between a suicide pact in which each of the two parties does for himself (or herself) what is necessary to cause death, and a suicide pact where one of the parties is the agent inflicting death on both. Where, for example, each of two people takes poison in pursuance of an agreement to commit suicide, and one dies and the other survives, the survivor is guilty of two crimes; of the murder of the other party as a principal in the second degree, and of attempted suicide upon himself. If the method chosen, however, is that one shoots the other and then himself, and his attempt to shoot himself is ineffectual, he is guilty of murder as a principal in the first degree. The case of husband and wife who agree to end their lives by means of household

¹³ Plucknett, *op. cit.* 445.

¹⁴ Glanville Williams, *Criminal Law* (2nd ed. 1961) 393.

gas supplies a further illustration of the technical nature of these distinctions. If the husband turns on the gas, and his wife dies and he survives, he is guilty of murder as a principal in the first degree, because it was his act in turning on the gas that killed her. If he dies and she survives, she is guilty of murder as a principal in the second degree, because she has aided and abetted him in his self-murder. Dr Glanville Williams remarks that 'it would be discreditable if any actual legal consequences (*sc.* in the exaction of the death penalty) were to hinge upon such distinctions',¹⁵ and it may be taken that some such feeling contributed to recent alterations of the law that have been made in the United Kingdom. The legal fiction, whereby 'malice' (which to lawyers means not 'spite' but 'intention') is transferred when an injury intended for one person falls on another, may enter into suicide. If a would-be suicide is inept in the attempt, as when by clumsiness in an unsuccessful endeavour to shoot himself, he kills another, or in jumping from a height for the purposes of self-destruction he falls upon and kills some other person but not himself, he is guilty of murder; the intention to kill himself is 'transferred' so that the accidental result becomes the crime.

Attempted suicide may have been regarded long before as punishable in some way, but it was not until the middle of the nineteenth century, with the development of the law relating to criminal attempts, that it was held judicially that it was a criminal offence. The reasoning was simple: an attempt to commit a felony is a misdemeanour; suicide is a felony; an attempt to commit it is, therefore, a misdemeanour, and in 1854 the law was so declared.¹⁶

The statute book abounds in material of historical, anthropological and sociological interest. Section 17 of the Coroners Act 1958 is an instance. It provides:

Notwithstanding any law or custom to the contrary it shall not be lawful upon the finding of a verdict of *felo de se* against any person for the coroner holding such inquest to give directions for the private interment of the remains of such person *felo de se*; nor shall there be any limit of time from the finding of the inquisition within which interment shall necessarily take place; nor shall such interment necessarily take place between the hours of nine and twelve at night; nor shall the performance of any of the rites of Christian burial be forbidden by such coroner at the interment of the remains of such person; but such coroner shall have the like power to give directions for the interment of the remains of such person *felo de se* as if the verdict of *felo de se* had not been found against such person.

Modelled on an English Act of 1882, it was first enacted in Vic-

¹⁵ Glanville Williams, *The Sanctity of Life and The Criminal Law* (1958) 266.

¹⁶ *Regina v. Doody* (1854) 6 Box C.C. 463; *Regina v. Burgess* Le. & Ca. 258; *Rex v. Mann* [1914] 2 K.B. 107.

toria in 1886. In former times burial of a suicide was at night at the cross-roads, a stake (sometimes of iron because of its magical properties) driven through the body and a stone placed over the corpse's face. The last person buried at the cross-roads was one Griffiths, in 1823, at the junction of Eaton Square, Grosvenor Place, and King's Road, London. A great master of the criminal law, Sir James Fitzjames Stephen, believed there was no legal authority for the custom, and that, like the practice of gibbeting executed felons, it had originated without any legal warrant in circumstances now forgotten.¹⁷ It was abolished in 1823.¹⁸ During the eighteenth century the Crown limited forfeiture of goods to cases where suicide was committed to avoid conviction for felony. Forfeiture of property as a possible legal consequence of suicide or other felony was ended in England in 1870, and in Victoria in 1878.¹⁹

There are other macabre aspects of suicide but it is beyond the ambit of this paper to deal with them. If further information is desired, it will be found in H. Romilly Fedden's book, *Suicide* (London 1938), in Glanville Williams' civilized essay, 'The Prohibition of Suicide', in *The Sanctity of Life and the Criminal Law* (London 1958), and in the chapter on suicide in Norman St John-Stevas' thought-provoking studies, *Life, Death and the Law* (London 1961).

The Present English Law

Legal pundits find the attempt to give a definition in answer to the question, What is a crime?, a fascinating and absorbing pursuit, but for present purposes it is sufficient to take the statement in *Halsbury's Laws of England*,²⁰ that 'a crime is an unlawful act or default which is an offence against the public, and renders the person guilty of the act or default liable to legal punishment'. Suicide does not come within that description, because the successful commission of the act puts the actor beyond any earthly punishment. It has, therefore, been described, rather strangely, as 'an unenforceable crime'.²¹ Perhaps the only justification for retaining it as a crime at all is to reinforce public disapproval, and to discourage attempts to commit it, and maybe to provide a basis for punishing a person who aids or abets or counsels another to do so. The latter purpose can be achieved quite readily, however, by a statutory provision without the need to retain suicide as a crime.

¹⁷ J. F. Stephen, *History of the Criminal Law of England* (1883) iii, 105. The statement concerning the burial of Griffiths is taken from N. St John-Stevas, *op. cit.* 232.

¹⁸ 4 Geo. IV c.52.

¹⁹ Crimes Act 1958 s. 543; Act No. 627 of 1878. N. St John-Stevas, *op. cit.* 234.

²⁰ X, (Simonds ed. 1955) 271.

²¹ Glanville Williams, *Criminal Law* (2nd ed. 1961) 392.

Sir Ernest Gowers' *Royal Commission on Capital Punishment* 1949-1953 turned its attention to suicide, and as a result of its report,²² section 4 of the Homicide Act 1957 (Eng.) was introduced, though the section went further than the Commissioners recommended. As amended by the Suicide Act 1961 (Eng.) it is as follows:

(1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other being killed by a third person.

(2) Where it is shown that a person charged with the murder of another killed the other or was a party to his being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.

(3) For the purposes of this section "suicide pact" means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

In England the penalty for manslaughter rests in the judge's discretion. In Victoria the punishment may not exceed imprisonment for 15 years, and a fine may be ordered in addition to or instead of imprisonment.²³

Section 1 of the Homicide Act 1957 (Eng.) abolished 'constructive malice' (or transferred intention) as an element in murder, and thus got rid of some of the grotesque consequences I have mentioned earlier, though a writer in the *Modern Law Review* is perturbed lest a result of *D.P.P. v. Smith*²⁴ is to emasculate that section.²⁵

But the concessions made by the Homicide Act 1957 (Eng.) did not satisfy the critics, and in 1961 the Suicide Act (Eng.) was passed.²⁶ Sections 1 and 2 (1) and (2) are as follows:

Section 1. The rule of law whereby it is a crime for a person to commit suicide is hereby abrogated.

Section 2. (1) A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on conviction on indictment to imprisonment for a term not exceeding fourteen years.

(2) If on the trial of an indictment for murder or manslaughter it is proved that the accused aided, abetted, counselled or procured the suicide of the person in question, the jury may find him guilty of that offence.

The law in England now stands thus: suicide is not a crime. The survivor of a suicide pact, when he has done the killing, is guilty, not of murder, but of manslaughter. As the rule of law that suicide is a

²² Command Paper 8932, 59-62, 275.

²³ Crimes Act 1958 s. 5.

²⁴ [1961] A.C. 290.

²⁵ B. W. M. Downey, 'Suicide Act, 1961' (1962) 25 *Modern Law Review* 60, 63.

²⁶ Second Report of the Criminal Law Revision Committee, 1960 (Cmd 1187).

crime is abrogated, the survivor of a suicide pact who has not killed the deceased cannot be found guilty either of murder or manslaughter, though seemingly he may be convicted of complicity in the successful suicide. An attempt to commit suicide is not a crime, but aiding, abetting, counselling or procuring another to attempt suicide is.

The Law in Australia and New Zealand

Of the six Australian States, three, New South Wales, Victoria and South Australia, retain the common law relating to suicide. In New South Wales attempted suicide may be dealt with summarily in a court of petty sessions if the accused consents.²⁷ In Victoria and South Australia the common law exists with all its rigours unabated. In the latter State, prosecutions for attempted suicide (when they occur) are usually instituted under section 270 (1) (a) of the Criminal Law Consolidation Act 1935, which makes the common law misdemeanour of attempting to commit a felony punishable by imprisonment for not more than two years. In Victoria, punishment for attempted suicide, as an indictable common law misdemeanour, is in the court's discretion, and may be imprisonment or a fine or both.

Queensland and Western Australia have codified the criminal law, and their criminal codes (which are schedules to Criminal Code Acts of those States) replace the common law.²⁸ In 1924 Tasmania enacted a Criminal Code Act, with the Criminal Code as a schedule, but while it excludes common law offences it still preserves the rules and principles of the common law that may be relied on by way of defence. It is in this respect similar to the Crimes Act 1961 (N.Z.).²⁹

Suicide ceased to be a crime in Queensland when the Code was enacted in 1899. Unlawful homicide is defined as the unlawful killing of another. Broadly speaking, if it is done with intent to kill it is wilful murder; if done with intent to do grievous bodily harm it is murder; if it is neither it is manslaughter. Consent by a person to the causing of his own death does not affect the criminal responsibility of the killer.³⁰ Thus the survivor of a suicide pact who had actually killed the other party is guilty of wilful murder. Section 312 makes attempted suicide an offence punishable by imprisonment for not more than one year, but Sir Roslyn Philp³¹ informs me it has long been the practice not to prosecute for this offence. By virtue of section 7 aiding a person to attempt to commit suicide is punishable in the

²⁷ Crimes Act 1900 (N.S.W.) ss. 476 and 477.

²⁸ Criminal Code Act 1899 (Qld.), First Schedule; Criminal Code Act 1913 (W.A.), Schedule.

²⁹ Criminal Code Act 1924 (Tas.), ss. 6 and 8; Crimes Act 1961 (N.Z.), ss. 9 and 20.

³⁰ Criminal Code 1899 (Qld.) ss. 284, 300, 301, 302, 303.

³¹ A Justice of the Supreme Court of Queensland.

same manner as the offence itself. Section 311 provides that any person who procures another to kill himself, or counsels another to kill himself and thereby induces him to do so, or aids another in killing himself, is guilty of a crime and is liable to life imprisonment.

The Criminal Code of Western Australia was first enacted in 1902 and was repealed and re-enacted in 1913. It is very similar to the Queensland Criminal Code. A person who attempts to kill himself is guilty of a misdemeanour punishable by imprisonment with hard labour for not more than one year. If the accused admits the offence he may be dealt with summarily by the justices who may sentence him to imprisonment for not more than six months.³² The law of Western Australia with respect to suicide is otherwise the same as the law of Queensland.

In Tasmania, suicide is not an offence; there is no crime of self-murder. Under the Criminal Code Act 1924 (Tas.) homicide is the killing of a human being by another, and it may be murder or manslaughter.³³ Like the Codes of Queensland and Western Australia, the Tasmanian Code stipulates that no person has a right to consent to the infliction of death upon himself and that any such consent shall have no effect on criminal responsibility.³⁴ The survivor of a suicide pact who actually killed the other party is guilty of murder. Any person who instigates (which means 'counsels, procures or commands') or aids another to kill himself is guilty of a crime and may be punished by imprisonment for such term or a fine of such amount or both as the judge thinks proper.³⁵ Whether it is a necessary constituent of the offence that the suicide should be successful has not been decided in any reported case. Until 1957 section 164 made attempted suicide an offence, but in that year the section was repealed,³⁶ and thus attempted suicide is not a crime in Tasmania.

In New Zealand neither suicide nor attempted suicide is a crime. The substance of the English suicide pact provision has been adopted, but the section was re-drafted. The relevant sections of the Crimes Act 1961 (N.Z.) are as follows:

Section 179. *Aiding and abetting suicide*—Every one is liable to imprisonment for a term not exceeding fourteen years who—

- (a) Incites, counsels, or procures any person to commit suicide, if that person commits or attempts to commit suicide in consequence thereof; or
- (b) Aids or abets any person in the commission of suicide.

Section 180. *Suicide pact*—(1) Every one who in pursuance of a

³² Criminal Code 1913 (W.A.) s. 289.

³³ Criminal Code Act 1924 (Tas.) Schedule, ss. 153, 158, 159.

³⁴ *Ibid.* s. 53 (1). Cf. Criminal Code 1899 (Qld.) s. 284; Criminal Code 1913 (W.A.) s. 261.

³⁵ Criminal Code 1924 (Tas.) ss. 1, 163, 389 (3).

³⁶ Act No. 13 of 1957 s. 3.

suicide pact kills any other person is guilty of manslaughter and not of murder, and is liable accordingly.

(2) Where two or more persons enter into a suicide pact, and in pursuance of it one or more of them kills himself, any survivor is guilty of being a party to a death under a suicide pact contrary to this subsection and is liable to imprisonment for a term not exceeding five years; but he shall not be convicted of an offence against section 179 of this Act.

(3) For the purposes of this section the term 'suicide pact' means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life; but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

(4) It shall be for the person charged to prove that by virtue of subsection (1) of this section he is not liable to be convicted of murder, or that by virtue of subsection (2) of this section he is not liable to be convicted of an offence against section 179 of this Act.

(5) The fact that by virtue of this section any person who in pursuance of a suicide pact has killed another person has not been or is not liable to be convicted of murder shall not affect the question whether the homicide amounted to murder in the case of a third person who is a party to the homicide and is not a party to the suicide pact.

Suicide and the Civil Law

This survey has been concerned with the criminal law relating to suicide, but no discussion would be complete without mention of a remarkable civil case, *Beresford v. Royal Insurance Co. Ltd.*³⁷ It arose out of the suicide of Major Charles William St John Rowlandson. It is convenient to take the facts as they are stated by Lord Wright in a judgment of the Court of Appeal.³⁸

The undisputed facts are that the deceased had insured himself with the appellants some years before for sums amounting in all to £81,000 at annual premiums totalling about £3,000. But he became financially embarrassed and cancelled some of the policies, so that the insurances were reduced to £50,000 in all at the time of his death, which was August 3, 1934. Until the last premiums fell due he had managed to find money to pay the premiums, partly by borrowing from the appellants against the surrender value of the policies. A balance of £400 remained due for premiums on June 16, 1934. To help him as far as they possibly could the appellants gave him gratuitous extensions of time. These ran out finally at 3 *p.m.* on August 3, 1934, when the policies would lapse if the premiums were not paid. He was unable to find the premiums. He was in debt to the extent of more than £60,000. He had no assets and was at the end of his credit. At two or three minutes before 3 *p.m.* he shot himself in a taxicab in St James' Street. He had left a letter with his solicitor, written that very morning, in which he said in effect that, though what he was about to do would

³⁷ [1938] A.C. 586.

³⁸ *Beresford v. Royal Insurance Co. Ltd.* [1937] 2 K.B. 197, 207-208.

be technically defrauding the insurance company, yet they would not notice a small matter like £50,000, less the loans, whereas it would be a serious matter if the moneys were not paid, for the people who had believed in him and lent him these large sums of money.

The jury, in answer to the questions put to them by the judge, found that, according to the formula laid down in *Macnaughton's* (or *M'Naghten's*) case, he was not insane. They also found that when he shot himself he was possessed of that degree of physical, intellectual, and moral control over his actions which a normal man would have.

These findings beyond question amounted to a finding that the case was one of *felo de se*, or felonious suicide. It is clear that the assured deliberately killed himself to enable his estate to collect the insurance moneys. In two or three minutes the policies would have automatically expired, because he had no means of raising the premiums.

The policies expressed that the sums thereby assured were payable on the death of the life assured to the executors, administrators, or assigns of the assured and contained a term that, subject to the endorsed conditions, they were "indisputable". Of the endorsed conditions only condition 4 is material. It runs: "If the life . . . shall die by his own hand, whether sane or insane, within one year from the commencement of the insurance, the policy shall be void as against any person claiming the amount hereby assured or any part thereof, except that it shall remain in force to the extent to which a *bona fide* interest for pecuniary consideration, or as a security for money, possessed or acquired by a third party before the date of such death, shall be established to the satisfaction of the directors".

The Court of Appeal held that the personal representative of a person who, having insured his life, commits suicide while sane, cannot recover the policy moneys from the insurance company, because it would be contrary to public policy that the Court should assist a man who has committed a felony, or his representative, to recover the fruits of his crime. When the case was taken on appeal to the House of Lords, the Law Lords were of the same opinion.

The judgments of the Court of Appeal and the House of Lords are excellent examples of the rigidity of lawyers' logic, a rigidity that is emphasized by the prompt steps taken in New South Wales, Victoria and South Australia to nullify the effect of the decision. It was not necessary for any legislative action to be taken in Queensland, Western Australia and Tasmania, for suicide was not a crime in those States, and the basis for the decision, that suicide was a felony, did not exist. The decision of the House of Lords in *Beresford's* case was given in May 1938. Adverse reaction to it was prompt in the Australian States that preserved the common law. In New South Wales in 1938, and in Victoria and in South Australia in 1939, Acts of Parliament³⁹ were enacted which had the effect of excluding the

³⁹ Life Fire and Marine Insurance (Amendment) Act 1938 (N.S.W.) s. 2; Instruments (Insurance Contracts) Act 1939 s. 2; Life Assurance Companies Amendment Act 1939 (S.A.) s. 3.

operation of the actual decision in *Beresford's* case, thereby making the law fairer and more rational than that it had been declared to be by the House of Lords. These legislative provisions were adopted in 1945 by section 120 of the Commonwealth Life Insurance Act 1945, which provided:

A policy shall not be avoided merely on the ground that the person whose life was insured died by his own hand or act, sane or insane, or suffered capital punishment, if upon the true construction of the policy, the company has thereby agreed to pay the sum insured in the events that have happened.

No catastrophic effects have followed this legislation, which confirms the feeling that the attitude to public policy of English courts, august though they were, may have had little to do with reality. The position is now the same in England as it is in Australia, for the abrogation, by the Suicide Act 1961 (Eng.), of the rule that suicide is a felony has removed the foundations upon which *Beresford's* case rested.⁴⁰

The criticisms that may rightly be made of *Beresford's* case do not apply, however, to cases where a person deliberately brings about his own death in circumstances that result also in the death of others who are not parties with him in a suicide pact. Such cases have occurred in North America, and they are emphatic and terrible reminders that human beings are never completely predictable and that no assumptions concerning the mainsprings of human conduct are universally valid. Where, for example, a person in killing himself causes the destruction of an aircraft or an automobile or a railway train or a sea-going vessel, or blows himself up in a public place, and in doing so brings about the death of other persons, his purpose being to enable his dependants to receive the proceeds of insurances on his life, the crime is so appalling in its selfishness and its enormity so manifest that any adequate legal system must prohibit the achievement of that purpose. The object of the prohibition is not to deprive the dependants of a benefit but to prevent abnormal individuals from entertaining the mad and wicked idea that any person will gain from such a monstrous deed. If it were sought in such circumstances to maintain claims in an Australian court it is certain the action would fail. In order to succeed the purpose necessarily involves a criminal enterprise of an atrocious character, and the court would refuse to aid any attempt by dependants to take financial benefits under the insurances. If an aircraft was involved the provisions of recent legislation, the Crimes (Aircraft) Act 1963 (Cth), the supplementary Crimes (Aircraft) Act 1963 (Vic.), and the similar Acts of other States would be regarded as significantly relevant. It is desirable that the general pro-

⁴⁰ B. W. M. Downey, 'Suicide Act, 1961' (1962) 25 *Modern Law Review* 63.

hibition should be established beyond doubt by specific legislation, which should require that its effect be stated prominently on the face of every policy of life insurance.

Proposals for Reform

According to the latest Official Year Book of the Commonwealth of Australia,⁴¹ in Australia deaths from suicide in 1961 numbered 1,249, being 901 males and 348 females. This was 1.4 *per centum* of the total deaths. In Victoria during the year 1962, 235 males and 112 females, a total of 347, died from suicide or wilfully inflicted self-injury. These deaths during 1962 represented a rate of 116 *per million* of population as compared with 93 in 1961, 89 in 1960, 94 in 1959, and 90 in 1958.⁴²

Through the courtesy of Mr R. Glenister, Secretary of the Law Department, Melbourne, and the Chief Commissioner of Police, Melbourne, I have been able to gather some further figures. The information they convey is meagre and I hope that as a result of this Symposium far better methods will be instituted for collecting statistical information about suicide than now exist. Like all constructive activities, social engineering requires hard facts. Preventive, remedial and punitive measures must be largely conjectural even when based on verified statistical information, but without it they are the product of prejudice and undisciplined speculation. For years I have lamented the lack of national crime statistics; in 1961 I wrote:

In this country, there are no useful statistics relating to crime and juvenile delinquency compiled on a national basis. Each State has criminal statistics of a sort, but no competent person would claim they are adequate. Further, the criminal statistics of any State are not capable of any but a crude and primitive (and often misleading) comparison with those of the others. The need for a system of uniform statistics relating to crime and delinquency is plain and is generally admitted. Clearly, the States should agree to use uniform methods with a common terminology, and the information thus obtained should be collated processed and interpreted by the Commonwealth Bureau of Statistics. That so obvious a need has not been met furnishes an eloquent illustration of the cynical aphorism that what is everybody's business is nobody's affair.⁴³

There is no record of the findings of suicide upon inquests by the Coroner's Court, Melbourne, for 1957 and 1958, but the following figures have been supplied to me:

⁴¹ No. 49 of 1963, 384.

⁴² Victorian Year Book, No. 78 of 1964, 152.

⁴³ The Honourable John Vincent Barry, 'The Study of Social Pathology—Science or Scientology' (1961) 1 *Adelaide Law Review* 124-125.

Coroner's Court, Melbourne

Year	Number of findings of suicide
1956	121
1959	205
1960	188
1961	209
1962	258

The police records contain the following rather skimpy information:

	From Police Records		From Commonwealth Statistician	
	Attempted suicide	Prosecutions	Convictions	Deaths registered as suicide
1958	12	5	1 (probation)	247
1959	13	3	1 (probation)	265
1960	15	7	4 (1 probation) (1 rising of Court) (1 Children's Welfare Department) (1 insane)	257
1961	14	3	3 (1 probation) (2 insane)	271
1962	13	6	4 (3 bond) (1 imprisoned)	347
1963			— Not available —	

The number of unsuccessful suicide bids is impossible to ascertain. The ready availability of barbiturates makes such attempts easy to make and difficult to prove, though it may be possible to make an informed guess. In 1953 Dr Cunningham-Dax gave the figures of attempted suicides seen at two Melbourne teaching hospitals as 120 and 200 a year respectively, and he stated that about 20 *per centum*, or 400 to 450, of the annual admissions at the Royal Park Receiving House were attempted suicides.⁴⁴ Yet the number of prosecutions for this offence is relatively small, and newspapers no longer publish the court proceedings when they do occur. Is any useful purpose gained by retaining it as part of the criminal law? Only a relentless and unimaginative adherent of the doctrine of maximum severity would be prepared to assert that the criminal punishment of a poor wretch driven to attempt self-destruction could act as a deterrent upon him or others similarly distracted, or that his conduct called for retributive punishment. The absurdity of designating suicide as a crime is manifest to any intelligence uncorrupted by legalistic sophistry. Though they regard suicide and attempted suicide as grave sins, the Churches seem no longer to consider the criminal law a fit or adequate agency

⁴⁴ Dr E. Cunningham-Dax, 'Suicide' (1955) 6 *Medico-Legal Proceedings of Victoria* 46, 51.

to deal with the problem. Writing from the viewpoint of Christian morality, Norman St John-Stevas considers neither suicide nor attempted suicide should fall within the ambit of the criminal law.⁴⁵ The common law attitude has not the support of responsible public opinion, and is no longer tenable. In practice the criminal prohibition against attempted suicide is used only in a small proportion of cases, and when it is and becomes known, its use evokes feelings of dismay because it does not conform to the ordinary man's sense of justice. There is, too, a similar uneasiness when the survivor of a suicide pact is convicted of murder. Laws that run counter to the community's feeling for justice or do not reinforce it are undesirable. Their continued existence may give rise to abuses, and the infrequent occasions when they are invoked tend to undermine respect for the law.

The attitude of the police in Victoria is far in advance of the present law, and it may be taken as some indication of the state of public opinion. Clause 1191 of the Standing Orders of the Victorian Police Force is as follows:

Where would-be suicides do not at once come into the hands of the Police, a report must be forwarded through the usual channels to the Officer in Charge of the District for instructions before any proceedings are taken.

The decision whether a prosecution is to be instituted against a 'would-be suicide' who comes into their hands is made by the Superintendent of the relevant District. I have been informed that, very sensibly, in Victoria

the approach of our Police (that, of course, includes the Superintendents) to this problem is that we feel a prosecution rather aggravates the condition of the would-be suicide and the circumstances and the person's background are fully examined and, where psychiatric treatment is arranged and some person, *e.g.*, a near relative will show an interest in the would-be suicide, a prosecution is not undertaken.

It is suggested that it is desirable and in the public interest for the law relating to suicide to be made uniform throughout Australia and brought into conformity with the law as it now exists in New Zealand. The New Zealand model is preferable to the English for several reasons. As I have shown, the present position in England was reached by two steps. The New Zealand legislation, which achieves substantially the same results as the two English Acts, has the advantages that it was enacted at the one time and covers the field (once suicide and attempted suicide have ceased to be crimes) in two juxtaposed sections. To give effect to this proposal would require

⁴⁵ N. St John-Stevas, *op. cit.* 256 ff. See also Rupert Cross, 'Unmaking Criminal Laws' (1962) 3 *M.U.L.R.* 415, 424.

legislation by the Parliaments of all the States, and as a basis for discussion it is suggested:

1. In New South Wales, Victoria and South Australia the rule of law whereby it is crime for a person to commit suicide should be abrogated.
2. In all States except Tasmania, where it has already ceased to be an offence, the rule of law, or the statutory provision, whereby attempted suicide is a crime should be abrogated or repealed.
3. In all States the survivor of a suicide pact who has actually killed the other party to the pact should be guilty of manslaughter and not of murder. The provisions of section 180 of the Crimes Act 1961 (N.Z.) should be adopted.
4. It should be a criminal offence for anyone to incite, counsel, or procure another person to commit suicide if that person commits or attempts to commit suicide in consequence of the incitement, counselling or procurement. The provisions of section 179 (b) of the Crimes Act 1961 (N.Z.) should be adopted.
5. It should be a criminal offence for anyone to aid and abet another person in the commission of suicide. The provisions of section 179 (b) of the Crimes Act 1961 (N.Z.) should be adopted.
6. A provision should be adopted similar to section 41 of the Crimes Act 1961 (N.Z.), in the following terms:

Prevention of suicide—Every one is justified in using such force as may be reasonably necessary in order to prevent any act being done which he believes, on reasonable grounds, would, if committed, amount to suicide.

If these proposals became the law throughout Australia, divergencies which serve no social purpose would cease to be. Perhaps they may not meet every debatable case,⁴⁶ but they would provide a rational criminal law adequate for most situations likely to occur. The way would then be clear so that we may address ourselves to the task of solving by non-punitive methods what has been shown in this Symposium to be a grave and urgent social problem of increasing magnitude.

⁴⁶ B. W. M. Downey, 'Suicide Act, 1961' (1962) 25 *Modern Law Review* 62-63.