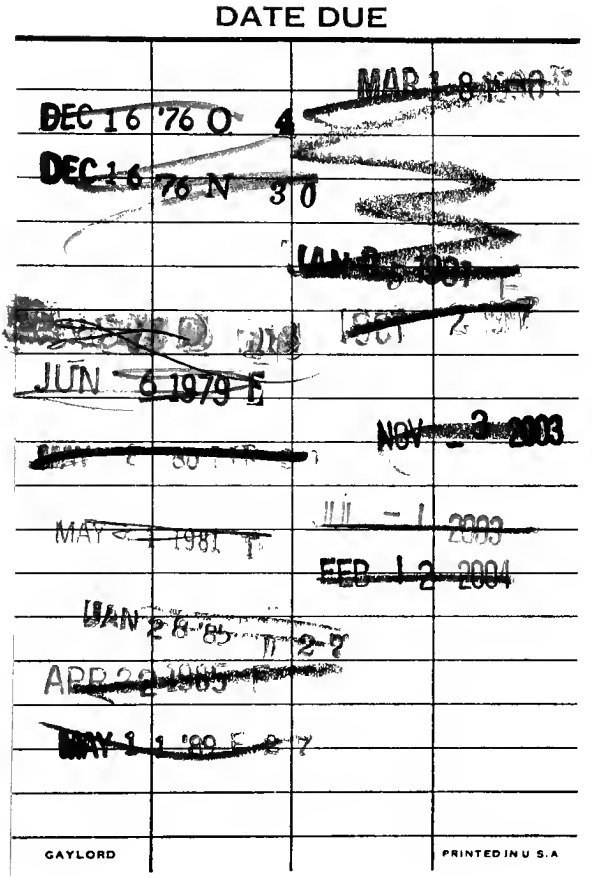

SUICIDE:

HISTORY OF THE PENAL LAWS

RELATING TO IT IN THEIR

LEGAL, SOCIAL, MORAL,

AND

RELIGIOUS ASPECTS,

IN ANCIENT AND MODERN TIMES.

BY R. S. GUERNSEY, OF THE NEW YORK BAR.

READ BEFORE THE N. Y. MEDICO-LEGAL SOCIETY SEPT. 23D, 1875.

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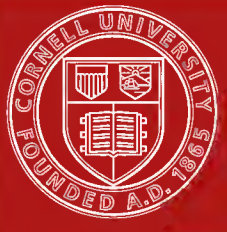
INTRODUCTION.

THE origin of the following pages was in a request from the Medical Journal Association, of New York City, for the author to read a paper before that body, on the Law of Suicide. This was done in April, 1875, under the title of "Penal Laws Relating to Suicide." Afterwards the Medico-Legal Society requested that the paper be read before it. It was somewhat extended, and was read on September 23, 1875.

The author has not only treated the subject as an original one, but he believes that this work shows a thoroughness of research and detail which none of the many treatises on the subject of suicide has attained.

R. S. G.



SUICIDE;

HISTORY OF THE PENAL LAWS RELATING TO IT IN THEIR LEGAL, SOCIAL, MORAL AND RELIGIOUS ASPECTS, IN ANCIENT AND MODERN TIMES.

By R. S. GUERNSEY, Esq.

The subject of suicide, as it has been viewed at various times and in various nations, is important as well as remarkably interesting.

Penal laws are commonly called criminal laws, and are for the sole purpose of the protection and welfare of the body politic—the state and its members; and penalties are prescribed by the law-making power with that end in view.

I do not use the word *penal* here in its narrow legal sense, but in the broad sense of *penalty* of every kind and nature, legal, social, moral and religious, in connection with this subject.

The importance of the subject strikingly appears by comparing the statistics of homicide in the United States as given in the census of 1870. The table also shows by means of colored parallelograms the positive and relative degrees of homicide and suicide in different parts of the country as well as in each State In the eastern States suicide appears to be about six times as frequent as murder. In the western States

Read before the Society, Sept. 23d, 1875.

there is a larger portion of murder and about two-thirds less of suicide. The north presents a broad field of homicides, nearly twice as large as that of all the rest of the country, with a very narrow strip of suicides. Allowances should be made for the unsettled condition of the government in the southern States at the time covered by these statistics. In New York and New Jersey suicide is about three to one of murder; and in Pennsylvania, about two to one. The proportion of suicides to murders is always in excess in all countries. From the above it appears that man is literally his own worst enemy, when taken in the aggregate in a community.

As the punishment of a sucide can only act upon that which he has left behind him—his reputation and his fortune, and its effects upon his relatives and friends, no little difficulty has been experienced and ingenuity displayed as to how this would be the most effective as a preventative of this loss to the State, as it has been almost universally regarded.

In the famous essay by Beccaria on "Crimes and their Punishment," first published in Naples, in 1764, he thus discourses on this subject:

"Suicide is a crime which seems not to admit of punishment, properly speaking, for it cannot be inflicted but on the innocent or upon an insensible dead body. In the first case, it is unjust and tyranical, for political liberty supposes all punishments entirely personal; in the second, it has the same effect, by way of example, as the scourging a statue. Mankind love life too well; the objects that surround them; the seducing phantom of pleasure and hope, that sweetest error of mortals, which make men swallow such large draughts of evil mingled with a very few drops of good, allure them too strongly, to apprehend that this crime will ever be common from its unavoidable impunity, The laws are obeyed through fear of punishment, but death destroys all sensibility. What motive, then, can restrain the desperate hand of suicide? He who kills himself does less an injury to society than he who quits his country forever, for the other leaves his property behind him, but this carries with him at least a part of his substance. Besides as the strength of a society consists in the number of citizens, he who quits one nation to reside in

another, becomes a double loss. This then is the question whether it be advantageous to society that its members should enjoy the unlimited privilege of imigration ?"

"If it be demonstrated that the laws which imprison men in their own country are vain and unjust, it will be equally true of these which punish suicide, for that can only be punished after death, which is in the power of God alone ; but it is no crime, with regard to man, becaused the punishment falls on an innocent family. If it be objected that the consideration of such a punishment may prevent the crime, I answer, that he who can calmly renounce the pleasure of existence, who is so weary of life as to brave the idea of eternal misery will never be influenced by the more distant and less powerful considerations of family and children."

It is truly astonishing that so thoughtful a man as Beccaria should thus combat the reason, observation and experience of ages, and even the dictates of every heart who has any relatives or dear friends whose feelings of grief or shame are thought of or cared for above a feeling of revenge or sudden passion.

Popular opinion has always been against it in proportion to its prevalence, because no one knows when or who may be stricken down by this dreadful means if it is not discouraged.

There are two classes of voluntary deaths ; one may be termed the vicious and criminal, which is that suicide by which a man under the influence of selfish impatience or apprehension withdraws himself from them by death. The other is where life is sacrificed in the observance of duty or in the practice of virtue, and then it must be for others; in other words, it must be a martyrdom or heroic death, voluntarily imposed, in order to be justifiable.

When it was suggested to Flavius Josephus the Jewish christian and warrior to destroy himself, he replied : "Oh ! my friends, why are you so earnest to kill yourselves ? Why do you set your soul and body, which are such dear companions, at such variance? It is a brave thing to die in war, but it should be by the hands of the enemy."

The Mosaic law contained no penalty against self-destruction. The first instances of suicide recorded in Jewish his-

tory are of Saul and his armour-bearer, 1055 years before the Chtistian era. Samson's death cannot properly be called suicide, and there is but one other recorded in the Bible, being that of Anhitibel. Public opinion was against it among the Jews. It was their custom to bury all executed criminals on the day of their death, at sunset, by the officers of the law, without any ceremonies and not in the family sepulchre. The bodies were buried and kept until the flesh was consumed, the bones were then given to the relatives to be interred among the family graves. It was regarded as a very great punishment not to be buried by relatives and friends and not to have great ceremony, according to wealth and rank, and not to be buried with their fathers—they abhorred being "buried like an ass," as their writers expressed it. It is probable that in olden times suicides were buried by them like criminals.

Among the ancient Jews if a man was found guilty of a capital offense and condemned to be hanged, his body was not to remain after sunset on the tree, but, says the Mosaic law, "Thou shalt bury him that day, that thy land be not defiled, for he that is hanged is accursed of God."

In the time of Moses and under the custom and laws which prevailed during the period mentioned in the old testament, many of the criminals and suicides who had no relatives or friends to look after their burial, may have been literally "buried like an ass," that is, an outcast without friends, and perhaps unknown. For a description of such a burial place see title "Gehenna," in Chamber's Cyclopedia."

The Jews seldom mourn for such as are suicides or who die under excommunication. So far, indeed, are they from regretting the loss of them, that they set a stone over the coffin to signify that they ought to be stoned to death, if they had their deserts for thus violating the law of God and doubting His promises. This punishment of stoning to death was administered in cases of blaspheming and heresy, and many of the capital crimes, among the ancient Jews.

Josephus mentions that in Judea the body of a suicide was only buried at sunset, he was then denied the usual burial ceremony. Suicide never was frequent among them, for if it had been it would have been more often mentioned and there

would have been a more general law or declaration against it, for the Jews were particularly watchful for the welfare of the State and the preservation of its members. Saul's death was regarded as if he had been killed in battle by his enemies—as his wounds were fatal, and he had rather die than be taken captive.

The modern Jewish law is the same now as it was for some centuries before the Christian era.

The fashionable mode of suicide among the Jews seems to have been by throwing themselves from the roof of a house. The act must be deliberate. If a person immediately after declaring his intention to commit self-destruction was seen to ascend the roof of a house and throw himself off he was deemed a suicide. But, any one who is found dead, no matter if he be strangled, hung on a tree, or stabbed with a sword, he is not deemed a suicide. A murderer, overtaken by justice and confined in prison, who is after a while found dead in his cell, is not to be treated as a suicide under the law. A child or an idiot who kills himself is not treated as a suicide under the law, nor is the adult who is driven to the act under circumstances like King Saul. But only he can be treated as a suicide under the law who has previously, while in a sane state of mind, declared his intention to destroy himself.

Says a standard work on their laws:

"If any one in anger shall be seen to throw himself from the roof of a house, or to commit suicide, there shall be no mourning observed, nor keriah (rending of the garments), nor any office performed in honor of the dead, as in other cases. None of the rules of mourning is to be observed." He is not eulogized—the garments are not cut, the shoes are not removed, etc.; but all that is usually observed to comfort and to sympathize with the relatives is permitted.

Among the Jews, suicides and murdered persons are buried in the clothes they have on when they die.

In some of the Oriental countries suicide is in some instances not only legal, but esteemed to be meritorious; and this is said to be on the authority of the ancient sacred books of the Hindoos.

In India the self-sacrifice of widows and self-immolation

under the car of Juggernaut are now prohibited by the British government.

In China, self-destruction is no crime, and it has been so for thousands of years. It is a favor to allow a condemned criminal to be his own executioner.

In Japan, self-destruction is not only frequent but is considered meritorious in many instances. When an official has committed an offense, or even when there has been in his department a violation of law, although beyond his power of prevention, in order to avoid capital punishment, (which extends to the slightest offenses) he anticipates it by disemboweling himself. By this act of self-destruction he saves his property from forfeiture and his family from death. With many of the high officials it is a point of honor thus to kill themselves, on any failure in their departments, and their sons are often promoted to high rank as a reward for the father's compliance with the established usage.

If these customs were introduced here in similar cases by officials we would probably have a more faithful administration of public trusts. Suicide would then undoubtedly be more frequent than now, but the public would have less reason to lament its occurrence and example than at present.

By the Code Annamite, translated from the original Chinese in 1865, by which Cochin China is at present ruled, and is entirely founded on the model of the code which now governs China, it particularly provides for those who desire to commit suicide in order to spite other people. "Every wife of a hard and disagreeable character," declares this Chinese code, "who has caused her husband such vexations that he has committed suicide, will be condemned to immediate strangulation." "The persons who drive another to suicide by words or acts are to be capitally condemned." "The punishment inflicted on persons who, by reason of their health or any influence or power they may possess, are of a tyranical character, and who consequently insult or oppress quiet persons, so that the latter out of despair commits suicide, shall be decapitation."

The desciples of Zeno, the Stoics, held that self-destruction when not caused by despair is not necessarily immoral, is

frequently praiseworthy, and under certain circumstances is even prescribed by duty, yet the corpse of the suicide according to old usage remained unburied.

In the early part of the Christian era the bodies of suicides were left unburied by them, they believing that the soul would still linger around it and share its ignominy until it was buried, which was generally done after all means of identification had disappeared. As stoical philosophy advanced in popular estimation this custom ceased.

The stoical system of ethics was, in the highest sense, a system of independent morals. It taught that our reason reveals to us a certain law of nature, and that a desire to conform to this law, irrespectively of all considerations of reward or punishment, of happiness or the reverse, is a possible and a sufficient motive of virtue. It was also in the highest sense a system of discipline. It taught that the will, *acting under the complete control of the reason*, is the sole principle of virtue and that all the *emotional* part of our being is of the nature of a disease. Its whole tendency was therefore to dignify and strengthen the *will*, and to degrade and suppress the *desires*. It taught, moreover, that man is capable of attaining an extremely high degree of moral excellence; that he has nothing to fear beyond the present life; that it is essential to the dignity and consistency of his character that he should regard death without dismay, and that he has a right to hasten it if he desires.

The ancient Greeks and Romans were by no means unanimous in their approval of the liberty to commit suicide. Pythagoras is stated to have forbidden men "to depart from their *guard* or station in life without the order of their commander—that is of God." Plato adopted similar language, though he permitted suicide, when the law required it, and also when men had been struck down by intolerable calamity. Aristottle condemned it on *civic* grounds as being an injury to the State. Virgil painted in the darkest colors the condition of suicides in the future world. Cicero strongly asserted the doctrine of Pythagoras, though he praised the suicide of Cato. Apuleius, expanding the philosophy of Plato taught that "the wise man never throws off his body except by the

will of God." Cæsar, Ovid, and others, admitted that in extreme distress it is easy to *despise* life, but urged that true courage is shown in *enduring* it. Virgil described the souls of suicides in the future life in a depreciative manner.

According to Euripides, Hercules said: "I have considered, and though oppressed with misfortunes, I have determined thus; Let no one depart out of life through fear of what may happen to him; for he who is notable to resist evils will fly like a coward from the darts of an enemy."

Cicero brings before us a passing notice of Hegesias who was surnamed by the ancients, "the orator of death." His eloquence was so intense and fascinating in regard to the tomb and the future life, that multitudes freed themselves, by suicide, from the troubles of the world, and sought happiness beyond the grave, and the contagion was so great that Ptolemy, it is said, was compelled to banish the philosopher from Alexandria.

As a general proposition the law recognized suicide as a right, but slight restrictions arose from time to time. Seutonius speaks of Claudius accusing a man for having tried to kill himself. Ziphilin says that Hadrian gave special permission to the philosopher Euphrates to commit suicide "on account of old age and disease."

A very strange law, said to have been derived from Greece, is reported to have existed at Marseilles. Poison was kept by the Senate of the city and given to those who could prove that they had sufficient reason to justify their desire for death and all other suicide was forbidden under penalty of disgrace to their remains. The law was said to be intended to prevent hasty suicide and to make deliberate death as rapid and painless as possible.*

There was some sound philosophy in this law as the following anecdote will illustrate:

A French cobbler had resolved to commit suicide; and, to

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* In nearly all European countries and in many of the American States there are laws regulating and restricting the sale of poisons, the objects of which in part are to prevent hasty suicides by such means, as it is the most prevalent choice of self-destruction. In France and Germany the laws are very stringent in this particular.

make his exit more heroic, prepared the following memorial in writing · "I follow the lesson of a great master, and as Moliere says,

When *all* is lost and even *hope* is fled—"

He had just written *thus far* and applied the fatal knife to the *carotid* artery, when suddenly recollecting, he stopped, and said to himself: "Eh! but is it Moliere who says so? I must make sure—if not, I shall be laughed at." He now got Moliere, read a few comedies, changed his mind, and returned to his cobbler's bench.

Pythagoras forbade suicide among the Greeks. By the law of Thebes suicides were to have no honors paid to their memory.

The Athenian law ordained that the hand which attempted or committed the deed be cut off and *burned* apart from the body.

Plutarch informs us that an unaccountable passion for suicide seized the Milesian virgins. A decree was issued that the body of every young woman who hanged herself should be dragged *naked* through the streets with the same rope with which she had committed the deed. As it was not fashionable to commit suicide in any other manner, this effectually stopped it.

By the Roman jurists neither suicide or self-mutilation was, as a rule, regarded as criminal either in consumation or attempt. They sometimes expressed the qualification that the consent of the Senate or Emperor was necessary to *justify* suicide.

The first Roman Law occurs in the reign of Tarquinius Priscus, the Vth King of Rome, about 606 years before Christ. The soldiers who were appointed to make drains and common sewers, thinking themselves disgraced by such servile offices, put themselves to death in great numbers. The king ordered the bodies of all self-murderers to be exposed on crosses in the public places. This put an end to it.

A réscript of Hadrian, (the XVth Emperor of Rome) about 117 years before Christ, expressly directed that these soldiers, who, either from impatience of pain, from disgust of life, from disease, from madness, from dread of infamy or disgrace,

had wounded themselves or otherwise attempted to put an end to their life should only be punished with ignominy. But the attempt of a soldier at self-destruction on *other grounds* was a capital offense and likened to desertion. Persons being under prosecution for heinous offenses or being taken in the commission of a great crime, who put an end to their life to escape punishment, forfeited all their property to the *Fiscus.* It was not otherwise forbidden.

It had become customary with many men, in Rome, who were *accused* of political offenses, to commit suicide before trial, in order to prevent the ignominious exposure of their bodies and the confiscation of their goods. This deprived the emperor of a large source of revenue, and Domitian, about A.D. 80, ordained that the suicide of an accused person should entail the same consequences as his condemnation.

Tacitus says that Tiberius, about the beginning of the Christian era, gave an encouragement to criminals to become their own executioner.

In a law of Mark Anthony, which is still in the Roman law, we find it written, "If your brother or your father being convicted of no crime hath put himself to death, either to avoid pain, or being weary of life, or from despair or madness, his will shall, nevertheless, be valid; or, if there is no will, his heirs inherit according to law."

In Justinian's Pandects, made about A.D. 533, there is a law "that if persons accused or who have been found guilty of any crime, should make way with themselves, their effects should be confiscated." But this only took place when confiscation of goods happened to be the penalty appointed by the law for the crime of which the suicide was found guilty. By *custom* it was inflicted on suicides in any other circumstances.

The learned Grotius in his famous work on the Law of Nature and of Nations, published two centuries and a half ago, thus speaks of suicide:

"The rule that prevailed among the Hebrews with respect to burying the dead, contained an exception, as we are informed by Josephus, excluding those who had committed suicide. Nor is it surprising that a mark of ignominy should be

affixed to those on whom death itself connot be inflicted as a punishment. Aristotle, in the 5th book of his Ethics speaks of the infamy universally attached to suicide. Nor is the observation at all weakened by the opinions of some of the Grecian poets, that as the dead are void of all perception, they cannot be affected either by loss or shame. For it is a sufficient reason to justify the practice, if the living can be deterred from committing actions for which they see a mark of infamy set upon the dead.

"In opposition to the Stoics and others who admitted the dread of servitude, sickness, or any other calamity, or even the ambitious love of glory to be a just cause of voluntary death, in opposition to them, the Platonists justly maintain that the soul must be retained in the custody of the body, from which it cannot be released, but at the command of Him who gave it. On this subject there are many fine thoughts in Platonus, Olympiodorus, and Macrobius on the dream of Scipio.

"Brutus, following the opinions of the Platonists, had formerly condemned the death of Cato, whom he himself afterwards imitated. He considered it as an act of impiety for any one to withdraw himself from his allegiance to the Supreme Being, and to shrink from evils which he ought to bear with fortitude. And Megasthenes, as may be seen in Strabo, book 15, remarked the disapprobation which the Judean sages expressed of the conduct of Calanus; for it was by no means agreeable to their tenets, that any one, through impatience, should quit his post in life. In the 5th book of Quintus Custius there is an expression of King Darius to this effect, that he had rather die by another's guilty hand than by his own. In the same manner the Hebrews call death a release, or dismission, as may be seen not only in the Gospel of St. Luke, chap. 2, verse 19, but in the Greek version of the Old Testament, Gen. 15 verse 2 and Numbers 20, towards the conclusion, and the same way of speaking was used by the Greeks. Plutarch, in speaking of consolation, calls death the time when God shall relieve us from our post."

The attitude which the teachings of antiquity, and especially of the Stoics on the one hand and of almost all modern

moralists, (for Christianity now colors all modern moral philosophy,) on the other, in regard to their conception of death, appears very plainly in their view of suicide. For this modern view of it among us we are indebted to the great Roman Catholic Church.

The doctrine of future rewards and punishments which is so prominent in the New Testament and the Koran, is the foundation upon which it was mainly built in religion.

It is true that among the early Christians there prevailed a sort of ambition for martyrdom to such an extent that it sometimes became suicide. Tertulian, one of the early church fathers who lived in the second century, said : "The blood of the martyrs is the seed of the church." In that age many dying men deplored the natural death, which robbed them of the honors of martyrdom. It was carried to such an extent that later on the heads of the church condemned it as the fruit of misguided zeal, but the people considered it with reverence.

A council of Arles, about the middle of the fifth century, having pronounced suicide to be the effect of "diabolical inspiration," a council of Braga in the following century ordained that no religious rites should be celebrated at the tomb of a suicide, and that no masses should be said for his soul.

It was ordained in the sixth century by the Canon law tha no commemoration should be made in the Eucharist for such as destroyed themselves, neither should their bodies be carried out with palms nor have the usual service read over them. Suicide and attempting suicide were to be treated as infamous, and as far as possible amenable to penal discipline, and a suicide is considered as having "died in mortal sin," and could never enter the Paradise of the blest.

And these provisions, which were repeated by later councils, were gradually introduced with the Canon law into the laws of the barbarian and of Charlemagne. Thus they were spread all over Europe.

About the middle of the thirteenth century St. Lewis IX., king of France, and an ardent crusader, originated confiscation of property to the heads of the church, and the corpse

was subjected to gross and various outrages. In some countries it could only be removed from the house through a perforation specially made for the occasion in the wall; it was dragged upon a sledge or hurdle through the streets, hung up with the head downwards, and at last thrown into the public sewer, or burnt, or buried in the sand below high-water mark, or transfixed by a stake on the public highway, at cross-roads in the same manner as that of an executed criminal.

The ferocious laws here recounted contrast remarkably with a law in the Capitularies of Charlemagne, which provides that though mass may not be celebrated for a suicide, any person may, through charity, cause a prayer to be offered up for his soul.

The reasons for this great change which the Canon law made were not merely ethical and *spiritual* but *political*. There could be no patient endurance in the state, it was insisted, unless there was patient edurance in the citizen. If the people should resort to suicide to escape trouble, so would the state, and all social order and safety would be at an end.

During the whole period of the supremacy of the Church of Rome for many centuries the act was more rare than before or since. The influence of Catholicism was seconded by Mohammedanism which on this, as on many other points, its teachings are similar to those of the Christian Church, and even intensified in this case—for suicide, which is never expressly condemned in the Bible, is more than once *forbidden* in the Koran,* and the Christian duty of resignation was exaggerated by the Moslem into a complete fatalism similar to the Calvinistic doctrine of predestination. Under the government and influence of Catholicism and Mohammedanism suicide, during many centuries, almost absolutely ceased in all the civilized, active and progressive part of mankind. †

* It was contended by some of the leaders of the church that suicide was prohibited by the commandment, "Thou shalt not kill." St. Augustine argued that he who kills himself kills a man. The Koran also says, "Thou shalt not take the life thou cannot give."

† It should be remembered that about this time monastic life was very prevalent and its solitude was undoubtedly resorted to in many cases as a substitute for suicide. If despairing and suffering humanity was thus cut off from the clouds and storms of life, they also lost its brightness and the sunshine which is derived from social life.

The Roman Catholic religion was established by law in all the countries in Europe, and the Canon laws had the same force and effect as any other laws.

In all governments where Church and State are united the ordinances of the Church are always carried out and enforced by the State power.

Where Church and State are separated the rules of the church are permitted to have their full force unless there is a positive statute that may effect them.

In Russia, where the Greek Church is the established church its priests class as suicides all persons who kill themselves by the excessive use of stimulants. *

The position which the Roman Catholic Church and its propagators took in its early days and in its strength and vigor, is still maintained by it, and its two main branches, the Greek Church and the Protestant Episcopal Church. In all these churches clergymen and others are prohibited, under penalty of excommunication and suspension, reading the burial service and rites over the body of any person who has laid violent hands on himself, whether that of a communicant or not. But this rule does not apply to insane or weak-minded persons; and clergymen and priests argue that no sound-minded person will commit suicide, or at all events there is a doubt about it, and they, in Christian charity, give the deceased the benefit of such doubt, so that the Church prohibition practically amounts to nothing. A refusal to perform the burial rites of those churches or any other church over the body of a suicide for that reason is almost unknown in the United States.

The statute law in England prohibits any funeral rites of any church in *all cases*.

The old Germanic law adopted the same principle as the Ecclesiastical law.

Some of the present German codes are silent on the subject, to wit.: the Bavarian and Saxon.

The Austrian code only provides that the body of a suicide

* In 1881 this ordinance of the Church in Russia was changed so that they are not now classed as suicides.

shall be buried by the officers of justice, but not in a church yard or other place of common interment.

The Prussian code forbids all mutilation of the dead body of a suicide under ordinary circumstances, but declares that it shall be buried without any marks of respect otherwise suitable to the rank of the deceased, and it directs that if any sentence has been pronounced, it shall, as far as it is feasible, be executed, on the dead body, due regard being had to decency and propriety. The body of a criminal who commits suicide to escape the execution of a sentence pronounced against him is to be buried at night by the common executioner at the usual place of execution for criminals.

France has no provision in her penal codes for the punishment of suicides, deeming the Church penalties sufficient punishment to deter them. Experience shows that it apparently has little effect in that direction.

In the Reign of Terror, in France, a law was made ordaining that the suicide of an accused person should entail the same consequences as his condemnation in regard to the disposition of the body and the confiscation of property.

While Bonaparte was First Consul in 1802, a grenadier of the French consular guard was disappointed in love and committed suicide by shooting himself. When Bonaparte heard of the transaction, in order to prevent such a cowardly practice from spreading among the troops, he directed the publication of the following :

"The grenadier, Grablin, has committed suicide from a disappointment in love He was in other respects a worthy man. This is the second event of the kind that has happened in this corps within a month. The First Consul directs that it shall be notified in the order of the day Guard, that the soldier ought to know how to overcome the grief and melancholy of his passions; that there is as much true courage in bearing mental affliction manfully as in remaining unmoved under the fire of a battery. To abandon oneself to grief without resisting, and to kill oneself in order to escape from it, is like abandoning the field of battle before being conquered."

We have before seen that the Roman Emperor, Hadrian, assimulated the suicide of a soldier to desertion.

In Denmark, the only penalty is that the body is not allowed to be buried in consecrated grounds or churchyards.

In Norway, the only penalty is that the body is not to be buried in consecrated ground, but this does not apply to a *non compus mentis*, and therefore the law is practically of no effect.

Sweden, like many other European countries, has no statute law on the subject of suicide.

In many other European states, where there is no law on the subject, the *practice* is to treat the body the same as that of an executed criminal. This arose in the Church and under the Canon law when the Church of Rome was the prevailing religion throughout Europe, and was united with the State, and its ordinances were enforced as State laws.

The immorality of suicide was discussed at considerable length by Abelard in the eleventh century, and by St. Thomas Aquinas in the thirteenth century.

Dante and Dryden have devoted some fine lines to painting the condition of suicides in hell, where they are also frequently represented on the bas-reliefs of cathedrals.

In the romances of chivalry, however, this mode of death is frequently portrayed without *horror*, being regarded in the heroic light which prevailed in that age.

When the unhappy Indians in the South American continent were reduced to slavery and treated with atrocious cruelty by their conquerors, they killed themselves in great numbers, until the Spaniards, in order to deter them, declared that their masters also would commit suicide and would pursue their victims into the world of spirits. Thus the poor unfortunate slaves had no hope of rest; they feared the cruelty of their masters in the next world. This deterred them from suicide.

In Cuba, the negroes committed suicide in large numbers, under a religious delusion, believing that they would be restored to life at the end of three days. It was only suppressed by the Governor-General ordering the heads exposed in public for one month, and their bodies burned and their ashes publicly scattered to the winds. (Ro'one de Paris, 29 April, 1845.)

The West African negroes sometimes commit suicide when in distant slavery, believing that they will revive again in their own native land, free from toil and their masters lashes.

Among the North American Indians it was mostly among the squaws, and was by hanging on a tree. They had a tradition that in the spirit land they were forced to drag the fatal tree forever, and hence they would always select the smallest one which would answer the purpose.

Many centuries previous to the Reformation in England, the Canon law was adopted into the statutes of England. And as a further punishment, confiscation of lands and goods followed, this being regarded in the nature of a compensation to the State for its loss of a human being. This latter penalty is said, by Bracton, to have been adopted from the Danes, where it had previously existed. It may have been derived from the Canon law and the Roman civil law, in both of which it had been used many centuries before, as we have seen. The English statute also directed that the remains should be buried in the highway at cross-roads, with a stake driven through the body.

This burial at the cross-roads and without religious rites, was to give as strong an impression as possible of a heathen burial, and also of a criminal act, for the heathen Teutons there executed their caiminals by sacrificing them to the gods on their altars, which were mostly at the junction of the cross-roads and the body was pinned to the earth by an unpainted stake, and passers-by would cast a stone at it.

This mode of disposing of the body of suicides was an ancient custom brought into England by the Saxons and did not prevail in all parts of England. Christian burial was denied suicides in all parts of England, under the Canon law. When they were buried in the parish churchyard they were placed in the most obscure parts of it.

In many churchyards may be seen a row of graves on the extreme verge of the north side of the grave yard, apart from that in which the bodies of the inhabitants in general are deposited. Some of the graves do not lie east and west as do those who have Christian burial. These are occupied by the bodies of still-born infants, suicides and excommunicated

persons, and those who it is termed are "buried out of the sanctuary," because they are not entitled to the church rites of burial.

The first grave-digger in Hamlet, when he asked if the grave should be made "straight," was evidently accustomed to that part of England where a suicide's grave was not made east and west, as the church stood and as other graves run, but was to be made "crooked," or not parallel to them.

Forfeitures for felonies did not exist in England until after the Norman Conquest. Suicide in common with many other felonies had the penalty of forfeiture of goods and chattels without any special mention.

All his goods, and chattels, and leases of real estate, were forfeited to the crown. The real estate (excepting leases), was not forfeited in such case, and his inheritance was not forfeited as to other property. This offence was never attended with corruption of blood.

In this as well as in other felonies at common law the offenders must be of the age of discretion and of sound mind, and therefore an infant killing himself under the age of discretion, or a lunatic during his lunacy, is not regarded as a *felo de se*, so as to work a forfeiture of his property. But the disposition of the remains is the same in all cases.

This was only carried out when the coroner's jury decided the question of the sanity of the offender in the negative. This continued until 1823, when by statute (4 George IV. chap. 52) the body is required to be taken to the churchyard or other burial ground of the parish or place in which the remains are found, and is to be buried by the coroner, if found sane, within twenty-four hours after the finding, and such interment must take place at night between the hours of 9 and 12 o'clock. The rights of Christian burial are not allowed by law in any case of suicide when the coroner's jury decide the deceased to have been sane when the act was committed. This is seldom done, however, and the church officer, the parson, is bound by the verdict and must perform the burial service according to the usual form as in other cases. Churchmen of the Protestant Episcopal Church are very much displeased with this, for by the 68th canon and the rubric in the

Book of Common Prayer such persons are not allowed to be buried by the parson according to the forms of the Established Church. The term Christian burial, as used in the statute, undoubtedly means any religious ceremony at the grave, and is not confined to the Episcopal Church, and the Roman Catholic Church, for they are the only Christian churches that prescribe the burial service which their priests must follow.

Churchmen contend that in all cases of suicide the deceased should be denied the burial rites of the church, and they ought not to be bound by the coroners jury and compelled to perform the rites in such cases.—*Wheatley on Book of Common Prayer.*

Ceremonies over the body were not allowed, but they might be performed by the relatives and friends at their own houses, but without the body and without a priest of the Established Church.

According to the canons of the Established Church of England, no clergyman, only those of the Established Church, are allowed to perform funeral rites and ceremonies in a church or consecrated churchyard or burial ground belonging to the Established Church.

By the canon law Christian burial in consecrated ground and with the religious services prescribed by the Roman Catholic Church was denied to all who were not Christians, to excommunicated persons, suicides, criminals, usurers, schismatics, heretics, and even unbaptized children of Christian parents. The eucharist was celebrated at the grave as one of the rites as early as the fourth century, but it has been generally abandoned.

The part of the canon law against suicides was taken from the action of the first council of Braga, which occurred many years before the canon law noticed it.

The first ecclesiastical rule which occureth as to suicide is the 34th canon of the first council of Braga, in the year 563, which forbids any burial service for those *qui violentan sili ipsis infermet mortem.* But in Wilkin's councils the 5th chapter of the 2d book of the Penetential of Egbert, Archbishop or York, written about the year A. D. 750 (which chapter is

plainly taken from the canon of Braga), adds this limitation, "If they do it by the instigation of the devil." And at p. 232 the 15th of the canons published in King Edgar's time, about the year 960, adds a further limitation, "If they do it voluntarily by the instigation of the devil." (1 Burns, Eccles. Law, 265.) It will be observed that this canon law of Egbert was in the time of the Saxon Heptarchy, but it, nevertheless, applied to all of England.

The Decretum of Gratian inserting the canon of Braga adds to it "voluntaire." (Do.)

Wheatley on Common Prayer, says self-destruction makes no exception as to the use of the forms of burial used by the Established Church.

The exact language of the canons of Edgar, as translated by Wilkins, is as lollows:

"Concerning those who by any fault inflict death upon themselves, let there be no commemoration of them in the oblation, as likewise for them who are punished for their crimes, nor shall their corpses be carried unto the grave with palms."

"If any shall voluntarily kill himself by arms, or by any instigation of the devil, it is not permitted that for such a person any masses be sung, nor shall his body be put into the ground with any singing of a psalm, nor shall he be buried in pure sepulchre."

Canons Edgar, 1 Wilk., 225, 232.

Johnson, A. D. 740, No. 96, and 963, No. 24.

1 Burns, Ecc. Law, 260.

After the Reformation in England, on the revision of the Canons of the Protestant Episcopal Church, in 1603, by the Hampton Court Conferences, the substance of the 68th canon became and is now known as the 68th canon of the latter church. The rubric, which is in the burial office in the English Book of Common Prayer, was not drawn up until 1661, and was deemed as explanatory of the ancient canon law and of the previous usage in England, and greatly modified and limited the class of persons to whom it applied in the canon law. Before the rubrics of 1661, the prohibition extended to all persons who had not received the holy sacra-

ment, at least at Easter, or such as were killed in duels, tilts or tournaments, or convicted of infamous crimes, but did not exclude unbaptized persons and suicides.

The Savoy Conference, in 1662, made the last revision of the Book of Common Prayer as it is now used by the Protestant Episcopal Church in England, and the rubrics as they were called (because printed in red ink) over many of the prayers, and in other parts of it informing the clergy as well as the laymen how and what to do on particular occasions. These were derived from the canons in most cases, and in some instances they conflicted with the canons, and in other cases did not go so far as the canons. When the law for the conformity of Christian worship was passed in 1662, compelling its use in the form it then was and that it should be used as stated in the rubrics, the English Courts held that in all cases of conflict between the rubrics and the canons that the rubrics should prevail and that the canons were only of force so far as the statutes and common law permitted them (Mastin v. Escott, 2 Curteis, 760).

As to how far the canon law is in force in England it has been stated by authority that the canons of 1603, as well as the acts of Parliament after the reformation, also constitute a portion of that law binding upon the clergy, but only binding upon the laity where admitted by long custom or express recognition of the tribunals of the common law (Lord Hardwicke in Middleton v. Croft, Strange Rep., 1056; see also Mastin v. Escott and Kemp v, Wickes, 3 Philli, 276).

The duty cast upon the clergyman by his office is prescribed by the sixty-eighth canon, which provides that no minister shall refuse or delay to bury any corpse that is brought to the church or churchyard convenient, warning being given him thereof, in such manner and form as is prescribed in the Book of Common Prayer. And if he should refuse to do so, except the deceased were within the prohibited class specified in the rubric, he shall be suspended by the bishop of the diocese from his ministry by the space of three months.

As the rubric now stands there are only three classes of persons who are within the prohibition. It reads as follows: "Here it is to be noted that the office ensuing is not to be

used for any that die unbaptized, or excommunicated, or have laid violent hands upon themselves."

If a clergyman should disregard this rubric and perform the burial office over the prohibited classes, he would be liable to trial and discipline by an Ecclesiastical Court for disregarding the laws of the church. The result might be suspension for a definite period or the deprivation of his orders.

The committing of a crime would not render a person liable to be excommunicated even when Church and State were united. There were ecclesiastical crimes only which would render a person liable to be excommunicated, and mere state offences were not regarded as such by the church when they did not affect church matters. (See Selden's Table Talk.)

In the ecclesiastical law a *felo de se* is regarded the same as an excommunicated person

To the rigid rule of the church there was then, as there still is no exceptions, but the law made the coroner's inquest binding upon the church. The first grave-digger in Hamlet believed that if Ophelia had not been a gentlewoman she would not have Christian burial. The second grave-digger promptly answers that she is, because the "crowner" (coronor) has set upon her and finds that she is to have Christian burial.

Shakespeare has thus accurately stated the laws of the Church and of the Statutes in England, at the time he wrote, and not the laws of Denmark, in Hamlet's time.

Hamlet, King of Denmark, lived about A.D. 700 and Christianity was not introduced in Denmark until about A.D. 827, by Harold. So the laws of the Christian Church of England were referred to, and not the laws of Denmark, at the time of Prince Hamlet.

A sample of how suicide was regarded in law and morals about the time of the Reformation in England appears by the argument of counsel in the case of Hales vs. Pettit, reported in Plowden, page 253; it was argued that:

"It is an offence against Nature, against God, against the King. (1.) Against Nature, because it is contrary to the rules of self-preservation, which is the principle of nature; for everything living does, by instinct of nature, defend itself from destruction, and then to destroy oneself is contrary to

nature and a thing most terrible. (2.) Against God, in that it is a breach of His commandment, 'Thou shalt not kill,' and to kill himself by which act he kills in presumption his own soul, is a greater offence than to kill another. (3.) Against the King, in that he has hereby lost one of his mystical members; also, he has offended the King in giving such an example to his subjects, and it belongs to the King, who has the government of the people to take care that no evil example be given them; and an evil example is an offence against him." Hales vs. Pettit, Mich. Term 4 and 5, Eliz. 1562 in C. P. Plowden, 253.

The reply to this argument is equally as ingenious and subtle. So much so Shakespeare, in Hamlet, Act 5, Scene 1, puts the same logic in the second grave-digger's remarks when the fair and unfortunate Ophelia's grave is to be made. He says:

1ST GRAVE.—Is she to be buried in christian burial that wilfully seeks her own salvation?

2D GRAVE.—I tell thee she is; therefore make her grave straight; the crowner hath set on her, and finds it christian burial.

1ST GRAVE.—How can that be, unless she drowned herself in her own defense?

2D GRAVE.—Why, 'tis found so.

1ST GRAVE.—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, to perform. Argal, she drowned herself wittingly.

2D GRAVE.—Nay, but hear you, goodman delver.

1ST GRAVE.—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.

2D GRAVE.—But is this law?

1ST GRAVE.—Ay, marry is't, crowner's 'quest law.

2D GRAVE.—Will you ha' the truth on't? If this had not been a gentlewoman, she should have been buried out of christian burial.

1ST GRAVE.—Why, there thou say'st; and the more pity, that great folks should have countenance in this world to drown or hang themselves, more than their even Christian. Come, my spade."

The grave was to be made "straight," that is, it was to be made East and West, for Christian burial, but in cases of those who had not Christian burial the grave was North and South, as before stated.

It is evident that the burial is represented as taking place in Denmark, as the King and Queen and Courtiers were present, but still the burial was according to the laws of England and the Established Episcopal Church, and not the Roman Catholic burial rites, as they were not allowed to be used in any parish churchyard in England after the Reformation and the establishment of the Episcopal Church and the rites prescribed by the Book of Common Prayer. For several centuries following the Reformation in England the Established Church was allowed to go beyond the requirements of the Book of Common Prayer in some particulars, and retain some of the old customs, and in none more so than in the burial rites.

We have before seen that the canons of King Edgar prohibited, at the burial of suicides, the carrying of palms by the funeral cortege, as was then the usual custom, and also the singing of psalms at the burial, and the singing of masses for the soul of a suicide.

In Shakespeare's time it is probable that in England the carrying of palms was customary at funerals, and although the law of England prohibited masses for the soul in all cases, it allowed but did not require a requiem at the grave after burial, and also allowed prayers for the souls of the dead. In Hamlet it appears that although the burial was according to the law of England, yet the Church could and did abridge the usual rites in cases of suicides. The absence of palms and some other appearances in the funeral cortege of Ophelia is thus noted :

> " Here comes the King, the Queen, the Courtiers.
> Who is this they follow,
> And with such maimed rites, this do they betoken ?
> The corpse they follow did with desperate hand,
> Foredo it's own life."

In the same act in Hamlet the parish priest is made to say that Ophelia, upon account of the manner of her death, should not have the full rites of Christian burial. He said:

"Her death was doubtful;
And but that great command oversways the order
She should in ground unsanctified have lodged,
Until the last Trump; for charitable prayers
Shards, flints and pebbles should be thrown upon her."

The "great command" referred to was the statute law of England when the coroner found she was insane, and therefore entitled to Christian burial.

The last line above quoted fully describes the burial of suicides in that part of England where the ancient custom prevailed of burying at the cross-roads with a stake driven through the body, to mark the spot, and passers-by throw flints and stones upon it.

But the strict letter of the law still allowed the parish priest to abridge the usual burial service in such cases. Ophelia had the extent of the bell and burial rites of the church, but the priest refused to have a requiem sung for her soul after the burial. When asked by Laertes in suprise if no more was to be done after the burial, he indignantly said:

"No more be done?
We should profane the service of the dead
To sing a requiem and such rest to her
As to peace-parted souls."

In the American Book of Common Prayer, the prohibition of the use of the burial office is that the forms are not to be used by any minister for any unbaptized adults, any who die excommunicated or who have laid violent hands upon themselves (in the English it extends to unbaptized infants).

The minister is subject to the same penalty as in England.

In the United States the canon law as amended is in full force without any express statutory interference.

No part of the property is vested in the crown before the self-murder is found by some inquisition. If the body can be found all such inquisitions must be by the coroner *super visuns corporis*, and an inquisition so taken could not formerly be traversable in the Court of King's Bench. If the body cannot be found the inquiry may be by a Justice of the Peace the

same as all other felonies, or in the Court of King's Bench, if it sits in the county where the act was committed, and such inquisitions are traversable by the executor, heir, etc.

Coroners' Juries generally carried their views so far as to decide that the very act of suicide is an evidence of insanity, and that therefore it worked no forfeiture to the crown. Bentham cites this as an example of the uselessness of official oaths.

About the time of the Commonwealth it was very seldom that a suicide was pronounced insane by a coroner's jury. It is reported that out of seventy-four cases only three were found insane.

In 1693 a law was enacted allowing the findings of a coroners's jury to be reviewed by the Court of King Bench by the writ of certierari and the inquisition may be quashed as insufficient.*

In the Catholic Church the confessional, undoubtedlv, always has had a powerful influence in preventing the violation of the laws and ordinances of the church. Suicide is yet much less frequent among members of the Catholic Church than it is among other church members. It is proportionately less among Jews, however.

It has been computed, from statistics returned in certain provinces of Austria and Germany, that in a population of 1,000,000 the proportion of suicides between the Jews and the mixed white races were as one to four.

It should be remembered that when the Roman Catholic Church was in its supremacy in England, which was for many centuries, every State officer must be a member of that Church, at least in many cases, not of lower rank than a priest of that church. This was continued by the Protestant Episcopal Church until a repeal of the Corporation and Test acts, as they were called, which required it.

In Scotland there is a forfeiture of personal property only.

On the principal that the ethical precepts of the English Ecclesiastical law are incorporated in the common law of the several United States, so far as the same is applicable, suicide

* In the year 1870, by statute 33 and 34, Viet., chap. 23, a verdict of suicide does not now work forfeiture of any estate or property.

and the attempt at suicide are to be viewed as common law offences with us, and hence are felonies.

The *usages* of the English law have never been carried out in this country against the body or estate of the unfortunate *felo de se* since Colonial times.

Forfeiture in cases of suicide are expressly abolished by statute in New York. (3 R. S., p. 988, sec. 32.)

In the United States the law does not make any distinction or difference in regard to the burial or disposition of the bodies of suicides and those whose death is caused by disease or accident.

In 1879, by chap. 33, § 38 of 42 and 43 Viet., for an attempt at suicide in the British army, an officer will be court-martiald and cashierd, and a private will be imprisoned.

AIDING AND ABETTING SUICIDE.

When self-killing ceases to be entirely voluntary; in other words, when it is executed under another's compulsion, then, at common law, that other is guilty of homicide, though the deceased himself struck the fatal blow

Under the New York Revised Statutes (2 R. S., 661, § 7) assisting another in committing self-murder is declared to be manslaughter in the first degree.

At common law, if a man encourages another to murder himself, and he is present abetting him while he does so, such a man is guilty of murder as *principal.* It is otherwise, however, at common law when the suicide is consummated in the *absence* of the adviser. In such cases, as the adviser is only an accessory *before* the fact, he cannot, according to the old technical rule of law, be convicted until after the conviction of the principal, who, being on this hypothesis dead, is out of the reach of legal process. This, however, has been in many of the States corrected by statute, and where it is not, the advising another to commit suicide, who afterwards does so, is indictable at common law as a misdemeanor.

A civil action for damages against a person aiding and abetting another in suicide will nndoubtedly lie in favor of any party who is injured thereby.

Under the Anglo-Saxon laws a person present at the death of a man who was murdered or had committed suicide was regarded as *particeps criminis*, and as such was liable to a fine. Every man's life had its value called, a *were* or *capitis estimatio*. This had been varied at different periods, in the time of King Athelstan, in A.D. 926, a law was made to settle the *were* of every order of persons in the State. If the fines were not paid the punishment was death.

In some countries accessories to suicide are punishable, even though suicide itself is not a penal offense.

Among the German States, Brunswick, Thuringia, Baden, and Saxony alone punish those who are accessories to suicide. The penal code of France has no penalty against accessories in such cases. The penal code of India has a penalty.

The general principal of law, however, prevails in all civilized countries that when any act is declared and punished as a crime, aiding and abetting another in it is also punishable. This was so under the Roman civil law and the canon law as well as at common law.

The law against this crime is obsolete from disuse because it is never necessary to enforce it, the natural instincts of the human heart being sufficient to prevent the frequency of such crimes.

In misdemeanors there are no accessories, but all the guilty actors, whether present or absent at the commission of the offense are principals, and should be indicted, and are punishable as such. (People vs. Enim, 4, Denio 129.)

SUICIDE AND TESTIMENTARY CAPACITY.

In regard to wills made just before committing suicide the prevalent doctrine in England and in this country is that the act of self-destruction may not necessarily imply insanity so as to avoid the will; that if the will is a rational act rationally done, the sanity of the testator is established, and the character of the will and its consistency with the character of the testator is the sole evidence of rationality at the time of its execution.

We have before seen that by the Roman law the will of a suicide could be admitted to probate.

Under the English common law previous to the statute abolishing forfeiture the will of a *felo de se* is void, both as to the appointment of an executor and also with respect to any legacy or bequest of goods, for they are forfeited by the very act and manner of his death; but any devise of land made by him is good, as that is not subjected to any forfeiture. The will of a *felo de se* is of force against the testator and his representatives and all other persons whatsoever; so if the king or lord pardons the forfeiture the will is suffered to take effect.

SUICIDE AND LIFE INSURANCE.

It is an established principle of law that an insurance against the consequences of an illegal act is, like a contract to do an illegal act, a void contract as against public policy, and we have before seen that suicide is a crime at common law, therefore no insurance can be recovered in such cases, unless the party is proved to be insane at the time of the act, then the insurance is valid and can be recovered. In order to avoid a recovery in all cases of suicide, a clause has been inserted in many policies conditioned to make it void "if the assured shall die by his own hand or act," or words to that effect.

The first case that was decided on the question of suicide and its effect on a life insuranc policy containing such a clause was that of Breasted vs. The Farmers' Loan and Trust Company, in the Supreme Court of the State of New York (reported 4, Hill 74) in 1843. The policy contained a clause of forfeiture in case the insured died by his own hand. It was held in that case that the insanity of the iusured at the time of his death by suicide was no defence. This decision was sustained by the Court of Appeals when it came up ten years afterwards (reported in 8 N. Y. 303) by five judges against three. On this appeal the case of Borradaille vs. Hunter (44 Eng. C. L. Reps. 336, which was the first English case on a similar question and was decided in 1843), was cited and approved

In England it is the law at present, under this particular form of a policy, that in every case of suicide, whatever may have been the mental condition, if the policy containing the clause which makes it void "if the assured shall die by his own hand or act," or words to that effect, the policy becomes void in such case. (In Clift vs. Schwabe 54 Eng. C. L., p. 437.)

The principle of the decisions in the English cases is founded upon the right of contracting parties to make any exception they may agree upon at the time of the issuing of the policy, and that it must be strictly construed in favor of public policy.

In Germany and throughout Continental Europe (with the exception of France—in the latter the Courts have given conflicting decisions as to the construction of the conditions against suicide), the Courts coincide with the views expressed in the English decisions and hold the policy void in such cases. There have been many conflicting decisions in American Courts on this same question, but they have not, any of them, gone so far as the English cases. In the United States Supreme Court (Life Ins. Co. vs. Terry, 15 Wallace, 580), in a case where the policy contained a condition "If the said person whose life is hereby insured shall die by his own hand this policy shall be null and void," and the insured died from poison voluntarily administered by himself, the Court says:

"We hold the rule on the question before us to be this. If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches and there can be no recovery. If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of this act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character of the general nature, consequences and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable."

This case was explained by the N. Y. Court of Appeals in Van Zandt vs. Mutual Benefit Life Insurance Company (55 N. Y. 169).

The presumption of law is, in all cases, that death was caused by accident, as in drowning, poisoning, &c. or in the natural way when no cause of death can be discovered. (Mallory vs. Trav. Ins, Co., 47 N. Y., p. 54.)

The burden of proving that the insured died by his own hand is on the insurer. This proved, the burden is thrown on the representatives of the insured to show that he did not commit the act of self-destruction, with the knowledge that it would, and the intent that it should, result in death.

(See proper charge to the jury stated fn Van Zandt vs. Mutual Benefit Ins. Co., 55 N. Y. 169.)

A person is in law presumed to be sane, and to know the consequences of his own acts, until the contrary appears.

When the question of suicide and insanity, in regards to life insurance claims, are left to a jury, they are almost always decided against the insurers, on the ground apparently, if no other can be found, that the act of suicide itself is evidence of insanity.*

The most important decision, and one in which the American doctrine at the present time is plainly laid down to its full extent, has very recently been decided by the Court of Appeals of Maryland (Knickerbocker Ins. Co. vs. Peters, 42, Md. 414).

In this case the policy contained the clause, which by its terms made it void, "if the assured shall die by his own hand or act." The act of self-destruction was by hanging. The wife of the deceased sought to recover from the insurance company the amount of the policy. The company defended under said clause, which they claimed made the policy void. In deciding the case the court said it is now too well settled to admit of question that the clause is not to be construed as comprehending every possible case by which life is taken by

* Dr. Johnson was right when he said, in regard to suicides, "that they are often not universally disordered in their intellects, but one passion presses so upon them that they yield to it and commit suicide as a passionate man will stab another."

the person's own act. For instance, all the authorities concur in the view that an unintentional or accidental taking of life is not within the meaning or intention of the clause.

Thus, if, by inadvertence or accident a person shoots himself or take poison by mistake, or in a sudden frenzy or delusion tears a bandage from a wound and bleeds to death, in a literal sense of the term, he dies by his own act; yet all the decisions agree that a reasonable construction of the proviso according to the plain and obvious intention of the parties, would exclude such party from its operation, and the Court instructed the jury that the clause in question would not prevent a recovery if they found from the evidence that the deceased killed himself in a fit of insanity which overpowered his consciousness, reason and will, and acted from a mere blind and uncrontrollable impulse; and that after they are satisfied that he died by his own hand, it becomes the duty of the plaintiff, on her part, to offer proof sufficient to prevent the operation of the clause; and she does not comply with such exigency by proof merely that deceased was insane at times. She must prove that he was insane when the act was committed, and in the absence of such proof of his condition at the precise time when the act was committed, the jury must presume he was then sane, and they cannot draw an inference that he was insane from the fact that he destroyed his own life. These instructions, say the Judges, state the law more explicitly and more favorably for the insurer than is found in any of the American authorities to which they have referred, or to which their attention has been called on argument. The Court says, in effect, that when the act of self-destruction is done during insanity, it is death by accident. It is to be observed that this clause did not say "sane or insane."

Mr. Justice Hunt, of the United States Supreme Court, remarked, in deciding a case, that "insurance companies some times insist that individuals, largely insured upon their lives, who are embarrassed in their affairs, resort to self-destruction, being willing to end a wretched existence if they can thereby bestow comfort upon their families."

"The juror," adds justice Hunt, "would be likely to repu-

diate such a theory on the ground that nothing can compensate a man for loss of life."

It is a good ground of challenge to a juror, in such cases, if he believes that suicide is an evidence of insanity.

The question as to the effect of the religious sentiments of *felo de se* cannot be taken into consideration by the court or jury when considering the sanity or insanity of the deceased in life insurance cases. This has been directly held by the N. Y. Court of Appeals, in the case of Gibson vs. The Am. M. Life Ins. Co., 5 Transcript Appeals, p. 261.

In that case the question in contention at the trial was whether the death of the deceased was accidental or whether it was a case of intentional self-destruction. The defendant insisted that they had a right to show that the deceased was an infidel and an atheist, and thence to draw an argument in support of the theory of intentional suicide. In holding that such evidence could not be considered, the Court said :

"To adjudge that a man's belief in Christianity will prevent the commission of suicide, or that atheism will produce or tend to produce a contrary effect, is to adopt a principle more subtle and speculative, more uncertain and more remote than the law can recognize."

The *maxim Nemo praes nuntur*, &c. No man is presumed to be forgetful of his eternal welfare, and particularly at the point of death. (6 Coke, 76), relates to dying declarations only, and not to suicides or presumptions in regard to the act.

Expert testimony is also very much restricted in this class of cases. A medical witness was called for the plaintiff and asked the question : "Assuming that a person had that form of insanity which you denominate melancholia, and had committed suicide, would you attribute that suicide to the disease ?" This question was objected to on the trial, and the witness answered, "Yes, I should attribute it as the result of insanity." The N. Y. Court of Appeals 8. (Van Zandt vs. Mutual Benefit Life Ins. Co., 55, N. Y., 179,) granted on this ground a new trial; the verdict was in favor of the plaintiff.

The many insurance decisions on the subject of suicide already in the law reports, which show the controversy that exists among us with all the force of novelty, is caused by the different policies issued.

So long as insanity is allowed to avoid the terms of insurance in cases of suicide, it is apparent that no clause can be inserted in a policy which can effectually guard against it if the question is tried by a jury in the usual manner.

In our American Courts, in order to see that justice and right is done to insurers, the courts in some cases take the case away from the jury, if possible, and direct a verdict for the insurers (Fowler vs. Mutual Ins Co., 4 Lansing, 202).

(See McClure vs. Mutual Benefit Life Ins. Co., 55, N. Y., p. 651. Weed vs. do. 70 N Y., 562.)

The policy in such a case should contain, in the clause against self-destruction, the further proviso "whether sane or insane," or words to that effect. Great caution must be used in this, or a new trial will be granted, for the reason that the case was a proper one for the jury alone to pass upon.

It has seemed doubtful what clause could be inserted in any American policy which could effectually guard against suicide. In a late case, however, in the United States Circuit Court, in the Northern District of Illinois (Chapman vs. The Republic Life Insurance Company, 5 Bigelow Ins. Cases, p. 110), the company defended against a suicide claim on the ground (among others) that its policy contained a condition thus worded: "In case the said insured die by his or her own act and intention, whether sane or insane, or of death in consequence of the violation of law, * * * then, and in such case, it is stipulated by all the parties in interest that the company shall not be liable for the sum assured." In point of fact, Chapman's death was caused by a pistol shot fired by himself, and the company disclaimed liability on the ground that the shot was fired "with the intention and for the purpose of then and there causing his death." The usual plea of irresponsibility on the ground of insanity was put in as an offset to the company's defense, and the company relied upon the condition of its policy above quoted. The Court said: "I have no doubt of the right of an insurance company to thus protect itself against liabilities;" and again, "as nothing is seen in this case, or has been suggested, making it incompetent for the defendant to protect itself against the insane act of persons holding its policy, we think effect must

be given to the condition, and the replication must be held to be bad."

Quite recently the Federal Court, sitting in St. Louis, declared that whether a suicide is insane or not, whatever, indeed, may be the circumstances of his killing, if he dies intentionally by his own hand, insurance on his life will be forfeited; the policy contained a stipulation of forfeiture in event of suicide. The Court held, in the same case, that on another policy there was no forfeiture because it was not so stipulated in the policy.

It was held (Pierce vs. Travelers' Life Ins. Co., 34 Wis. S. C., 3 Ins. L. J., 422), where a policy contained the conditional clause "or die by suicide, felonious or otherwise, sane or insane," &c., the policy should be null and void; that the parties to the contract having defined the sense in which the word "suicide" is to be used, the Court is bound by that definition, and the insurers are not liable without regard to the mental condition of the deceased.

The apparent conflict among the American adjudications on this point is chiefly caused by the peculiar wording and construction of the different provisos against self-destruction. The current of these decisions, when the policy is properly worded as construed by our Courts on this question is gradually approaching Dean vs. Am. Mutual, (4, Allen, Mass., p. 96), and will ultimately be in effect the same as the English decisions, for they are the most just to the insurers and are according to the common law, and are for the welfare of the community as tending to discourage and prevent self-destruction.

(Since this part of this paper was published the United States Supreme Court, in October, 1876, in the case of Bigelow, is Berkshire Life Ins. Co., 93, U. S. p, 284, has impliedly followed the case of Borradaile vs. Hunter, in the same direction, by construing a life policy containing the phrase "sane or insane" to have the same meaning and effect as the policy was held in that case to have without that language. The case also follows the case of Breasted vs. The Farmers' Loan and Trust Co., 4 Hill, p. 74, before cited.)

In viewing the decisions of our Courts, the express lan-

guage of the policy must always be considered. The restrictions and practices in regard to suicide clauses are, therefore, very important. In England the conditions as to suicide are different at various times and in different companies. Some of them issue policies free from any conditions on this point ; others declare that their policies shall be void in the event of death by suicide occurring within a certain period after the issue of the policy, such period varying from six months to five years. The wording of the suicide clause is also various—as, dying by his own hand, whether under the influence of insanity or not.

Most of the companies declare that suicide, whenever committed, shall not prejudice the assignee of a policy, but some of them add the condition that intimation of the assignment must have been made to them either before death or one month after death.

French companies also vary in their policies—some omitting any clause against suicide, and others containing restrictions in various terms and conditions.

In Germany, Austria and Switzerland a great variety of practices exist. Some companies, under their clause against suicide, pay the full amount assured if the policy has been a certain number of years in force, some pay only in the event of insanity being established as the cause of suicide, others only pay to third parties, some leave the settlement entirely in the hands of their boards, a very few companies preserve silence by omitting the clause or giving but vague directions on the subject. The Gotha Life Assurance Company, the leading company in Germany, formerly considered a policy null and void in all cases of suicide, even without any clause against it, and its action was sustained in the German law Courts. In 1840 an alteration was made in the by-laws of that company, by which it was provided that all claim upon the amount assured, beyond the reserve value of the policy, was lost if a person died by his own hand. It will be observed that no distinction under this regulation was made as to whether a person died under the influence of insanity or otherwise. The reserve value is always much less than the amount of the premiums which have been actually paid. I

believe that the Gotha originated this plan, which is now quite common in the policies recently issued by American companies.

The American companies exhibit as extensive varieties in regard to their practices as can well be imagined. They not only include all the European varieties of policies and clauses relating to suicide, but many more. The N. Y. Life Insurance Company, the fourth in rank in the United States in the number of outstanding policies, has no clause, and never had any, relating to suicide or self-destruction. Some companies now provide that if insanity is ascertained and pronounced by an authorized board or person specified by them, by request on the part of the insured, before the act of self-destruction is committed, then the policy will be paid ; some of these, even in such case, only pay the amount of the reserve of the policy, and others return the premiums.

About one year ago the Chamber of Life Insurance, composed of about thirty leading companies in the United States, recommended that a clause be inserted in the policies of all companies, to the effect that it would he null and void "if the person shall die by suicide or by his own hand, or in consequence of an attempt to commit suicide or to take his own life, provided, however, that if any of these acts be committed while in a state of derangement or insanity, the company agree to pay upon the policy thus voided the full legal reserve thereof."

The policy must be at least one year old to be entitled to this. This has generally been adopted, more or less, in effect by all companies (excepting the New York Life), relating to new policies. Many of them had used it for several years before, more or less. In some instances they return the actual amount of the premiums paid in such cases. The fifth company in rank does this. Some companies contain further restrictions, as to the length of time, &c. The practice of assignment of the policy or the payment to other persons interested in the life of the insured is the same as is in general use. In all other cases it must be on consent of the company.

The question of the legal assignment of a life insurance

policy is governed by the laws of the State where the assign ment is made. (Barry vs. Eg. L. A. So., 59 N.Y., 587.)

Of the outstanding life policies in the United States, and there are about eight hundred and eighty thousand of them, probably about one-twentieth do not contain any proviso against suicide; and about three-fifths contain only the simple proviso making it void if the insured shall "die by suicide," and about three-tenths contain the additional words of "sane or insane." The first and third companies in rank in the number of outstanding polices only added to that clause "sane or insane" about four years ago—the fifth had used it for many years. The second in rank contains only the simple proviso declaring it void in case of suicide. The fourth, as we have seen, does not contain any restrictions whatever on this point. These five companies have more than one-third of the total number of outstanding policies.

I have not found or heard of any policy, either in Europe or America, that contained the comprehensive suicide clause, and in addition thereto the words to the effect that said clause should "bind the heirs, executors, administrators and assigns, and all other persons interested in the insured." Such an addition to some of the suicide clauses which are in some policies (to wit: the case of Chapman vs. Republic Life Ins. Co., above cited) would undoubtedly greatly relieve the Courts of any necessity of ever submitting any question under it on this point to a jury, and thus the intention of the parties at the time of the making of the contract would be enforced in law without any uncertainty in the matter. There has never been any reported adjudication upon any policy containing such a clause as is above suggested. In some States these words would be implied.

Where a policy provides that if the party die by his own hands the policy should be void, except to the extent of any *bona fide* interest which a third person might have acquired, the English Courts hold that it may be enforced for the benefit of others, whatever be the means of which death is occasioned. (Moor vs. Woolsey, 25 Beaman, 599. The Solicitors' and Gen. Life Assur. Co. vs. Lamb, 2 De Gex. J. and S 251.

Where a policy was taken out for the benefit of the wife

and children of the insured, and it contained no clause forfeiting it in case his death by suicide, it was held by the N.Y. Court of Appeals (Fitch vs. Am. Pop. Life Ins. Co., 59 N. Y., 557), that evidence that deceased committed suicide was not admissable, and that the parties interested were not bound by the acts of the deceased unless in violation of some condition of the policy.

In regard to the enforcement of payment from foreign companies doing business abroad, the general rule of the law of the forum prevails, and the law of the place where the contract is to be performed is to be considered without regard to the laws under which the company is organized and located at home.

The *lex loci contractus* prevails to a certain extent. The policies generally provide that payment of loss must be by the "home office," and at the "home office." In such case the *lex loci* is at that place, although a suit is commenced in some other State it is governed by that of the home office.

To allow insurance for suicide, it is argued, seems unjust to all policy-holders, as it introduces another class of risks which cannot be guarded against, or only to a very limited extent; and hence all premiums are necessarily made much larger, and a loss in such cases also impairs the capital and surplus of the company. The patronage of the people, however, shows that it is liked by them. The degree of skill exercised in the medical examinations of applicants make the risks much less in such cases than is generally supposed.

The propriety of allowing any insurance on a life destroyed by suicide may well be questioned on the grounds of public policy. (1.) It is an illegal act, being a felony at common law, as we have before seen. (2.) It is an immoral act, and against the welfare of a State to allow any encouragement for the self-destruction and loss of its members which all are bound to preserve and protect. (3.) It is aiding and abetting suicide, which is also a crime at common law and by statute. The harm done by allowing it is in proportion to the absence of restrictions on that point in the policy, and also in the amount of the insurance.

The endowment plan has a contrary effect from the usual

life insurance plans, and it should be encouraged as having a beneficial tendency favorable to the longevity of individuals. The number of endowment policies outstanding in the United States is very small in comparison with life policies.

CONCLUSION.

Self-preservation is, unquestionably, the natural law, and is the strongest instinct of all animal life. If it were not more prevalent than the destructive agents without and within organic beings, they would all, sooner or later, become annihilated. Love of life, therefore, is and must be the natural selection and conservative for preservation; and death, and and the fear of it, is and must be naturally shunned for the same reason.

Man is the only being in all animal life, with one exception, that ever commits wilful and deliberate self-destruction. The scorpion will sometimes sting itself to death when its hope of life is gone. Byron has graphically described this in "The Giour," by the following lines:

> " * * * * like the scorpion girt by fire,
> In circle narrowing as it glows,
> The flames around their captive close,
> 'Till inly scorched by thousand throes,
> And maddening in her ire.
> One sad and sole relief she knows—
> The sting, she nourished for her foes,
> Whose venom never yet was vain,
> Gives but one pang and cures all pain
> And darts into her desperate brain."

There are and must be times when the natural instincts are overcome or lost, and then some other stronger and counteracting influences must be brought to bear to preserve or to restore them to power and healthy action.

It is, unquestionably, the duty of a State, and each member thereof, to use any and every means to protect and preserve its members from destructive agencies, from whatever sources they may come. Counteracting influences over predominant

tendencies which are or may be harmful to the community, is the object of all penal laws. The difficulty seems to be how this shall be done in this case. The punishment of suicides by a narrow view, seems that it may or can only affect the living, and not the guilty party,—that the innocent also must suffer. All penal laws relatively, affect the friends and family of those who may violate them, and many times this is found to be their most salutary use in deterring their violation.

We have seen in the foregoing history that there are attributes and peculiarities of the mind that may be used to effectively prevent this most terrible occurrence. Religious influence should be encouraged as a solace in moments of despair, and as having rewards and punishmeuts in a future life. Suffering humanity seems to require this in the day of temptations and of troubles, be they real or imaginary.

It may be said here that penalties ought not to be enforced against insane persons who commit suicide. It is a well recognized fact that the insane have like passions as those who are not insane, and are amenable to influences, and are restrained from doing wrong and constrained to do right, by the same motives, which have the same effects in sane persons, and that they generally have the power of self-control when they have a sufficient motive to exert it Their actions are controlled, like sane persons, by their hopes and fears, be they real or imaginary.

The disposition of the body and property of the deceased may be in a manner which will deter others from similar acts. Exemplary penalties are common and are always commendable in all penal laws. The bodies of executed criminals have in all nations and countries (except in the United States) from the earliest times to the present, been denied the usual burial rites which were peculiar to the times and country in which they were executed, and some special disposition of them were prescribed.

We all need protection from this dreadful foe, which may deprive us, at any time, of our most esteemed and nearest and

dearest friend, or our own hand may be raised against our own life ; and then there are those who would mourn for the most worthless of us.

However useless and burdensome the suicide himself may be regarded by the community, or by his relatives and friends, or by himself, his *example* should not be allowed, for some more worthy person may be tempted, in a moment of despondency and madness, to follow the unfortunate and cowardly course to escape the ills and ails of life, instead of "taking up arms against a sea of troubles," and bravely fighting the battles of life through any and every adversity, bearing all with fortitude—always hoping for the better in the sharp extremities of fortune. By thus living heroically in the path of duty and right, he will, like a soldier on duty, die as he has lived, heroically ; and, at the last, he can exclaim, with St. Paul, "*I have fought a good fight!*" Such examples will have beneficial effects