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Richard O'Sullivan

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# THE ETHICS OF SUICIDE\*

## Aquinas and the Common Law

RICHARD O'SULLIVAN

SOME *obiter dicta* lately spoken by the Lord Chief Justice on the subject of suicide direct attention to the attitude of the English law (which differs from other systems of law) on this important topic. Suicide has always been regarded by the common law as a felony: *felo-de-se*, even though, by the nature of the case, the offender escapes temporal punishment.

The principle was reasserted in an appeal to the House of Lords in the year 1938, when it was held, in the case of *Beresford v. Royal Insurance*,<sup>1</sup> that the personal representative of one who, having insured his life, committed suicide while sane, was not entitled to recover the policy money from the insurance company, as it was contrary to the policy of the law to assist a personal representative to recover the fruits of the crime committed by the insured person. In giving judgment, Lord Atkin said:

. . . Deliberate suicide, *felo de se* is and always has been regarded in English law as a crime. . . . Indeed, Sir John Jervis, in his first edition of his book on the office and duties of coroners, said: "Self murder is wisely and religiously considered by the English law as the most heinous description of felonious homicide." . . . By English law a survivor who had agreed . . . [with the deceased] to commit suicide with him is guilty of murder: and the attempt to commit suicide is an attempt to commit a felony and punishable accordingly: . . .<sup>2</sup>

This decision of the House of Lords was in line with the decision of the Common Bench in a case decided in the fourth-fifth year of Queen Elizabeth I, which is reported in Plowden's *Commentaries*. It is the

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<sup>1</sup> [1938] A. C. 586.

<sup>2</sup> *Id.* at 599.

famous case of *Hales v. Petit*,<sup>3</sup> which arose out of the suicide by drowning of one of the Queen's Judges, Sir James Hales.<sup>4</sup> The suicide was declared to be an offense against Nature, against God, and against the King:

(1) Against nature, because it is contrary to the rules of self-preservation, which is the principle of nature, for every thing living does by instinct of nature defend itself from destruction, and then to destroy one's self is contrary to nature, and a thing most horrible,

(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 hereby he has lost a subject, and . . . he being the head has lost one of his mystical members.<sup>5</sup>

The judgment of Dyer, C. J., and his colleagues of the Common Bench reflects the principles enounced by St. Thomas Aquinas in answer to the question in the *Summa*: "Whether it is lawful to kill oneself?":

It is altogether unlawful to kill oneself, for three reasons: (1) Because everything naturally loves itself, so that everything naturally seeks to preserve its own existence and resists destruction as far as it can. Suicide is therefore contrary to the inclination of our nature and to the love which every man owes to his own self.

(2) Because the part, as part, belongs to the whole. Each man is part of the community and so he belongs in a certain manner to the community. By taking his own life he accordingly does an injury and an injustice to the community.

<sup>3</sup> 1 Plow. 253, 75 Eng. Rep. 387 (C.B. 1563).

<sup>4</sup> Shakespeare was familiar with the report in Plowden, and parodies the arguments of Counsel in the Grave-digger Scene in *Hamlet*.

<sup>5</sup> 1 Plow. 253, 261, 75 Eng. Rep. 387, 400 (C.B. 1563).

(3) Life is a gift God makes to man, who is always subject to the rule of Him who has power over life and death. And so one who takes his own life sins against God . . . as does one who arrogates to himself the right of judging in a matter which is outside his jurisdiction.<sup>6</sup>

Having in mind the known dependence on the philosophy of Aquinas of men like Sir John Fortescue and Christopher St. Germain and Sir Thomas More, and, in some sense, Sir Edward Coke,<sup>7</sup> it is a fair inference that Chief Justice Dyer, and his colleagues of the Common Bench, consciously followed the teaching of Aquinas in this matter of suicide. The argument is in essence identical. And the inference is strengthened if one observes that the common law also follows the reasoning of Aquinas in his answer to the next question in the *Summa*: "Is it lawful in any case to mutilate or maim a man?" (*Utrum mutilare aliquem membro in aliquo casu possit esse licitum?*)<sup>8</sup> His answer is that, since each member is a part of the whole human body, it exists for the sake of the whole body, and hence it is to be treated in whatever way the good of the whole requires. A member which is healthy, therefore, and in its normal state, cannot be cut off without injury to the whole body. Yet, since the whole man is directed to the whole community of which he is a part, it may happen that the amputation of a member

<sup>6</sup> SUMMA THEOLOGICA, II-II, q. 64, art. 5.

<sup>7</sup> See the *de monarchia*, and the *de Laudibus* of Fortescue, and the early chapters of the *Doctor and Student* of St. Germain and the testimony of Stapleton (Hallett ed., p. 38) and the argument for property in the *Utopia* and the letter of Thomas More to Dorpius (1515), and see the autographed copy of the *Library Catalogue of Sir Edward Coke* (Yale).

<sup>8</sup> SUMMA THEOLOGICA, II-II, q. 65, art. 1.

(though it be prejudicial to the body of the individual citizen) may be directed to the good of the whole community, if it be inflicted as a punishment with a view to the repression of certain crimes. And so, just as public authority may deprive a citizen of his life for certain gross crimes, it has the right also to deprive him of one of his members for certain lesser offenses. But a private person may never take such action, even with the consent of the victim. To do so would be to do an injury to the community to which the individual man in his integrity belongs.

The principle stated in this form by Aquinas has been restated and enforced by the English Courts in a series of cases in modern and even in very recent times. Thus the consent of the victim is no answer to a criminal charge in respect of blows which are intended or are likely to maim or to do serious bodily harm to the victim.<sup>9</sup> Again, it has been held to be beyond the power of an individual citizen to authorize the practice of artificial sterilization, e.g. by an operation of double vasectomy.<sup>10</sup>

<sup>9</sup> See *R. v. Coney*, 8 Q. B. D. 534 (1882); *R. v. Donovan*, [1934] 2 K.B. 498.

<sup>10</sup> See *Bravery v. Bravery*, [1954] 3 All E.R. 59 (Dissenting judgment of Denning, L. J.).

The better opinion among practitioners in the law is that the performance of such an operation (even with the consent of the patient) is a criminal offense on the part of the surgeon, unless of course it is dictated by some overriding necessity.

It is beyond dispute that the common law of England was, in the picturesque phrase of Professor John C. Wu, "cradled in Christianity." Pollock and Maitland told us long ago that:

It is by "popish clergymen" that our English common law is converted from a rude mass of customs into an articulate system, and when the "popish clergymen," yielding at length to the pope's commands, no longer sit as the principal justices of the king's court, the creative age of our medieval law is over.<sup>11</sup>

Granted that the creative age of the common law, which Pollock and Maitland had in mind, had passed before the writings of Aquinas came to be known in England, it is reasonably clear that during the fourteenth, fifteenth and sixteenth centuries these writings were widely known among the leading lawyers of the Inns of Court and exerted an influence on the later development of the law.

<sup>11</sup> 1 POLLOCK and MAITLAND, *HISTORY OF ENGLISH LAW* 133 (1899).