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## A Cross-Cultural Historical Case against Planned Self-Willed Death and Assisted Suicide

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Some traditional cultures (India, China, Japan, Greece and Rome) came to legitimate, at a certain period of their history, planned self-willed death for specific reasons. By contrast, they implied (and sometimes stated explicitly) that spontaneous suicide out of despair, fear, rage or passion was unfortunate and to be discouraged by society, and was therefore illegitimate. Even though there was an attempt in all of these cultures to create firm boundaries around so-called legitimate self-willed death and to limit the types of motives, methods and people who were allowed to do this (and therefore the numbers), there is empirical evidence of a slippery slope. This is indicated by an increase in the types of motives, methods and groups sanctioned by religious, philosophical, legal or political authorities. It seems, moreover, that these slippery slopes occurred when some of the following conditions were present: a large aging population; unstable social conditions creating a desire for control; legitimation associated with a central societal, religious or philosophical value; devaluation of the body (especially when its elimination was considered penultimate to the attainment of heaven or liberation); warfare; tolerance of suicide; intolerance of vulnerable groups; cultural contact; interreligious competition; advocates; or an easy means. There is some evidence of physician-assisted suicide in ancient Greece and Rome that may have contributed to a slippery slope.

From the evidence presented, it seems that there is a real possibility of a slippery slope if planned self-willed death and physician-assisted suicide are legitimated, especially if certain social conditions are present. Today, some social conditions that may contribute to a slippery slope — such as a large aging population, legitimation associated with a central societal value (in this case, freedom and autonomy), and rapid social change — are already present. No society can rule out the possibility of a slippery slope developing after legitimation of self-willed death, because no society can rule out future situations that contribute to such slopes. This suggests that it may prove better in the long run not to legitimate self-willed death, even though compassion for those who are suffering extreme pain or recognition of a person's autonomy might seem initially to be a good reason for a society to take this step.

Certaines cultures traditionnelles (Inde, Chine, Japon, Grèce et Rome) en sont venues à légitimer, à une certaine époque, la mort délibérée et planifiée pour des raisons spécifiques. Par ailleurs, elles sous-entendaient (et parfois, formulaient explicitement) que le suicide spontané provoqué par le désespoir, la crainte, la rage ou la passion était regrettable et devrait être découragé par la société ; bref, ce type de suicide était illégitime. Même si, dans chacune de ces cultures, un effort était fait pour délimiter l'étendue de cette soi-disant mort délibérée et légitime par la limitation des motifs la justifiant, des méthodes et des personnes autorisées (c'est-à-dire leur nombre), l'expérience semble démontrer qu'il existe bel et bien un effet d'entraînement. C'est ce que tend à démontrer la multiplication du nombre de motifs justificatifs, de méthodes et de groupes sanctionnés par de telles autorités religieuses, philosophiques ou politiques. En outre, il semble que ces effets d'entraînement apparaissent lorsque certains facteurs furent réunis : une population vieillissante nombreuse ; des conditions sociales instables engendrant un désir de contrôle ; une légitimation associée à une valeur centrale sociale, religieuse ou philosophique ; la dévaluation du corps humain (particulièrement à l'époque où son élimination était considérée comme l'étape pénultième précédant l'entrée au paradis céleste ou la libération) ; la guerre ; la tolérance au suicide ; l'intolérance face aux groupes plus vulnérables ; le choc des cultures ; la rivalité entre différentes religions ; les avocats ; ou la facilité d'accès aux méthodes. Certains éléments de preuve tendent à démontrer la présence du suicide médicalement assisté à Rome et dans la Grèce antique, ce qui peut avoir contribué à créer cet effet d'entraînement.

Partant de ces éléments de preuve, il apparaît que nous risquons fort de créer un tel effet d'entraînement, si la mort délibérée et planifiée, et le suicide médicalement assisté sont légitimés et ce, surtout dans la mesure où certaines conditions sociales sont présentes. En fait, de nos jours, certaines d'entre elles sont déjà présentes — telles que la population vieillissante, la légitimation associée à une valeur sociale centrale (dans ce cas la liberté et l'autonomie), ainsi que les changements sociaux rapides — et peuvent contribuer à créer un effet d'entraînement. Aucune société ne peut éliminer la possibilité qu'une telle situation se développe suite à la légitimation de la mort délibérée, puisque aucune société ne peut éliminer les situations futures contribuant à créer de telles conditions. Ceci porte à croire qu'à long terme, il serait préférable de ne pas légitimer la mort délibérée même si, de prime abord, la compassion envers les personnes aux prises avec d'extrêmes souffrances et la reconnaissance de l'autonomie de la personne semblent plutôt encourager la société à adopter une démarche opposée.

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## Introduction

In the majority decision of the Supreme Court of Canada in *Rodriguez v. Canada (A.G.)*, Justice Sopinka held that

[s]ection 241(b) has as its purpose the protection of the vulnerable who might be induced in moments of weakness to commit suicide. This purpose is grounded in the state interest in protecting life and reflects the policy of the state that human life should not be depreciated by allowing life to be taken.<sup>1</sup>

He goes on to state that

attempts to fine tune this approach by creating exceptions have been unsatisfactory and have tended to support the theory of the "slippery slope". The formulation of safeguards to prevent excesses has been unsatisfactory and has failed to allay fears that a relaxation of the clear standard set by the law will undermine the protection of life and will lead to abuses of the exception.<sup>2</sup>

In this article I will present cross-cultural historical evidence from India, China, Japan, Greece and Rome which suggests that legitimation of planned self-willed death has tended to a "slippery slope" over time (especially when combined with an underground phenomenon of assistance by physicians as in the West), and that this should make us wary of such legitimation today.

At the outset of this discussion, it is important to define some key terms. There is considerable debate over terminology today, in part because the very construction of terminology participates in the construction of reality.<sup>3</sup> There is an even greater problem with terminology when one examines historical and comparative data, for different cultures have different concepts of death and, of course, different terms for them in different languages. Nevertheless, several types of self-willed death are found in various cultures: (1) suicide, here defined as an event motivated by overwhelming despair, fear, rage or passion, often described as spontaneous, irrational and unfortunate; (2) assisted suicide involving the help of a physician and considered illegitimate by those in authority; (3) legitimate self-willed death, a planned death motivated by one or more supposedly good reasons that have been accepted by religious, philosophical, legal or political authorities within very specific boundaries; (4) assisted self-willed death involving the help of religious or military figures (though rarely physicians) and considered legitimate during a certain historical period;<sup>4</sup> (5) death

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<sup>1</sup>[1993] 3 S.C.R. 519 at 595, (*sub nom. Rodriguez v. British Columbia (A.G.)*) 107 D.L.R. (4th) 342 [hereinafter *Rodriguez* cited to S.C.R.].

<sup>2</sup>*Ibid.* at 613.

<sup>3</sup>See M.A. Somerville, "The Song of Death: The Lyrics of Euthanasia" (1993) 9 J. Contemp. Health L. & Pol'y 1 at 2-15 [hereinafter "The Song of Death"].

<sup>4</sup>I have consciously avoided the term "euthanasia" in the following discussion and have employed instead the expressions "planned self-willed death" and "assisted self-willed death". This approach avoids the emotional associations of the Nazi practice of euthanasia and broadens the discussion beyond one particular and familiar case. By examining the context of *self-willed* death (rather than *other-willed* death, as in the full-blown Nazi practice), there is greater opportunity to detect a "family of resemblances" by stretching the parameters of the concept and charting its varieties across cultures. Because the concepts of planned self-willed death and assisted self-willed death are focal to current calls to legalize physician-assisted suicide, their historical antecedents are worthy of consideration in the current debate, as will be noted later in this article. (Even Hitler used the example of assisted *self-willed* death to attract physicians and psychiatrists into tak-

that is indirectly caused by withholding or withdrawal of treatment when treatment is not beneficial; and (6) death that is indirectly caused by medication to relieve pain but which may unintentionally shorten life.<sup>5</sup> The latter two belong to the domain of modern medicine.

The other key term to be defined is "slippery slope". "Slippery slope" is defined in this article as the *probability* (not necessity)<sup>6</sup> that once there is legitimation of self-willed death (involving one type of motive, means or group), this may lead, given certain societal conditions, to more types of self-willed death, involving other motives, means and groups. There are conceptually and potentially two phases to a "slippery slope". The first phase is the slope indicated by an increase in the types of *self-willed* death. The second phase is the slope initiated by the transition to *other-willed* deaths mandated by the authorities to eliminate certain groups. The critical juncture for an escalation of self-willed death to other-willed death is the legitimation for a certain group, such as physicians, to assist in the killing of people by the provision of deadly drugs or other assistance, thereby creating an intermediary step between suicide and homicide, with its concomitant ambiguity regarding motive.

A "slippery slope" implies that there is a relation among the examples. These may be due to some of the following: (1) cultural contact or inter-religious competition leading to the exchange of ideas and practices, especially in a shared social, economic and political milieu that causes common problems; (2) the psychological tendency for people to assimilate cases, even when they involve "fallacious assimilation, mistaken use of precedent, and unwarranted cause,"<sup>7</sup> if they fulfil some need or satisfy some desire, or express some central value of the society; (3) interested agents who help to popularize the practice; (4) the use of reiterative arguments to include more and more examples; (5) vague concepts leading to more applications; and (6) the need to treat similar cases consistently and to avoid faulty analogies and bad precedents.

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ing the first important step toward killing an "undesirable" person.) This approach of searching for a "family of resemblances" related to self-willed death also suggests that analogies can be made, for the similarities outweigh the differences (by contrast, when the extreme case of Nazi euthanasia is held as the *locus classicus* of euthanasia, there is a tendency to dismiss all other examples of self-willed death as false analogies and therefore not related to the possibility of a slippery slope).

<sup>5</sup>Compare these definitions to the terminology provided by the recent Dutch guidelines on medical decisions concerning the end of life ("MDEL"): "(1) Non-treatment decisions (NTD), the withholding or withdrawal of treatment in situations where the treatment would probably have prolonged life, (2) alleviation of pain and symptoms (APS) with opioids in such dosages that the patient's life might have been shortened, (3) euthanasia and related MDEL, the prescription, supply or administration of drugs with the explicit intention of shortening life, to include euthanasia at the patient's request, assisted suicide, and life-terminating acts without explicit and persistent request" (P.J. van der Maas *et al.*, "Euthanasia and Other Medical Decisions Concerning the End of Life" (1991) 338 *The Lancet* 669 at 670). See also M.A. Somerville, "The Definition of Euthanasia — A Paradoxical Partnership" (1991) 3 *Bioethics Research Notes* 17, and her criticism of the Dutch definitions in "The Song of Death", *supra* note 3 at 2-15.

<sup>6</sup>According to slippery slope theories, even a small change in the status quo may lead to an escalation to something harmful. We are speaking here of the probability of a slope, not the necessity of one. See W.H. Nielson, "The Slippery Argument against the Legalizations of Voluntary Euthanasia" (1987) 18 *J. Social Philosophy* 14.

<sup>7</sup>T. Govier, "What's Wrong with Slippery Slope Arguments?" (1982) 12 *Can. J. of Philosophy* 303 at 316.

The present study is based on an empirical approach to slippery slopes (and so avoids many of the philosophical arguments that dismiss claims of the possibility of a slippery slope based on faulty reasoning, false analogies, and so forth).<sup>8</sup> This empirical approach involves documentation of the fact that self-willed death comes to be legitimated at a certain point in time in a culture and that over time the types of motives, methods or groups increase. (Such increase implies an increase in the total numbers of people involved, though this is impossible to document from ancient texts.) There is also attention to documenting whether there is assistance for self-willed death and whether vulnerable groups are involved, for these are clues to the serious escalation of a slope. Finally, there is an attempt to examine what links the various examples, to qualify them as contributions to a slope rather than as isolated examples that appear coincidentally. Argument over the relevance of past slippery slopes to the current debate regarding whether physician-assisted suicide should be legitimated brings the problem of proper and improper analogies centre-stage, for the discussion has moved from fact to possibility.

How did self-willed death come into existence? There are several explanations. (1) It was a way to cope with a difficult dying process, and may be as old as *homo sapiens*.<sup>9</sup> (2) It was a survival tactic of those small-scale societies that were constantly on the move and could not jeopardize their safety by caring for immobile or slow individuals. (3) It belonged to a tradition of warriors killing themselves (rather than allowing themselves to be killed when defeated by their enemies) and military oaths of loyalty to follow a leader even in death, which dates back to the development of organized warfare. Since the wives of warriors were often captured, raped and used as slaves, they too sometimes preferred self-willed death, especially after their husband's death in battle.<sup>10</sup> In fact, self-

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<sup>8</sup>For a criticism of the slippery slope argument, see Govier, *ibid.* Govier, after analyzing problems related to conceptual, precedential and causal fallacies, notes that the best arguments are causal ones that are based on real empirical claims, and that slopes in any case may occur because of the psychological fact that people are inclined to group cases together even if the analogy is faulty (*ibid.* at 316). See also G.W. Trianosky, "Rule — Utilitarianism and the Slippery Slope" (1978) 75 J. of Philosophy 414.

<sup>9</sup>It is difficult to document this theme in prehistory. Anthropological evidence of contemporary small-scale societies, which may bear resemblance to prehistoric societies, shows that self-willed death is very rare in some. This may be related to the fact that a suicide's corpse is denied burial or proper funeral rituals, for its ghost is considered malevolent. But self-willed death is prevalent in other small-scale societies. In them, people seem to take their lives when they have experienced "disappointed love or jealousy; illness or old age; grief over the death of a child, a husband, or a wife; fear of punishment; slavery or brutal treatment by a husband; remorse, shame or wounded pride, anger or revenge" (E. Westermarck, "Suicide: A Chapter in Comparative Ethics" (1908) 1 Sociological Rev. 12 at 13). These suicides seem to be spontaneous.

<sup>10</sup>There is only indirect evidence for this hypothesis that planned self-willed death first became popular in warrior circles. In India, the first documented example of *sati* (reported by the Greeks) appears only in the 4th century B.C.E., though there is an allusion to it in the earliest Hindu text, the *Rgveda* (written sometime between 1800 and 1200 B.C.E), for the wife in the funeral ritual lies down by her dead husband and then is told to arise. The fact that planned self-willed death was legitimated first in Jainism, which itself had developed in warrior circles, is one clue to its warrior origins. And the fact that Buddhism, which also developed in warrior circles in this period, rejected it after considerable debate, is still another clue that it was already an issue. Finally, several centuries later, the Hindu text, the *Mahābhārata*, referred directly to self-willed death by warriors. It

willed death in many cultures, including India, China, Japan and the Roman Empire, was common in warrior circles, likely for similar reasons, and became embedded in the heroic idiom of honour and shame.<sup>11</sup> If heaven or immortality were offered as a reward for death in battle, self-willed death may have become a substitute for death in battle for old warriors who had managed to survive. (4) It was a solution to the problems created by the fact that life-span increased dramatically from about thirty years, making debilitating old age and lingering illness on a large scale a new phenomenon for human communities, especially because medicine was still a fledgling "art" and could not be counted on to relieve pain.<sup>12</sup> (5) It was related to the development of other-worldliness and asceticism; the body became less of intrinsic worth and more of instrumental value for the attainment of transcendence. Hence, some ascetics eliminated the body through self-willed death to hasten the realization of enlightenment or salvation.<sup>13</sup>

## I. Planned Self-Willed Death in Eastern History and the Question of a Slippery Slope

### A. India (6th-4th Century B.C.E.)

#### 1. Jainism

Planned self-willed death can be traced in the historical record of India after the 6th century B.C.E.<sup>14</sup> The first religion in ancient India to legitimate

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is possible, therefore, that it had been practised for some time (indirectly informing the early Jain and Buddhist discussions). See A. Sharma & K.K. Young, "The Meaning of *ātmahano janāḥ* in *Īśā Upaniṣad 3*" (1990) 110 *J. of the American Oriental Society* 595; A. Hejib & K.K. Young, "Sati, Widowhood and Yoga" in A. Sharma, ed., *Sati: Historical and Phenomenological Essays* (Delhi: Motilal Banarsidass, 1988) 73.

<sup>11</sup>A.J.L. van Hooff, *From Autothanasia to Suicide: Self-Killing in Classical Antiquity* (London: Routledge, 1990) at 53, states, for example, "Military circles have always been counted as very favourably disposed towards self-killing."

<sup>12</sup>See S. Tilak, *Religion and Aging in the Indian Tradition* (Albany: State University of New York Press, 1989) at 26, 165, n. 11. Tilak argues, for example, that in India the life expectancy was about 30 years in the period of the *R̥gveda* but increased dramatically by the period of the Upaniṣads. Because there was now a whole class of elderly people, rather than just a few old individuals, there was a greater tendency not only to reflect on the meaning of old age and death, but also to find ways to avoid a long, difficult process of dying.

<sup>13</sup>According to one scholar, "[i]t is difficult to avoid seeing a close connection between the phenomenon of renunciation, which is a principle hallmark of Indian religion in post-Vedic times, and the relatively wide-spread practice of religious suicide" (M.G. Wiltshire, "The 'Suicide' Problem in the Pali Canon" (1983) 6 *J. Int'l Assoc. of Buddhist Studies* 124 at 128). Wiltshire attributes this, in turn, to the "alienation experienced by the indigenous people on being subjugated by the Aryans ... [which] culminates with disaffiliation from *all* phenomena, including one's individual self and its corporeal form" (*ibid.*). Although this may be a factor, I think that more important ones are extreme pain in the dying process, a warrior custom, an aging population, and an inherent logic of transcendence and asceticism that leads to a devaluation of the body. These factors also help to account for cross-cultural similarities.

<sup>14</sup>For a full discussion of this history in India, see K.K. Young, "Euthanasia: Traditional Hindu Views and the Contemporary Debate" in H.G. Coward, J.J. Lipner & K.K. Young, eds., *Hindu Ethics: Purity, Abortion, and Euthanasia* (Albany: State University of New York Press, 1989) 71. See

self-willed death was Jainism, a religion that originated in warrior circles, although it propounded, perhaps in reaction,<sup>15</sup> an extreme version of the principle of nonviolence (*ahimsā*), not harming even an insect if possible. Its founder, Mahāvīra, fasted to death while in meditation. Called *sallekhanā*, this became the model for the ideal form of death not only because it was done by the founder of the religion but also because Jains believed that such a fast would eliminate the remaining *karmas* (actions) that sustained the very existence of the body (and its perpetuation through reincarnation), thereby allowing for liberation — the realization of *kaivalya*, described as the radical autonomy of pure consciousness.

The Jain texts on the topic<sup>16</sup> point out that although *sallekhanā* was to be voluntary, it could not be undertaken by everyone, and there were specific safeguards to prevent abuse. It was to be performed, for example, only by those who had joined the monastery (*saṅgha*) and who had spent many years fasting and meditating to ensure that they had the requisite discipline to carry out the final fast to death. Moreover, they had to obtain permission for *sallekhanā* from the head of the monastery and make a formal public vow. In this sense, *sallekhanā* was considered a voluntary, rational and planned act, which could be subject to public scrutiny. Since Mahāvīra performed self-willed death when he was very old, the ideal time to do it was late in life. *Ācāraṅga* (1.7.8.1-10) states that it was to occur, however, before aspirants experienced serious illness or extreme debilitation, for they had to have total discipline and consciousness to the very end. If they fell ill during the fast, they were to break it, eat and regain their health before trying again.

These conditions, which were noted in scripture and recognized by the religious community, distinguished the phenomenon of self-willed death from suicide, which, by implication, was a spontaneous, usually private act of overwhelming despair.<sup>17</sup> It is striking that in the oldest and exemplary Jain model,

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also U. Thakur, *The History of Suicide in India: An Introduction* (Delhi: Munshiram Manoharlal, 1963); A.B. Keith, "Suicide (Hindu)" in *Encyclopaedia of Religion and Ethics*, vol. 12 (New York: Charles Scribner's Sons, 1922) 33; R. Thapar, "Death and the Hero" in S.C. Humphreys & H. King, eds., *Mortality and Immortality: The Anthropology and Archaeology of Death* (London: Academic Press, 1981) 293.

<sup>15</sup>Jainism also developed as a reaction to animal sacrifice, which was central to the ritual of the Indo-Europeans and the early history of the Brahmanical (Hindu) tradition in India.

<sup>16</sup>For a discussion of Jain self-willed death, see C. Caillat, "Fasting unto Death According to *Āyāraṅga-Sutta* and to Some *Paiṇayas*" in A.N. Upadhye et al., eds., *Mahāvīra and His Teachings* (Bombay: Navajivan Press, 1977) 113; S. Settar, *Inviting Death: An Indian Attitude towards the Ritual Death* (Leiden, Neth.: E.J. Brill, 1989). See also P.S. Jaini, *The Jaina Path of Purification* (Berkeley: University of California Press, 1979); *Gaina Sūtras*, trans. H. Jacobi, *Sacred Books of the East* (Oxford: Clarendon Press, 1895).

<sup>17</sup>It may be assumed that if legitimate self-willed death is defined as a fast to death in order to eliminate the body and achieve salvation by a bonafide monk or nun who has made a formal vow with a preceptor, this death is planned, public, limited to a certain group, done for specific religious motives, and done by a specific method. By definition, therefore, it can be distinguished from a self-willed death motivated by despair, fear, rage and passion that is spontaneous, private, available to everyone, and utilizing any (and usually easy) means. The development of a category of legitimate self-willed death assumes, therefore, the background of suicide as a spontaneous, usually private act of overwhelming despair. This distinction between legitimate self-willed death and illegit-

planned self-willed death was not a way to eliminate the extreme pain of terminal illness.<sup>18</sup> And there was absolutely no question of having someone give assistance or drugs to facilitate the process. In this sense, the early Jain ideal of *sallekhanā* was more analogous to today's concept of voluntary withholding of treatment, especially withholding of artificial nutrition and hydration, though it was done before terminal illness or extreme debilitation occurred, and it did not involve drugs for pain relief during the dying process.

## 2. Buddhism

Buddhism, another religion that emerged in warrior circles in India in the 6th century B.C.E. but promoted the concept of nonviolence (*ahimsā*), took quite a different approach to self-willed death. Lambert Schmithausen argues that

[i]n early Buddhism, the precept not to kill living beings is a categorical one, with a tendency not to allow of any exception. Take, *e.g.*, the case of self-defence. According to Vasubandhu (4th or 5th cent. AD), killing in order to protect oneself is qualified as resulting from greed, hence not sanctioned. Or a person conscripted into the army remains unstained by the collective act of killing committed in war only if he vows beforehand not to kill any living being, not even in order to save his own life.<sup>19</sup>

According to the scripture of early Buddhism, the Pali Canon of the Theravāda school, the Buddha emphasized the psychological or mental, rather than the physical, aspect of embodiment:<sup>20</sup>

The Buddhist understanding of suffering (*dukkha*) is that it is caused not by an exterior agent such as a Supreme Being, but by the illness of one's own mind, *tanhā*. This illness can and should be treated. Physical illness, aging and death are natural phenomena. They appear as suffering only when one perceives them through *tanhā* or self-centeredness.<sup>21</sup>

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imate suicide is implicit in the early Jain texts, but is explicit in the Hindu law texts of a later period (and in Jain discussions today). The Hindu lawgiver Parāśara (4:1-2) stated, for instance, that "if a man or woman hangs himself or herself through extreme pride or extreme rage or through affliction or fear, he or she falls into hell for sixty thousand years" (P.V. Kane, *History of Dharmasāstra: Ancient and Mediaeval Religious and Civil Law*, vol. 2, pt. 2 (Poona, India: Bhandarkar Oriental Research Institute, 1974) at 924). Other texts cited by Kane (and discussed later in this article) call suicide (presumably by such motives, means, *etc.*) a *śim*. The funeral rituals are not to be performed for such a suicide, though they are allowed for someone who has performed legitimate self-willed death.

<sup>18</sup>For an early description of *sallekhanā*, see *Ācāraṅga Sūtra* 1.7.8.1-10. This passage says that one should know that the time for death has arrived, but it should be before debilitation. If one falls sick during the fast, it should be stopped and food consumed until one is healthy again. But one should also rejoice in the pain occasioned by the burning up of karma in the process of dying, since the destruction of karma is necessary for liberation.

<sup>19</sup>*Buddhism and Nature* (Tokyo: International Institute for Buddhist Studies, 1991) at 45. Schmithausen seems to ignore the fact that in early Buddhism, before the time of Vasubandhu, monastics could eat meat as long as they were not the ones to kill the animals. Nonetheless, there is a strong aversion to killing in the early tradition.

<sup>20</sup>See Wiltshire, *supra* note 13 at 124-40. See also L. de la Vallée Poussin, "Suicide (Buddhist)" in *Encyclopaedia of Religion and Ethics*, *supra* note 14 at 24.

<sup>21</sup>S. Taniguchi, "Methodology of Buddhist Biomedical Ethics" in P.F. Camenisch, ed., *Religious Methods and Resources in Bioethics* (Dordrecht, Neth.: Kluwer Academic Publishers, 1994) 31 at 43.

With the removal of fear, egoity, ignorance and desire, including the desire for continued existence, through right mindfulness, one can perceive things as they really are. This is true health (*aroga*) and leads to wisdom and compassion (*karuṇā*), which will end the cycles of death and rebirth characterized by suffering. The Buddha is called the “king of physicians” and the “master of medicaments”; his teaching is called medicine or health, because he saw clearly the root of the problem of suffering and offered a solution.<sup>22</sup>

Buddhist reflections on planned self-willed death were based in part on a crisis that occurred in a monastery. In the Pali Canon’s *Book of the Discipline*, in chapter III called “Defeat (*pārājika*)”<sup>23</sup> (that is, expulsion from the monastery), it is said that the Buddha instructed his monks to meditate on their bodies as impure or unlovely (*aśubha*). In his absence, the monks began to loath their own bodies and so deprived themselves of life,<sup>24</sup> or had a sham monk, Migalaṇḍika kill them.<sup>25</sup> Although Migalaṇḍika felt remorse, he was encouraged by a follower of Māra (the personification of death/evil) to think that he had attained much merit because he had brought those monks across *samsāra* (the cycles of rebirth) to enlightenment. This inspired the sham monk to go about encouraging more monks to take their lives, one day depriving as many as sixty monks of life.<sup>26</sup> Learning of this event, the Buddha rebuked the monks saying,

Monks, it is not becoming ... , it is not seemly, it is not fit, it is not worthy of a recluse, it is not right, it should not be done ... this is not for the benefit of non-believers. ... Whatever monk should intentionally deprive a human being of life, or should look about so as to be his knife-bringer, he is also one who is defeated, he is not in communion.<sup>27</sup>

The Buddha replaced the meditation on the impurity of the body with a meditation on breathing, describing it as conducive to peace and well-being.

Although embellished with mythical details, as is common in the Pali Canon, such an incident of monks becoming depressed in their meditation on the impurity of their bodies and then killing themselves, thinking that they would attain enlightenment with the elimination of their bodies, likely happened. The Buddha must have realized the propensity to a slippery slope. After all, at least according to the preceding account, there was a gradual escalation over a number of days from the death of one monk to the deaths of sixty monks, after they heard of the benefits of self-willed death. Consequently, the Buddha took immediate action to prevent another such event by changing the form of meditation to a more positive one, by warning that a monk who instigated or helped others to die would be expelled from the monastery, and by teaching his disciples that they should await natural death. Despite the fact that the Buddha’s

<sup>22</sup>*Ibid.* at 31.

<sup>23</sup>*Book of the Discipline (Vinaya-Piṭaka)*, vol. 1 (*Suttavibhaṅga*), trans. I.B. Horner (London: Luzac, 1949) (vol. 10 of *Sacred Books of the Buddhists*, R. Evans, ed.) at 116 [hereinafter *Book of Discipline*].

<sup>24</sup>*attanāpi attānam jīvitā voropenti.*

<sup>25</sup>*Book of Discipline*, *supra* note 23 at 117.

<sup>26</sup>Wiltshire, *supra* note 13 at 129, cites M. III.269; S. IV.62; S.V. 320ff; Vin. III.68ff as passages referring to this incident.

<sup>27</sup>*Book of Discipline*, *supra* note 23 at 123.

message focused on the importance of liberation as the extinction (*nibbāna*) of the suffering and impermanence of the body, he did not want his monks and nuns to practice planned self-willed death as a means of eliminating the body and its desires, which perpetuate rebirth. This position is consistent with his other teachings. "Life is precious and dear for every living being," said the Buddha. "Judging from your own life's valuableness don't kill and don't let kill."<sup>28</sup> Even when the act of planned self-willed death was voluntary, it contravened the general principle of nonviolence (*ahimsā*).

This incident in the *Book of the Discipline* is followed by another didactic account stating that monks must neither instigate lay people to will their death nor provide the means for them to do so. A group of six monks, who were enamoured with a beautiful woman, said to her husband, who was very ill, "What need have you of this evil, difficult life? Death would be better for you than life. Hence, when you have done your time, at the breaking up of the body after death, you will pass to a happy [birth] ... , to a heaven-world ..."<sup>29</sup> This inspired the ill man to kill himself by eating "detrimental" foods and drinks. The wife, furious at the monks for instigating her husband's death, called them of low morality; others joined in the condemnation. And so did the Buddha, saying, "Whatever monk should intentionally deprive a human being of life or should look about so as to be his knife-bringer, or should praise the beauty of death, or should incite (anyone) to death ... he also is one who is defeated, he is not in communion."<sup>30</sup> In other words, this account addresses the problem of self-interest in the motivation of those who are ostensibly compassionate and want to relieve the suffering of others. It also forbids monks to assist by providing the means for someone to perform self-willed death.

Key terms in this passage have been defined by a commentator: intentionality, for instance, is something "committed knowingly, consciously, deliberately." (In two other Vinaya passages — IV.290 and III.112 — it is said that "whatever transgression is committed like this, is called a legal question [regarding] ... whether an offence be wrong."<sup>31</sup>) A knife is defined more generally as "a knife or a dagger or an arrow or a cudgel or a stone or a sword or poison or a rope."<sup>32</sup> (Another gloss adds "falling into a deep ravine, or into a pit, or down a steep precipice."<sup>33</sup>) The expansion of the methods to include poison is significant. The early physicians in India were often Buddhist monks. Because monk-physicians were the ones who not only knew the poisonous properties of drugs, but could also provide them, the issue of physician-assisted suicide was particularly relevant to early Buddhism.

This discussion of self-willed death in the *Book of the Discipline* concludes with a more general analysis regarding intentionality and act. Some monks

<sup>28</sup>See S. Kato, "Japanese Perspectives on Euthanasia" in A.S. Berger & J. Berger, eds., *To Die or Not to Die? Cross-Disciplinary, Cultural, and Legal Perspectives on the Right to Choose Death* (New York: Praeger, 1990) 67 at 70 [quoting Dhammapada, No. 130].

<sup>29</sup>*Book of Discipline*, *supra* note 23 at 125.

<sup>30</sup>*Ibid.* at 125-26.

<sup>31</sup>*Ibid.* at 126, n. 3.

<sup>32</sup>*Ibid.* at 126.

<sup>33</sup>*Ibid.* at 127.

praised, out of compassion, the beauty of death to a monk who was ill. When he died, they feared they had committed an offence that would lead to their expulsion from the monastery. The Buddha came to the same conclusion because their act was intentional and led to the death of the monk. This event is compared to other intentions and acts. For example, some monks tried to cure a monk who was ill by a treatment involving heat. When he died, the Buddha said that there was no offence, because they did not mean to cause his death. In another incident, some monks gave the same treatment intending to kill a monk, but he did not die. Although this was considered a grave offence, it did not involve expulsion from the monastery. For expulsion, the act must be intended by the one who gives the orders and also by the one who carries them out; if pain or injury occurs, it is a grave offence, but if death occurs, it is an offence of "defeat" necessitating expulsion from the monastery. If an act is unintentional, but the person dies, it is a grave offence but not "defeat".<sup>34</sup> As Wiltshire concludes, the rules of the monastic discipline (*vinaya*) condemn "any act or form of conduct which may be construed as inciting or assisting another to commit suicide [*Book of the Discipline*] ... and prescribes expulsion from the Order (*pārājika*) as punishment for the offence."<sup>35</sup>

There are four rules by which one can be expelled from a Buddhist monastery. Through the centuries they have been recited every fortnight in the monasteries and an infraction must be confessed at that time. The rule under discussion, according to the commentators, means that Buddhist monks (who were often the physicians) must not perform abortions, nor provide the means to do so, nor even information about how to do so. Similarly, they must not help a family to kill a family member whose "hands and feet are cut off," *i.e.* who is physically dependent and by extension, infirm and a burden. (The rule, therefore, is similar to the Hippocratic Oath in the West.) It may be concluded that early Buddhism was against physician-assisted suicide.

It could be argued that early Buddhism did allow an exception. It allowed people experiencing unbearable pain in dying to kill themselves. This is illustrated by the cases of the monks, Vakkali, Godhika and Channa, possibly the monk, Assaji, and the lay disciples, Anāthapiṇḍika and Dīghāvu, who were extremely ill.<sup>36</sup> Channa is described, for example, as "a sick man, in pain, grievously ill."<sup>37</sup> When he threatened to kill himself, a monk said that he would

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<sup>34</sup>See also the account in the *Pāyāsi Sutta* (Pali Canon, *Dīghanikāya* II.330-32) about Pāyāsi, a chieftain, who argued that there is no after-life and so there can be no karmic retribution for the bad acts a person does in this life; if there were another life, then good people would kill themselves to reap their rewards immediately. Mahā-Kassapa, a Buddhist monk, gives several analogies in reply, including the analogy that if a fruit is picked before its time, it will not mature but die. In addition, he says that the purpose of living is not just attaining one's own enlightenment but also acting altruistically to help others along their spiritual path.

<sup>35</sup>*Supra* note 13 at 129-30.

<sup>36</sup>For Vakkai, see S. III.119; Thag. 350-4; Dh.A. IV.117; Vism. 129; for Godhika, see S. I.120; for Channa, see M. III.263; S. IV.55; for Assaji, see S. III.124; for Anāthapiṇḍika, see M. III.258; S.V. 380; and for Dīghāvu, see S.V. 344 (cited by Wiltshire, *ibid.* at 131-32).

<sup>37</sup>"Discourse on an Exhortation to Channa (Channovādasutta)" in *The Middle Length Sayings*, vol. 3, trans. I.B. Horner (London: Luzac, 1959) (no. 31 of *Pali Text Society Translation Series*) at 315.

search for beneficial foods, medicines and care-givers. Channa replied that he had already had all this help, and so if he took his life, having been a good disciple of the Buddha, it would be without blame. He was then examined on the doctrines related to impermanence and no soul to confirm that he was not clinging to bodily existence and the desire for rebirth, after which he killed himself.<sup>38</sup>

Such is the general pattern of these self-willed deaths.<sup>39</sup> In fact, says Wiltshire,

they are cases which might be categorized as examples of self-administered euthanasia. So, when we try to understand why they are exonerated, it is initially necessary to appreciate that their act is not gratuitously performed, but constrained by force of circumstance. ... [I]t is made quite plain, in the context of the stories, that recognized conventional treatments had been and were being used to alleviate the ailment, but that they had a limited value in these particular instances. If this were not made plain, then exonerating these suicides might have the effect of opening the floodgates for people to take their own lives on the pretext of slighter complaints.<sup>40</sup>

The Buddha stated that "whoever lays down this body (*kāya*) and grasps after ... another body, is to be blamed"; in other words, says Wiltshire, "his [suicidal] act carries bad karmic consequences."<sup>41</sup> To determine whether a person had the right intention to perform self-willed death when in extreme pain, the Buddha asked the monk "'have you any anxiety ... or remorse ... ?' and 'have you anything to blame ... yourself with in regard to morals ... ?'"<sup>42</sup> Either the monk answered negatively (as did Channa) or was absolved of his anxiety by the Buddha (as was Vakkali) and so died peacefully. The monks became enlightened and the lay disciples became deities in a heaven (residence in paradise being lower than enlightenment).

But it could also be argued that there had been good palliative care offered by the monastery and that some monks had tried very hard to discourage other monks or lay people from killing themselves. Neither the monks nor the Buddha himself gave *explicit* permission for them to take their lives (and therefore did not really grant a formal exception to the general principle of *ahimsā*). Rather, after trying to prevent the suicide, they had little choice (aside from the extraordinary measure of surveillance and physical intervention) but to acknowledge the act of self-willed death by the people who were suffering extreme pain and yet were spiritually composed.

Nevertheless, one possible early Buddhist exception to natural death is analogous to today's call by some voices in the public square for recognition of planned self-willed death by someone experiencing unbearable pain in the final stage of terminal illness, except that it had to be done completely by the individual with no assistance whatsoever, and it had to be done by someone who had no desire for rebirth (as a means to eliminate a body full of pain for a new one without pain).

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<sup>38</sup>In another account, after he cut his throat he became afraid. He rallied his equilibrium, however, and then became enlightened just as he was dying.

<sup>39</sup>*Saṃyutta* 3:123.

<sup>40</sup>*Supra* note 13 at 132.

<sup>41</sup>*Ibid.* at 135.

<sup>42</sup>*Ibid.* at 136.

These requirements had the effect of discouraging most monks from performing self-willed death. Without the confirmation of their enlightenment by the Buddha himself, monks of later times no longer had the absolute confidence that they were indeed enlightened and did not want to risk rebirth itself or a worse rebirth. There was also no absolute criteria of how to recognize whether someone was an *arhant*, *i.e.* an enlightened person. In addition, one of the *pārājika* rules is that an individual cannot claim to be *arhant*. All this had the effect of being a deterrent against the development of a Buddhist practice of legitimate planned self-willed death.<sup>43</sup> Moreover, according to one later popular Theravāda view, people should live out their natural life-span because when people suffer, their bad karma comes to fruition and is eliminated; committing suicide will create more karma which will be passed onto the next life, preventing enlightenment.<sup>44</sup> Unlike today's calls by some advocates of assisted suicide, such as Sue Rodriguez, for the right to choose the time and manner of death and the right to have total control over their own body on the basis of rights to autonomy and liberty<sup>45</sup> (central values to modern Western societies<sup>46</sup>), there was a refusal by early Buddhists to accept planned self-willed death for any reason, with possibly one exception (extreme pain).

As for the Buddha himself, he fell ill at the age of eighty after eating pork; choosing the precise time and place to depart, he spoke to his disciples, meditated, and while in meditation, died — an event known as his *mahāparinibbāna* or final enlightenment.<sup>47</sup> Because the Buddha said that he could live longer if he wanted to, it could be argued that he himself was causing his own death. But the idea of his control over the time of his death could also be attributed to the fact that he was viewed by his disciples as having super-human powers. Mention of such control may have been added to an earlier account of his death, for it is parallel to the story of death-while-in-meditation of Mahāvīra, the founder of Jainism, and it goes against the early Buddhist position not to encourage

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<sup>43</sup>I thank my colleague Richard Hayes for these insights.

<sup>44</sup>One modern Buddhist critic argues:

In the case of mercy-killing no act of killing can be carried out without the arising of the thought of ill-will or repugnance towards suffering. In this sense one only terminates life when one is motivated by anger or hatred on the one hand or completely negative feelings towards the suffering of the patient on the other hand. Even though the motivation might have been good (*i.e.*, to alleviate the patient's further suffering), as soon as thought is transformed into action to terminate life it becomes an act of aversion. When a doctor performs what he believes is mercy-killing, actually it is because the pain and suffering of the patient are repugnant to him ... Subconsciously he transfers his aversion to the suffering to the one who embodies it (P. Ratanakul, "Bioethics in Thailand: The Struggle for Buddhist Solutions" (1988) 13 *J. Med. & Philosophy* 301 at 310).

<sup>45</sup>*Supra* note 1 at 583.

<sup>46</sup>See Somerville, *supra* note 3 at 15-32, for an analysis of today's context of the discussion of euthanasia. She points out that we are a commercial "throw-away" society and may extend this concept to throwing away "useless" people. We are a "death-denying" but also, with modern technology, a "death-defying" society. Accordingly, and often for contradictory reasons, we desire control, certainty and activity. Contributing to such a context are important values — such as individual rights, quality of life and dignity — that contribute to the desire for control.

<sup>47</sup>See F. Story, trans., *Last Days of the Buddha: The Mahā Parinibbāna Sutta* (Kandy, Sri Lanka: Buddhist Publication Society, 1974).

planned self-willed death. In any case, the Buddha's acceptance of his illness is more analogous to the modern idea of refusal of treatment and allowing the disease to take its natural course, than it is to directly killing oneself (euthanasia) or physician-assisted suicide.

### 3. Brahmanism (Hinduism)

Unlike Theravāda Buddhism, which possibly made the experience of unbearable pain in the process of dying an exception to natural death for a person who no longer desired rebirth (though practically discouraged the practice by such a high spiritual requirement), the Brahmanical (Hindu) religion, the majority religion with its roots in the prehistoric Indo-European past, initially refused to legitimate in any circumstance planned self-willed death. This is made evident by *Īśā Upaniṣad* (2-3), another text written about the 6th century B.C.E., which promoted the old Vedic ideal life-span of one hundred years and warned that people who are slayers of the self (*ātmaḥatyā*) will go to hell (*asuryā-loka*).<sup>48</sup>

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From this discussion, we see that when self-willed death was given religious endorsement — as in Jainism for mendicants, and possibly in Buddhism for those suffering from unbearable pain in the final throes of dying who no longer clung to bodily existence and rebirth — the practice was carefully circumscribed. This was done to create a boundary between the category of legitimate self-willed death and the category of “illegitimate” suicide, the latter probably understood as voluntary death out of overwhelming despair, fear, rage, passion or pride (as was its definition in later Indian texts). The word “illegitimate” is used here in the sense that the authorities did not officially condone such suicides as a solution to problems, though they may have felt compassion for the individual concerned. Moreover, there were threats of punishment, either in this life or in the one to come, if an individual ignored this boundary around legitimate self-willed death and contributed to a slippery slope. But were these safeguards satisfactory? Did they prevent, in fact, a slippery slope? One of the markers of a slippery slope, as mentioned previously, is that the types of motives, methods or groups increase.

## B. India (4th Century B.C.E.-20th C.E.)

### 1. Jainism

Epigraphical evidence shows that another category of Jains became involved in the practice of self-willed death and for more reasons.<sup>49</sup> After the 4th century C.E., *sallekhanā* came to be practised not just by monks and nuns, but

<sup>48</sup>Methātīthi also quotes a passage attributed to the *Śatapathabrāhmaṇa*, “na purāyusaḥ svah kāmī preyāt” (one who desires heaven should not depart from life before time). See Sharma & Young, *supra* note 10 at 595. See also *Mahābhārata*, *Adīparva* (1/9:20) and the law-giver Parasara (4:1-2).

<sup>49</sup>See S. Settar, *Pursuing Death: Philosophy and Practice of Voluntary Termination of Life* (Dharwad, India: Institute of Indian Art History, Karnatak University, 1990).

also by the laity. The *Upāsakadaśa* (Ten Lectures on the Religious Profession of a Layman) legitimated *sallekhanā* for the laity, as did the *Sāgaradharmāmṛta* (1.12). In the Jain law books, the terms and motives increased: besides a way to attain salvation, self-willed death was a way to avoid (1) calamity such as captivity by an enemy; (2) great famine; (3) old age, especially when there were problems of disease, weakness and senility; and (4) severe illness. Still, it was to be done only through the withdrawal of nutrition by self-control and without help. The individual was to make a formal vow after a confession of sins to the preceptor. Usually the person withdrew to a mountaintop to perform *sallekhanā*. Perhaps a more serious clue in the Jain tradition that a slippery slope was occurring was the fact that the word *bālamāraṇa*, which once meant foolish (*bāla*) death, or suicide out of extreme depression, for some came to mean the death of an infant/child (*bāla*), probably one who was physically deformed or mentally retarded, or the death of an “infantile” adult.<sup>50</sup>

## 2. Brahmanism (Hinduism)

Nonviolence (*ahimsā*) developed in this period as the central religious value in Hinduism. It was analogous to the Western term, “sanctity of life”, in the sense that life was to be protected and was viewed in some sense as sacred. In the great epic, the *Mahābhārata*, a basic reason is given why society must encourage nonviolence and protect life. Here is a summary of the argument and its implications:

[T]he self is valuable, therefore, we do not like harm or death. The self is valuable to others; therefore they do not like harm or death. The implication is that to protect ourselves, we should not harm or kill others so that they will not harm or kill us. Therefore compassion *should* certainly be shown to all. The need for a moral command implies a problem: though people act almost automatically to prevent harm or death to *themselves*, they may cause harm or death to *others*. Not only have they failed in doing justice to others at the most fundamental level of humanity, they have ignored another fundamental truism of life: that human beings are interdependent. People can never be completely autonomous beings. Their lives depend on others in various ways. They need to have confidence that others are committed to non-injury — especially when they are vulnerable (wounded, diseased or weak). This is the only way to remove fear at the heart of life ... To have that confidence in safety, they must start with themselves and extend protection to others.<sup>51</sup>

There were several exceptions allowed to this general principle of the sanctity of life in Hinduism: self-defense; the just war; and the category of planned self-willed death, albeit subject to certain restrictions.

It is striking that the Brahmanical (Hindu) tradition, which had once been completely against any form of planned self-willed death, now made an explicit

<sup>50</sup>P. Bilimoria, “A Report from India: The Jaina Ethic of Voluntary Death” (1992) 6 *Bioethics* 331, cites various texts and authorities for the idea of *bālamāraṇa* as a foolish death (*ibid.* at 345) and then comments, “Jaina tradition recognises what is called *bāla-māraṇa*, death of the infant or infantile, *i.e.* those severely-mentally handicapped or lastingly incompetent” (*ibid.* at 347). He gives no textual references for this, however. Because *bāla* means both foolish and child, genuine confusion may have set in or a shift of meaning was introduced to legitimate the killing of retarded or mentally ill individuals. I have no idea when this may have occurred.

<sup>51</sup>K.K. Young, “Hindu Bioethics” in Camenisch, ed., *supra* note 21, 3 at 15, discussing *Mahābhārata*, *Strīparva* 7:25-28.

distinction between illegitimate suicide out of overwhelming despair, *etc.* and legitimate self-willed death. Gradually, the latter was accepted, first for warriors (thereby acknowledging what was probably an ancient practice) and ascetics<sup>52</sup> and then for other groups such as the very old and the very ill. The lawgiver Atri<sup>53</sup> stated, for example, that

if one who is very old (beyond 70), ... cannot observe the rules of bodily purification (owing to extreme weakness ... ) ... is so ill that no medical help can be given, kills himself by throwing himself from a precipice or into a fire or water or by fasting, mourning should be observed for him for three days and *śrāddha* [funeral rituals] may be performed for him.<sup>54</sup>

To discourage suicide, which was considered a sin, Brahmin law makers said that the *śrāddha* or funeral rituals should not be performed for those who committed suicide because of rage, fear, affliction or pride by such means as fire, water, beating the head, poison or hanging.<sup>55</sup>

Like the Jains and the Buddhists, the Brahmins were careful to try to restrict the practice. The performance or non-performance of a funeral, one of the most important rites of passage that had profound implications for destiny, served to mark dramatically the boundary between legitimate self-willed death and suicide. Another deterrent was to smear the suicide's body with impure things. And if the person who attempted suicide lived, the person, along with any friends or relatives who were accomplices, were to be fined.<sup>56</sup>

Therefore, in order to prevent people from using any illness or old age in general as an easy excuse to commit suicide, there had to be other conditions present. Aparāka (who lived between 1110-1200 C.E.) said much the same thing as Atri centuries before:

He who is suffering from serious illness [and] ... cannot live, or who is very old, who has no desire left for the pleasures of any of the senses and who has carried out his tasks, may bring about his death at pleasure by resorting to *mahāprasthāna* ... [walking in a giant circle and fasting until dropping dead], by entering fire or water or by falling from a precipice. By so doing he incurs no sin and his death is far better than *tapas* [asceticism], and one should not desire to live vainly (without being able to perform the duties laid down by the *śāstra*).<sup>57</sup>

When the author says, "he who is suffering from serious illness [and] ... cannot live," it is difficult to know what is meant precisely. This probably refers to the fact that death is imminent (and therefore the person cannot live for long). The prescription that one's duties had to be fulfilled was a deterrent against the desire for self-willed death on the part of the individual who wanted to abandon

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<sup>52</sup>*Mahābhārata*, Anuśāsana parva 25:63-64; *Manu* 6:31-32; 6:76-78; *Jābālopaniṣad* (a late text). See also Young, *supra* note 14 at 101-102, for further discussion.

<sup>53</sup>It is difficult to date Atri. He is referred to in *Manu* 3:16 and so must have lived before Manu, whose date varies from the 1st century B.C.E. to 3rd C.E.

<sup>54</sup>Atri 218-219, cited in Kane, *supra* note 17 at 926.

<sup>55</sup>The funeral rituals called *śrāddha* were not to be performed for suicides (see *Manu* 5:89 and *Vasiṣṭa Dharma Sūtra* 23:14-16).

<sup>56</sup>*Mahābhārata*, Ādiparva 179.20; *Parāśara* 4:1-2; *Manu* 5:89; *Vasiṣṭa Dharma Sūtra* 23:14-16; 23:18; *Yama* 20-21. See Kane, *supra* note 17 at 924, for various references.

<sup>57</sup>Kane, *ibid.* at 926.

life when others were dependent on him or her; *dharma*, or duty in Hinduism, included everything from marriage and raising children to mandatory rituals. Similarly, a *sati*, a woman who immolated herself on the funeral pyre of her husband (which is distinguished from *sati*, the act of immolation), could not be pregnant nor have young children; she had to make a formal vow (*saṃkalpa*); and she had to have her finger burnt by a priest to see if she showed no emotion, a sign of the voluntary nature of her decision and an indication of her fortitude to carry out the act. Finally, relatives had to try their utmost to dissuade her.

One of the major developments in this period was the popularization of faster and easier means, such as jumping to one's death or drowning (means that have been common to suicides in many cultures throughout the centuries). This popularization of easy means may have been one of the main contributions to a slippery slope. In the *purāṇas*, for example, Hindu devotees to a deity were encouraged to take their own lives at a sacred river or a holy place in order to attain heaven or enlightenment quickly.<sup>58</sup> In fact, such an act was said to be equivalent to attaining enlightenment by asceticism and meditation: "the goal which is obtained by the wise one — renounced, immersed in meditation — that same goal can be achieved by one who has abandoned life at the confluence of the [rivers] Gaṅgā [Ganges] and Yamunā. Whoever perishes in the Gaṅgā with desire or without desire conquers death in heaven and does not see hell."<sup>59</sup> Salvation, in other words, could be had by *anyone* by a spontaneous act or even an unintentional one!

Such hyperbole, by stressing the universal accessibility of the means and the goal, no doubt inspired more individuals to will their own deaths. It also instigated the formation of new groups whose very identity was defined by a tradition of self-willed death. By the 7th century C.E., a class of heroes called *tulīlāl* vowed to sacrifice themselves to safeguard dignity, piety, purity and truth; a class of servants known as the *velevāli* vowed to follow their master even in death; and women, called *satis*, vowed to follow their husbands in death.<sup>60</sup> In some areas, such as the southwest corner of the Deccan (where today's provinces of Karnataka, Kerala, Andhra and Tamil Nadu meet), there were various groups performing self-willed death: warriors and their wives; Jain monastics and lay people; and women whose husbands had died. Their places of self-willed death were marked by hero stones, *niśidhi* tablets (the markers of the Jains), and *sati* stones, which had epitaphs.

Despite the popularization of self-willed death in some Hindu circles, there was no universal accord on the subject. One important Hindu philosopher-ascetic, Śaṅkara (788-838 C.E.), made no comment on it but did advocate waiting for the moment of natural death, as if an antidote to the practice of self-willed death were necessary. But another famous philosopher, the Kashmiri Abhinavagupta (10th-11th century), is said to have taken his own life and

<sup>58</sup>*Kūrmapurāṇa* 1:37:16:39; *Padmapurāṇa*, *śṛṣṭi* 60:65; *Brahmapurāṇa* 177:25.

<sup>59</sup>*Padmapurāṇa*, *śṛṣṭi* 60:65. Translation by K.K. Young.

<sup>60</sup>S. Settar & M.M. Kaliburgi, "The Hero Cult" in S. Settar & G.D. Sontheimer, eds., *Memorial Stones* (Delhi: Manipal Power Press, 1982) 17 at 30-31, 36.

inspired his disciples to follow him. According to the traditional account, after he had attained enlightenment and completed his *magnum opus*, he and his twelve hundred disciples entered a cave and never reappeared. Even if some hyperbole has entered into this account, the possibility that Abhinavagupta performed self-willed death with some disciples is likely. Another example is that of the yogi Jñānadeva (1275-96 C.E.) who, in his early twenties, buried himself alive as did his two brothers and sister.

In the 19th century, the British observed that on the island of Sagar at the mouth of the Ganges river, the lower castes hurled children into the sea to be devoured by sharks in fulfillment of their vows, and adults voluntarily jumped for the same purpose. Men also hurled themselves from a precipice in the mountains south of the Narmadā river as a means to fulfill their vows. The escalation of the slippery slope is seen even more clearly in the offering of obsequies (otherwise denied) to lepers consenting to burial alive.<sup>61</sup>

### 3. Buddhism

According to one 8th century Chinese account, Buddhists in India did not practice self-willed death.<sup>62</sup> However, certain ideas had developed in Indian Buddhist texts that may have been contributing to a change in the Buddhist perspective on this topic. In the Pali text, *The Questions of King Milinda*, the monk Nāgasena says that two statements are true: a monk should not commit suicide because he must be a guide for others, but also that the Buddha taught that one must end life to get beyond rebirth. Nāgasena's statement could be interpreted as meaning that self-willed death is legitimate if it occurs after one has guided others.

Developments in the Mahāyāna branch of Buddhism were also paving the way for changes. The Jātakas included stories of the ideal person (*bodhisattva*) sacrificing his body to feed a hungry animal, thereby establishing a precedent for altruistic self-willed death. The practice of planned self-willed death eventually entered Buddhist circles, perhaps in imitation of the *bodhisattva* ideal.<sup>63</sup> Śāntideva (about 700 C.E.), in his *Śikṣāsamuccaya*, says:

[I]n what measure is a disciple — a beginner — to imitate the heroic deeds of the *bodhisattvas* of old? ... The question is whether in such and such a case sacrifice or self-denial is really useful to our fellow creatures; whether there is not some other means of procuring universal welfare. To sum up, the sacrifice of one's body is not in accordance with a wise estimate of the spiritual needs of a beginner.<sup>64</sup>

This passage suggests that a slippery slope had begun in the Buddhist circles of India, for now young monks were willing their deaths as a means to enlightenment (unlike the earlier form of Buddhism, Theravāda, in which the monks had

<sup>61</sup>See Keith, *supra* note 14 at 35.

<sup>62</sup>I-Tsing, a Chinese Buddhist pilgrim (682-727 C.E.), mentioned during his travels to India that Indian Buddhists did not practice self-willed death, unlike Chinese Mahāyāna Buddhists. Other South Asian Buddhist countries such as Thailand that followed the Theravāda branch of Indian Buddhism have maintained the early Buddhist position. See Ratanakul, *supra* note 44.

<sup>63</sup>De la Vallée Poussin, *supra* note 20 at 26.

<sup>64</sup>*Ibid.*

to be terminally ill, in extreme pain and have no desire for rebirth). The *Saddharmapundarika*, which describes how the bodhisattva Bhaiṣajyarāja was so dissatisfied with his worship that he set himself on fire, may have been emulated in China by the 5th century C.E.<sup>65</sup>

### C. East Asia (4th-20th Century C.E.)

Whatever the origin of the Buddhist practice of self-willed death by ordinary monks who were not ill, the practice became well-established in Chinese Buddhism, for Ch'an (Zen) monks died in meditation; their bodies were then mummified (in imitation of a Taoist practice), lacquered and installed as statues for veneration in Buddhist temples.<sup>66</sup> The Pure Land school in China took literally the Indian word for enlightenment — *nibbāna* — as “blowing out” life itself rather than metaphorically as “blowing out” the flames of desire. This led to the practice of self-willed death by fire, fasting, jumping or drowning. A disciple of the Chinese monk Shan-Tao, for instance, jumped to his death to reach the Pure Land (a kind of heaven). The Buddhist practice of self-willed death in China was also related to an ancient Chinese tradition of honour and shame, especially in the military context. According to the *Yü Li*, a Taoist work, when people killed themselves out of loyalty, filial piety, chastity or friendship, they went to heaven, but those who did so spontaneously out of rage, desire to unjustly injure someone or to avoid punishment for a crime went to hell.<sup>67</sup>

One early 19th century report states that in China, suicide was “extremely common among all classes and among persons of all ages. For those who had been impelled to this course by a sense of honour the gates of heaven were open wide, and tablets bearing their names were erected in the temples in honour ...”<sup>68</sup> These heroes were servants or officers of state who chose not to survive a defeat in battle or an insult offered to the sovereign of their country. They were also young men who chose to die when they were unable to avenge an insult to their

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<sup>65</sup>See Kato, *supra* note 28 at 71. There are also a number of references by the Greeks to Indians (possibly Buddhists) performing self-willed death by fire when they were ill (see van Hooff, *supra* note 11 at 37).

Still, Schmithausen observes that “apart from [a] ... passage from the Vinaya of the Mahīśāsakas, I for one have not, so far, noted, in classical texts, any passage sanctioning (not to mention recommending) the killing, out of compassion, of a man or animal suffering from acute and incurable pain ...” (*supra* note 19 at 47).

<sup>66</sup>It is also possible that the Chinese Buddhists came to accept self-willed death because of Taoist influence. The Taoists, who thought that the soul would retain its power after death if the body were preserved, developed methods of mummification during the Western Han dynasty (206 B.C.E.-25 C.E.). By the 7th century C.E., Buddhist Ch'an abbots sat in meditation posture and died. They were then mummified by being wrapped in a cloth impregnated with lacquer (a method unique to the Buddhists). Because they were now immune to putrefaction, which was a sign that they were enlightened Buddhas, they became literally icons to be worshipped and were established in a memorial hall for this purpose. The fact that Chinese funerary practices came to use a portrait (which had to have a perfect likeness to the person) as a dwelling place for the soul may have also contributed to the Buddhist practice, for the lacquered mummy preserved even more realistically the exact features of the person. See R.H. Sharf, “The Idolization of Enlightenment: On the Mummification of Ch'an Masters in Medieval China” (1992) 23 *History of Religions* 1.

<sup>67</sup>Cited in Westermarck, *supra* note 9 at 19.

<sup>68</sup>*Ibid.* at 18.

parents; women who killed themselves on the death of their husbands; and people who killed themselves as a means of revenging an inaccessible enemy (by a kind of sympathetic and transferred magic). The latter was, "according to Chinese ideas a most effective mode of revenge, not only because the law [threw] the responsibility of the deed on him who occasioned it, but also because the disembodied soul [was] supposed to be better able than the living man to persecute the enemy."<sup>69</sup> In Japan, itinerant monks such as Kūya (903-972) and Ippen (1239-1289) drowned to obtain the Pure Land.<sup>70</sup> These events became so popular that they were often portrayed on scroll paintings. They were also imitated by ordinary disciples all over Japan who were told to "Delight in dying" and "Hasten your Death"<sup>71</sup> and so took measures to leave this defiled world.<sup>72</sup> (In fact, one of the words used in Japan today for euthanasia is *anraku-shi*, which literally means "ease-pleasure-death" and came to connote the realm of bliss, *i.e.* the Pure Land.<sup>73</sup>) In Japan, the dead were called buddhas (*hotoke*).<sup>74</sup> During the Heian period, priests who were fatally ill went to the Mujō-dō temple where they received care and ultimately a "good" death which was "hastened" in the ritual of *rinjū-gyōgi* according to the *Ichigōnhōdan*, a book "recommending religious voluntary euthanasia in Pure Land Gate."<sup>75</sup>

Japanese Zen supported the idea of planned self-willed death because of Master Dogen's injunction to cast off one's body-mind,<sup>76</sup> which was occasionally taken literally. It also supported the custom because of its integration of the samurai warriors' practice of *bushidō*, a way of dying called *seppuku/harakiri*.<sup>77</sup> This form of self-willed death was by disembowelment, an extremely painful act that took great courage and perseverance. After an 8th century mythic reference to this act by a young goddess who had fought with her husband, the practice of *seppuku* entered the customs of the military aristocracy, the samurai, which had come to power by the 12th century.

Incidents of *seppuku* reached epidemic proportions during the Mongol invasion in the 13th century: many samurai committed *seppuku* in order to show their valour in face of the enemy and to escape from capture by the enemy. From the 13th century on *seppuku* took firm roots among the members of the samurai class. Influenced by the philosophy of Zen and Confucianism, the samurai began to develop the warrior code of ethics called *Bushido*.<sup>78</sup>

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<sup>69</sup>*Ibid.*

<sup>70</sup>See H. Welch, *The Practice of Chinese Buddhism: 1900-1950* (Cambridge, Mass.: Harvard University Press, 1967). See also C.B. Becker, "Bioethics and Brain Death: The Recent Discussion in Japan" (1990) 40 *Philosophy East and West* 543 at 549.

<sup>71</sup>Kato, *supra* note 28 at 71.

<sup>72</sup>*Ibid.* at 70-71, quoting Morishita.

<sup>73</sup>Becker, *supra* note 70 at 550.

<sup>74</sup>See R.J. Smith, *Ancestor Worship in Contemporary Japan* (Stanford, Calif.: Stanford University Press, 1974) at 50-53.

<sup>75</sup>Kato, *supra* note 28 at 73.

<sup>76</sup>*Ibid.* at 72.

<sup>77</sup>Kato states, "It seems that the religious resignation found in Dogen (1238), the high priest representative of Zen Gate, and the Pure Land teachings of 'hastening death' in *Ichigōnhōdan* (1294) then merged in the *Hagakure* (1716) of 'Bushidō ...'" (*ibid.* at 73).

<sup>78</sup>T. Fusé, "Suicide and Culture in Japan: A Study of Seppuku as an Institutionalized Form of Suicide" (1980) 15 *Social Psychiatry* 57 at 58.

What started out as a way to preserve honour when defeated in battle became a substitute for capital punishment and then a way to follow one's lord in death. It became ritualized and institutionalized in the Tokugawa period (1603-1867). Toyomasa Fusé describes how these self-willed deaths actually increased in peacetime:

Prolonged peace in Tokugawa Japan witnessed an increase in a form of *seppuku* called *junshi* or "suicide to follow one's lord to the grave." In peacetime the samurai were deprived of occasions to show their valour and loyalty to their lords, so they felt the acute need of showing their sense of loyalty at the time of the death of their lords ... ; throughout the Tokugawa period, hundreds and thousands of men followed their lords to the grave. Every feudal province took enormous pride in the number of such *junshi* as a badge of distinction and loyalty.<sup>79</sup>

In other words, *seppuku* was so central to the warriors' identity that the act was encouraged more for the sake of identity and its statement of total mastery over life than for an actual military context. Famous examples were romanticized, inspiring plays and, in modern times, novels and films. In fact, it became such a central religio-cultural concept that it was categorized into many types according to whether it was voluntary or forced, and according to motive, body position, and even style of the cut.<sup>80</sup>

The practice of *seppuku* — viewed as a way to die beautifully and imaged as "falling down like cherry blossoms" or "dying with a smile"<sup>81</sup> — moved beyond warrior and monastic circles, for it also inspired among the lower classes (1) the practice of *aitai-jini* (a death pact between unhappy lovers who wanted union in another world) and (2) the practice of abandoning "useless", poor old women in distant mountains.<sup>82</sup> Thus, in the East Asian Buddhist tradition, we find that the *types* of self-willed death increased over the centuries. In Indian Buddhism, planned self-willed death possibly became a legitimate *exception* to natural death by a person experiencing unbearable pain in the process of dying who had no desire for rebirth (though there is some controversy whether it was formally sanctioned as an exception). This exception, or the hermeneutical scope in the scriptures for it, expanded to include planned self-willed death by monastics in general; then by novice monks, religious laity, and warriors; and finally by commoners such as lovers, old women and men, and poor people. The fact that there are over forty-five terms in Japanese to distinguish the various types of self-willed death is a clue to the slope: *shinjū* (double suicide, family suicide); *ikka shinjū* (suicide of a whole house); *jōshi* (lovers' suicide); *junkoku* (suicide for one's country); *junsō* (burial of others with the deceased), *etc.*<sup>83</sup>

<sup>79</sup>*Ibid.* at 59.

<sup>80</sup>See *ibid.* at 60 for an elaboration of this typology.

<sup>81</sup>See Kato, *supra* note 28 at 74. See also the discussion by Somerville in "The Song of Death", *supra* note 3, on how the modern desire for euthanasia is based on anaesthetization and estheticization.

<sup>82</sup>Kato, *ibid.* at 72-74. According to Kato (*ibid.* at 74) this was described in *Narayama-bushi-ko* by Shichiro Hukasawa.

<sup>83</sup>I thank my colleague, Dr. Victor Hori, for showing me his translation of over 45 terms in the Japanese dictionary related to forms of Japanese suicide, some distinguished by the people involved, others by the method or motive.

Fusé relates the popularization of planned self-willed death in Japan more generally to the importance of roles and status for the Japanese, and the fact that they were

vulnerable to social disturbances or personal mistakes or inadvertencies that [brought] about a change in role definition. Shame and chagrin [were] so extreme among the Japanese, especially in a perceived threat to loss of social status, that the individual [could not] contemplate life henceforth, and rather than face the necessity of continuing life in an altered or degraded social role, he [chose] to end it all.<sup>84</sup>

Although some Buddhists dismiss the case of *seppuku* because it was a Japanese custom which originated outside the religion, it could be argued that it was nonetheless religiously endorsed by the religion and became integrated into the Zen world view. This was, moreover, by no means the first time that Buddhism had endorsed such a practice of self-willed death, despite its initial reluctance to do so.

Shigeru Kato states that the Japanese willingness to perform self-willed death has its roots in (1) the ancient Shinto religion which cultivated a "religious holism swallowing individual consciousness"<sup>85</sup> and (2) the Buddhist doctrine that the cycles of reincarnation are characterized by suffering and transience and in the doctrine that the world ultimately is emptiness (*śūnyatā*). "It may not be appropriate to say that Buddhism alone has made Japan 'a kingdom of suicide,'" comments Kato, "but we cannot deny that it has strengthened the Japanese tendency to beautify suicide or absolve suicide of a sense of sin."<sup>86</sup> Fusé argues that this was the responsibility of Buddhism, for Shinto was life-affirming.<sup>87</sup>

Although there are suggestions of a slippery slope in India, China and Japan, it is important to point out that the practice was, by and large, voluntary and that it was legitimated initially by the elite for the elite classes in the society, not as a way to encourage "undesirables" to eliminate themselves, though the latter gradually occurred as in the case of lepers, widows and old people, especially old women.<sup>88</sup> Still, it is hard to determine whether it was completely voluntary. It is often pointed out that indoctrination may not only encourage people to consider a certain act as a norm or religious ideal, it may also encourage people to perform it. The religious instigation to salvation and the promotion of an easy or quick means to attain it, as in some forms of popular Hinduism and East Asian Buddhism, cast a shadow on the idea that these forms of planned self-willed death were completely voluntary.

The possibility of indoctrination has long been viewed as one of the problems with the samurai, for by the Tokugawa period they were virtually obliged to live up to the canons of samurai courage and to invent an occasion such as

<sup>84</sup>*Supra* note 78 at 62.

<sup>85</sup>*Supra* note 28 at 72.

<sup>86</sup>*Ibid.* at 71.

<sup>87</sup>*Supra* note 78 at 61-62.

<sup>88</sup>The case of self-willed death as a substitution for capital punishment is a common exception to this generalization.

self-willed death, if need be, to express this. The practice of *sati* may also have involved indoctrination. In late classical and medieval India, Hindu women were inspired from early childhood by religious stories and rituals to look on *sati* as the ideal form of death. Moreover, there was no other positive role for elite widows; widowhood was viewed as extremely inauspicious. And widows were forced to live with no comforts and possessions with their former husband's family, for their presence was sometimes resented as an economic burden or economic threat (especially, in those regions where a wife enjoyed a right to inheritance).<sup>89</sup>

This question of being a burden has relevance for today, of course, because at least some people who are attracted to assisted suicide say that they do not want to be a burden to others in illness or old age. With an aging population and constant media attention on problems of allocation of societal resources, which will become increasingly serious for the health care system, there may be an insidious indoctrination to the view that a non-productive person is a burden to his or her family in particular and society in general. For example, recently Jain leaders, when reevaluating the practice of *sallekhanā* with a view to restoring it, acknowledged that an individual's desire not to be a burden to the community is a legitimate reason to want to perform *sallekhanā*.<sup>90</sup>

The problem of feeling themselves a burden is particularly acute for today's old women in Japan. There are *pokkuri* temples visited mainly by old women. After their worship, the old women buy "a piece of underwear — available in all sizes and shapes — bearing a stamp with the figure of Ususama Myōō."<sup>91</sup> The underwear symbolizes the fact that the women do not want to become incontinent and a burden to their daughters-in-law who must take care of them (often in tiny Tokyo apartments). Feeling vulnerable because they may become dependent on others, they pray for a sudden and easy death. These temples are associated with Pure Land Buddhism, the tradition that once advocated planned self-willed death. It is not surprising, therefore, to read that older people sometimes kill themselves by drowning after visiting one of these temples. The phenomenon of the *pokkuri* temples may be related to the fact that

[t]he suicide rate in Japan is characterized by the growing number of suicides in higher age groups. Some 28 percent of all suicides in Japan are committed by people over sixty, with the highest rate found among those over eighty. The suicide

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<sup>89</sup>Some idea of the numbers involved can be found on the stones marking a place where a self-willed death occurred. Over 7,000 stones marking various types of planned self-willed death have been found in the province of Karnataka alone. See S. Settar, "Memorial Stones in South India" in Settar & Sontheimer, eds., *supra* note 60 at 193. According to British records, the number of *satis* varied by year (378 in 1815 and 839 in 1818 in Bengal, for instance). One estimate is that there were about 5000 *satis* annually all over India. *Satis* most commonly included the lowest caste (Śūdras) and the highest (Brahmins); very often the *sati* was from a poor family. See A. Yang, "The Many Faces of Sati in the Early Nineteenth Century" (1987) 42-43 *Manushi: A Journal about Women and Society* 15.

<sup>90</sup>See Bilimoria, *supra* note 50 at 348.

<sup>91</sup>F. Wöss, "Pokkuri-Temples and Aging: Rituals for Approaching Death" in M.R. Mullins, S. Susumu & P.L. Swanson, eds., *Religion and Society in Modern Japan: Selected Readings* (Berkeley, Calif.: Asian Humanities Press, 1993) 191 at 193.

rate for women over seventy-five was far higher in Japan than in any other country covered by the WHO statistics for 1988 ...<sup>92</sup>

Aside from the question of indoctrination and the problem of old people feeling themselves a burden, it is important to note that planned self-willed death in India, China and Japan was never associated with assistance in its initial historical stages, but only late in its development at a time when the popularity of the phenomenon had increased. Thus, in India, a woman who was performing *sati* (which became a popular form of self-willed death only after other types had become common) would be held down by the priests when the flames began to curl around her. By traditional standards this was viewed as legitimate assistance to help the woman carry out her resolve, which she had already made public and for which she had been tested to determine that she alone had made the decision and that she had the requisite fortitude. In Japan, retainers helped those trying to reach the Pure Land by drowning in a river; a rope was tied around the aspirants' waists so that if they changed their mind, the retainers could haul them out.<sup>93</sup> Samurai warriors also sometimes received help from relatives or friends who would decapitate them to complete their act of *seppuku*;<sup>94</sup> by the Tokugawa period, this was ceremoniously done by a master swordsman, who, after the very first stab by the warrior, took over and finished the act immediately. This development conforms to the pattern of an escalation in the slippery slope based on a quicker and easier means and the involvement of assistants.

The aid of physicians and drugs was virtually never mentioned in Indian texts as a means to help an individual carry out an act of planned self-willed death (which does not rule out the possibility that physicians assisted behind the scenes<sup>95</sup>). I can only speculate on the reasons for this. The *Caraka Samhitā*, an encyclopaedic Indian text on medicine, written about the 1st century B.C.E., states that a physician should not treat a dying patient.<sup>96</sup> Because physicians were trying hard to establish and protect their reputations (and distinguish themselves from the many quacks), they probably did not want to be associated with cases involving terminally ill persons. They also did not want to be seen as directly assisting death through the provision of drugs, though their pharmaceutical knowledge probably was extensive enough to provide deadly concoctions should they have desired to be of assistance in this manner. The contact with Greece after the 4th century B.C.E., and later with the Roman Empire, could have also alerted them to the use of hemlock or opium for this purpose.<sup>97</sup>

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<sup>92</sup>*Ibid.* at 200 [notes omitted].

<sup>93</sup>See Becker, *supra* note 70 at 549.

<sup>94</sup>The friend or relative who assisted, called *kaishaku*, would behead the warrior to shorten the agony of dying. See Kato, *supra* note 28 at 74.

<sup>95</sup>There is a hint that some physicians may have provided poison to people, for in the Buddhist passage about the six monks who encouraged the ill husband of a beautiful woman to die, discussed previously, the word knife as a means to kill oneself was glossed to include poison. It is possible that physicians, at least the less reputable ones, made poison available to the dying.

<sup>96</sup>*Agniveśa's Caraka Samhitā*, 1:62-63. For discussion, see Young, *supra* note 51 at 20.

<sup>97</sup>Both cultures were aware of each others practices of self-willed death. The Greeks were quite fascinated by the practice of *sati* in India (and in Greece itself by the ostentatious manner by which some Indians residing there died by publicly burning themselves). See van Hooff, *supra* note 11 at 37-38.

It is also possible that physicians' refusal to assist, especially by giving drugs, was related to their fear that they may be accused of homicide. In early Buddhist Theravāda circles, there was no legitimation of physician-assisted self-willed death because monks were the physicians, and any hint that a monk was instigating another person to suicide or providing the means (such as poison) was cause for expulsion from the monastery if death occurred. And it is possible that the Buddhists, Hindus and Jains themselves did not want to be drugged; they were supposed to be fully conscious at the moment of death, for their final thoughts could influence destiny.<sup>98</sup> The closest analogy to assistance, in the Asian context, was the case of religious figures, family, friends or associates assisting by physically helping the person to carry out the act of dying (by burning, drowning or decapitation) after it had been publicly declared and planned.

As for the secular courts or state authorities giving individuals permission for planned self-willed death or expecting them to take their lives in certain situations, this never happened to my knowledge in the history of India, China and Japan (unlike in the history of the West), with a few exceptions: (1) parents eliminating deformed infants; (2) criminals eliminating themselves as a substitute for capital punishment; and (3) warriors or *kamikaze* pilots being expected to die in certain circumstances.

And as for the State ordering certain groups to die by self-willed death or to be killed by assistance, this too never occurred to my knowledge. The following are possible reasons why planned self-willed death in Asia did not have an extreme slippery slope: (1) the fact that the religions which originated in India — Jainism, Hinduism and Buddhism — have had a strong sanctity of life principle in their concept of *ahimsā* and allowed very few exceptions; (2) the fact that they could attribute meaning to suffering through the law of *karma* and see the dying process in a positive light as the final step to a better rebirth or enlightenment/heaven; (3) the fact that they tried to create a firm boundary around the concept of self-willed death when they legitimated it, in particular, insisting on its voluntary nature in a context of public accountability; (4) the fact that they expected physicians to assist the healing process but not the final dying process; and (5) the fact that the physicians themselves did not want to become involved, in order to establish or protect their reputations and to avoid any suggestion of homicide.

Finally, it may be argued that the various instances of planned self-willed death in India, and by extension in Asia, are not isolated examples but are connected by a continuous cultural, religious and intellectual milieu. Buddhism and Jainism were religions that developed in the same locale (the Gangetic plain) and virtually the same period (the 6th century B.C.E.) in India. Both religions share common features, including stories and concepts, as a result. The Brahmanical (Hindu) tradition was also present in this region at this time, its leaders interacting with those of the other two religions as basic doctrines were being formulated. Moreover, in classical times (from the 4th century B.C.E. to the 10th century C.E.), these religions all spread together to the different regions of

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<sup>98</sup>For a Hindu example, see *Bhagavad Gītā* 8:5-6.

the subcontinent and engaged in constant debate and interaction. There was a continuous exchange of ideas and practices. On the topic of self-willed death, this can be documented by observing the proximity of stones marking the place of self-willed deaths belonging to the three religions, especially in certain regions of India.

The fact that Buddhism originated in India and then travelled to other Asian countries established a religious and cultural continuity of the religion in general. There is some debate over whether there was continuity of the particular practice of self-willed death from Indian to East Asian Buddhism, because it was discouraged in the former and became common only in the latter. But the fact that Indian Mahāyāna texts had already introduced the notion of self-willed death and the fact that Indian Buddhism itself had taken up the practice by the 8th century C.E. suggest that there was continuity. This continuity was reinforced by Buddhist assimilation of the Taoist practice of mummification for immortality, Confucian funerary practices, Chinese and Japanese misunderstandings of Indian Buddhist texts, and local warrior traditions.

## H. Planned Self-Willed Death in Western History and the Question of a Slippery Slope

### A. Greece (*The Classical and Hellenistic Periods: 5th-1st century B.C.E.*)

Turning now to the West, we find some similarities in the practice of planned self-willed death. First, it enters the historical record in Greece about the same time as in India, the 6th-5th century B.C.E. One of the most famous and earliest cases is that of Socrates (b. 470–d. 399), who died by drinking hemlock. Compulsory self-willed death had become a substitute for capital punishment. Hemlock may have been first used for this purpose in the latter part of the 5th century B.C.E. Socrates, as we know, had been condemned to death by the Athenian court because of accusations of corrupting the youth and atheism; hence, he was permitted to take hemlock so that the authorities would not have to do the killing. Even though he had had the opportunity of fasting to death when in prison, and his students had offered him a way to escape the imposed death, Socrates refused, perhaps because he was already an old man (71) who wanted a dramatic death and saw no purpose in living his remaining days in hiding or exile.

For Socrates, then, drinking hemlock was both forced on him by the Athenian court as a form of capital punishment and accepted by him as the best solution. That the means (hemlock) was not of his choice, absolved him of any shame of dying the “easy” way by drugs. It also gave him an opportunity to exhibit his philosophical stance at the moment of dying (he was surrounded by his students) and therefore to die in a public, honourable, noble and manly way. In fact, the theatricality of the occasion must have appealed to him — a final speech after being condemned to death by the authorities. Plato reported in the *Phaedo* how Socrates sipped the cup of death easily and cheerfully as if he were toasting a friend. (Exhibitionism became a feature of planned self-willed deaths and contributed to the fame of the person who died in this manner.) But Socrates (or is it Plato speaking?) pointed out that although philosophers may want to die to free the soul from the body, they should not kill themselves and desert their

roles unless the god sends some *necessity* upon them. Such a necessity for Socrates involved being condemned to death by the Athenian court.

Just as self-willed death in India became popular at a time when life expectancy was increasing, making aging a more common phenomenon, so too in Greece.<sup>99</sup> And just as in India, China and Japan, "honour suicides to avoid capture, humiliation, and shameful death [were] frequent in the conflicts ...,"<sup>100</sup> so too in ancient Greece. In the early literature, Ajax killed himself by his sword, as did Menoikeur, Achilles and Haimon. In real life, Dimnos killed himself when it was revealed that he had conspired against Alexander the Great.<sup>101</sup> Moreover, just as fasting to death was one of the earliest forms of self-willed death to be legitimated in India, so too this seems to be the case in classical Greece (where it was called *karteria*).<sup>102</sup> And just as fasting was considered noble in some circles in India, so too was fasting considered noble in ancient Greece.<sup>103</sup>

It is likely that a great plague in Athens (430-423 B.C.E.) and the Peloponnesian War (431-404 B.C.E.), leading to the destruction of the political autonomy of the Greek city-states — events that dramatically increased fear, stress, hopelessness and alienation — contributed indirectly to the popularity of planned self-willed death among elite men (warriors and philosophers, some of whom had once been warriors). The fact that Plato and Aristotle debated the subject, and tried to contain the practice, as will be discussed shortly, is a clue that the practice was escalating.

Just after this period, schools of Greek philosophy that endorsed planned self-willed death — the Stoic, Cynic and Cyrenaic — developed.<sup>104</sup> For example,

in the Stoic tradition, perhaps reaching as far back as Zeno himself, [there was] a strong and very well-articulated defense of the appropriateness and correctness

<sup>99</sup>From the 6th century B.C.E. on, many philosophers were living to old age: Pythagoras died at 82; Anaxagoras at 72; Empedocles at 60; Socrates at 71; Plato at 80; Aristotle at 62; Speusippus at 68; Epicurus at 71; Zeno at 72; Dionysios at 80; Cleanthes at 72; Diogenes at 80 (see van Hooff, *supra* note 11 at 36).

<sup>100</sup>G. Rosen, "History in the Study of Suicide" (1971) 1 *Psychological Medicine* 267 at 268. Roman warriors also had this practice.

<sup>101</sup>Van Hooff, *supra* note 11 at 48.

<sup>102</sup>Although *karteria* can mean simply brave endurance of pain, van Hooff shows, on the basis of his examination of the context of many references to this term, that it is commonly employed to indicate fasting as an actual means of self-willed death. See van Hooff, *ibid.* at 42, for a statistical examination of the methods (including fasting) used for self-willed death in 626 cases where the methods have been specified. In Latin, fasting to death was called *inedia*. Van Hooff observes that "at an early date, perhaps already in the fifth century B.C., there existed medical experience of voluntary death by fasting. This type of death cannot have been too uncommon since it attracted the attention of doctors" (*ibid.* at 43-45).

<sup>103</sup>*Ibid.* at 42. Also, "starving oneself to death was regarded in antiquity as a method which demonstrated noble resoluteness, preferably to be used in sight of an admiring or sympathetic public ... As a passive method, abstaining from food was hardly counted as an act of 'laying hands upon oneself'; rather it was the perfect way of 'leading oneself out'" (*ibid.* at 47).

<sup>104</sup>See the discussions in J.M. Cooper, "Greek Philosophers on Euthanasia and Suicide" in B.A. Brody, ed., *Suicide and Euthanasia: Historical and Contemporary Themes* (Dordrecht, Neth.: Kluwer Academic Publishers, 1989) 9. See also F.H. Sandbach, *The Stoics* (London: Chatto & Windus, 1975); J.L. Saunders, *Greek and Roman Philosophy after Aristotle* (New York: Free Press, 1966); R.D. Hicks, *Stoic and Epicurean* (New York: Russell & Russell, 1962); A.A. Long, *Hellenistic Philosophy: Stoics, Epicureans, Sceptics*, 2d ed. (Berkeley: University of California Press, 1986).

of suicide in many circumstances: whenever, for example, one [could] judge that, because of incurable illness, or extreme pain, or the absence of the necessary means to support oneself, a "natural" life, in the sense of a biologically smoothly functioning, unhindered one, [was] no longer possible.<sup>105</sup>

Although self-willed death was legitimated by these philosophers, it is important to note that they did not give a general endorsement of the practice by any means and in any circumstance, but limited it to specific circumstances and reasons such as extreme pain or extreme poverty.<sup>106</sup> Moreover, they did not officially endorse assistance and drugs. And when there were references to how philosophers belonging to the early phase of these schools died, it was by a difficult means. (Indeed, it is hard to find examples of philosophers dying by an easy means, although they were readily available.) There was no blanket endorsement, in other words, of autonomy and liberty legitimating death by one's own will at any time, any place and by any means, especially an *easy* means, as was true in some of the late Stoic writings in Rome (and as is sometimes argued in the popular press today).<sup>107</sup>

Greek views of self-willed death must be understood in terms of the prevailing values of the time: honour and shame. An honourable self-willed death expressed courage, rationality, planning and a philosophical perspective. A shameful one expressed fear, irrationality, spontaneity and no philosophical perspective. An honourable death was a public event and contributed to a person's (especially an elite man's) fame. By contrast, a shameful death was private and forgotten. Finally, an honourable death was to be aesthetic and preserve the integrity of the face, while a shameful one need not do so.<sup>108</sup>

Hemlock<sup>109</sup> was not endorsed as a noble means of self-willed death. In fact, Greek philosophers did not even comment on it, nor drugs in general, as a

<sup>105</sup>Cooper, *ibid.* at 24.

<sup>106</sup>The Stoics ... were far from holding a categorical approval of suicide; the carefully formulated early Stoic view permitted suicide in certain cases (*e.g.*, when beset by mental deterioration or by debilitating disease or by extreme poverty, or when necessary to discharge one's duties or to avoid disgrace) but opposed it in other cases ... (B.A. Brody, "Introduction" in Brody, ed., *supra* note 104, 1 at 2).

M. Griffin ("Philosophy, Cato, and Roman Suicide: I" (1986) 33 *Greece & Rome* 64 at 72-73) says, "The Stoics devoted a lot of thought to what the acceptable reasons for committing suicide were. For them, ... [duties or appropriate acts] were acts for which a reasoned defence can be adduced (D.L. 7.107), but suicide belonged to a special class of duties, ... those imposed by exceptional circumstances (D.L. 7.109)." Diogenes Laertius 7:129-131 also said that the wise man, for reasonable cause, may exit from life on his country's behalf; for the sake of his friends; and if he suffers intolerable pain, mutilation or incurable disease. See also the five reasons for suicide associated with the Stoics by Olympiodorus, a neo-platonist commentator of the 6th century, in Cooper, *ibid.* at 36, n. 20.

<sup>107</sup>See Brody, *ibid.*

<sup>108</sup>Van Hooff points out that drugs caused disfigurement; because there was an ancient tradition that the appearance of the mortal body would influence the after-life, people did not want to violate the integrity of their bodies (*supra* note 11 at 77).

<sup>109</sup>Hemlock was also well-known to the biblical world. See Conium Maculatum L. in J.A. Duke, ed., *Medicinal Plants of the Bible* (Owerri: A Division of Conch Magazine LH, 1983) at 49-52; J.A. Duke, *CRC Handbook of Medicinal Herbs* (Boca Raton, Florida: CRC Press, 1985) at 139-40.

means of self-willed death, though they could easily have done so.<sup>110</sup> By implication, this means that self-willed death by drugs or physician-assisted suicide was a shameful death (contrary to what our contemporary rhetoric — self-willed death/assisted suicide as “death with dignity” — would have us believe of the classical Greek texts).<sup>111</sup> It is also striking that the word “euthanasia” does not appear in Anton J.L. van Hooff’s list of 167 words referring to self-willed death in Greek texts (nor does it appear in his list of Latin ones).<sup>112</sup> Cooper claims that it is a coinage of the Hellenistic period meaning either an easy or a noble death, though he cites only a reference for “noble” (Cicero in *ad Atticum* 16,7,3).<sup>113</sup> Aside from the special case of Socrates,<sup>114</sup> an easy death was a shameful death; a difficult one (fasting or by sword) was noble. Why? Because determination and courage were needed for the latter, and only a few could do it. Anyone could die by drugs, for that was easy. It is also likely that the very difficulty of the means was an important deterrent, so that not everyone would be tempted, thereby leading to a slippery slope.

Despite the tendency to legitimate planned self-willed death only for old warriors or old philosophers who had “good reasons”, there are indications that in some places the penchant for planned self-willed death became a virtual epidemic. The Cyrenaic philosopher, Hegesias (4th-3rd century B.C.E.), taught, for example, that death was the only goal of life because happiness was so fleeting. He wrote a Job-like tale about a man who was so overcome by troubles that he fasted to death. After many of Hegesias’ students took this tale to heart and killed themselves, King Ptolemy prevented the “too successful ‘Death-urger’ (*Peisithanatos*) from teaching any longer, in order to dam the wave of suicides.”<sup>115</sup>

<sup>110</sup>Van Hooff, *supra* note 11 at 60.

<sup>111</sup>Van Hooff, discussing Aristophanes’ *Frogs*, notes that “rope and ladder, a jump from a tower and finally hemlock” are mentioned for their comic effect as “the three most miserable ways of voluntary death ... Such banal methods could be expected in slaves, as Roman law proves. ... Among the means which a ‘bad slave’ (*malus servus*) is supposed to have applied, again we have the triad hanging, jumping and ‘a medicine by way of poison’” (*ibid.* at 59-60).

<sup>112</sup>For a full list of suicidal vocabulary in Greek and Latin, see van Hooff, *ibid.* at 243-50, app. C.

<sup>113</sup>Cooper, *supra* note 104 at 9. It is likely that euthanasia was a term that referred to a natural death that was not painful and therefore “easy”.

<sup>114</sup>See also the discussion in M. Smith, “Did Socrates Kill Himself Intentionally?” (1980) 55 *Philosophy* 253; R.G. Frey, “Did Socrates Commit Suicide?” (1978) 53 *Philosophy* 106; Plato, *Great Dialogues of Plato*, trans. E.H. Warmington & P.G. Rouse (New York: New American Library, 1956); J.C.G. Strachan, “Who Did Forbid Suicide at *Phaedo* 62b?” (1970) 20 *The Classical Quarterly* 216.

The case of Socrates belongs to the special context of capital punishment. This case is relevant to the discussion at hand, for several reasons. Death by hemlock, which is usually viewed as a shameful death, was not so shameful for Socrates because it was *by necessity* and because he himself treated it as a noble death. Also, later figures such as Cato chose to kill themselves after reading the account of Socrates’ death (even though they were not faced with capital punishment). Seneca, while he had other reasons, nonetheless alludes to Socrates’ death. Thus, Socrates’ death associates a famous philosopher and death by hemlock. It is possible that this association contributed over time to the change from hemlock viewed as a shameful means to hemlock viewed as a noble means. At least this is the case today, for the Hemlock Society was formed to try to legitimate and legalize death by poison and assisted suicide as a “death with dignity”.

<sup>115</sup>Van Hooff, *supra* note 11 at 42.

There are also clues that other groups, if not greater numbers of people, resorted to this practice, suggesting again that a slippery slope was occurring. It is likely that the use of hemlock by commoners was largely responsible for this. In Ceos, where hemlock was cultivated and processed, there are accounts of a practice, if not a law, that anyone over sixty had to take hemlock to end their lives.<sup>116</sup> Concoctions made with hemlock had become so deadly and worked so quickly that a literature on antidotes developed; this suggests that people in a moment of depression turned too quickly to hemlock for a solution. Although so-called "noble" self-willed death was generally by a difficult means such as by fasting or sword, in some cities self-willed death by hemlock lost its association with shame and became not only common but even legitimate in the eyes of the political authorities. Thebes and Massalia (modern Marseilles) were, for instance, Greek cities where self-willed death by hemlock had become common. In the latter, according to van Hooff, anyone could resort to death in this manner by seeking permission from the authorities; if adequate reasons were presented, the person received a dose of poison at the town hall.<sup>117</sup>

The tradition of the philosophers' "noble" self-willed death was given a literary seal of approval in the *Lives of the Philosophers* by Diogenes Laertius (circa 200 C.E.). Because self-willed death appeared like an "obligatory last act" for the philosophers, the text reflects what may have become a cultural institutionalization of planned self-willed death for elite men.<sup>118</sup> Laertius said that one may perform self-willed death "for the sake of one's country, for the salvation of friends, and because of intolerable suffering, mutilation, [and] incurable diseases."<sup>119</sup>

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<sup>116</sup>This is reported by a number of authors such as Strabo (63 B.C.E.-23 C.E.), *Geography* 10, 5-6, who says that it occurred during the siege of Athens. See also *Theophrastus: Enquiry into Plants and Minor Works on Odours and Weather Signs*, vol. 2, trans. Sir Arthur Hort (London: William Heinemann, 1916) at 305. This tradition may have continued for some centuries; Valerius Maximus describes in his *Memorable Facts and Sayings* how an old Greek woman died from hemlock in the traditional manner before Sextus Pompeius, whom she had invited to the event (van Hooff, *ibid.* at 32).

<sup>117</sup>Van Hooff, *ibid.* at 167-68. Van Hooff dismisses the historicity of this reference because it is lacking in precise details. This is in keeping with his sympathy for the practice of planned self-willed death and physician-assisted suicide, which colours his interpretation despite his usually scholarly treatment of the topic.

<sup>118</sup>Some accounts of the reasons for a planned self-willed death seem trivial; according to Diogenes Laertius (7.26-28 and 7.175-176), Zeno broke his toe and Cleanthes had to abstain from food for two days because his gums were inflamed. See D. Laertius, *Lives of Eminent Philosophers*, vols. 1 & 2, trans. R.D. Hicks (Cambridge, Mass.: Harvard University Press, 1950). It is difficult to know whether Diogenes Laertius, who lived possibly in Anatolia (circa 200 C.E.) and who seemed to be morbidly fascinated with the topic of death, was reporting fact or fiction. His style is that of a hagiographer, and under the influence of later Stoicism, which had more of a tendency to accept autonomy in general rather than in particular circumstances as providing a good reason for self-willed death, he could have included some legendary material (of course, it is also possible that both Zeno and Cleanthes, being old and wanting to avoid the dying process altogether, chose these seemingly trivial situations to start the process of dying).

<sup>119</sup>D. Gourevitch, "Suicide among the Sick in Classical Antiquity" (1969) 43 *Bulletin of the History of Medicine* 501 at 510.

**B. Rome (*The Republican and Imperial Periods: 3rd Century B.C.E.-5th Century C.E.*)**

It was not only in ancient Greece and her colonies where planned self-willed death was to be found; it was also practised in the Roman Empire (which included some authority over Greece from the 2nd century B.C.E. on). Despite the fact that early Rome abbreviated funerals for suicides as a deterrent (as in India and Greece), the practice of planned self-willed death became common, in part because of an ancient practice among Roman warriors and in part from contact with the Greek practice, especially through Greek prisoners of war who were physicians (*circa* 265 B.C.E.) and through Romans who went to Athens and Corinth as ambassadors as of 228 B.C.E.

Once again, the practice of planned self-willed death seems to have increased in the wake of political problems that bred despair (for instance, during the civil war that ended the Roman Republic in the 1st century B.C.E., when some senators politically opposed the emperor and took their own lives rather than lose face, be tortured or be killed). The decay of religious belief, confusion over the meaning and purpose of life, and the popularity of Stoic thought, which had become a standard feature of the educational curriculum, also played their part. It is beyond the scope of the present article to review the discussions or actual examples of self-willed death by Cato, Seneca, Lucan, Tacitus, Pliny, Cleombrotus and others,<sup>120</sup> except to point out that some scholars, such as Miriam Griffin and George Rosen, think that planned self-willed death became so popular that it was virtually a fashion or cult.<sup>121</sup>

Famous figures not only wrote about it or actually did it — often emphasizing its heroic and theatrical nature — they also inspired others. What for some had been a necessity when faced with political accusation, torture, death or a way “to secure certain posthumous advantages which the suicide had over the condemned in respect of the disposal of his person and his property,”<sup>122</sup> became for others simply a theatrical way to die.<sup>123</sup> Among elite men, fasting and death by sword remained common means, though cutting open the veins also occurred. Van Hooff concludes, “It seems that at the turn of the first century it was accepted behaviour to draw up the balance-sheet of life and to decide for

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<sup>120</sup>During the civil war that ended the Roman Republic (at the end of the 1st century B.C.E.), planned self-willed deaths increased. It is striking how often Plato's death scene is said to be the inspiration for a planned self-willed death (as with Cato).

See also R. Garland, “Death without Dishonour: Suicide in the Ancient World” *History Today* (January 1983) 33; *The Letters of the Younger Pliny*, trans. B. Radice (Middlesex, U.K.: Penguin Books, 1977); Rosen, *supra* note 100; van Hooff, *supra* note 11.

<sup>121</sup>See Griffin, *supra* note 106. See also Rosen, *ibid.* at 271, who says of self-willed death that “it became almost a social disease.”

<sup>122</sup>A.W. Mair, “Suicide (Greek and Roman)” in *Encyclopaedia of Religion and Ethics*, *supra* note 14 at 32. At the time of the Empire, the goods of a condemned person were generally confiscated and he was not given burial rites (this was not true under the Republic).

<sup>123</sup>“[L]ater Stoics like Panaitios (c. 140 B.C.E.) and Posidonios (c. 130-46 B.C.E.) ... [interpreted suicide] in the sense not of an external compulsion, but of an inner overmastering impulse. By this interpretation the whole philosophic anti-suicide position was undermined” (Mair, *ibid.* at 31).

death. Maybe the Roman aristocracy of the imperial terror paved the way for a more general openness towards suicide in the next epoch."<sup>124</sup>

As the popularity of planned self-willed death grew, an easier means such as poisonous drugs — which may have hitherto been used mainly by commoners, women and slaves — became popular among elite men in the late Republic. Danielle Gourevitch thinks, in fact, that physicians often helped in cases of planned self-willed death by elite ill men (as well as others).<sup>125</sup> The custom of requesting poison became

so well established that the mere request for poison is insufficient to compromise the requester. ... We frequently see him [the physician] solicited, whether quite openly for suicide or whether suicide be advanced as a pretext to mask a murder. ... The physician may be asked in such a fashion as to let him know the patient's intent; or there may be an unadorned request for help.<sup>126</sup>

The fact that the physicians were usually slaves or Greeks<sup>127</sup> meant that Romans already viewed them with contempt and were at ease demanding poisons from them, though sometimes they coded their requests or made them ambiguous to prevent the physician from being charged with homicide.<sup>128</sup> Old people who were tired of life occasionally resorted to this means, though there is little public record of such action.<sup>129</sup> According to van Hooff, who reports on the impression created by cases in Pliny's correspondence, "It was not uncommon in the upper-classes immediately beneath the elite to take one's own life after consulting one's friends and doctors."<sup>130</sup> It was also not uncommon for humble people and slaves to take their lives.

Ideological and dramatic exploitation of suicide among humble people once again makes it clear that self-killing was common in all classes of ancient society. But in the materials handed down to us, upper-class males dominate the scene ... The unhappy few of the elite are of course only the tip of the iceberg of suicide. Beneath there is the great mass of anonymous desperate people.<sup>131</sup>

This nonchalance about self-willed death by drugs continued into the Imperial period and is captured in the words of Libanius, the court orator during the reign of the Emperor Julian in the fourth century C.E.: "If your existence is hateful to you, die; if you are overwhelmed by fate, drink the hemlock. If you are bowed with grief, abandon life. Let the unhappy man recount his misfortune,

<sup>124</sup>*Supra* note 11 at 124.

<sup>125</sup>*Supra* note 119.

<sup>126</sup>*Ibid.* at 507.

<sup>127</sup>"Nine out of ten physicians were slaves and the tenth Greek ..." (*ibid.* at 503).

<sup>128</sup>H. Trowell, *The Unfinished Debate of Euthanasia* (London: SCM Press, 1973) at 7-8, thinks that it is difficult to determine the degree of physician-assisted suicide. Although there are many examples of physicians supplying a poison, there is no specific passage where physicians actually administered the poison. He thinks that this was to avoid charges of homicide.

<sup>129</sup>Although *taedium vitae* was a category of Roman law, there are few public cases; because it did not have public significance, it probably was not publicly recorded, though it may have been very common. See van Hooff, *supra* note 11 at 122. According to van Hooff, the law-giving emperor, Antoninus Pius, "specifies even more exactly when a suicide may be a confession of guilt. If the accused has put an end to his life from *taedium vitae* or because of *unbearable pain* or *otherwise*, 'he has an heir' (*successorem habet*)" (*ibid.* at 170).

<sup>130</sup>*Ibid.* at 39.

<sup>131</sup>*Ibid.* at 20-21.

let the magistrate supply him with the remedy, and his wretchedness will come to an end."<sup>132</sup> According to Libanius, such an unhappy person had simply to go in front of the Senate, obtain permission to die, and receive an appropriate supply of hemlock.<sup>133</sup>

Although early Christians looked down on such practices as pagan, some, especially those of Greek and Roman background, promoted a variant of the custom in their desire for martyrdom. It was praised in the 2nd and 3rd centuries C.E. by Christian leaders such as Ignatius of Antioch, Origen of Alexandria (who wanted to be a martyr himself, like his father had been), and Bishop Eusebius. And it was welcomed as an ideal death by women such as Vibia Perpetua or the Donatist Christians who wandered in ecstasy, finally flinging themselves over cliffs.<sup>134</sup> Again, it may not be incidental that the latter occurred at a difficult time and place of social change: the breakup of the Roman empire in North Africa.<sup>135</sup>

To conclude, in early Western history there was also a slippery slope. Although self-willed death probably originated in warrior circles in ancient Greece, it became popular with elite, urban old men (some of whom had been warriors at some stage of their lives) who looked on fasting to death as a manly, courageous and therefore noble act. After the social, economic and political upheavals of epidemics and war, the popularity of planned self-willed death by the philosophers grew. The most extreme example was Hegesias, who inspired many of his followers to take their lives. Although under-reported, there were also planned self-willed deaths utilizing hemlock by old people, women and slaves, especially in illness, and probably involving the assistance of physicians who provided the deadly concoction. This was, however, mainly a secret (and shameful) practice. The fact that texts report antidotes to hemlock suggests that it was being used rashly by people for suicide or homicide. In at least one place in classical Greece, Ceos, the State mandated all old people to die by drinking hemlock. Later in the Hellenistic period in Thebes and Massalia, the political authorities would give permission and a free dosage of the drug; this too indicates the popularity of self-willed death and a resulting slope. The obsession of Diogenes Laertius, late in the Hellenic period, with stories about the self-willed deaths of the Greek philosophers brings this aspect of Greek history to light.

Planned self-willed death in Roman history may have begun independently in warrior circles but was reinforced through contact with the Greek practice, both as a noble ideal of the philosophers, thanks to popular schools like the

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<sup>132</sup>Libanius, cited by É. Durkheim, *Suicide: A Study in Sociology*, trans. J.A. Spaulding & G. Simpson (New York: Free Press, 1951) at 330.

<sup>133</sup>It could be argued that this statement by Libanius is suspect, for he was an orator who had often little regard for fact. But it could also be argued that while this may be true when he spoke of classical Greece far removed in time, it may not be true when he spoke of his own court. Precisely because he belonged to the court, he witnessed such practices and reported on them. More likely, Libanius could have been referring to such a practice during the previous several centuries in Rome, for that was the period when physician-assisted suicide by hemlock was popular and easy means had lost their association with shame.

<sup>134</sup>See Rosen, *supra* note 100 at 270-73.

<sup>135</sup>Trowell, *supra* note 128 at 8.

Stoics, and as a largely underground practice of assisted suicide through the provision of hemlock by Greek physicians. Just as self-willed death became popular in Greece in the wake of epidemics and the Peloponnesian War, which had destabilized society, so it became especially popular in Rome during the civil war that ended the Roman republic. Even though self-willed deaths at the time were usually solutions to political problems, the examples of famous men taking their own lives and being more willing to seek easier means such as hemlock seem to have contributed to a slippery slope in the next several centuries. And it is possible that the easy availability and acceptability of hemlock made the boundary around legitimate self-willed death less easy to maintain, creating a greater overlap with the phenomenon of suicide out of overwhelming despair. This may also have happened because the general principle of the sanctity of life was not firmly established; socially endorsed infanticide and the exposure of unwanted children being cases in point. Finally, the State itself may have become involved in the practice of planned self-willed death in the first several centuries of the common era, by having the authorities give both permission and the requisite drug.

As for the question of whether all these examples of planned self-willed death are isolated examples or are causally related, it may be argued that the latter is the case, for the simple fact that ideas circulated in Western society as they did in Eastern ones. The ability to die an extraordinary death with courage, fortitude and nobility informed ancient Greek norms of masculine identity and eventually philosophical treatises and literary texts, accounting for why self-willed death occurred over many centuries on the battlefield, in prison surrounded by one's disciples, or at home surrounded by one's family. The prevalence of hemlock and the fact that physicians were taught its powers and passed on knowledge of its effects to the next generation of physicians also established a continuity of practices. Finally, the close relation between Greece and Rome from the Hellenistic period — especially the contact of philosophers and physicians — contributed in no small measure to the continuity of practices of planned self-willed death.

### III. Stopping the Slippery Slopes

Plato, in the *Phaedo* (61c10, d6-7), has Socrates sympathetically, through the figure of Philolaus, present the view of the Pythagoreans, who maintained that self-willed death was wrong. A justification in the form of a theory is then presented, the gist, following John M. Cooper, being that the gods "are our keepers, who tend us and take care of us as possessions of theirs. As their possessions, we have no right to decide to cease to be tended and used by them as they see fit ..." <sup>136</sup> In other words, divine authority is invoked in support of natural death. "There is also the suggestion, to judge from Cebes' immediate response (62c-e), that suicide would be stupid, too, and wrong on that ground, because being under the charge and tendance of the gods, who are wise and good, we must expect to be exceedingly well cared for in whatever way ..." <sup>137</sup>

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<sup>136</sup>*Supra* note 104 at 15.

<sup>137</sup>*Ibid.* at 16.

Cooper observes that Socrates does not commit himself to a total ban, saying in 62a that “for some people it is better that they should die, and if so it is impossible to see why it should not be permitted to them to bring about their own deaths, rather than having to linger on until someone else does them the favor.”<sup>138</sup> This passage provides an opening to the possibility of exceptions. In fact, in *Laws IX*, Plato does indeed allow for some exceptions: in the preamble, when commenting on the contemplation of a capital crime that might bring about the ruin of the State and social order, he states that the individual should try to purify and reform himself, but if this is not possible, he “should look upon death as the preferable alternative and rid [himself] of life,”<sup>139</sup> before he actually commits such a crime. In *Laws IX* (873c-d), there is an extensive discussion of the exceptions. It is worth quoting Cooper’s summary and discussion in full:

With the exception of three special cases, suicides are to be punished with burial in unmarked, solitary graves in deserted, outlying districts. The special cases, for which neither this nor any other punitive action is to be taken, are these: when the agent acted (1) (as Socrates did) under judicial order, or (2) being forced (*anan-kastheis*, 873c6) by some excruciating and unavoidable misfortune, or (3) having come to participate in some irremediable disgrace that he cannot live with. Plato’s language here, though it appears to be carefully chosen, is not completely clear ... but there seems to be a clear difference between the first two of these exceptions, on the one hand, and the third. The first and second, being cases where the agent is represented as acting under compulsion (*ananke*), legal or emotional — a typical case of the second kind might be suicide due to understandable grief or depression, caused perhaps by the loss of one’s whole family in a fire ... The third, however, appears to cover justified suicides (there is no reference in this case to compulsion), where the justification lies in the fact that the person has (perhaps intentionally, perhaps not ... ) done something *morally* very disgraceful ... So whereas earlier in book IX Plato had said that a person whose moral character was irremediably extremely bad should kill himself, here he counts suicide as justified as a way of extricating oneself from extreme moral disgrace brought on one’s actions.

All other suicides than the three classes just indicated the law of Magnesia will punish in the way specified above, on the grounds that anyone who commits suicide in other circumstances “imposes [an] unjust judgment [of death] on himself in a spirit of slothful and abject cowardice ...” Apparently, then, anyone who commits suicide when his judgment is unclouded by grief, depression, or other severely distorting emotions ... will be judged to have shown cowardice and a reprehensible unwillingness to take action against these evils and their effects on his life. That is to say, Plato here denies that the sorts of consideration that the Stoics later held *did* justify committing suicide ...<sup>140</sup>

Planned self-willed death motivated by extreme pain was, according to Plato, a cowardly inability to take charge of life.<sup>141</sup>

<sup>138</sup>*Ibid.*

<sup>139</sup>854c4-5, as quoted by Cooper, *ibid.* at 18.

<sup>140</sup>*Ibid.* at 18-19.

<sup>141</sup>At the same time Plato, in his *Republic* (3:295), condemned the physician, Heroditus, the teacher of Hippocrates, for medically treating diseases and thereby inventing lingering death. He then praised the physician god, Asclepius, for refusing to treat the extremely ill. In other words, he seems to be acknowledging the fact that physicians need not interfere with the process of natural death. This is similar to today’s acknowledgement that physicians, with public and legal accountability, are not required to use extraordinary measures to keep an individual alive who is experi-

Why did Plato take this position? Cooper suggests<sup>142</sup> that it was simply because he was a traditionalist and supported the government and traditional laws (in contrast to the later Stoics who were sceptical and iconoclastic).<sup>143</sup> But Plato presents a discussion full of nuance on this topic, and when he is arguing for exceptions to the general law regarding the treatment of the corpse of suicides, these discussions may well represent his own reflections on the law.

If planned self-willed death by hemlock and assisted suicide were becoming more common in a population under duress after the Peloponnesian War, it may be that Plato was, in fact, appealing to the authority of Athenian law to discourage suicides (*i.e.* by burial in unmarked solitary graves or removal of the right hand of such a person and its burial away from its corpse to disempower its spirit). Indeed, Plato may have been one of the first to notice that a slippery slope was occurring, and so he categorically condemned as cowards people who took their lives when they experienced the pain of illness. Because of the easy availability of hemlock, he may have decided to make a distinction between *spontaneous* suicide when judgment is clouded by grief, depression, *etc.* and *planned* suicide, the former to be tolerated by society, the latter not.

Now, the idea of planned suicide returns us to the context of taking hemlock to avoid pain. Since death by hemlock was becoming more common at this time, it is conceivable that it was being perceived as a problem for society, especially since a literature on antidotes developed then. This may have prompted Plato not to include it as one of his exceptions, even though extreme pain in terminal illness seems, in point of fact, very similar to the idea of excruciating and unavoidable misfortune.

Similarly, it may be that Aristotle (384-322 B.C.E.) was also addressing a slippery slope when he argued that to kill oneself in order to escape from anything that is distressing (poverty, desire or pain) is not courageous;<sup>144</sup> planned self-willed death is wrong, moreover, because it deprives the city of the productive labour of a citizen. He too referred to a law that forbade suicide and mentioned "an established penalty for breaking the law against suicide."<sup>145</sup> Somewhat later, even the Epicureans, who legitimated planned self-willed death under certain circumstances, warned "against fleeing life because of the hatred of life," and the Stoics (much like the Buddha) had to preach against the "death wish."<sup>146</sup> Epicurus, in fact, "[analyzed] as pathological the motives that lead

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encing extreme suffering in what is assumed to be the final dying process or in cases of a coma with little hope of recovery when such measures will not benefit the person (though physicians should provide good palliative care).

<sup>142</sup>*Supra* note 104 at 24.

<sup>143</sup>See also K.J. Dover, *Greek Popular Morality in the Time of Plato and Aristotle* (Oxford: Basil Blackwell, 1974).

<sup>144</sup>Griffin, *supra* note 106 at 71, citing N.E. 3.1116a12.

<sup>145</sup>Cooper, *supra* note 104 at 35.

<sup>146</sup>Despite the predominantly negative view of Plato and his pupil [Aristotle], however, there is a kernel of truth in the story of Cleombrotus: that is the *impression* Plato's dialogue could make on the unwary reader, overwhelmed by its message of the immortality of the soul and its incarceration in the body. This is one indication of the dilemma

many people to kill themselves. 'It is absurd,' he said, 'to run towards death because you are tired of life, when it is by the manner of your life that you have brought it about that you ought to run towards death' — what you should do instead is to revise the way you live so that you no longer feel so tired of living that death is a reasonable option for you."<sup>147</sup> He also analyzed deep depression and anxiety related to the fear of death as reasons for suicides.

In Roman society, criticism against planned self-willed death and assisted suicide mounted in some circles after the end of the Republic, as their popularity grew. The attempt to stop their practice was not due to some extreme religious peculiarities of the Christians but was based on a deep concern in many sectors of late Roman society that these practices were detrimental to society, for this ideal was encouraging even young people to treat their lives apathetically (that, too, at a time of depopulation after several epidemics had devastated elite Roman society). Epictetus (*circa* 50-120 C.E.), a Greek Stoic generally supportive of self-willed death, noted "a death-wish among young men and felt obliged to restrain it, urging them not to commit suicide."<sup>148</sup> The poet Martial opined, "I have no use for the man who, by easy shedding of his blood, purchases fame; I value the man who can win praise without death."<sup>149</sup>

The Hippocratic Oath was likely revived<sup>150</sup> during the 1st century C.E. by the Pythagoreans to counsel physicians to protect their healing art and their patients by not providing drugs for self-willed death; hence:

I will apply dietic measures for the benefit of the sick according to my ability and judgment; I will keep them from harm and injustice. I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect ... In purity and holiness I will guard my life and my art.<sup>151</sup>

Gourevitch observes, "If the most moral texts do in fact forbid physicians to take such action, this is in itself a sign that abstention was not universal: if the question had not arisen, it would not have occurred to anyone to codify the prohibition."<sup>152</sup> Much the same can be said about a similar oath in the *Corpus Medi-*

later faced by all the dogmatic Hellenistic schools of philosophy, namely that their insistence on the unimportance of external goods and of apparent evils like death, a doctrine designed to render life happy by making one independent of the blows of fortune, could in fact make life seem dreary and death attractive. Hence the Epicureans issued warnings against fleeing life because of *odium vitae*, hatred of life (D.L. 10:125-6; Lucr. 3.79ff.) and the Stoics preached against the *libido moriendi*, the death wish (Sen. *Ep.* 24.24-25; Epictetus 1.9.12) (Griffin, *supra* note 106 at 71).

<sup>147</sup>Cooper, *supra* note 104 at 29.

<sup>148</sup>Rosen, *supra* note 100 at 270.

<sup>149</sup>Quoted in Griffin, *supra* note 106 at 68.

<sup>150</sup>In 1943, Ludwig Edelstein, after analyzing the oath, came to the conclusion that it belonged not to the Hippocratic tradition but to the Pythagorean, which was revived in the 1st century C.E. It was then adopted by Christian physicians. See L. Edelstein, "The Hippocratic Oath: Text, Translation and Interpretation" in O. Temkin & C.L. Temkin, eds., *Ancient Medicine: Selected Papers of Ludwig Edelstein* (Baltimore: John Hopkins Press, 1967) 3. See also Trowell, *supra* note 128 at 7-8.

<sup>151</sup>See L.R. Kass, *Toward a More Natural Science: Biology and Human Affairs* (New York: Free Press, 1985) at 229.

<sup>152</sup>*Supra* note 119 at 505.

corum Graecorum.<sup>153</sup> Van Hooff notes that “[i]n the literature of the Later Roman Empire sympathetic descriptions of self-killing because of unbearable suffering do not occur any more: the climate of complete tolerance which existed in Pliny’s times was apparently over.”<sup>154</sup>

Criticism was also voiced by opponents of Stoicism, such as the neo-Platonists, who, from the 3rd century C.E. on, focused many commentaries on the Pythagorean prohibition of suicide in the *Phaedo*.<sup>155</sup> Plotinus (3rd century) assumed that “Plato’s view was that suicide never is justified in the pursuit of happiness, and so sets himself to argue, especially of course against the Stoics ...”<sup>156</sup>; more specifically, he argued against the destruction of the body to free the soul and against reason as neither depending on nor relating to the body, and therefore, there being no basis “at all for arguing that reason itself (*i.e.* as it is in its own self) will ever dictate the termination of one’s own life.”<sup>157</sup> That Plotinus imposed a much stricter reading on Plato by returning to the *Phaedo* (and ignoring the *Laws*) is a clue that he was looking for a proof text to stop a slippery slope associated with the Stoics.

In Jewish circles, criticism is represented by the Jewish historian Josephus who condemned planned self-willed death.

In Jotapata Flavius Josephus mobilized all his anthropological, philosophical and theological knowledge to convince himself and his people that self-killing in their situation was fundamentally reprehensible. In the face of God suicide was wrong, because man was not entitled to dispose freely of the soul that was poured by Jahweh into the body. The soul that prematurely left the body acted like the steersman who during a storm had his ship go down by his own hand. Animals did not kill themselves; that is to say, self-killing was against nature. No honour was to be gained by destroying oneself: it was an act of cowardliness ... Moreover, the community was damaged by the exit of its members.<sup>158</sup>

It is significant that Josephus took this stance at a time of great political turmoil in the Jewish territory and the destruction of Jerusalem by the Roman army in 70 C.E., which inspired several mass self-willed deaths to avoid capture. Based on the deep Jewish respect of life, criticism of self-willed death also occurred in later rabbinic literature.

Christians added their voices to these growing criticisms, especially when they realized that desire for martyrdom was taking the lives of too many Christians in the prime of life. Finally, with growing Christian power and, we may presume, concern over the ill-effects of the practice of self-willed death by

<sup>153</sup>*Ibid.* at 506, n. 45 (*Hippocratis opera*, I, 1, p. 5, II. 15-17).

<sup>154</sup>*Supra* note 11 at 126.

<sup>155</sup>It could be argued that views began to change just because the Platonists became more popular than the Stoics in this period and they were loyal to Plato. But still, the question has to be asked, Why did the neo-Platonists become more popular than the Stoics? One reason could be that the Stoics were perceived as promoting a view of self-willed death that was detrimental to society.

<sup>156</sup>Cooper, *supra* note 104 at 30. See also R.T. Wallis, *Neoplatonism* (London: Duckworth, 1972).

<sup>157</sup>Cooper, *ibid.* at 31.

<sup>158</sup>Van Hooff, *supra* note 11 at 181. See also Trowell, *supra* note 128 at 3; L.D. Hankoff, “Flavius Josephus: Suicide and Transition” [1979] *New York State J. Med.* 937.

pseudo-Christian martyrs,<sup>159</sup> as well as by pagans, Christian leaders declared any form of self-willed death tantamount to murder and condemned it in canon law in the Councils of Braga (563); Auxerre (578); and Antisidor (590). At the Council of Toledo (693), it was said that anyone who attempted suicide could be excommunicated. Augustine (354-430 C.E.), writing from North Africa where self-willed death was particularly popular, argued that suicide was often a cowardly act. Condemnation in canon law was reinforced from the Middle Ages on by (1) threats of hell; (2) confiscation of property; (3) degradation of the corpse (for example, dragging it through the streets and hanging it on a gallows); or (4) refusal of burial in consecrated ground (instead burying the corpse at a cross-road by night with a stake driven through the heart). This negative view of planned self-willed death was reaffirmed by Aquinas (1225-74), who said that suicide was contrary to nature. In addition to sanctions by the Church, suicide was viewed at common law

as a form of felonious homicide that offended both against God and the King's interest in the life of his citizens. As Blackstone noted ...

the law of England wisely and religiously considers, that no man hath a power to destroy life, but by commission from God, the author of it; and, as the suicide is guilty of a double offence; one spiritual, in invading the prerogative of the Almighty, and rushing into his immediate presence uncalled for; the other temporal, against the king, who hath an interest in the preservation of all his subjects; the law has therefore ranked this among the highest crimes, making it a peculiar species of felony, a felony committed on itself.<sup>160</sup>

It may be surmised from this discussion that the purpose of such law or ritual was not to punish unfortunate people who were so filled with despair that they took their own lives. Rather, it was to stop a slippery slope in a society that had legitimated planned self-willed death to the detriment of its populace and to provide a deterrent to prevent future cases. This point is borne out by the fact that once the practice of planned self-willed death was sufficiently checked, there was legal leniency for suicides that occurred out of overwhelming despair, desperation or insanity.<sup>161</sup>

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The history of planned self-willed death in India had much the same fate, though it occurred some centuries later. The perception that there was a problem developed within the Buddhist tradition by the 8th century C.E., if Śāntideva's admonition — that self-willed death by a beginning monk was not really useful to procure universal welfare and therefore not a wise estimate of the spiritual needs of a beginner — responded to a social reality. The Brahmanical (Hindu)

<sup>159</sup>A corollary was the desire to protect authentic martyrdom.

<sup>160</sup>*Supra* note 1 at 596, citing Blackstone, *Commentaries on the Laws of England*, vol. 4 (Oxford: Clarendon Press, 1769) at 189. For details on canon law, see Rosen, *supra* note 100 at 273.

<sup>161</sup>See the discussion on melancholy and madness by Rosen, *ibid.* Henry de Bracton, the chief common law authority in the mid 13th century, exempted such cases. Some of the laws of the Continent at the time, such as the *Sachsenspiegel*, the *Schwabenspiegel*, and the Freising municipal law code, also did not punish suicide.

tradition, by the 10th century C.E., definitely tried to stop the practice in Hindu circles in what were known as the Kalivarjya prohibitions. These prohibitions declared that the various forms of self-willed death — including those by the sick and the old — were improper conduct for the good people (*sādhus*) in this age. It is noteworthy that *sati* was not mentioned. Probably *sati* did not receive the same condemnation because of the economic implications of supporting a widow, especially a child widow, for many years or permitting her to inherit property as allowed by law in regions such as Bengal where *sati* was particularly common. Some other texts placed restrictions only on the upper castes: the *Tīrthaprakāśa* forbade Brahmins from performing self-willed death at the holy place Prayāga, and the *Śuddhitattva* said that the three upper castes could not perform self-willed death.<sup>162</sup> Similarly, in the 11th century C.E., the Muslim author, Alberuni, reported that self-willed death by burning was forbidden to men of the two highest castes — Brahmins and Kṣatriyas (though they sometimes avoided this law by hiring somebody to drown them in the Ganges); women and men of the lower castes, however, burned themselves, the latter when incurably ill or extremely infirm.<sup>163</sup>

From this discussion it is striking that self-willed death continued to be accepted for women and Śūdras, the lowest caste, thereby indicating that vulnerable groups were not included in the reforms. Mainly after criticism by Muslim rulers and later Christian missionaries — who carried their condemnation of planned self-willed death in the West into their contact with other cultures — were the various practices of planned self-willed death in India, including *sal-lekhanā* and *sati*, criticized also by Hindus. In 1802, during the British Raj, “the legislature intervened to prevent the practice of suicide on the island of Sagar.”<sup>164</sup> Regulation XVII of 1829 declared that abetting a suicide was an act of homicide. In 1860, the Indian Penal Code (based on the British Penal Code) declared that the attempt to commit suicide (section 309) and the counselling, aiding or abetting of suicide (section 306) were punishable by imprisonment. When suicide was made a crime, and suicide was interpreted to include the former religiously legitimated types of planned self-willed death, these practices came to a virtual halt (with only a few cases of *sati* reported in 1914, 1919, 1934, 1983).<sup>165</sup> Hence, in India too the law was not designed to punish those unfortunate people who took their lives out of overwhelming despair but rather to halt the practice of planned self-willed death because it was viewed, at least in some circles, as detrimental to society. Nonetheless, the political strategy of threatening self-willed death was sometimes used, Mahatma Gandhi’s threats to fast to death for political victories against the British being a case in point.<sup>166</sup>

<sup>162</sup>Kane, *supra* note 17, vol. 4, pt. 2 at 609.

<sup>163</sup>A.T. Embree, ed., *Alberuni’s India*, trans. E.C. Sachau (New York: W.W. Norton, 1971) at 170-71.

<sup>164</sup>Keith, *supra* note 14 at 35.

<sup>165</sup>For a discussion of the relevant legal cases, see D. Shanker, “Indian Legal Concepts of the Right to Die” in Berger & Berger, eds., *supra* note 28, 103 at 110-111.

<sup>166</sup>An actual Asian Buddhist example of self-willed death for political reasons was the self-immolation in 1963 of the Vietnamese Buddhist monk, Thich Quang-Ducto, in Saigon, to protest the Vietnam War.

Westermarck reports that there were imperial prohibitions in China to try to stop women from taking their lives when their husbands died (a Chinese version of *sati*). "Sometimes suicide [was] classified by the Chinese as an offence against religion, on the ground that a person owed his being to Heaven, and [was] therefore responsible to Heaven for due care of the gift."<sup>167</sup> And in Japan as well there were internal criticisms against planned self-willed death. When Ippen died, and then six of his disciples also killed themselves in sympathy, the next patriarch of the Pure Land school, Shinkyō, declared that they did not reach the Pure Land because their action was self-willed, preempting the grace of Amida Buddha, who presided over the Pure Land, to save them.<sup>168</sup> Moreover, there were "strict and frequent prohibitions"<sup>169</sup> by the Tokugawa shogunate (as in 1744) to prevent samurai warriors from following their lords to the grave. *Seppuku* was finally made illegal after the Meiji Restoration in 1868, following an incident in which thirteen samurai performed *seppuku* in response to the French government's demand that they be punished because they had fought with some French soldiers near Osaka. Because of the notoriety that this event caused in the West, its merits were debated by the new Meiji government, intent on making Japan a modern state, and it was banned in 1872 as a "practice unheard of in the civilized West."<sup>170</sup> Still, there were many cases of *seppuku*,<sup>171</sup> followed by a major revival of the custom during World War II when "countless numbers of Japanese military officers committed *seppuku* in [the] Pacific islands ... Immediately after the end of the war in 1945, moreover, the serene outer ground of the Imperial Palace in Tokyo was dyed with blood by some Japanese men and women, both military and civilian, who calmly committed *seppuku* in tens and hundreds as an 'apology' to the Emperor for having lost the war."<sup>172</sup>

It is clear that when societies perceived a slippery slope with reference to planned self-willed death, they resorted to religious leadership and law to try to stop it. This occurred in the West some centuries before it occurred in the East. It is difficult to know the reason why. One possibility is that the slope was more severe in the West, perhaps because the underground phenomenon of physician-assisted suicide by hemlock had become popular in many circles, and so the problem was detected and addressed more forcibly. It is also possible that the West caused an earlier closure on this phenomenon because it was associated with one of the major crises in the history of the civilization: the decline of the Roman Empire, which was concomitant with a number of epidemics and a fear of depopulation by the elite strata of Roman society.

By contrast, it may be argued that in India the practice of planned self-willed death continued for a longer period of time because it was a phenomenon

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<sup>167</sup>*Supra* note 9 at 18.

<sup>168</sup>See Becker, *supra* note 70 at 549.

<sup>169</sup>Fusé, *supra* note 78 at 60.

<sup>170</sup>*Ibid.* at 59.

<sup>171</sup>T. Harada, "Suicide (Japanese)" in *Encyclopaedia of Religion and Ethics*, *supra* note 14 at 35, gives the statistics from 1905 to 1915; there was a low of 9,413 at the beginning of the period, rising systematically to a high of 12,705 at the end of the period.

<sup>172</sup>Fusé, *supra* note 78 at 57.

related to inter-religious competition among the Jains, Buddhists and Hindus, the latter growing in power at least in part because of their popularization of an easy means to salvation (including some forms of self-willed death). Only by the 10th century, when Hinduism emerged as the key power broker in the sub-continent, did Hindus direct their attention to the issue of abuse of such practices and proposed reforms of the tradition of planned self-willed death. But because of the subsequent crises of foreign rule first by Muslims and then by Christians, it was difficult to deal with questions of internal reform that were so central to questions of religious identity, and so the process of reform was delayed until the 19th century. In Japan, as well, effective reforms were comparatively late, though there had been a series of attempts to halt the practice of planned self-willed death over the centuries. One major reason for a slower response in Japan may have been the fact that planned self-willed death was central to the identity of the samurai warriors, who were in power for a number of centuries.

In all these contexts, both West and East, criminal law was most effective in halting the slope. Once it had served its purpose, however, greater leniency was given to specific cases of suicide out of overwhelming despair, *etc.* This led to the decriminalization of suicide in the modern period in many Western countries and in Japan. But it is also clear that once a tradition of planned self-willed death had been culturally and/or religiously endorsed in a society, it could be revived under the right circumstances, as with the Japanese during World War II.

## Conclusion

Justice Sopinka, speaking for the majority of the Supreme Court of Canada, held that the State has an interest in protecting life. From the cross-cultural historical evidence gathered here, it can be seen that this has been a task of many societies. In former times, such protection was usually the responsibility of religion, which had powerful deterrents in the form of threats of hell, degradation of the corpse, or religious law.

In the dissenting opinion in the *Rodriguez* case, it is implied that since the decriminalization of suicide by Parliament has made suicide no longer illegal, suicide is now not only legal, it is also a right: people have a "right to choose death" and a way to die with dignity.<sup>173</sup> Moreover, since the *Canadian Charter of Human Rights and Freedoms* guarantees equal rights, a person who is prevented from exercising a legal act because of physical disability experiences discrimination. Therefore, such a person has a right to assistance to kill herself or himself.

But such an interpretation of the *Canadian Charter of Human Rights and Freedoms* is debatable. To decriminalize an act is not the same thing as to argue that people have a positive right to do it and a right to help in doing it if they cannot do it themselves. Such an interpretation was certainly not the intention

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<sup>173</sup>*Supra* note 1 at 620, McLachlin J.

of those who decriminalized suicide. The evidence of human history regarding the practice of planned self-willed death and physician-assisted suicide also serves as warning that such an interpretation, if it leads to a change in law, may also be harmful to society in the long run.

A principle of nonviolence or of the sanctity of life is enshrined in many societies as the fundamental value. This is certainly true of some of the societies influenced by the religions under consideration here: Jainism, Hinduism and Buddhism all had made nonviolence the central value, and this influenced the values (though not always the behaviour) of South, Southeast and East Asia. Once nonviolence or the sanctity of life was enshrined, a few exceptions such as self-defense or a just war were allowed in some societies. In the final analysis, all religions and societies that sought to protect life still had to deal with the basic paradox of life: that we have to eat and therefore kill some living creature in order to live. This supports Justice Sopinka's argument that the sanctity of life is the fundamental value, though some carefully considered and limited exceptions may be considered.<sup>174</sup> Suicide out of despair has never been viewed as a positive thing but as an extremely regrettable event which societies have tried hard to prevent. And even when planned self-willed death was legitimated during some periods of the history of some societies, it was certainly not a blanket endorsement of the freedom to die at any time or by any means or with help. On the contrary, the choices were very carefully limited. Obviously, religious communities were seeking to balance the interests of the society and the individual, much as Justice Sopinka argued modern societies must do (though he opposed self-willed death).<sup>175</sup>

More importantly, despite the attempt to legitimate self-willed death within a well-defined boundary, it seems that the legitimation of planned self-willed death developed (sooner or later) into a slippery slope. Even in one of the most conservative cases, that of early Buddhism, which did not endorse self-willed death except possibly in the case of the planned self-willed death of a person experiencing unbearable pain in the process of dying who had no desire for rebirth — allowing just one exception also led over time to a slippery slope, as evidenced in Śāntideva's concern about young monks willing their deaths and in some of the practices of East Asian Buddhism.

When Justice Sopinka argued that “[a]ttempts to fine tune this approach [of protecting life] by creating exceptions have been unsatisfactory and have tended to support the theory of the ‘slippery slope,’”<sup>176</sup> his judgment is again vindicated by the cross-cultural evidence of the large-scale societies presented here. For in India, Japan, Greece and Rome, we can recognize a definite increase in the types of motives, methods and groups; more importantly, these cultures themselves had recognized a problem with an escalation of planned self-willed death prior to the critique of foreigners and had made an initial attempt to stop the practice.

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<sup>174</sup>*Ibid.* at 592.

<sup>175</sup>*Ibid.* at 589-90.

<sup>176</sup>*Ibid.* at 613.

I have not brought Nazi Germany into this discussion but it may not be out of place to remember that Hitler received his inspiration for "mercy death" from the work of a jurist and a psychiatrist, Karl Binding and Alfred Hoche, who argued in 1920 for the legitimation of death assistance on the basis of compassion for an incurably ill woman and on the basis of problems of allocation of societal resources.<sup>177</sup> According to the proposal of Binding and Hoche, permission would be given by a government board consisting of a physician, a psychiatrist and a lawyer. Such mercy killing was to be preceded by conscientious deliberations carried out by appropriate medical procedures and agreement reached with the patient, the patient's legal representatives and the family. Therefore, it was rational in approach; it fostered external accountability to experts; it insisted on informed consent for competent adults (although others could decide for incompetent adults); and it provided for government regulation. The recommendations of Binding and Hoche quickly led to the worst slippery slope in history under the Nazis. The stage was set with Hitler's early propaganda film "I Accuse",<sup>178</sup> which appealed to the public to legitimate the use of euthanasia in order to relieve the suffering of an incurably ill woman; later the types of groups were increased: retarded and deformed newborns; retarded and deformed children; mentally ill adults; people with hereditary diseases; the handicapped; and other "undesirable" groups (homosexuals, Jews, Poles and Gypsies). Such legitimation of planned self-willed death occurred at a moment when German society was profoundly demoralized and economically ruined.

In this context we should not forget that in 1938, the Euthanasia Society of America was founded with the purpose not only to allow the terminally ill to choose their death, but also to eliminate the congenitally unfit, those who are "defective, without value and tortured."<sup>179</sup> And in 1939, an American Institute of Public Opinion poll showed that 41.4 percent favoured mercy deaths for hopeless invalids and 53 percent of physicians did.<sup>180</sup> In short, views in America paralleled in part those in Germany at the time, although only in Germany did the government give its official sanction. The tendency to attribute the German atrocity solely to Hitler is a case of selective amnesia which absolves other Western societies of any participation in the utilitarian values that contributed to this kind of thinking.

Many of the factors that could contribute to a slippery slope are present in our society, and we cannot afford to be complacent about this danger. By decriminalizing suicide in the modern period at exactly a time when traditional religious authority is waning and by linking planned self-willed death to the fundamental values of our society (autonomy and the freedom to choose) at a

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<sup>177</sup>K. Binding & A. Hoche, "The Permission to Restore Life Unworthy of Life", cited in R.J. Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (New York: Basic Books, 1986) at 46.

<sup>178</sup>Hitler's film "depicts a physician giving a lethal injection to his incurably ill wife in response to her desperate plea that he do so to relieve her of her terrible pain and suffering" (Lifton, *ibid.* at 49).

<sup>179</sup>D. Humphry & A. Wickett, *The Right to Die: An Historical and Legal Perspective of Euthanasia* (Eugene, Oreg.: Hemlock Society, 1986) at 14.

<sup>180</sup>*ibid.* at 18.

time when we have a growing aging population and AIDS — one of the most devastating epidemics in human history which will create great economic and emotional burdens — we should be alert to the danger of another slippery slope. It is a well-documented fact that suicides occur in families;<sup>181</sup> there is an element of imitation. (Just as there was an element of imitation in the planned self-willed deaths of members of other groups such as Japanese samurai, Greek philosophers and Roman senators.) As seen here, when societies are destabilized because of war (Greece after the losses posed by the Peloponnesian War; Rome after its civil war; North Africa after the breakup of the Roman Empire; and perhaps Japan during the Mongol invasions and World War II), planned self-willed deaths increase. Recent studies on suicide also suggest that they increase when there is a general tolerance of suicide in a society, social breakdown, and a desire for control or omnipotent mastery, the last avenue in which to exert free choice.<sup>182</sup> Planned self-willed death and assisted suicide increase, moreover, when the human body is devalued (for example, when its sheer existence is viewed as an obstacle to enlightenment or heaven as in some religions) or when human beings see no purpose to human life extending beyond productivity or the grave (as in some secular philosophies of both the ancient and the modern world).

In a democratic society such as Canada that turns to public opinion polls, votes in Parliament (promised by the Canadian Prime Minister in the wake of the physician-assisted suicide of Sue Rodriguez), or referendums to determine ethical action rather than to the historical record for clues to human follies and wisdom, we should be alert to possible problems. This time around a slippery slope (which need not implicate the State) would likely involve more and more deaths of “ordinary people”, thanks to legitimation of assisted suicide, especially physician-assisted suicide, as an *easy* means to die. It seems that a slope is already occurring in Western societies. Sue Rodriguez was, for instance, not at the very end of her life nor was she in intolerable pain that could not be controlled by pain relief measures.<sup>183</sup> This suggests that freedom to choose became for her the issue, not the elimination of unbearable pain. Given the vagueness

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<sup>181</sup>See *Suicide in Canada: Report of the National Task Force on Suicide in Canada* (Ottawa: Minister of National Health and Welfare, 1987) at 36-37.

<sup>182</sup>See *ibid.* at 25-32.

<sup>183</sup>Robin Brunet writes about how people claim they were misled by the description of the stage of Sue Rodriguez's disease at the time of death:

“I was led to believe Sue couldn't breathe or swallow. How did she manage to have a 'fine dinner' the night before she died?” ... Dr. Downing says the answer is simple: Her condition was grossly exaggerated. “During her final days she had difficulty swallowing at times but could still eat solid food,” he told *B.C. Report*. In a three-page press release that torpedoed the fundamental argument for euthanasia, Dr. Downing and Dr. Debra Braithwaite (who administered palliative care to Mrs. Rodriguez) revealed the ALS sufferer's true physical condition. “In the original arguments for euthanasia by Sue and others, the picture frequently painted was of a horrible death with pain,” they wrote. “If you note the clear change in Sue's remarks over this past year, she stopped talking of the fear of those symptoms. The reason for this was the good palliation and relief she obtained.” The doctors added: “Sue was not in any physical pain, she was not near death” (“Marketing Death” *British Columbia Report* (28 February 1994) 22 at 23-24).

of the definition of terminal illness (in the sense that a person may live with a terminal disease for a long period of time), other people may argue, as Rodriguez eventually did, that they have the right to take their lives simply because they fear a painful stage of their illness. Furthermore, self-willed deaths by people with AIDS, at various stages of the disease, are becoming common in Canada and other Western nations. Finally, the fact that critics of the Dutch guidelines point to many unreported cases of euthanasia and examples of involuntary active euthanasia suggests that a slippery slope is already taking place.<sup>184</sup>

We should remember that our legal decisions may not only profoundly influence our own society, but also, in our shrinking world, non-Western societies as well. Because some societies such as India and Japan have had long traditions of self-willed death, they may be inspired by new Western laws (should assisted suicide be legalized) to legitimate them again, especially in a post-colonial era that reasserts indigenous identity. For example, there was discussion about decriminalizing the law against suicide in India.<sup>185</sup> Before this happened, however, a modern case of *sati* occurred (in 1987), which seems to have caused second thoughts.<sup>186</sup> Still the debate continues. Now when some fundamentalist Hindus argue for a woman's right to perform *sati*, saying that as long as it is voluntary, it is a death with dignity, and in any case a woman has a right to do what she wants with her own body, they point to the growing support for assisted suicide and active euthanasia in the West as a voluntary, self-willed death with dignity to support their argument.<sup>187</sup> The Tamil guerrillas in Sri Lanka, who wear amulets with cyanide which they take if they are captured, are no doubt drawing on the ancient South Indian tradition of self-willed death by warriors. Even in the clash in India between students and the central government over the reservation policy (in 1990), a number of students burned themselves to death in protest, in what appeared to be a kind of epidemic.<sup>188</sup>

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<sup>184</sup>*Supra* note 1 at 603. See also R. Fenigsen, "A Case against Dutch Euthanasia" (1989) 19:1 Hastings Center Rep. 22 (Special Supplement); C.F. Gomez, *Regulating Death: Euthanasia and the Case of the Netherlands* (New York: Free Press, 1991).

<sup>185</sup>There were two legal discussions. One was by the Bombay High Court (*Maruti Shripati Dubal v. State of Maharashtra*, Writ Petn. no. 641 of 1986 (1987), 93 Crim. L.J. 743 (Bombay H. Ct.), cited in Bilimoria, *supra* note 50 at 351). The other case was decided by the Andhra Pradesh High Court in 1988 (*Chenna Jagadeeswar v. State of Andhra Pradesh*, Criminal Appeal No. 165 of 1987 (1988), 94 Crim. L.J. 549 (Andhra Pradesh H. Ct.), cited in Bilimoria, *ibid.* at 353).

<sup>186</sup>See M. Kishwar & R. Vanita, "The Burning of Roop Kanwar" (1987) 42-43 *Manusii: A Journal about Women and Society* 15-26 for details of the case. Almost 160 years after *sati* was declared to be culpable homicide by Regulation XVII of 1829, during the British Raj, incidents of *sati* are on the rise again in modern India, instigating the Indian Parliament to pass yet another law (December, 1987) to check the practice. According to the new law, the death penalty may be imposed on those who help carry out the ritual of *sati*; the woman who tries to perform *sati* may be sentenced to six months in jail; those who glorify *sati* may be given prison sentences of as long as seven years; and the government is empowered to dismantle memorials and temples related to *sati*. See "Death Penalty Approved for Aiding Hindu Suicide Rite" *The [Toronto] Globe and Mail* (17 December 1987) A10.

<sup>187</sup>See K.K. Young, "Women in Hinduism" in A. Sharma, ed., *Today's Woman in World Religions* (Albany: State University of New York Press, 1993) 121.

<sup>188</sup>K.K. Young, "The Indian Secular State under Hindu Attack: A New Perspective on the Crisis of Legitimation" in N. Smart & S. Thakur, eds., *Ethical and Political Dilemmas of Modern India* (New York: St. Martin's Press, 1993) 194 at 198.

The Jains are interested in reviving their practice of *sallekhanā*. They have consistently maintained that *sallekhanā* has no relation to other Indian forms of self-willed death such as *sati*.<sup>189</sup> Some Jain leaders today have discussed modifying the traditional Jain practice of *sallekhanā* by saying that in a modern medical context, lethal drugs for pain relief, "to bring on the impending death," may be used when pain is unbearable.<sup>190</sup> This suggestion would change a practice which was traditionally more analogous to withholding or withdrawal of treatment than to physician-assisted suicide and active euthanasia.

In Japan today, suicide is not illegal, though it is a crime to assist or encourage a suicide. Nevertheless, the topic of physician-assisted suicide is being debated, and there is a growing movement to legalize euthanasia.<sup>191</sup> Kato says that it is "the Japanese way." Fusé argues that *seppuku* must be understood with reference to Japanese culture, and that as a culturally and religiously legitimated form of self-willed death it should not be assimilated to the Western concept of suicide, for that would be a superimposition of "provincial Euro-American values and behaviour patterns."<sup>192</sup> Although he stops short of calling for a revival, others may not, given the recent reassertion of Japanese identity and arguments that ethics is somehow foreign — more specifically, Western — and may distort indigenous habits of thought, such as the idea that time is cyclic and that death is mediated by lengthy rituals and a calm mind.<sup>193</sup>

And in China, a recent poll revealed that over 90 percent of medical workers are in favour of active euthanasia, and that it is sometimes being practiced underground. The Chinese author of one report in a prestigious journal argued that the Chinese should "regard euthanasia, like ... eugenics ... as part of the agenda of our modernization and confirm its social value, moral value and importance in law."<sup>194</sup>

Some people argue that it is irrelevant to look to history for answers to modern problems. Because there have been tremendous social and technological changes, it is claimed, there can be no meaningful analogies with the past. I would argue, however, that we need first to do our homework on a cross-cultural and historical basis. As this study has shown, there are many conditions in traditional texts that sound very similar to ones encountered today: from the

<sup>189</sup>See Justice T.K. Tukol, *Sallekhanā Is Not Suicide* (Ahmedabad, India: L.D. Institute of Indology, 1976).

<sup>190</sup>See Bilimoria, *supra* note 50 at 347, reporting on a recent conference in India which examined the relation of euthanasia and *sallekhanā*.

<sup>191</sup>Becker, *supra* note 70 at 552, discusses, for instance, the conditions described by the Nagoya High Court (1962) which would make assisted suicide/euthanasia acceptable. Becker, however, is an advocate of active euthanasia and interprets Buddhism in this fashion. See also Kato, *supra* note 28 at 76-79, who examines other passages and gives quite a different interpretation. He also surveys current discussions on this topic by jurists and physicians.

<sup>192</sup>*Supra* note 78 at 63.

<sup>193</sup>H. Hardacre, "The Response of Buddhism and Shinto to the Issue of Brain Death and Organ Transplant" (Paper presented to the East-West Center Conference on Japanese Spirituality, January, 1992) [unpublished].

<sup>194</sup>S. Da Pu, "Euthanasia in China: A Report" (1991) 16 *J. of Medicine and Philosophy* 131 at 137.

common human problem of dying, to the existence of an aging population in a time of political and economic destabilization, to the exploitation of vulnerable groups, to the claims of freedom and rational choice to determine the time, place and mode of death.<sup>195</sup> This suggests that there may be some meaningful analogies.

It is important to realize, however, that even though slippery slopes existed in those societies that legitimated self-willed death, the existence of a phenomenon or even its popularity does not determine whether it is good or bad. This is the problem of how to derive an "ought" from an "is". There must be good reasons why an act should not be done. In the final analysis, such "good" reasons might include the following.

First, most species do not kill their own kind or themselves. Humans, unlike animals, are conscious of death and have greater freedom of behaviour (including the ability to kill other humans and themselves). This contributes to their ability to adapt and therefore to survive as a species. But they must use culture to limit this freedom so that it does not become destructive, especially at times of personal or social crises when people are filled with despair and see no reason to live. Therefore, cultural systems consciously promote the value of life-affirmation to prevent the abuse of human freedom.

Societies acknowledge, moreover, that human beings are interdependent. Since human beings have phases of dependency (*e.g.* infancy, childhood, old age) or particular situations of dependency (*e.g.* times of devastating illness, extreme mental despair or abject poverty), they need the protection of others at critical points in their lives. Because of the unpredictability of illness, the inherent ambiguity in any quality of life arguments (By whose standard? Will it always be this way?) and the fact that the moment of death itself is always unknown, it has been important to provide support in order to encourage life-affirmation that would sustain people through difficult periods in their lives. Because it may not be in the immediate self-interest of others to offer such protection or support, human beings have been culturally encouraged to be altruistic to protect others when they are dependent so that they themselves will be protected, in turn, when they are dependent.

This is, in effect, a kind of human life-insurance policy that becomes encoded into cultural systems. Human beings can and sometimes do ignore the vulnerability and dependency of others, but there are good reasons for their own survival and well-being not to do so, for there already have been and most likely will be times when they will need such help themselves. Therefore, they ought

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<sup>195</sup>From my survey, the only thing that is dramatically new today is the existence of certain kinds of technology, specifically life-support systems and other extraordinary measures that can maintain indefinitely the lives of persons who otherwise would have died by natural causes. This creates the historically unprecedented human problem of being imprisoned indefinitely by a machine. Many modern societies have already addressed this specific problem, however, by legally allowing for the withholding or withdrawal of treatment, albeit within carefully established boundaries determined by living wills or court hearings. In Canada, for example, the case of *Nancy B. v. Hôtel-Dieu de Québec*, [1992] R.J.Q. 361, 86 D.L.R. (4th) 385 (Sup. Ct.), establishes the legal precedent for such action. See also *Rodriguez*, *supra* note 1 at 598.

to act altruistically toward others to set an example and help create a societal agenda to ensure that help will be there for them when they need it. Such altruism is a duty and responsibility, and sometimes when it is beyond the call of duty — a gift. But the wise will see that it is also important for the self on a long-term basis, not to mention human survival and the well-being of the individual, the family, the group and even the species. Culture, which is the collective wisdom of a human society, has built these insights into its codes of behaviour, ethics or law so that the wheel does not have to be reinvented by each person or each generation (a precarious proposition).

Second, a reluctance by societies to endorse self-willed death and physician-assisted suicide can be attributed to the problem of determining the real intention or motive of a person's act when there are genuine conflicts of interest. Despite the recognized importance of altruism for human communities and the cultural norms to try to ensure it, there is always the possibility that individuals will be genuinely short-sighted or ignore or conveniently forget cultural norms and act selfishly for their own short-term benefits and goals. Some parents may abandon a handicapped child, for example, and some couples may not provide physical or emotional support for an old in-law who becomes temporarily ill.

Many people who were assisted in killing themselves by hemlock in Western antiquity were probably never sure if a relative or other interested party had encouraged or even paid a physician to use poison to kill under the disguise of relieving pain. This is likely why physicians who did become secretly involved in helping people die preferred to give the so-called "medication" to the person and then let him or her take it. Physicians also had the problem of protecting their reputation as healers, especially in an age when there were a number of quacks. If they were in the business of providing a death potion, then they would be associated with causing death rather than healing. The very fact that people may die despite medical treatment meant that it was always difficult to maintain the reputation of physicians. And the fact that poison usually worked quickly and effectively (making reversal difficult if a person changed his or her mind), or severely damaged a person if the dosage was inadequate, meant that doctors generally preferred to stay out of such activities. They had to try constantly to ensure that their intentions were life-affirming and transparent so that their reputation would not be marred and so that people would have confidence in them.

The Buddhist priests who were physicians were warned in no uncertain terms not to use their skills for such tasks. By contrast, there was for a long time no such direct taboo in Greek and Roman antiquity. Perhaps the fact that physicians were often slaves and already of low status contributed to the fact that physician-assisted suicide became common and was gradually perceived as harmful to the society. Eventually, the Hippocratic Oath brought the Western medical practice under the same controls that the Buddhist medical practice had developed some centuries earlier.

It is only realistic to acknowledge that in extremely difficult human situations involving others there may be a real tug-of-war between selfish and altru-

istic motives. Moreover, selfish ones may be denied or disguised by seemingly altruistic ones. Because it is so difficult to determine what are the real intentions of an individual, societies have tended to act very conservatively where ambiguity can occur, especially when intentions become a matter of life and death. In general, complex societies have encouraged a principle of nonviolence or sanctity of life and then have made only a few exceptions (*e.g.* self-defense or a just war). As we have seen, the legitimization of self-willed death in certain circumstances was an experiment that was tried because there seemed to be good reasons for such an exception — such as compassion to those who are in extreme pain — but proved problematic for the society as a whole in the long run. In the final analysis, the boundary between unplanned irrational suicide and planned rational self-willed death was always fuzzy. Desperate people who committed suicide often did think about how to accomplish the act; they too planned. Moreover, they too often thought about the reasons, and came to the conclusion that they had good reasons. And we should not forget the ambiguity involved even in cases of self-willed death that ostensibly had no help from others. It is just too difficult to know what thinking is truly independent from general cultural values taught to an individual from childhood.

To conclude, there are “good reasons” for any human society to protect the life of its members through cultural norms and laws. The fact that planned self-willed death and especially physician-assisted suicide created a slippery slope in those complex societies that experimented with it being an exception to the general rule of nonviolence or the sanctity of life means, moreover, that the State should avoid legitimating planned self-willed death and especially assisted self-willed death. Spontaneous suicide out of despair, *etc.* should remain decriminalized as long as the society has other mechanisms for suicide prevention.

When I began this research some years ago, I had not reflected deeply on the issues and would have agreed quite quickly that people should have the freedom and the right to choose their mode of dying, including physician-assisted suicide. As the pieces of the puzzle were put together from my historical research, first on India and then on other societies, I began, however, to reassess my earlier values. I now think that between (1) prolonging life for a long time through “imprisonment” by the technology of life-support systems, thereby creating both the reality of torture (psychological and physical) or a symbol of its tyranny, and (2) shortening the process of dying by physician-assisted suicide and euthanasia, thereby creating problems of intentionality and the possibility of a slippery slope, there should be a middle path that avoids these extremes. I think that legalized withholding or withdrawal of treatment within careful boundaries, good palliative care, encouragement of research into better pain relief, and maintenance of the prohibition against physician-assisted suicide in the criminal codes of Canada and other nations are all necessary at this historical moment.

As Justice Sopinka has said there needs to be a balance between the interests of the individual and the State.<sup>196</sup> It will take compassion on the part of care-

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<sup>196</sup>Rodriguez, *ibid.* at 592-93.

givers and altruism on the part of the dying to support and accept living out the natural life-span when extreme pain is involved. These are very important gifts to society and an expression of wisdom in the long run. For paradoxically, the dying (and those who take care of them) are the stewards of the living through their support of a nonviolent death in which no one is directly causing someone's death. Is this not essential for security and hope at the core of human existence?<sup>197</sup>

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<sup>197</sup>In this final assessment, I must admit that I have been profoundly influenced not only by the historical materials gathered here, but also by the concept of nonviolence, which has inspired the Indian religions, my field of study over many years. I have also been deeply concerned about phenomena such as *sati*, the self-willed death of a woman who *chooses* to follow her husband in death. Although I have sincerely tried to do justice in my writings to its dimension as a religious and heroic ideal which parallels that of the self-willed death of many male religious figures, I also cannot forget that women, although they were ostensibly making a free choice to die in this manner, lacked the real choices that men had in the society and were more prone to perceive themselves as a burden and to be perceived by others in this way. Were they, then, the vulnerable who must be protected by society, as Justice Sopinka suggests? And do examples like this give us an insight into how we should proceed with caution even when the context is ostensibly one of free will?