NOTES

TORTIOUS INDUCEMENT TO SUICIDE: A STUDY OF THE JUDICIAL OSTRICH

I

POLICY AND THE JUDICIAL OSTRICH

Although tortious injuries generally give rise to liability, English and American judges have been particularly solicitous to insure compensation for injuries violating the sanctity of the body.[1] Limiting concepts like foreseeability have been stretched or ignored to allow a diseased plaintiff to recover for injuries aggravating his illness,[2] to allow a plaintiff recovery for illness when an injury has rendered him susceptible to disease, and, most startling, to allow recovery for the consequences of a disease which would probably have been contracted even if the injury had not occured.[3]

Despite this general tendency favoring compensation, the courts have virtually refused to allow recovery for tortiously induced suicide.[4] Recovery is allowed only if the suicide is committed in a state of rage or frenzy, or if it results from an irresistible impulse.[5] Although the courts diverge in their interpretations of "irresistible impulse,"[6] their

1. Dean Prosser suggests that there may be a "magic circle" drawn around the body, and that anyone who breaks it, no matter how slightly, becomes liable for all the harm that may result therefrom. W. PROSSER, LAW OF TORTS 300 (3d ed. 1964).

2. *Id.* at 300 and cases collected.

3. *Id.* at 319. In the latter case, as Dean Prosser points out, "there are few cases." *Id.* at 300 n.1.

4. No printed appellate decision has been found which affirms a verdict for damages resulting from suicide caused by tortious conduct. A more typical decision simply states the rule and then holds, as a matter of law, that the deceased's conduct was such that the complaint fails to state a cause of action. *See, e.g.*, Appling v. Jones, 115 Ga. App. 301, 154 S.E.2d 406 (1967); Stasiof v. Chicago Hoist & Body Co., 50 Ill. App. 2d 115, 200 N.E.2d 88 (1964); Koch v. Fox, 71 App. Div. 288, 75 N.Y.S. 913, later appeal Koch v. Zimmermann, 85 App. Div. 370, 83 N.Y.S. 339 (1903).

5. *See, e.g.*, Tucson Rapid Transit Co. v. Tocci, 3 Ariz. App. 330, 414 P.2d 179 (1966); Stasiof v. Chicago Hoist & Body Co., 50 Ill. App. 2d 115, 200 N.E.2d 88 (1964); Daniels v. New York N.H. & H. R.R. Co., 183 Mass. 393, 67 N.E. 424 (1903); Wallace v. Bounds, 369 S.W.2d 138 (Mo. 1963); Bogust v. Iverson, 10 Wis.2d 129, 102 N.W.2d 228 (1960).

6. The older decisions, following the criminal law, hold that, when the decedent's actions are deliberate and rational, he is not subject to an "irresistable impulse," but acting in accord with his own volition. *See* Brown v. American Steel & Wire Co., 43 Ind. App. 560, 571-72, 88 N.E.

decisions render recovery virtually impossible in circumstances short of complete loss of bodily control.[7] The restrictive rule is justified as an elaboration on the requirement that the defendant's action be the proximate cause of the deceased's injury.[8] Under this rationale, the voluntary act of the deceased is regarded as an "intervening" or "superseding" cause of death, insulating the actor from liability.[9]

At best these decisions inadequately explain the basis for utilizing the notion of proximate cause. Proximate cause is, in reality, only a synonym for public policy.[10] As a result, the rules governing proximate cause normally vary immensely dependly on the particular tort for which recovery is sought.[11] In failing to articulate the reasons for applying the proximate cause doctrine, however, the courts have ignored distinctions between the various types of torts.[12] Rules governing the ability to recover for damages caused by negligence have been applied indiscriminately to intentional torts. For example, the intention of the wrongdoer may be to inflict pain, suffering or mental distress, and his actions may be successful to the point of precipitating suicide. Nonetheless, the deceased's ability to kill himself in a rational manner may block recovery if the court regards it as an "intervening force" breaking the chain of causation.[13]

80, 85 (1909) "[i]f the decedent at the time of taking his life had mind enough to know what he wanted to do, and how to do it, the line of causation from the accident to the death would be broken by the act of suicide and the latter would be the proximate cause of his death." *Accord* Lancaster v. Montesi, 390 S.W.2d 217 (Tenn. 1965); Arsnow v. Red Top Cab Co., 159 Wash. 137, 292 P. 436 (1930). *Contra*, Orcutt v. Spokane County, 58 Wash. 2d 846, 364 P.2d 1102 (1961), modifying the rule set out in *Arsnow, supra*, the court said: "[I]t is not proper [the *Arsnow* rule] in a case where there is medical testimony that the injury sustained by the decedent caused a mental condition which resulted in an uncontrollable impulse to commit suicide in the sense that the decedent could not have decided against and refrained from killing himself, and because of such uncontrollable impulse committed suicide." *Id.* at 853, 364 P.2d at 1105. The best articulation of the new rule is found in Tate v. Canonica, 180 Cal. App. 2d 898, 5 Cal. Rptr. 28 (1960).

7 *See* note 4, *supra*.

8 *See, e.g.*, Scheffer v. Washington City, 105 U.S. 249 (1882); Daniels v. New York N.H. & H R R Co., 183 Mass. 393, 67 N.E. 424 (1903); McMahon v. New York, 141 N.Y.S.2d 190 (Sup Ct 1955)

9 The voluntary nature of the decedent's acts serves as ground to differentiate these cases from those in which the tortious injury of the defendant aggravated a pre-existing condition. Long v. Omaha & C.B. Street R.R., 108 Neb. 342, 351-52, 187 N.W.2d 930, 934 (1922). The theory is similar to contributory negligence. *See also*, note 29, *infra* and accompany text.

11 *See* RESTATEMENT OF TORTS § 279, and comment c (1934).

12 Salsedo v Palmer, 278 F. 92 (2d Cir. 1921); Stevens v. Steadman, 140 Ga. 680, 79 S.E. 564 (1913).

13 Lancaster v. Montesi, 390 S.W.2d 217 (Tenn. 1965). The original *Restatement's* treatment of the rule allowing recovery if suicide is the result of an irrestible impulse or frenzy is somewhat

A. The distinction between intentional and negligent torts.

Until 1960, no case dealing with tortiously induced suicide had held that the tortfeasor's liability might depend upon whether his action was negligent or intentional and, if intentional, what consequences his action was intended to bring about.[14] Such distinctions, however, long had been recognized in other contexts.

The *Restatement (First) of Torts*, in considering the law applicable to conduct intended to cause bodily harm, suggested that such intentional conduct was the "*legal cause* of any bodily harm of the type intended . . . which it is a substantial factor in bringing about."[15] The comments to the *Restatement* section point out two important differences between this rule, as it applies to intentional torts, and the causal relationship necessary to find a negligent action the legal cause of an injury.

First, if the tort is intentional, the foreseeability of the injury is ignored. If the actor's "conduct has created a situation harmless unless acted upon by other forces for which the actor is not responsible," he is still liable for the plaintiff's injury.[16] Secondly, the conduct need only

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more liberal than that of the cases upon which it is based. *See* RESTATEMENT OF TORTS § 455, illustration 3 (1934):

> A negligently injures B. The injuries cause insanity which takes the form of suicidal mania. While suffering in this condition, B locks his door to prevent interference and cuts his throat with a knife he has secreted and sharpened for that purpose. A's negligence is the legal cause of B's death or other harm resulting from his cutting his throat.

Compare cases cited note 6, *supra*.

14. There was a hint in Cauverien v. DeMetz, 20 Misc. 2d 144, 188 N.Y.S.2d 627 (Sup. Ct 1959).

15. RESTATEMENT OF TORTS § 279 (1934):

> If the actor's conduct is intended by him to bring about bodily harm to another which the actor is not privileged to inflict, it is the legal cause of any bodily harm of the type intended by him which it is a substantial factor in bringing about.

16. *Id.*, comment c:

> The rule stated in this Section as determining the causal relation necessary to make the actor liable for bodily harm of the type which he intends to inflict differs in several important particulars from those which determine the causal relation necessary to make a negligent actor liable for harm resulting from his negligence.
>
> First, in determining whether the actor's conduct is a substantial factor in bringing about harm of the type which he intended to inflict upon the other, no consideration is given to the fact that after the event it appears highly extraordinary that it should have brought about such harm or that the actor's conduct has created a situation harmless unless acted upon by other forces for which the actor is not responsible. . . .
>
> Second, all that is necessary to make the actor liable under the rule stated in this Section is that his conduct is a substantial factor in brining about an injury of the type he intended to inflict. There are no rules which relieve the actor from liability because of the manner in which his conduct has resulted in the injury such as there are where the liability of a

be a substantial factor in causing the injury. It makes no difference that the "actor's conduct becomes effective in harm only through the intervention of new and independent forces for which the actor is not responsible."[17] Nor does it matter whether the intervening force is of a wrongful nature.[18] Section 280 applies the rule governing intentional infliction of bodily harm to other "interests in personality," and applies the comments relating to bodily harm to the "other interests."[19]

The *Restatement's* reference to *legal* cause is the touchstone of the distinction. When dealing with questions of liability, courts must determine whether, as a matter of law, allowing recovery would be consistent with public policy.[20] If it is not, they speak in terms of failure to show proximate causation, although actual causation may be apparent.[21] The *Restatement* sections and comments make it plain that foreseeability and intervening forces have no role, as a matter of policy, when the harm caused is within the class of the harm intended. Rather, in this situation the tortious act constitutes the legal or proximate cause of the injury if it substantially contributes to it.[22]

In 1960 the California District Court of Appeals applied the distinction between intentional and negligent torts to tortiously induced suicide. In *Tate v. Canonica*,[23] the plaintiff had alleged that the defendants made threats, statements and accusations against the deceased to harass and humiliate him, that these statements caused him to become mentally disturbed, and that as a result of this disturbance he committed suicide. A second count alleged that the defendants'

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negligent actor is in question. Therefore, the fact that the actor's conduct becomes effective in harm only through the intervention of new and independent forces for which the actor is not responsible is of no importance. So too, the fact that the operation of the new force was unexpectable by the actor or even that after the event it appeared highly extraordinary that it had operated does not relieve the actor from liability for harm of the type which he intended to inflict. So too, the wrongful character of the intervening force is of no moment. .

17 *Id*

18 *Id*

19. RESTATEMENT OF TORTS § 280 (1934).

20 *See, e g* , the concurring opinion in Orcutt v. Spokane County, 58 Wash.2d 846, 364 P.2d 1102 (1961) The dissenting judge argued against the extension of the "irresistible impulse" test for tortiously induced suicide on the basis of proximate cause. The concurring opinion argues that in a motion to dimiss because of inadequate evidence on which to go to the jury, proximate cause is inappropriate. It is a policy matter more appropriately decided on demurrer or when specifically raised by the parties.

21 W PROSSER, THE LAW OF TORTS 283-84 (3d ed. 1964).

22 *See* note 16, *supra.*

23. 180 Cal. App. 2d 898, 5 Cal. Rptr. 28 (1960).

actions were negligent.[24] The trial court sustained a demurrer against both counts. The California Supreme Court reversed. In its extensive opinion, the Court raises the major problems arising out of attempts to recover damages for suicide.

First, the Court notes that the petition alleges that the defendants' acts were done for the purpose of inflicting emotional distress, but without any intent to cause the deceased to commit suicide.[25] Admitting that earlier cases seem to support a rule that suicide is an intervening act "breaking the chain" of causation, the Court embarks on an independent analysis. It begins by noting that at one time suicide was itself regarded as a crime. It then assumes that the "unspoken" major premise of decisions holding suicide nonactionable was the criminality attached to it. Because California does not recognize suicide as a crime, this premise is inoperative.[26]

On the other hand, the *Tate* Court says, the law increasingly has been willing to hold persons liable when they intentionally cause mental distress.[27] Pointing next to the *Restatement (First) of Torts*, sections 279 and 280, the Court asserts that if an action is deliberately committed, causation can be shown if the tort is a substantial factor in bringing about the kind of harm which was intended.[28] Any introduction of proximate cause must rest on a public policy which mitigates against a recovery. The *Tate* Court fails to find such a policy. The tort was intentional. On the basis of sections 279 and 280 of the *Restatement*, then, there is no reason to disallow recovery because the defendant "knew what he was doing." Because contributory negligence is no defense to an intentional tort in California, that defense, which might be made by analogy, is unavailable.[29] The Court concludes its analysis by saying that if the defendant intended to cause serious mental distress and does so, and if the distress is shown to be a substantial factor in bringing about the suicide, a cause of action is

24. *Id.* at 900, 5 Cal. Rptr. at 31.

25. *Id.*

26. *Id.* at 903, 5 Cal. Rptr. at 33.

27. The court quotes extensively from its decision in State Rubbish Collectors Ass'n v. Siliznoff, 38 Cal. 2d 330, 240 P.2d 282 (1952) to show the California policy favoring imposition of liabiliy in these situations. Tate v. Canonica, 180 Cal. App. 2d 898, 905-06, 5 Cal. Rptr. 28, 34-35 (1960).

28. Tate v. Canonica, 180 Cal. App. 2d 898, 906-08, 5 Cal. Rptr. 28, 35-36 (1960).

29. *Id.* at 909, 5 Cal. Rptr. at 36.

stated. The mental state of the suicide victim becomes irrelevant.[30] The Court then analyzes and distinguishes various cases.[31]

Two serious problems in the Court's reasoning should be noted. First, sections 279 and 280 of the *Restatement* dispense with the normal considerations of proximate cause only when the injury sustained is within the class of injuries that the tortfeasor intended to inflict.[32] In *Tate* the tortfeasor intended to, and did, inflict emotional distress. His actions, then, under the rationale of sections 279 and 280, need only be shown to have contributed substantially to any emotional distress in order to be considered its legal cause. But the causal link between the emotional distress and the suicide is not established by the rationale of sections 279 and 280. That rationale only justifies the equation between substantial factor and legal cause if *suicide* is within the class of intended harms. This is not to fault the conclusion of the California Court. Suicide can quite properly be regarded as no more than a manifestation of extreme emotional distress and squarely within the category of intended harm.[33] But if this assumption is attributed to the Court as an unconscious, sub-silentio premise, the only support for it is the statement that: "all recorded history testifies that there are cases in which serious mental suffering is in fact a cause of suicide."[34] An analysis of the validity of an equation between serious mental distress and suicide as a manifestation thereof becomes, then, essential to the Court's ability to utilize the definition of legal cause found in sections 279 and 280.

It is noteworthy, however, that an alternative rationale is now available within which to consider the question of proximate cause. Section 312 of the *Restatement (Second)*, published five years after the *Tate* decision, provides that when one intentionally subjects another to emotional distress, and when the actor should realize that it is likely to result in some kind of illness or bodily harm, the actor is liable for

30. *Id.* at 912, 5 Cal. Rptr. at 38.

31 The second part of the Court's opinion deals with the question of negligence. It reasons, in accord with the modern rule of "irresistible impulse" that some rational conduct is not inconsistent with a holding that the deceased was not able to control his actions. *Id.* at 913, 5 Cal. Rptr at 46.

32. *See* note 16, *supra.*

33 The suggestion has been made that "[p]sychiatrically well (normal) persons never or very rarely make suicide attempts, regardless of the severity of the social stresses to which they are subjected " Robins, Schmidt & O'Neal, *Some Interrelations of Social Factors and Clinical Diagnosis in Attempted Suicide: A Study of 109 Patients*, 20 AM. J. PSYCHIATRY 25 (No. 3, 1956) It must also be kept in mind that every completed suicide includes a suicidal attempt.

34. 180 Cal. App. 2d 898, 912, 5 Cal. Rptr 28, 45 (1960).

the illness "for which the distress is the legal cause."[35] The section discounts the presence of actual intention to inflict the ultimate illness or harm. This rationale would avoid the problem in *Tate*, in which the defendants did not intend to cause the deceased to commit suicide. The comments clearly state that the actor need not intend to cause the harm or even know with substantial certainty that his action will cause any harm.[36] They further assert that it is not necessary that "the distress which he intends to cause is one which would be likely to cause bodily harm to a person of average resistance to emotional distress."[37]

If suit is brought on the basis of intentional torts like malicious prosecution, abuse of process, libel, or slander, it can be assumed that the defendant should recognize that his conduct would cause bodily harm or illness.[38] Supporting recognition of the causal relationship between intentional actions and physical and emotional illness is a line of decisions creating a tort action specifically granting recovery for "intentional infliction of emotional distress."[39] To be sure, the alternative route of 312 would leave a court with much the same dilemma which led to the utilization of sections 279 and 280. Under 312 the illness or bodily harm must be legally caused by the inflicted distress, but utilizing 312 has the advantage of focusing on the question of legal cause. Suicide does result in bodily harm and may be a symptom of mental disease.[40] The 312 rationale forces the question of whether the defendant's action should be, or even can be, considered the legal cause of the disease and therefore of the bodily harm. An answer to this question demands: (1) an investigation of the causes in fact of suicide, *i.e.*, both the sociological and psychological causes, and

35. RESTATEMENT (SECOND) OF TORTS § 312 (1965). The section reads:

> If the actor intentionally and unreasonably subjects another to emotional distress which he should recognize as likely to result in illness or other bodily harm, he is subject to liability to the other for an illness or other bodily harm of which the distress is a legal cause,
>
> (a) although the actor has no intention of inflicting such harm. . . .
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> . . . .

§ 312 became official in 1965.

36. RESTATEMENT (SECOND) OF TORTS § 312, comment d (1965).

37. *Id.* at comment e.

38. Comment b to section 312 makes it clear that it is because of the defendant's neglience in failing to foresee that his conduct might cause illness or bodily harm that the section is included.

39. W. PROSSER, THE LAW OF TORTS 51, 52 (3d ed. 1964).

40. *See* L. DUBLIN & B. BUNZEL, TO BE OR NOT TO BE: A STUDY OF SUICIDE 300-18 (1933) [hereinafter cited as DUBLIN]; E. STENGEL, SUICIDE & ATTEMPTED SUICIDE 51-56 (1965) [hereinafter cited as STENGEL].

the possibility that the tort may have exacerbated the latent disease or induced its development; and, (2) a consideration of the legal propriety of considering such an analysis in the light of psychological knowledge on the one hand and the public's interest in providing compensation to victims of wrong-doing on the other.

The second problem with the *Tate* decision is its assumption that the previous cases were sub-silentio based on an abhorrence of suicide manifested in its illegality. None of the cases dealing with suicide as an element of damages mentions the legal or illegal nature of the act. All of them do, however, implicitly indicate a concern with foreseeability,[41] an ability to prove cause in fact,[42] and a fear of allowing the plaintiff's deceased to intentionally exacerabte his damages.[43] The *Tate* Court's reliance on a novel premise explains its cavalier treatment of basic policy issues. It also explains the Court's unconscious assumption that the same *Restatement* generalities that enabled it to dispense with policy considerations in considering the actual emotional distress the injury caused, enable it to dispense with consideration of these issues in determining whether to allow recovery for the suicide the emotional distress may have led to.

In spite of these unfortunate oversights, the *Tate* decision shows a court willing to overcome seemingly unquestionable precedent and lift the judicial head out of the sand of proximate cause. In *Tate*, the distinction between intentional and negligent causes of suicide was recognized. This was, in the light of precedent, a substantial accomplishment. The California Court found only four cases, out of all the tortiously caused suicide actions, which dealt specifically with the problem before it.[44] One of these, *Salsedo v. Palmer*,[45] arrived at a conclusion completely opposite to that of the *Tate* Court. The other

41 Tucson Rapid Transit Co. v. Tocci, 3 Ariz. App. 330, 414 P.2d 179 (1966); Appling v. Jones, 115 Ga. App. 301, 154 S.E.2d 406 (1967); Brown v. American Steel & Wire Co., 43 Ind. App. 560, 88 N.E. 80 (1909).

42 Stevens v. Steadman, 140 Ga. 680, 683-84, 79 S.E. 564, 567-68 (1913).

43 McMahon v. New York, 141 N.Y.S.2d 190, 192 (Sup. Ct. 1955) ("In the circumstances of this case one may not aggravate the decedent's damage by willful and deliberate self-destruction.") *See also* Stasiof v. Chicago Hoist & Body Co., 30 Ill. App. 2d 115, 122-23, 200 N.E.2d 88, 92 (1964) quoting the above language from *McMahon*.

44. Salsedo v. Palmer, 278 F. 92 (2d Cir. 1921); Cauverien v. De Metz, 20 Misc. 2d 144, 188 N.Y.S.2d 627 (Sup. Ct. 1959); Jones v. Stewart, 183 Tenn. 176, 191 S.W.2d 439 (1946); Stevens v. Steadman, 140 Ga. 680, 79 S.E. 564 (1913).

45 278 F. 92 (2d Cir. 1921).

three cases either can be read only tangentially as supporting the *Tate* holding or must be distinguished.[46]

B. The Evolution of Confusion

Scheffer v. Washington City[47] is the leading and most frequently cited case dealing with tortiously induced suicide. In *Scheffer*, the plaintiff's deceased was negligently injured in a train accident. It was alleged that as a result he became insane and lost all power of reason. Because of pain and insanity, he committed suicide eight months after the accident. Not surprisingly, the Supreme Court refused to find that the suicide was "proximately caused" by the accident. The Court, applying familiar negligence reasoning, held the suicide was not "naturally and reasonably to be expected from the injury received on the train."[48] Because it "could not have been foreseen in the light of circumstances attending the negligence" of the defendants, the Court denied recovery.[49] Clearly, the *Scheffer* Court was applying policy normally associated with negligent torts, *i.e.*, examining forseeability in determining liability. Intentional torts were not considered: the court spoke solely in terms of negligence.

The next three cases to be decided all involved negligent physical injuries which allegedly brought about suicide by causing insanity or derangement.[50] Of the three the most important is *Daniels v. New York, N.H. & H.R. Co.*[51] The *Daniels* case articulated the rule generally cited as controlling in cases of negligently induced suicide. The *Daniels* court stated that it would only uphold liability if the suicide were "the result of an uncontrollable impulse, or [were] accomplished in delirium or frenzy . . . without conscious volition to produce death, having knowledge of the physical nature and consequences of the act."[52] The volition of the deceased was regarded, apparently, as an independent force. The defendant's negligence, apparently as a matter of policy, would not make him responsible for

46. All three of these cases are discussed, *infra*.

47. Scheffer v. Washington C., Va., M., & G. So. R.R., 105 U.S. 249 (1882).

48. *Id.* at 252.

49. *Id.*

50. Brown v. American Steel & Wire Co., 43 Ind. App. 560, 88 N.E. 80 (App. Ct. 1909); Daniels v. New York, N.H. & H. R.R., 183 Mass. 393, 67 N.E. 424 (1903); Koch v. Fox, 71 App. Div. 288, 75 N.Y.S. 913, later appeal Koch v. Zimmermann, 85 App. Div. 370, 83 N.Y.S. 339 (1902).

51. 183 Mass. 393, 67 N.E. 424 (1903).

52. *Id.* at 395, 67 N.E. at 426.

the manner in which the volition operated. The other cases articulated a similar rule, but, like the *Daniels* court, they did little more than cite the *Scheffer* decision to buttress their assertions.

The next suicide case involved an intentional tort. In *Stevens v. Steadman*,[53] the plaintiff's deceased was the vice president of a corporation, allegedly a highly excitable and nervous person. The defendants sent him a letter saying that he should resign from his position for the good of the company. They also threatened that if he did not resign they would resign themselves. They told him that for his own good, that of his family and that of the company, they would not discuss the reasons behind their actions with anyone, including him. Plaintiff alleged that the defendants tendered the ultimatum intending to drive decedent to suicide, but the only fact on which to base that inference was the letter itself. The court held as a matter of law that there was no way of proving that the letter had caused the suicide, at least in the absence of such proof in the letter had caused the suicide, at least in the absence of such proof in the letter itself.[54] There was no way to know what state of mind the deceased may have been put in by receipt of the letter.[55]

Steadman, it should be noted, is explainable on grounds other than judicial disfavor of suicide recoveries. First, the proof of intent was totally lacking, even accepting the allegations of the petition as true. Secondly, 1913, Georgia, like all the other states, refused to recognize that emotional distress could result from intentional conduct without some sort of physical injury and impact. This explains the court's reluctance to consider the issue of causation. Thirdly, the inference of causation in fact, *i.e.*, that the letter caused the decedent to commit suicide, was extraordinarily tenuous on its face.

The next case to be decided was *Salsedo v. Palmer*.[56] Although entirely at odds with the *Tate* decision, the underpinnings of this case are, to say the least, weak. In *Salsedo*, plaintiff's deceased, having been falsely arrested and tortured, jumped from a twenty-one story window while still imprisoned. The Second Circuit Court of Appeals[57] discussed liability for the intentional tort in terms of proximate cause, without

53. 140 Ga. 680, 79 S.E. 564 (1913).

54 *Id* at 683, 79 S.E. at 567.

55 *Id* at 683-84, 79 S.E. at 567-68.

56 278 F. 92 (2d Cir. 1921).

57 Action was brought against the deceased's captors in state court. The United States Attorney General, named as a defendant, obtained removal to federal court. *Id.*

noticing, in the guiding language it quoted, a limitation applying the proximate cause principle only to cases not involving "wanton" activity.[58] Ignoring the distinction drawn by the very authority it cited, the Second Circuit reasoned:

> It is conceivably, therefore, that a tortured man may kill himself. But, if he so kills himself deliberately, we hold that there is an intervening act of his own will for which the New York [wrongful death] act affords no remedy.[59]

This is no more than the application of the *Daniels* rule, articulated in a negligence case, to a situation involving an intentional tort. The court's next assertion, however, is startling, though it does dispose of the "frenzy" half of the *Daniels* test:

> If, on the other hand, it is contended that his self-killing is not his own act, but is the result of suicidal mania, we hold that suicidal mania is not a natural or reasonable result of either mental or physical torture. It is a most unreasonable inference . . . .[60]

Indicating the basis for its reasoning, the court stated that they were content to base [their] decision solely on the authority of *Scheffer* because no grounds for distinction exist between the two cases.[61]

Of course—as the California Court pointed out in *Tate—Scheffer* and *Salsedo* are, contrary to the assertion of the Second Circuit, easily distinguishable. One involved a negligent tort, and a policy decision based on proximate cause and reasonable forseeability was appropriate; the other involved an intentional wrong in which the relevant considerations are different. The harm intended in *Salsedo*, although definitely an intentional tort case, might not have been such that public policy would justify the imposition of liability. That does not, however, justify the court's utilization of negligence policy to decide non-negligence cases. Apparently neither *Salsedo* nor *Scheffer* recognize the difference between intentional and negligent torts because neither articulate *why* suicide is unforseeable. *Salsedo* exacerbates the problem by the court's failure to detail why foreseeability is even an issue at all.

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58. ". . . [I]n order to warrant a finding that negligence, or an act not amounting to a wanton wrong, is the proximate cause of an injury, it must appear that the injury was the natural and probable consequence of the negligence . . . ." *Id.* at 96.

59. *Id.* at 99.

60. *Id.*

61. *Id.*

Despite its inadequacies, *Salsedo* had an overwhelming effect on subsequent decisions.[62]

Cauverien v. DeMetz, a 1959 New York decision, illustrates the difficulty inherent in the confusion between negligent and intentional torts.[63] There, there, the deceased, in accord with the custom of his trade, took possession of a diamond from a wholesaler on an informal consignment agreeing to return the stone, or its value, on demand. The defendant, a diamond broker, took the stone from deceased on the same terms. The defendants told the deceased that they did not intend to deliver up the diamond, its value, or acknowledge possession. Plaintiff stated three causes of action: (1) that the defendant intentionally created emotional distress and blackened the name of the plaintiff's deceased; (2) conversion; and, (3) that the malicious and intentional conversions caused an irresistible impulse which caused the suicide.[64] The court merged the first count into the second, because damages could be recovered in conversion for emotional distress. The third count was held to allege "insanity" and therefore to state a cause

62 In 1946 the Tennessee Supreme Court decided Jones v. Stewart, 183 Tenn. 176, 191 S.W.2d 439 (1946). In *Jones*, the deceased, an 18 year old boy, was accused of stealing. The accuser had no probable cause for the accusation. As a result, the boy hung himself. The court held that there was no proximate cause between the accusation and the hanging. In reaching its decision the court quoted from *Salsedo, Daniels* and *Steadman*. As has been noted, *Salsedo* is less than impecably reasoned; *Daniels* is a negligence case; and, *Steadman* was decided on the basis of an inability to prove intent or causation. The *Jones* court noted that the deceased acted deliberately. The day before his suicide he placed a ring on his girl friend's finger with tears in his eyes, saying that he would not need it where he was going. The court then quotes from *Chattanooga Light & Power*, another Tennessee decision which disallowed recovery when an injury is the result of the plaintiff's own acts if they are so "fraught with peril" that a person of reasonable intelligence would be deterred from doing them. If despite the danger, the plaintiff acts in an unreasonable manner "it would seem impossible to find any ground upon which to maintain that the person guilty of the *first act of negligence* should be held liable." (emphasis added).

Obviously the court was applying negligence policy. As the *Tate* court pointd out, contributory negligence is usually no defense to an intentional tort. Tate v. Canonica, 180 Cal. App. 2d 898, 909, 5 Cal. Rptr. 28, 41 (1960). It cannot be determined, of course, whether the accusations in *Jones* were made negligently, or were made with the intent of causing emotional distress; if the former, negligence law was proper to apply. But if the action was malicious, the Tennessee court on the spurious basis of *Salsedo*, applied a rule which had no bearing on the facts before it.

It should be noted that in 1965, in a brief decision which failed to even cite the *Tate* case, the Tennessee court held that a plaintiff had no cause of action when the deceased, a paramour of the defendant, was driven to suicide by sadistic torture. The court merely held that she knew the consequences of her actions and therefore "(H)er voluntary act was an abnormal thing. . . ." The court relied merely on the *Jones* case. Lancaster v. Montesi, 216 Tenn. 27, 390 S.W.2d 217 (1965)

63 20 Misc. 2d 144, 188 N.Y.S.2d 627 (1959).

64. *Id.* at 146, 188 N.Y.S.2d at 629.

of action within the traditional tests of tortiously induced suicide.[65] Although the holding required no discussion of the differences between intentional and negligent torts, the court stated that if the wrong inflicted were intentional, "the wrongdoer is responsible for the injuries directly caused even though they may be beyond the limits of foreseeability."[66] Policy, apparently, would not keep the plaintiff from the jury when an intentional wrong was involved and the court denied that difficulty of proof should be a ground for depriving the plaintiff of his day in court.[67]

Despite its recognition of distinctions between intentional and negligent torts the court accedes to the old line of cases. "[T]he overwhelming weight of authority is to the effect that a suicide—absent insanity—is a new and independent agency which breaks the causal connection between the wrongful act and death." . . .[68] To support this position it cites none other than *Scheffer*, a negligence case, and *Salsedo*, which it had explicitly refused to follow rearlier in its opinion.

The *Cauverein* court's confusion is evident, as are the inadequacies of the *Tate* decision. Before proposing a more solid basis for legal rules deliniating the ability to recover for suicide, the psychological and sociological bases for self-killing must be considered.

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65. *Id.* at 149, 188 N.Y.S.2d at 632-33.

66. *Id.*

67. *Id.*

> Upon this complaint the wrong is alleged to be intentional, and therefore the wrongdoer is responsible for the injuries directly caused even though they may be beyond the limits of foreseeability. Where, as here, reliance is placed upon the wilful and malicious intent to commit a wrongful act, the question of whether death by suicide could be the natural, proximate and legal consequence of the tort is one for the jury. . . . Nor can it (the court) say that the result is too tenuous or speculative merely because of difficulty or improbability of proof.

68. *Id.* The court states as its holding:

> . . . [T]he court construes the allegation of irresistible impulse in the third cause of action as sufficient to constitute an allegation of insanity. Under the first cause of action, the allegation of mere emotional upset is insufficient, even if that cause were otherwise sustainable.

Id. A 1968 Mississippi decision is strikingly similar to *Cauverien* in its confusion. Though intentional torts were alleged in the complaint, i.e. abuse of process and malicious prosecution, the court held that the issue should go to trial on the question of irresistible impulse. The court said:

> Since plaintiff's evidence supports those factors (irresistible impulse), we do not reach the additional issues considered in Tate v. Canonica, which allowed recovery for suicide caused by an intentional tort if the mental stress which the defendant inflicted was a substantial cause of the suicide, even if the decedent was aware of his act and was not responding to an irresistable impulse.

State *ex. rel.* Richardson v. Edgeworth, ___ Miss. ___, ___, 214 So. 2d 579, 586 (1968).

II

THE PSYCHOLOGICAL & SOCIOLOGICAL CAUSES OF SUICIDE: SAND FOR THE OSTRICH.

Frequently linked with ideologies of death,[69] suicide has often connoted evil. To primitive societies, its occurrence foreshadowed disaster,[70] but as civilization progressed, ambivalence developed. In Ancient Greece and Rome, abhorrence mixed with cautious approval on the part of a few.[71] Later, in spite of the proscription of suicide by the Medieval Church,[72] men continued to argue for a more lenient attitude towards it.[73] By the late nineteenth century, suicide had generated substantial interest among pioneering social scientists[74] including Emile Durkheim, whose classic work *Le Suicide* applied the scientific method to its study.[75]

Disinterested in psychology,[76] Durkheim focused upon the relationship between society and the individual who committed suicide. He defined the act in terms of its consequences: "the term *suicide is applied to all cases of death resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce this result.*"[77] Armed with this operative definition, Durkheim undertook an empirical analysis which distinguished three types of suicide: egotistic, altruistic and anomic. Egotistic suicide arose from excessive individualism. It occurred when the individual was

69. STENGEL at 57. *See also* DUBLIN at 137-53.

70 STENGEL at 57.

71 *See, e g.*, DUBLIN at 183-96; F. WINSLOW, THE ANATOMY OF SUICIDE 1-29 (1840) [hereinafter cited as WINSLOW]; STENGEL at 60-61; Porterfield, *The Problem of Suicide* 37-39 in SUICIDE (J Gibbs ed. 1968) [hereinafter cited as Porterfield].

72. *See* DUBLIN at 197-210; STENGEL at 61.

73 *See* DUBLIN at 211-17; WINSLOW at 30-35; Porterfield at 41-45. Reference should also be made to the concept of suicide in the non-Western world. As in the West, suicide may be looked upon as a self-destructive act, especially today in nations like Japan where Westernization has been influential. *See* Iga & Ohara, *Suicide Attempts of Japanese Youth and Durkheim's Concept of Anomie: An Interpretation*, 26 HUMAN ORGANIZATION 59-68 (Spring-Summer 1967). But elsewhere in Asia, self-destructive acts lack completely the negative connotations which Western culture so readily imputes to them. Suicide in these areas is viewed as an affirmation of life whereby one returns to Nature, not an act in contravention of it. *See* Hope, *The Reluctant Way: Self-Immolation in Vietnam*, THE ANTIOCH REVIEW 149-63 (Summer 1967).

74 DUBLIN at 228.

75. E. DURKEHIM, SUICIDE (1951) [hereinafter cited as DURKHEIM].

76. *See* SUICIDE 7 (J. Gibbs ed. 1968) (Durkehim was "an implacable foe of psychological explanations . . ." [hereinafter cited as GIBBS]. Yet, this is qualified in R. MARIS, SOCIAL FORCES IN URBAN SUICIDE 23 (1969) [hereinafted cited as MARIS].

77 DURKHEIM at 44.

insufficiently integrated into his society. A strongly integrated society controlled its members, demanded that society's interests take priority over those of the individual and forbad self-destruction as detrimental to that priority. As this integration weakened however, each man gradually became master of his own destiny which included the privilege to end his own life.[78] Altruistic suicide, on the other hand, stemmed from excessive integration. The duty of self-sacrifice, not the privilege of choosing death, motivated the altruistic actor to whom society had allowed too little individualism. Especially common to primitive societies, this category comprehended suicides of the old and sick, of recent widows, and of followers on their leader's death.[79] The individual, considering himself a burden on society, illed himsel in an effort to relieve that burden. Durkheim's final category, anomic suicide, included those acts resulting from disruptions of the society, such as economic disasters or sudden wealth. During these periods, society's influence momentarily failed, leaving man ungoverned and susceptible to individual passions including self-destruction.[80]

Durkehim's analysis of suicide, although subject to valid criticism,[81] ranks as the acknowledged starting point for subsequent studies. The concept of social integration as a factor in suicide has been particularly influential with later sociologists. Gibbs and Martin, having pegged social integration as the major factor in Durkheim's theory, formulate a theorem, deduced from five postulates, that "[t]he suicide rate of a

78. "The more weakened the groups to which he belongs, the less he depends only on himself and recognizes no other rules of conduct than what are founded on his private interests." *Id.* at 209. Thus, for example, the Roman Catholic, being a member of a heirarchical authoritarian system that frowned upon any deviation, had a lower suicide rate than his Protestant counterpart whose religion emphasized greater individualism and free inquiry. Protestantism, forcing the individual to make his own decisions, rendered him more susceptible to suicide, even though that act was officially proscribed. *Id.* at 157-68.

79. DURKHEIM at 217-221.

80. "But when society is disturbed by some painful crisis or by beneficent but abrupt transition, it is momentarily incapable of exercising this influence; thence come the sudden rises in the curve of suicides. . . ." *Id.* at 252.

81. J. GIBBS & W. MARTIN, STATUS INTEGRATION AND SUICIDE 5-10 (1964) [hereinafter cited as GIBBS & MARTIN]; MARIS at 30-44 (a summary of Durkheim's theory which includes comments as to the weak or ambiguous parts of it). In addition there exists an implicit, if not explicit, disagreement with Durkheim's definition of suicide which omits the area of attempted suicide (whether or not resulting in death) and yet which assumes that all completed suicides were intended to result in death. *See* Blaine & Carmen, *Causal Factors in Suicidal Attempts by Male and Female College Students*, 125 AM. J. PSYCHIATRY 834-37 (1968) [hereinafter cited as BLAINE & CARMEN]; Piker, *Eighteen Hundred and Seventeen Cases of Suicidal Attempt. A Preliminary Statistical Survey*, 95 AM. J. PSYCHIATRY 97, 113 (1938) [hereinafter cited as PIKER; Weiss, *The Gamble With Death in Attempted Suicide*, PSYCHIATRIC Q. 17-25 (1957).

population varies inversely with the degree of status integration in that population."[82] They present extensive empirical support for their theorem, testing it by the variables of age, race, sex and marital status all of which is convincing only if the five underlying postulates are assumed to be true. By admitting that their first postulate is not directly testable,[83] they weaken their conclusions. Nevertheless, the analysis points out the tremendous difficulties of reconciling the variables that influence suicide. For example, to assert that married persons have a lower suicide rate than unmarried persons ignores other factors like age, race or status which may also have motivated suicide. Recognizing the complexity of the self-destructive act, Gibbs and Martin discuss extensively this problem of interacting variables.[84]

Emphasizing another aspect of Durkehim's theory, Henry and Short examine anomic suicide by testing the influence of economic change upon the suicide rate. Their theory finds a basis in three assumptions: "(1) aggression is often a consequence of frustration; (2) business cycles produce variation in the heirarchical ranking of persons and groups; (3) frustrations are generated by interference with the 'goal response' of maintaining a constant or r sing position in a status hierarchy relative to the status position of others in the same status reference system."[85] Consequently, strong external restraint due to either subordinate status or intense involvement in social relationships with others makes it easy to blame the latter when frustration arises.

82 GIBBS & MARTIN at 27. The five postulates serve to translate Durkheim's merely suggestive idea of social integration into a testable concept. The postulates are:

1. The suicide rate of a population varies inversely with the stability and durability of social ralationships within the population.
2. The stability and durability of social relationships within a population vary directly with the extent to which individuals in that population conform to the patterned and socially sanctioned demands and expectations placed upon them by others.
3 The extent to which individuals in a population conform to patterned and socially sanctioned demands and expectations placed upon them by others varies inversely with the extent to which individuals in that population are confronted with role conflicts.
4 The extent to which individuals in a population are confronted with role conflicts varies directly with the extent to which individuals occupy incompatible statuses in that population.
5. The extent to which individuals occupy incompatible statuses in a population varies inversely with the degree of status integration in that population.

Id.

83 *Id.* at 17.

84 *See, e.g., Id.* at 101-03.

85. A HENRY & J. SHORT, SUICIDE AND HOMICIDE 14 (1954) [hereinafter cited as HENRY & SHORT].

But weak external restraints cause the self to assume responsibility for frustration, resulting in a greater likelihood of suicide.[86] A major hypothesis of Henry and Short, that high status categories have higher suicide rates than low status categories,[87] derives directly from Durkehim.[88] Although presenting copious data on age, sex, race and income to prove their theory, Henry and Short betray weakness by their inflexible categorization of various traits as being either of high or low status. That one suicidal individual may possess traits of both high and low status (as defined by Henry and Short) casts doubt on their hypothesis of a direct relationship between status and suicide and the assertion that suicide varies inversely with external restraint.[89]

The work of Gibbs and Martin, Henry and Short, and others following Durkehim's lead,[90] emphasizes the quest for theories of suicide. It uses empirical data primarily to support hypotheses. But other studies insist less upon discovering systematic theories than upon gathering data. Sainsbury's ecological investigation does this "by examining the differences in suicide tate in various neighborhoods and social groups in London and interpreting these in terms of their social and cultural structure."[91] Although the study originates in Durkheim's identification with his society,[92] the emphasis is field research, not theory.[93] By pointing out statistically the contributions of these variables to suicide and the difficulties of evaluation,[94] Sainsbury suggests new avenues for research while providing well-documented evidence.

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86. *Id.* at 18.

87. *Id.* at 15, 27, 70.

88. DURKHEIM at 165 ("Now, although the statistics of suicide by occupation and classes cannot be obtained with sufficient accuracy, it is undeniably expectionally frequent in the highest classes of society.")

89. HENRY & SHORT, at 70-71. It is assumed that whites, males, high income groups, the young and middle-aged and military officers are high status persons whereas Negroes, females, low income groups, the aged and enlisted men are of low status. Such a categorization takes no cognizance of a mixture, as for example the high-income, sixty-five year old Negro. Although Henry and Short acknowledge the tenative nature of their rankings, they nevertheless utilize these figures to make absolute comparisons of suicide rates, thus severely weakening the credibility and usefulness of their statistics. For other critiques of Henry and Short, *See* Lester, *Henry and Short on Suicide: A Critique*, 70 J. PSYCHOLOGY 179-85 (1968).

90. *See* M. FARBER, THEORY OF SUICIDE (1968); MARIS at 177-89.

91. P. SAINSBURY, SUICIDE IN LONDON 11 (1956) [hereinafter cited as SAINSBURY].

92. *Id.* at 89.

93. An exhaustive investigation, Sainsbury's research in London boroughs isolates the variables of poverty, unemployment, overcrowding, social mobility and disorganization, sex, marital status, physical illness, monthly incidence, alcoholism and personality abnormality.

94. *Id.* at 28 ("The problem, then, becomes one of assessing the relative contributions of the influences causing conflict and tension.").

While Durkehim and his disciples analyzed suicide in its societal context, a second school of investigators, the Freudian psychologists, emphasized its individual aspects.[95] Unlike his contemporary, Emile Durkehim, Sigmund Freud never addressed himself squarely to the study of suicide. The phenomenon did, however, appear in his works peripherally as a result of his theory of eros and thanatos, the life and death instincts.[96] Only one paper specifically developed some of Freud's ideas on suicide.

In that paper, "Mourning and Melancholia,"[97] he compared the symptoms of the two conditions, noting that in each case the afflicted person reacted to the loss of something. In mourning, the loss was of a person or of an abstraction which has replaced a person. Painful dejection, a lack of interest in the outside world, an incapacity to love and an inhibition of all activity further characterized mourning. Melancholia, on the other hand, possessed all of the foregoing attributes and one more: it also displayed "a lowering of the self-regarding feelings to the degree that finds utterance in self-reproaches and self-revilings, and culminates in a delusional expectation of punishment."[98] Like mourning, melancholia was a reaction to the loss of a loved object. But often the melancholiac, although recognizing a loss, had no conscious perception as to what it was he had lost.[99] To Freud this suggested a relationship between melancholia and the unconscious loss of a love-object as distinguished from the completely conscious nature of the loss experienced in mourning.[100]

These two indicia of melancholy, unconsciousness and declining self-esteem, carried grave dangers of suicide. The melancholiac, having lost a love-object and unable to transfer the libido[101] to another, withdrew that libido into the ego which, in turn, was then identified with the abandoned love-object.[102] The loss of the latter became transformed

95 To denominate this group as "Freudian psychologists" is not to deny the interest or contributions of "non-Freudians" to the study of suicide. *See* B. SKINNER, SCIENCE AND HUMAN BEHAVIOR 232 (1953). Rather, it is to emphasize the stronger influence of Freud on later psychological-psychiatric investigations of suicide.

96 *See* D. Jackson, *Theories of Suicide in* CLUES TO SUICIDE 12 (E. Schneidman & N. Farberow eds. 1957) [hereinafter cited as JACKSON]; PORTERFIELD at 50.

97 S FREUD, *Mourning and Melancholia* 1917 in IV COLLECTED PAPERS 152-70 (1950) [hereinafter cited as FREUD].

98 *Id.* at 153.

99 *Id.* at 155.

100 *Id*

101 Libido is the form of energy used by the life instincts. C. HALL, A PRIMER OF FREUDIAN PSYCHOLOGY 59 (1954) [hereinafter cited as HALL].

102 FREUD at 159.

into a loss of the ego, creating conflict "between the criticizing faculty of the ego and the ego as altered by identification."[103] Hate and self-torment resulted because loss of a love-object occasioned "an excellent opportunity for the ambivalence in love-relationships to make itself felt and come to the fore."[104] In the end suicide might result when hate gave rise to murderous impulses, that is, impulses against others re-directed upon the melancholiac himself.[105]

Freud's explanation of suicide has significantly influenced the present generation of psychologists and psychiatrists,[106] Dr. Karl Menninger being foremost among these. Menninger's theory originates in Freud's suggestion that suicide is a murderous impulse derived from anger intended for a love-object but directed instead to the self. He finds three components of the suicidal act: the wishto kill, the wish to be killed and the wish to die. The wish to kill arises from the destructive instinct latent in every person.[107] Ordinarily in civilized society, psoitive feelings such as love inhibit this destructive instinct enabling the constructive life instinct to be asserted. This situation, as Menninger points out, avoids suicide: "To the extent which the constructive tendencies overtake and neutralize their deathbent predecessors, suicidal effect is deflected, deferred or completely circumvented."[108] These constructive tendencies extend through periods of weak neutralization, characterized by chaning moods, to the other extreme, suicide, in which the death instinct overtakes the life instinct.[109] To illustrate this concept of the

103. *Id.*

104. *Id.* at 161.

105. It is this sadism, and only this, that solves the riddle of th tendency to suicide which makes melancholia so interesting—and so dangerous. As the primal condition from which instinct-life proceeds we have come to recognize a self-love of the ego which is no immense, in the fear that rises up at the meance of death we see liberated a volume of narcissistic libido which is so vast, that we cannot conceive how this ego can connive at its own destruction. It is true we have long known that no neurotic harbours thoughts of suicides which are not murderous impulses against others re-directed upon himself, but we have never been able to explain what interplay of forces could carry such a purpose through to execution. Now the analysis of melancholia shows that ego can kill itself only when, the object cathexis having been withdrawn upon it, it can treat itself as an object, which it is able to launch against itself the animosity relating to an object—that primordial reaction on the part of the ego to all objects in the outer world.

Id. at 162-63.

106. *See* Jackson at 12-14.

107. K. MENNINGER, MAN AGAINST HIMSELF 26-28 [hereinafter cited as MENNINGER].

108. *Id.* at 32.

109. *Id.* at 28.

wish to kill, Menninger, following Freud, relies heavily on a discussion of melancholia.[110]

The nature of the conscience explains Menninger's second component, the wish to be killed.[111] Clinical experience has revealed certain laws governing the conscience: (1) when a person attacks something in his environment, the conscience simultaneously makes a similar attack upon the ego;[112] (2) the ego must "adjust the strong instinctive demands of the personality not only to the possibilities afforded by the external world but to the dictates of this conscience;"[113] and, (3) "in the unconscious a wish to destroy is quite equivalent to the actual destruction with regard to exposing the ego to punishment."[114] Thus, these laws demonstrate Freud's hypothesis: suicides may be "disguised murders" insofar as they reveal an unconscious need for that type of punishment.[115]

Finally, the wish to die stems from Freud's death instinct, a controversial postulate.[116] Menninger accepts the broad concept, although recognizing its hypothetical nature,[117] but defines it is his own terms as "an undifferentiated portion of the original stream of self-destructive energy ('death instinct') separate from that which has been converted, on the one hand, into externally directed aggression in the service of self-preservation and, on the other, into the formation of conscience."[118] Whereas the death instinct in a normal person emerges gradually, it erupts suddenly in the suicide. Thus, Menninger expands Freud's study of melancholy into a full psychodynamic theory, composed of the interaction of complex psychological motives.

The etiology of suicide remains today in its formative stages. No one has yet synthesized psychological and sociological findings, although researchers in each discipline recognize their dependency upon the

110 *Id* at 41-50.

111. Menninger defines conscience as "an internal, psychological representation of authority, originally and mainly parental authority but used in later life with prevalent ethical, religious, and social standards. It is largely formed in infancy and childhood and seldom keeps pace with the changes in external environment. *Id.* at 51.

112. *Id.* at 52-53. For a discussion of Freud's concept of ego, see HALL at 27-31, 41-46. Essentially, the ego is a psychological system concerned with transactions between an individual and the world.

113 MENNINGER at 53.

114 *Id.* at 54.

115 *Id.* at 55.

116. JACKSON at 16.

117 MENNINGER at 79.

118 *Id*

other.[119] Their findings, too, demonstrate remarkable similarity. While sociologists, for example, have spoken of social disintegration between the individual and his environment, psychologists discuss this same concept of isolation in terms of the effect of object loss on the ego.[120] Both recognize this as a contributing factor to suicide, although one emphasized the external and the other the internal.[121]

Further, no one cause of suicide exists.[122] Instead, many factors coalesce to produce it.[123] Causation itself presents difficulties which social scientists prefer to make "the permanent word of metaphysicians."[124] More often, they speak in terms of factors, variables or motivations contributing to the suicidal act. Even the theories offered by investigators purport not to be definitive formulations, but rather suggestions to aid subsequent empirical research.[125] Recognizing suicide's kaleidioscopic nature, social scientists must then deal withthe relative strength of each contributing factor as it affects the individual case, because what elicits suicidal responses in one person may have no effect upon another.[126] Suicide, consequently, admits no simple etiology, but requires instead, a detailed evaluation of each situation.

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119. Williams, *Changing Attitudes to Death*, HUMAN RELATIONS 421 (1966) [hereinafter cited as WILLIAMS]. *See also* GIBBS at 5-18.

120. WILLIAMS at 421-22.

121. B. BOSSELMAN, *Self-Destruction* viii (1958).

122. *Contra*, Johnson, *Durkheim's One Cause of Suicide*, 30 AM. SOC. REV. 875-86 (1965). Johnson argues that Durkehim's theses can be reduced to a unicausal theory of suicide, namely, that the more integrated a societal group is, the lower its suicide rate will be. It is unclear whether Johnson is merely interpreting Durkheim or, in addition, endorsing this unicausal theory as his explanation of suicide. In any case, his article presents a minority position, one which has been often refuted by others. *See* GIBBS at 18 (no need to find an "ultimate cause"); STENGEL at 112 ("There is always more than one reason for a suicidal act . . ."); Jackson at 15-16 ("Thus, it may be artificial, even misleading, to describe suicide from the point of view of a single motivation . . .").

123. Thus, suicide can be viewed as a combination of the individual's inner emotional make-up and external stress or extreme social pressures—a concatenation of "psychic forces" and "environmental factors." The psychic forces (of dependence, hostility, identification and so forth) stem from childhood conditioning based on biologic and cultural factors; the environmental factors (such as pain, wartime heroic sacrifice, cultural suttee or harakiri) stem from unfortunate current stressful situations which recapitulate childhood trauma or emphasize cultural mores.

JACKSON at 16.

124. GIBBS at 18.

125. *See, e.g.*, GIBBS & MARTIN at 218-25; MARIS at 187.

126. "The suicidal act, then, is a highly complex behavior pattern which reflects conflicting tendencies and whose outcome depends on their relative strength *and* on unpredictable factors." STENGEL at 112.

III
RATIONALE

Tate v. Canonica, utilizing the *Restatement's* analysis of intentional torts, suggests that the tortfeasor's action must only be a substantial factor in bringing about the suicide for recovery to be allowed. On the other hand, the old rule, and the rule still universally applied in negligence cases, is that the tort must be *the* cause of the suicide.[127]

A. Negligently induced suicide.

It is easy to justify the negligence rule after analyzing sociological and psychological studies. The sociologists, refusing to find *the* cause for suicide, will only consider the factors contributing to the act.[128] If society produces an individual who inclines toward suicide under the sociologists' theory, it seems unfair, as a matter of policy, to visit the liability on a single individual, who, by his negligence may have precipitated the injury. The social-psychologists offer no method to weigh the importance of the relevant factors. Under their theory, then, liability cannot depend on the relevant factors. Under their theory, then, liability cannot depend on the relevant contribution of the tortfeasor's actions.

Freudians emphasize the loss of love-objects and the resulting ascension of the death instinct.[124] This may help a court to find that the loss of a particular "love-object" or the impairment of ego from a "disfiguration" caused the death instinct to predominate. Nonetheless, except in instances of obvious impairment of the ego resulting from something like severe burns or scars, it is impossible to foresee the emphasis an individual will place on a particular "object" or to foresee what circumstances may combine to emphasize theimportance of the lost object or impaired ego perception. Neither the courts nor apparently the psychologists are equipped to make such

127 In Wallace v. Bounds, 369 S.W.2d 138 (Mo. 1963) plaintiff's deceased was injured in an automobile accident, allegedly caused by the negligence of the defendant. Four and one-half months later, deceased committed suicide by shooting himself. The jury trial resulted in a verdict for the defendant and the plaintiff appealed, alleging various grounds for error. Among the alleged errors was the trial court's jury instruction that the jury must find and believe that the death was "*the* direct and proximate result of the accident. . . ." The supreme court affirmed, stating that to be the cause of the suicide, the tort must have created either an irresistable impulse or caused a state of frenzy such that the suicide was involuntary.

128. *See* notes 69-94, *supra*, and accompanying text. *See also* notes 119-126 and accompanying text.

129 *See* notes 70-118, *supra*, and accompanying text.

detailed analysis of the individual, especially after his death has rendered his cooperation impossible.

It should also be noted that Freudian psychology, especially that which derives its conclusions from his concept of the death instinct, has been less than universally accepted.[130] Thirdly, even in cases where the ego or self concept is seriously impaired by accident, most people are not driven to suicide.[131] It is the confluence of surrounding factors, often unforeseeable, that enables the "death instinct" to emerge paramount. If any traditional concept of foreseeability is applied, a court cannot impose liability because the confluence of factors remains unforseen.

B. Irrestible impulse.

Additionally both the sociologists and the Freudians would probably agree on the unworkability of the irresistible impulse test. A psychiatrist would most likely say that the suicide itself exemplifies that the impulse was "irresistible." At most, this test allows courts and juries, in exceptional circumstances, to impose liability for negligent torts, or to adopt a different position for intentional torts, by finding that the decedent's actions resulted from an "impulse which he could not resist."[132]

C. The substantial factor test.

The factor analysis suggested by *Tate* agrees with the psychological interpretation of suicide. Injury can be a factor, even a substantial or critical factor, in the commission of suicide. But should it, as a matter ofpolicy, justify liability? Though it might be more forseeable in the context of malicious prosecution or abuse of process, there is always the chance that the deceased will commit suicide just to cause trouble and justify a larger recovery against the defendant. So far as causation is concerned, psychologists would not be willing to say, as the *Tate* equivalency of emotional distress and suicide requires, that the emotional distress caused by the tort causes the suicide. Emotional distress itself comprises only an element in the mass of factors that cause suicide. As Durkeim and those following him point out, sociological considerations play a substantial role. But should they be considered? In an intentional tort situation, the pressure to "take the

130. *See* note 116, *supra.*

131. Menninger's tripartite theory evidences this proposition. *See* text, pp. 6-7, *supra.*

injured as you find him" is stronger than in negligence cases, as the *Tate* Court points out by its use of sections 279 and 280.

The rationale of section 312 offers a better approach. If harm is intentionally inflicted, liability should result if the defendant should have known that some sort of mental illness or bodily harm would result.[132] This allows the court, by a test of negligence, to consider the severity of the distress inflicted and how reasonable it is that someone would take his own life when the particular harm is inflicted on him. If, as the *Tate* Court said, all of history shows that persons can be goaded into suicide, then a jury should be able to decide under the question of due care, whether the defendant had, or should have had, some idea that the deceased might be so mentally harmed by the intentional tort that he would kill himself. This approach has the advantage of focusing on the individual situation, forcing the court and the jury to consciously appraise the seriousness of the defendant's conduct, and the normality of the deceased's response. Especially appealing is its failure to deny recovery just because the decedent is more susceptible to the tort than most people. This approach requires a value judgment as to how normal his response is. It may not assure that the right disposition will be made, but it does assure that the right questions will be asked.

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132. State *ex rel.* Richardson v. Edgeworth, ____ Miss. ____, 214 So. 2d 579 (1968).