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CBIMINAL LAW--HUMANITARIAN MOTIVE AS A DEFENSE TO HOMICIDE--*State v. Sander*, (N.H. 1950).

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CRIMINAL LAW—HUMANITARIAN MOTIVE AS A DEFENSE TO HOMICIDE—*State v. Sander*, (N.H. 1950). See note, supra, for facts.

It has been uniformly accepted in Anglo-American jurisprudence that motive is neither an element of a crime, nor a defense to its existence.[1] Where the fact of a crime has been established by the satisfaction of its characteristics, the defendant may not challenge such finding because the state has suggested no purpose for the defendant's conduct,[2] because the state has failed to identify a motivation deemed present,[3] or because the defendant's motive was not to benefit himself.[4] Motive, however, has been held to be admissible to fortify the state's proof of defendant's necessary intent and to establish the fact of defendant's having committed the act in question.[5] Motive or its absence has also been deemed a proper aid to the accused to show a state of mind incapable of the criminal intent[6] neces-

[1] 1 WHARTON, CRIMINAL LAW, 12th ed., §§137, 155 (1932); 25 A.L.R. 1007 (1923); State v. Ehlers, 98 N.J.L. 236, 119 A. 15 (1922); People v. Cornetti, 92 N.Y. 85 (1883).

[2] ". . . it is not the law that the prosecution, to justify a conviction in a given case, must be so successful in fathoming the mysteries of the human mind and in revealing the possibly hidden secrets influencing it as to develop and disclose to the jury a motive sufficient and adequate for the commission of the offense." State v. Rathbun, 74 Conn. 524 at 529, 51 A. 540 (1902); Robinson v. State, 71 Neb. 142, 101 N.W. 634 (1904). Compare the ambiguous language in People v. Enwright, 134 Cal. 527 at 530, 66 P. 726 (1901).

[3] State v. Bobbitt, 215 Mo. 10 at 43, 114 S.W. 511 (1908).

[4] State v. Slingerland, 19 Nev. 135 (1885).

[5] Such proof is of particular importance in cases depending on circumstantial evidence. State v. Hembree, 54 Ore. 463 at 474, 103 P. 1008 (1909); Hedger v. State, 144 Wis. 279, 128 N.W. 80 (1911).

[6] "The absence of a self-serving purpose or motive in any murder case would, of course, be a very material and persuasive circumstance for consideration in connection with other

sary to liability, to show that his act was for reasons of self-defense,[7] or to weaken a case which the prosecution has established on a foundation of circumstantial evidence.[8] Just as motivation has been without independent significance in the criminal law, so, as a corollary, a particular manifestation of motivation, killing for "humanitarian" motives, has been equally rejected as a legal basis for acquittal.[9] It must be indicated, however, that there is an amazing dearth of specific authority for this last proposition. The writer has found only one instance in which the defense of "humanitarian" motive has been offered and that attempt failed.[10] Another case indicates, *arguendo,* that the defense would be rejected, for the state deems the lives of its citizens too dear to be taken for self-ascribed humanitarian motives or even for purposes which might likely be beneficial to the community. So sacred is human life to the state, this case continues, that the state forbids the taking of one's own life, and, a fortiori, it would not allow the taking of the life of another.[11] The paucity of authority on "humanitarian" motive as a defense, other than the multitude of cases discarding the element of motive generally, must be considered a concession to a universal rule, however.[12] In the nature of things, it will be highly unlikely that the issue will ever be raised. Local sentiment is often hostile to prosecution on facts of euthanasia or other types of "mercy-killing" and the suspect will not be prosecuted.[13] But, if tried, the defendant will likely attempt to show a more-or-less recognized defense, such as temporary insanity,[14] or some more questionable defense.[15] In the principal case, the defense counsel, in sum-

circumstances, such as marked melancholia, as tending to establish the degree of mental irresponsibility which is recognized by our law." State v. Ehlers, supra, note 1, at 244.

[7] People v. Enwright, supra, note 2.

[8] See note 5, supra.

[9] 25 A.L.R. 1007 (1923). The presence of humanitarian motivation should not be confused with the absence of legal "malice," the latter being synonymous with "intent." 22 C.J.S. §31 (1940); 1 WHARTON, CRIMINAL LAW, 12th ed., §137 (1932).

[10] People v. Kirby, 2 Park. Crim. Rep. (N.Y.) 28 (1823). Defendant drowned his children by throwing them off a bridge. He testified to a magistrate that he drowned the children because he thought "it would be better for them to go into eternity than to stop in this world." Id. at 29. Counsel for the defendant argued "that there was sufficient evidence to satisfy the jury that the prisoner was laboring under mental derangement. But if they were not satisfied of that fact, the prisoner could not be convicted of murder, for there was no evidence of malice against the children, but, on the contrary, it appeared he was much attached to them." Id. at 31. After the jury was charged that motive was immaterial as a defense, the accused was found guilty. The conviction was affirmed, no reasoning being given. (Defendant's sentence was later commuted when his sanity was doubted).

The annotation at 25 A.L.R. 1007 (1923) suggests a few other cases on the mercy-killing issue. This writer believes, however, that none will be found in point in either direction.

[11] State v. Ehlers, supra, note 1 at 241.

[12] An article in an English law journal, the conclusions of which are supported by Sir Frederick Pollock, categorically rejects the remotest possibility that "mercy-killing" could be a defense in English law. Stephen, "Murder from the Best Motives," 5 L. Q. REV. 188 (1889). The author comments on interesting writings which had appeared shortly before in the New York Medico-Legal Journal, in which physicians admitted the practicing of euthanasia.

[13] 13 R.C.L., Homicide §36 (1916).

[14] The judge lamented the already common practice (in 1838) of using that defense "in cases which do not at all justify such a conclusion." Regina v. Alison, 8 Car. & P. 418 at 424, 173 Eng. Rep. 557 at 559 (1838).

[15] There are many cases (apart from those involving "mercy-killings") in which the

mation arguments, expressly denied that euthanasia was a defense or issue in the case.[16] The case is interesting for purposes of this discussion, however, in that pre-trial press comments had indicated that that issue might likely be raised. As a consequence, national attention focused on the trial. But, as indicated in the statement of facts, the issue was never raised and the defendant was acquitted after the jury decided that there was no causal connection between the defendant's acts and the death of the patient.

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accused has argued the consent of the victim to the homicide. Such a defense has been universally rejected. Turner v. State, 119 Tenn. 663 at 671, 108 S.W. 1139 (1907); State v. Moore, 25 Iowa 128 (1868); 13 R.C.L., Homicide §36 (1916).

[16] N.Y. TIMES, March 10, 1950, p. 23: 6, 7.