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From Taboo to Tourist Attraction: Assisted Suicide in Switzerland

By

Seline Natalie Messmer

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Faculty Advisor: Professor Gabriel Winant

Preceptor: Professor John McCallum III

Dedication

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Assisted Suicide in Switzerland: From Taboo to Tourist Attraction

Abstract

Since ancient Greece, societies have had notions of what constitutes "Euthanasia" (a good death), and if a human life should be ended prematurely to ease suffering and preserve dignity. The codification of a criminal code of law and the debate surrounding this process reveals how the discussion of assisted suicide developed in Switzerland. Discussions reveal private examples brought forth by actors in the legal debate, showing noteworthy trends regarding which individuals should be legally and morally allowed to participate in the practice. The discursive trend also reveals how the Swiss Government has repeatedly argued against federal and local regulation of the practice in their attempt to minimize its involvement, shifting authority over life and death onto private organizations. This paper aims to trace this discussion to show how the practice has developed and attempt to explain why it has developed into a highly unregulated and largely privately organized practice, attracting "tourists" from all over the world.

Introduction

One of the most basic principles of life is that at some point we will die. Everyone reading these pages will eventually pass away. We might not agree on what happens after our body reaches that stage, but no matter how much we disagree on the matter, we will die regardless. Another truth about the subject is that not all one of us will die in the same manner. Most of us, if probed with the morbid question of how we would like to die, would probably desire a peaceful and painless death, perhaps surrounded by friends and family. In any case, dignity and absence of pain are likely to be core elements of what constitutes a desirable death, yet sadly they are not a given. From strokes to diseases like cancer, Alzheimer's, or Parkinson's, some of us may have to suffer for a prolonged period before passing. This is likely the point in my paper where many readers would like to stop reading, stating that life is too short to entertain such thoughts; some younger readers might want to chime in with a colloquial *yolo*. But however uncomfortable the truth of the inevitability of death might be, the discussion of what should constitute a good death extends back

much farther than such colloquial terms. The term "good death" in Greek brings us directly to the topic of this paper: Euthanasia.

Bettina Schöne-Seifert intends to define the words surrounding suicide in her work "Ist assistenz zum Sterben unärztlich?" (is assistance to die un-doctoral).[1] The former member of the German Ethics Council explains that the word euthanasia (from Greek the good death) has received a negative connotation in the European debate, as it was used throughout the genocide of "Aktion T4" committed by Nazi Germany under the guise of mercy against people they deemed unworthy of living. She then continues to define the terms active, passive, and indirect assisted suicide, wherein proves the ambiguity of the usage of the terms. She states that passive assisted suicide is the renunciation of medical assistance necessary for the patient to survive, while inactive suicide is the prescription of medication which leads to the passing of the individual.[2] However, according to present Swiss legislative, these terms would both be considered passive suicide.[3] A distinction which might have only minor importance in moral and ethical discussions, but of important consequences in Swiss legal debates, as active assisted suicide, according to Articles 114 and 115, remains illegal in Switzerland to this day.[4]

Considering the importance of the terms and their differentiation in this paper, I will offer my own definition based on past and present Swiss legislative, as the terms regarding their legal understanding have not undergone significant change in Swiss law for over a century.[5] Switzerland distinguishes between active and passive suicide and only defines in the "Schweizerischen

[1] Bettina Schöne-Seifert, *Ist assistenz zum Sterben unärztlich?* (Freiburg: Universitätsverlag Freiburg Schweiz, 1998), 98-119.
[2] Ibid., 99.
[3] "Art. 114-115" In *Schweizerisches Bundesblatte*, BBI 1937 III 52, (Bern, 1937), 660.
[4] "Schweizerisches Strafgesetzbuch, 26 June 1985" In *Schweizerisches Bundesblatte*, BBI 1985 II 35, (Bern, 1985), 1.
[5] The Articles have changed from Article 101 and 102, orthography has been modernized, alterations to legal consequences were made

Strafgesetzbuch" (criminal code of law, hence *StGB*) what constitutes the illegal active assisted suicide. Article 114 of the 1937 version of the *StGB*, which remains in effect today[6], states that a person who out of commendable motivation, namely compassion, kills a person based on the individuals pressing and serious demand ("dringendes und ernstliches Verlangen") is to be punished with prison.[7] While this article pays noteworthy attention to intent and reasoning behind an offense against a law, it states that the direct participation of a second party in the act of suicide is illegal. The following Article 115 states that who out of selfish motivations leads somebody to commit suicide or aids them in committing suicide, will be, if the suicide is committed or attempted, punished with to up to five years in the penitentiary ("Zuchthaus"[8]) or prison.[9] For the sake of this paper, the current practice will be considered passive assisted suicide. Euthanasia and active assisted suicide will be considered the direct involvement of a physician in the sense of direct administration of a drug to a patient.

As previously stated, the current legal basis for assisted suicide in Switzerland is based on Articles 114 and 115 in the "Strafgesetzbuch" (criminal code) of Switzerland.[10]. These laws, however, do not define what *is* legal but state what is not, providing a shaky foundation for the practice. If one pays attention to these two articles alone, it becomes questionable why the practice of passive assisted suicide is considered legal, let alone practiced to the extent that it is. To give an account and attempt an explanation of the development of this disparity shall be the aim of this paper. Since this paper traces the discussion of the practice over an extensive timeframe, this

[6] Text of the Article has changed
[7] "Art. 114 Tötung auf Verlangen" In *Schweizerisches Bundesblatte*, BBI 1937 III 52, (Bern, 1937), 660.
[8] The difference between "Zuchthaus" and "Gefängnis" is that the former was to be considered more severe, its minimum sentence being one year. It was also connected to mandatory work sentences and carried higher social repercussions than prison, and limited the contact with the outside world. (See StGB 1937, Art. 36)
[9] "Art. 115 Verleitung und Beihilfe zum Selbstmord" In *Schweizerisches Bundesblatte*, BBI 1937 III 52, (Bern, 1937), 660.
[10] "Art. 114 Tötung auf Verlangen", "Art. 115 Verleitung und Beihilfe zum Selbstmord" In *Schweizerisches Bundesblatte*, BBI 1937 III 52, (Bern, 1937), 660.

section will attempt to give a short synopsis on the most important aspects of the debate. In addition, a chronology is provided for the sake of convenience within the appendix.

The first part of this paper is concerned with the decriminalization of suicide and the tentative steps towards a decriminalization of assisted suicide. Although assisted suicide remains a taboo in many societies until the present, suicide regarded even more controversial, and was indeed illegal in Europe until the intervention of thinkers of the French Enlightenment movement during the 18th century. The influence of this movement in Switzerland can be seen throughout the "*Helvetische Staatsverfassung*". However, as Ossip Bernstein, a 1777 contemporary analyst of the legal situation surrounding suicide writes, there was no clear tendency towards decriminalization of suicide at the time, showing the extent of the taboo of suicide. In a next step, this paper traces the complicated path of the codification of the Swiss criminal code by looking at the "Zivilgesetzbuch" (civil law code) from 1907 to build the understanding of the importance of intent throughout the Swiss legal system. It is in these early stages of the debate where we first encounter case examples. Although the nature of these case examples changes over time, these they show a need to humanize the topic and illustrate the moral and ethical aspects with examples from the private life of the different actors of the debate. The "Strafgesetzbuch" (criminal code) entering into force in 1942 marks the end of the first part of this paper. The second part of this paper continues in the 1970s after the debate had disappeared from the public sphere due to genocide committed by Nazi Germany under the guise of Euthanasia. This part aims to shed light on the continuous reluctance of the Swiss government to regulate the practice. The discussion returns with the arrest of Professor Urs Hämmerli. Hämmerli confessed to his political superior that he had ended the life support of some of his patients at the renowned *Triemli* hospital in Zurich. Rather than criticizing Hämmerli, the public opinion largely tilted toward denouncing his political superior for breaking the "status

quo" of not publicly speaking about the subject. Although political initiatives which followed the renewed debate argued for more regulation of the practice, the Swiss Parliament continually denied the necessity for such regulation. Instead, private organizations, directed by guidelines of the Swiss Academy of Medical Sciences (hence *SAMW*), stepped in. In their present condition, these organizations conduct their business out of private apartments and houses around Switzerland. *EXIT* and *Dignitas*, two of the most influential organizations in German-speaking Switzerland are based around a membership model, requiring fees to access all their services. Their members range from everyday individuals to outspoken celebrities such as Tina Turner.[11] Physicians, while officially banned from directly attending the practice, are needed, and allowed to prescribe the medication used by patients to end their lives and are often involved in deciding the eligibility of the patient.[12]

As stated, this paper attempts to give an overview of the debates surrounding the practice of assisted suicide, showing how the importance of the concept of intent has led to this controversial practice being highly unregulated. The specific case examples throughout the debate allow for a further analysis of the shift in the debate away from honor-based motives to quality of life.

From Taboo to Legalization

First, I will discuss the "*Helvetische Staatsverfassung*" (Helvetic constitution, hence HS) from 1798 to explain the influences in the decriminalization of suicide.[13] Eva Schumann notes in her work "*Dignitas – Voluntas – Vita*" that the decriminalization of "ärztliche Sterbehilfe" (physicians

[11] "Ich bin Mitglied bei EXIT", Tagesanzeiger, Tamedia, October 10, 2018, https://www.tagesanzeiger.ch/kultur/pop-und-jazz/ich-bin-mitglied-bei-exit/story/23070716.
[12] "Urteil des Bundesgerichtes: Natrium-Pentobarbital Verschreibung" (BGE), 133 I 58, 76.
[13] Sources will be documented in footnotes and translations will be added in brackets after the words. Orthography was not altered; spelling differences and mistakes were transferred as found in the original documents.

assisted suicide) only became feasible with French Enlightenment philosophy.[14] Schumann explains that Frederick the Great, influenced by Montesquieu and Voltaire, decided that suicide should not be considered an act of "violence", but an "acte volontaire" (voluntary act) and thus "juste" (just) and should not be punished.[15] The "Berner Preisausschreibung" (writing competition of Bern) from 1777 shows that this Enlightenment influence was not merely ideological in Switzerland.[16] In this document, the Economic Society of Bern asked for suggestions towards a new legislative regulation of suicide and offered 100 Louis d'Or as a reward.[17] Half of the prize money had been donated by Voltaire himself, showing the direct influence of the French Enlightenment movement in the creation of Swiss legislation.[18] German-speaking submissions to the contest were analyzed by Ossip Bernstein in his 1907 dissertation whereby he concluded the absence of clear tendency towards decriminalization. Thus, clearly differentiating the German-speaking literature from the French, which had showed a tendency towards decriminalization.[19] Bernstein also claims, that it was only due to Frederick the Great that suicide was eventually decriminalized.[20] But the influence of the enlightenment on this version of the Constitution is undeniable, and not merely due to the temporal proximity of the French Revolution and the creation of the document. The creation of a constitution had been ordered by the French Government and the version of 1798 had been written by Peter Ochs in Paris.[21] The document itself shows strong similarities to the French directorate Constitution, as it marks the separation of power as central to the organization of the Government.[22] Moreover, the Enlightenment movement

[14] Eva Schumann, "Dignitas", (Göttingen: Universitätsverlag, 2006), 11.
[15] Ibid., 12.
[16] Christoph Luther, "Ein Strafrecht der Gerechtigkeit und der Menschenliebe," 2.
[17] Ibid.
[18] Ibid., 3.
[19] Ossip Bernstein, "Die Bestrafung des Selbstmordes und ihr Ende," (Breslau, 1907), 44.
[20] Ibid.
[21] Andreas Kley, "Verfassung," in: *Historisches Lexikon der Schweiz (HLS)*.
[22] "Document Nr. 191", In *Quellenbuch zur Schweizergeschichte,* ed. Wilhelm Oechsli, (Zurich, 1901), 587-589.

(German "Aufklärung") is mentioned explicitly and is to be central to the understanding of the country and its constitution.[23] Finally, when Cantons hesitated to accept the Constitution, the French Government ordered them to ratify it on March 28, 1798.[24] This hesitation is not surprising since the Helvetic Confederation, which existed in its crudest form since 1291, was not properly unified and thus did not share a codified legal code. The *HS*, while not providing information regarding suicide, shows the presence of Enlightenment influence which suggests a move towards decriminalization, even though the "Berner Preisausschreiben" indicates that tendencies towards decriminalization of suicide was not as advanced as in France.

Second, I will discuss the "Zivilgesetzbuch" (civil law code) from 1907. This source is dated much later than my first, as Switzerland was undergoing civil unrest and reorganization until the late 19th century.[25] It was possibly due to this reorganization that the debate surrounding suicide and assisted suicide did not change much and was still based on the idea of decriminalization when the debate surrounding it reemerged. The "Zivilgesetzbuch" (hence *ZGB*) was written in 1907 and ratified in 1911, from when the laws remained legally binding, with some alterations, until the present.[26] The *ZGB* of 1907 represented by far the most sophisticated legal code in Swiss history until this point.[27][28] It is important to mention at this point why finding the *civil law code* of Switzerland is important in understanding the debate surrounding a law which will be part of the

[23] Ibid., 583.
[24] "Document Nr. 188", In *Quellenbuch zur Schweizergeschichte*, ed. Wilhelm Oechsli, (Zurich, 1901), 579.
[25] Theodor Bühler, Alain Prêtre, "Gesetze," in: *Historisches Lexikon der Schweiz (HLS)*
[26] Ibid.
[27] Bernhard Schnyder, "Zivilgesetzbuch (ZGB)", in: *Historisches Lexikon der Schweiz (HLS).*
[28] On the first page of the document is stated that this version includes all three national languages, showing the unifying intent of the document. More importantly though this note meant that after hours of searching online archives, this was not the original document, which had turned out to be much for difficult than expected. One problem was that access to archives was severely restricted to the Covid-19 pandemic. Another problem was that the *ZGB,* although having undergone some changes, remains in use in Switzerland to this day. Every time a law was added or revised, which happens much more frequently than expected especially after 1960, a different version of the document is created.

criminal law code. The reasoning behind the consideration of the *ZGB* and its influence on the *StGB* is Article 1, which shows the influence of preceding Helvetic and the continuation of the influence of the "Gewohnheitsrecht" (common law). Article 1 states that the *ZGB* is to be applied in all questions of the law for which it contains either by explicit wording or interpretation an article of law.[2930] The article also states that in case the *ZGB* does not contain a regulation for a situation, that the judge should act in accordance with common law ("Gewohnheitsrecht"). If there is no such regulation in common law either, the judge should then act as if a legislator.[31] This article clearly shows that the authors were aware that the *ZGB* could not be all-encompassing and that the articles, which are kept short, would leave room for future interpretation and change within "Gewohnheiten" (customs). Hence a fundamental aspect of Swiss legislature is the idea that individuals should act in accordance with "Treu und Glauben" (loosely; good faith), showing the importance of intent in Swiss law.[32] This concept is further defined in Article 3, which states that in the cases where the law is directly linked to the concept it must be assumed that a person is acting in accordance with "Treu und Glauben".[33] The influence of the *ZGB* on the later criminal code of law and the repetition of these concepts provide evidence for their importance.

Third, I will mention the version of the "Strafgesetzbuch" (criminal code) from July 23, 1918. As with the *ZGB*, the *StGB* had taken a few years from being authored to being ratified.[34] The ratification of the *StGB* was remarkable in its work towards legal unification, especially after

[29] Original: "Das Gesetz findet auf alle Rechtsfragen Anwendung, für die es nach Wortlaut oder Auslegung eine Bestimmung enthält".
[30] "Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907" In *Schweizerisches Bundesblatte*, BBI 1907 VI 589, (Bern, 1907), 589.
[31] Ibid. Original: "Kann dem Gesetze keine Vorschrift entnommen werden, so soll der Richter nach Gewohnheitsrecht und, wo auch ein solches fehlt, nach der Regel entscheiden, die er als Gesetzgeber aufstellen würde."
[32] Ibid., 590.
[33] Ibid. Original: "Wo das Gesetz eine Rechtswirkung an den guten Glauben einer Person geknüpft hat, ist dessen Dasein zu vermuten."
[34] Lukas Gschwend, "Strafrecht", in: *Historisches Lexikon der Schweiz (HLS)*.

the opposition which the "Peinliches Gesetzbuch der helvetischen Republik" (hence *PGHR)* had received. The "Strafgesetzbuch" was not the first criminal law code in Switzerland and was preceded by other written legal codes, most notably the *PGHR*, which was based French "codé penal" and enacted in 1799.[35] Although not mentioning suicide or assisted suicide, the document again shows the influence of French Enlightenment. However, most Cantons disregarded its content rather quickly, as it was deemed too complicated and foreign.[36] A noteworthy aspect of the document is the presence of the concept of "Treu und Glauben" which provides a conceptual link of the document to the much later written *ZGB* and *StGB.*[37] This link provides evidence that intent is of importance not only in civil but also in criminal law. Although this conceptual link, as well as the influence of French Enlightenment, is remarkable, the document does not mention the concept of suicide or assisted suicide.

The success of the *ZGB* is touted as responsible for the renewed endeavors for a unified criminal code in 1911.[38] However, the competence of writing the *StGB* had been given to the Parliament much earlier through the Constitutional Revision of 1898. As can be seen from the publication of the results of that vote on the first page of the document, this revision had not been without opposition.[39] This table shows that while some of the Cantons had accepted the law with a large majority not all had shared this conviction. There seems to be an inclination of Catholic versus Protestant Cantons, with Protestant Cantons voting more favorably for the law. Another interesting aspect of the table is how it is organized, which shows no inherent logic.[40] The document mentions that Professor Carl Stooss had been influential in the writing of the document,

[35] Ibid.
[36] Ibid.
[37] Ibid., 34.
[38] "Schweizerisches Strafgesetzbuch, July 23, 1918" In *Schweizerisches Bundesblatte*, BBI 1918 IV 1, (Bern, 1918), 2.
[39] Ibid., 1-2.
[40] Ibid.

but also mentions other experts involved, clearly trying to highlight the wide governmental support of the document.[41] This need for representation of support highlights the previous unwillingness to create a unified and codified law in Switzerland. The document also mentions in the section "Überwindung der kantonalen Gesetze" (overcoming cantonal laws) that they had not simply abolished the previous criminal codes of the Cantons. Instead, they had carefully inspected them for differences, showing the contrast in "sittlichen und rechtlichen Anschauungen des Volkes" (moral and legal attitudes of the population).[42] The anxiety surrounding the differences in moral and legal attitudes could represent one explanation for why Switzerland left so much room for intent in their code of laws. The legal margin is likely to appeal to different Cantons which felt disempowered by the unification efforts. In addition, the document stated that the differences in the criminal codes were not as extensive as had been claimed and there had already been much effort made towards unification. However, regional differences remained, with some Cantons having made more progress than others.[43] The regional difference alluded to would be the German and French-speaking parts of Switzerland, with the German-speaking part favorably referred to.[44] Although this introduction does not directly mention the law of interest in this paper, it does highlight the debate surrounding the criminal code in general. This highlights the French influence on the "Code pénal" as well as regional, cultural and religious differences in the creation of the *StGB*. The actual articles of law which are of importance regarding suicide are kept intentionally short.[45] Article 101 states that a person who kills a human, based on the individuals "dringendes

[41] Ibid., 2-3.
[42] Ibid., 4.
[43] Ibid., 4-5
[44] Ibid.
[45] Heinrich Lammasch "Der Entwurf eines schweizerischen Strafgesetzbuches", in Schweizerische Zeitschrift für Strafrecht (Expedition der Stämpfli'schen Buchdruckes: Bern, 1888), 121.

und ernstliches Verlangen" (pressing and serious demand) is to be punished with prison.[46] This article leaves little room for interpretation and states that even though a human might ask to be killed, it remains illegal to do so, thus making assisted suicide illegal. However, the room for intent imbedded in the article simultaneously gives back authority to the judges as although the crime itself might be well defined, the punishment is not. The next article directly addresses the issue of suicide and states that who out of "selbstsüchtigen Beweggründen" (selfish motivations) entices somebody to commit suicide or helps them to do so will be if the action is successful or attempted sentenced to up to five years in the "Zuchthaus" (penitentiary) or prison.[47][48] At a first glance, this law seems to ban passive assisted suicide, but more emphasis is being paid to the intent of the supporting party; for instance, was there greed involved? Moreover, the short law is explained by the authors in the preceding commentary of the *StGB*. This commentary stands in interesting contrast to the short and neutral formulation of the articles. The authors openly criticize the Cantons for their unprecise wording in the differentiation between "Mord" (murder) and "Totschlag" (manslaughter) and state that the *StGB* tries to define the previous ambiguity which left much room for interpretation by the judges.[49] The commentary is signed in the name of the "Bundesrat" (Federal Council) and the Chancellor of the Federation; however, the actual authorship must be assumed as a collection of authors, likely influenced by the previously mentioned Stooss.[50] The commentary itself reads as both a justification for the law reform as well

[46] "Schweizerisches Strafgesetzbuch, July 23, 1918" In *Schweizerisches Bundesblatte*, BBI 1918 IV 1, (Bern, 1918), 137. Original: "Wer einen Menschen auf sein dringendes und ernstliches Verlangen tötet, wird mit Gefängnis bestraft."
[47] Ibid. Original: "Wer aus selbstsüchtigen Beweggründen jemanden zum Selbstmord verleitet oder ihm dazu Hilfe leistet, wird, wenn der Selbstmord ausgeführt oder versucht wurde, mit Zuchthaus bis zu fünf Jahren oder mit Gefängnis bestraft."
[48] The difference between "Zuchthaus" and "Gefängnis" is that the former was to be considered stricter and was connected to mandatory work sentences and carried higher social repercussions.
[49] Ibid., 31.
[50] Ibid., 102.

as an explication for some of the ambiguities. Regarding Article 101, the commentary states that in such cases an especially mild approach towards the culprit should be taken. The reason for this approach is that the motive for such an act is mostly based on "Mitleid" (pity) taken on the "hülflos Leidenden" and the wish to end their "Qualen" (ordeals).[51] One remarkable aspect about the commentary is that it tends to give specific case examples which will be repeated continuously throughout the debate surrounding assisted suicide. The authors also further describe the example of two unhappy lovers who wanted to "give each other" death, but one of them is saved and thus unable to join the other in death.[52] The authors highlight that such cases should be considered assisted suicide. The formulation of this example is interesting as the plurality in "Fälle" (cases) and the specificness of the example indicates a certain frequency or public knowledge of such occurrences. In addition, the parallel to *Romeo and Juliet* cannot be denied. The commentary continues on a new line, stating that although suicide is not considered a "Vergehen" (offence) in the modern law and there is no reason for "bevölkerungspolitischen Gesichtspunkten" (demographic considerations) to resort back to such laws.[53] The commentary then goes even further than the previous example, which was focused on the consent of the parties involved, and states that even the "Überredung" (persuasion) to suicide can be in some cases considered a "Freundestat" (act of friendship), hence the importance of the intent of the person involved.[54] This commentary offers an interesting insight into the legalization of suicide and assisted suicide, while both humanizing the topic and highlighting the importance of intent. It seems important to remark that the commentary is located outside of the *StGB* and although intends to explain the laws further, has no actual influence on it. But as can be observed in these documents, intent, the concept of

[51] Ibid., 31.
[52] Ibid., 32.
[53] Ibid.
[54] Ibid.

"Treue und Glauben", and common law are integral to Swiss laws and offer insight into how the practice of assisted suicide was able to emerge from these laws. These case examples also show who these laws were intended for. In these case examples we can see themes of both pain relief and romance, themes which we will see changed over time, showing that the group for whom the practice was intended for also changed.

The analysis of these documents has allowed for a better understanding of how suicide had been legalized and led to the legalization of assisted suicide. It has also shown that the debate preceding the *ZGB* and *StGB* was complicated and characterized by regional, religious, and cultural differences. These differences likely having impacted the need for intent within the formulation of the civil and criminal code of laws. Also, the practice of resorting to common law in the absence of a clear legislative decision as well as the concept of "Treu und Glauben" influenced the emergence of the practice of assisted suicide from an article of law defined mostly by omission. To further trace the development of this practice one could potentially analyze the constitutions and law codes of the individual Cantons, however this goes beyond the scope of this paper.

From Legalization to Practice

Although the Federal Government had asked Carl Stooss to prepare the *StGB* in 1890, it was not until 1918 for the above discussed version of the document to reach the state where it was officially presented to the public by the Federal Council.[55] Despite the fact that the previous paragraph indicated renewed endeavor in 1918 to legislate a unified and codified criminal code for passive assisted suicide, reality was more complicated. In simple terms, while the authorities would take

[55] Lukas Gschwend, "Strafrecht," in: *Historisches Lexikon der Schweiz (HLS)*.

intent into consideration regarding sentencing, the practice remained illegal. For the law to come into effect would prove a similarly complicated and slow process. Finally, in 1937 the *StGB* was accepted by both chambers of the Parliament, and a referendum in 1938 created the constitutional foundation for it to come into effect in 1942.[56] Disputes over the death penalty and the purpose of punishment delayed the process beyond its already slow pace.[57] The *aim* of the punishment points towards two opposing concepts with "Sühnegerichtsbarkeit" (repenting for committed sins) on one, and "Besserungsstrafe" (punishment is intended to better the person) on the other, showing that extension of intent beyond the courtroom. The "Sühnegerichtsbarkeit" was primarily focused on the Christian idea of punishment for a sin committed and revenge for the victim. Meanwhile the "Besserungsstrafe" focuses on the rehabilitation of the offender. These two opposing sides can be seen in the magazine *Zeitschrift für schweizerisches Strafrecht*, whose editor was the same man in charge of overseeing a new draft of the criminal code for Switzerland, Carl Stooss. This publication revolving around the criminal code, aided by the length of the debate surrounding the draft, before finally being enacted, allows for an extensive analysis of the controversy surrounding the new criminal code and assisted suicide. However, also forcing this paper to make a jump back in the timeline once again.

In 1888, Viennese Professor Lammasch offered his thoughts on the draft in a Swiss newspaper for legal matters. He states the necessity and importance for a close relationship between the document and the "ethischen und socialen Werturteilen der Bevölkerung" (ethical and social value judgements of the population).[58] Although this relationship might seem like a prerequisite, Lammasch claimed that it had been neglected in previous drafts of legal documents

[56] Ibid.
[57] Ibid.
[58] Heinrich Lammasch "Der Entwurf eines schweizerischen Strafgesetzbuches", in *Schweizerische Zeitschrift für Strafrecht* (Expedition der Stämpfli'schen Buchdruckes: Bern, 1888), 122.

across Europe.[59] Further, Lammasch stated his views on the "Sühnegerichtsbarkeit" in correlation with assisted suicide and wrote that the motive of the sinner should dictate the severity of the punishment.[60] The importance of this correlation can also be seen by the efforts in its maintenance, which can be explicitly seen in the adjustments of certain laws over time in accordance with ethical and moral changes within society.[61]

An interesting aspect of the debate held in this newspaper, which will also find its way into the *StGB* is the continuation of the previously mentioned fictional examples for cases in which passive assisted suicide should be legal. Ernst Hafter, Professor of Law at the University of Zurich at the time and co-author of the *StGB*, refers to one such example in his comparison of German and foreign criminal code.[62] Hafter starts his comparison, which is based on the work of another author, with high praise for how Germans had worked together to create this new law code.[63] The length of this praise and his emphasis on equality indicates a criticism of the process in Switzerland, which although well under way, was still far from being finished. Hafter's section on assisted suicide is largely paraphrased from the German law code and states that one can argue if the "Unmündige" (under-aged[64]) and the "Geisteskranke" (mentally ill) are capable of uttering a legally recognizable desire to be killed.[65] As for a small child, or a sick individual whose cognition is severely affected, there can be no talk about desire.[66] However, Hafter quotes that this does not

[59] Ibid.
[60] Ibid.
[61] "Botschaft über die Änderung des Schweizerischen Strafgesetzbuches und des Militärstrafgesetzes", In *Schweizerisches Bundesblatte*, BBI 1985 II 2, (Bern, 1985), 1009.
[62] Ernst Hafter "Die vergleichende Darstellung des deutschen und ausländischen Strafrechts", in *Schweizerische Zeitschrift für Strafrecht* (Expedition der Stämpfli'schen Buchdruckes: Bern, 1906/1909), 149.
[63] Ibid., 133-134.
[64] "Unmündige" can be translated as under-age, but it is also a legal state which defines whether an individual is deemed capable of making their own decisions. The context of the word indicates that likely it pertains to a child in this case.
[65] Ibid., 149.
[66] Ibid.

signify that this case should be illegal, it merely means that the conventional law has to be appended with the motive. If the individual acted out of mercy for the individual who was beyond saving or hope and stands in close relation to the individual their case shall be treated in a privileged manner.[67] This example shows the legal effort in Germany to further restrict intent based on the relationship of the parties involved. In his next step, Hafter finally quotes the other author's example. In this case example, a six-year-old child is killed by its parents after suffering from paralysis in different parts of its body and exhibits increasing symptoms of "lasterhaften Neigungen" (depraved inclinations) after contracting scarlet fever.[68] Hafter continues by stating that in clear-cut cases such as this one he himself would not hesitate for a moment to extend "privileged" legal treatment to the parents of this child. The privilege Hafter mentions in this text alludes to a milder or shorter sentencing after taking the intent of the perpetrators into consideration. His work also highlights the difficulty of using intent and a desire for further limitation of the concept. In addition, Hafter makes a clear statement in this text as to what deserves privileged treatment – parents making a painful decision which does not benefit themselves but helps end the pain of a child.

Interesting about this example and Hafter's treatment of it is the difference it shows between German and Swiss law regarding the differentiation of ability to consent, or in this case show the desire to consent, necessary to qualify for privileged treatment. Hafter states that he has concerns regarding a law, which under certain circumstances could practically entrust the life of a sick human being to the discretion of a close relationship.[6970] Hafter warns of the amount of horrific

[67] Ibid.
[68] Ibid.
[69] Ibid.
[70] "nahestehender Personen" is translated with close relationship, as it does not refer to a direct relative.

"Gemeinheit" (viciousness) that this privilege given by mercy could and often would claim.[71] But even with these concerns Hafter remains convinced that such cases deserve milder punishment.[72] Hafter proposes that instead of using the idea of "hopelessness" and thus the state of the patient, proposed in the German code of law, Switzerland should instead approach the issue from the intent of the culprit.[73] Hafter argues that this approach allows for the judge to be more objective. Moreover, he states that the law should still take the state of the patient into consideration and apply to people which are able to show their desire to be killed. Considering people that are unwilling or unable to show this desire should fall into a different law due to completely different psychological reasoning of the culprit.[74] This article illustrates several remarkable aspects of the debate. For one, it shows that the intent of the culprit is Hafter's main focus, whereas the German law focuses on the quality of life of the victim, showing a conceptual gap between the two legal understandings of intent. The words culprit and victim are chosen deliberately, considering that even though both legal concepts take into deliberation certain aspects of mitigation of the act of assisted suicide, the remain illegal. Another remarkable aspect of the article is Hafter's concern regarding the German legal situation and the freedom it left for people to take advantage of privileges they had been given – a concern which will turn out to be justified. Although this debate was happening at the beginning of the 20th century, the terminology of key terms quoted in the article such as "hoffnungslosen Zustand" (hopeless situation) of the patient would later be repeated by Nazi lawyer Hans Kerrl, who worked towards institutional authority in deciding whose life could be terminated.[75] This paper would be going too far by arguing that the legal situation in

[71] Ibid.
[72] Ibid.
[73] Ibid., 150.
[74] Ibid.
[75] Udo Benzenhöfer, Der Gute Tod? (München: Beck, 1999), 110.

Germany gave way for the "Aktion T4", however, this contemporary concern of Hafter regarding the legal situation in Germany shows the importance of defining intent.

Hafter's article suggests an intense debate surrounding minute yet important details surrounding the Article "Mord auf Verlangen" (desired murder). Yet when comparing the Article in criminal code proposed in 1918 and the later version of the Article which would eventually be passed in 1937, one would find only minor differences in the wording of the two laws which would eventually define assisted suicide. Another look into the *Schweizerische Zeitschrift für Strafrecht* at a later point reveals some of the actors within the debate and provides evidence that the absence of change does not signify the absence of deliberation in this case. In 1909, Hafter writes another article for the above-mentioned newspaper both presenting and addressing the criticism the draft had received.[7677] In his article, Hafter presents a chronological and alphabetical biography of all the materials sent in, organized by year and Article. In the second part of his article, he then lists only the critical comments, and explains that the others are of little worth to the actual process even though the critical comments also contained much "Wertloses" (worthless) material.[78] Pertaining assisted suicide, the same actors can be found as in the previous article. Franz von Liszt, a German jurist, who Hafter had quoted in the previous article, argues in his submission against "Verlangen" (desire) as a marker for privileged treatment of the culprit, and in some cases, one has to go beyond this "border". Liszt states that in some cases, pity on "hopeless (physical or mental) state of health"[79] of the individual should be taken into account even if there is no desire

[76] Ernst Hafter "Bibliographie und kritische Materialien zum Vorentwurf eines schweizerischen Strafgesetzbuches", in *Schweizerische Zeitschrift für Strafrecht* (Expedition der Stämpfli'schen Buchdruckes: Bern, 1908/1909), 97.
[77] The article was ordered by the federal justice and police department, warranting this action by stating that the newspaper had received extensive and wide-ranging criticism on the draft which had been publicized in 1898, which subsequently led the justice department to believe that the collection and publication of this material was necessary.
[78] Ibid., 98.
[79] As with all quotes from the text, even though they appear in German in the original document, punctuation or as in this case brackets, are taken as in the original text.

of the individual.[80] Liszt seemingly shows awareness of the controversiality of his statement and states that the mild punishment only applies if there are "*nahe Beziehungen*" (close relationships) between the killed and the culprit.[81] Underneath this comment, Hafter adds his own criticism of Liszt and states that in such cases, the idea of honorable motives should be applied, implying that this addition would be superfluous.[82] This repetition of Hafter's criticism regarding the linking of intent and proximity of relationship highlights his concern regarding the safeguarding of the practice. Remarkably for once, neither of the authors present any specific case examples. The two previous articles potentially suggested an isolated discussion between Hafter and Liszt as opposed to a wider debate. But, the submission by the Swiss doctor's commission underneath shows that this was not the case. Although the submission only pertains to a minor detail aiming for more precision regarding motive, the submission nonetheless shows the involvement of the medical community within the debate.[83] This involvement of the medical community is tangible throughout the debate and especially noteworthy regarding the development in Germany. Although the medical community was highly involved in the "Aktion T4", the Swiss Government still heavily relied on their guidelines for its own regulations of the practice. The first steps of this reliance can be seen with commentaries such as these which will later become official guidelines supported by the government.

Moving along the chronology of the document, the next article continues with the debate surrounding assisted suicide. The first comment on the topic, from an individual called Brodtbeck, calls for the deletion of the article from the code of law altogether, as the Article does not pertain

[80] Ibid., 186.
[81] Ibid.
[82] Ibid., 187.
[83] Ibid.

to a criminal act.[84] Liszt on the other hand comments that the act should only be punished if the suicide is successfully enacted.[85] Following Liszt is once again Hafter, who repeats an earlier suggestion of another author, which suggested to only punish an individual if their aid in somebody's suicide was motivated by "selbstsüchtigen Beweggründen" (selfish motivations).[86] This attempt to further define intent will prove to be the most successful and eventually find its way into the criminal code of law. Following the previous comment, another repeating submission is from the Swiss doctor's commission, who would like to add the word *deliberately* in the case of helping somebody commit suicide.[87] The extent of the discussion can be seen whereby minute detail in wording, as in the case of *deliberately*, is considered. According to Hafter's own record, the word *deliberately* was present in the draft of Carl Stooss in 1894, yet the commission's comment shows that it was still being discussed in 1906.[88] This highlights that such a minute detail, heightening the importance of intent, must have been discussed over the course of years. Another aspect which shows the extent of the discussion can be seen in the "negotiations" of Stooss' draft. In this document, a commission chosen to discuss the draft debate the extent of the prison sentence that Article 51, "Mord auf Verlangen" (desired murder), should carry. While one author argues for the complete eradication of a minimum sentence for this article, Stooss is only willing to reduce the minimum sentence from one year to one month.[89] The document notes that Stooss' concession was favored more highly and accepted by 11 versus 4 votes. This vote is especially interesting as it provides empirical evidence on the view of assisted suicide at the turn of the century. The results show that almost a third of the commission were willing to abandon a minimum sentence

[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] Ibid.
[88] Eugène Ruffy et al. "Schweizerisches Strafrecht", in Verhandlungen II (Stämpfli & Co.: Bern, 1896), 13.
[89] Ibid., 12.

altogether, whereas the rest of them accepted a significant reduction of the minimum sentencing. Thus, showing the first concrete steps toward the decriminalization of assisted suicide. Since the commission consisted of individuals from different Cantons and linguistic regions there is also the possibility of regional patterns within this vote, however, this was not recorded.

Turing to Article 52 in the same document, which pertains to assisting somebody with committing suicide which later will be better known as passive assisted suicide, the discussion again returns to intent and case examples. Zürcher argues that the Article should contain a notion against selfishness and thus further define intent and offered an example of a case he had heard of.[90] In this case, an officer had been taken into custody for a vile crime that he had committed, while in custody his friend brough him a revolver. Zürcher argues that it would have been best for the officer and his family if he would have made us of the revolver. If so, he believes that the friend would have only acted in the interest of the arrested and would not deserve to be punished.[91] Stooss argues against Zürcher's suggestion, reciting Article 36, which asks for the consideration of honorable motives. The record shows that Zürcher's suggestion was rejected by a large majority.[92] Yet what is interesting about this example is that the reason why the motion was denied does not have anything to do with the case presented by Zürcher, but with the fact that the wording would have been repetitive. The presence of an entire article surrounding intent in addition to the mentioning of intent in the articles itself again shows the importance of this concept in Swiss law. The text then further provides evidence for the fact that assisted suicide was not considered an option just for terminally ill patients but also for individuals which had brought embarrassment on themselves, their families, or their rank. Although one could argue that this was an isolated

[90] Ibid.
[91] Ibid.
[92] Ibid., 13.

example for this view, the acceptance within the discussion and the environment in with the discussion took place suggest a more widely spread acceptance of this opinion.

Moving on, in the legal discussion one can observe ongoing dispute over minute details within the text. The draft of 1908 shows handwritten additions to the federal document which ranges from minor grammatical additions to the deletion of the word deliberately.[93] As this paper has previously paid attention to the word *deliberately*, an analysis of this handwriting would have been of interest. However, the dating of the writing, let alone the attribution of the writing to an author was not possible and thus, this paper will discard the comments in its discussion.[94] This decision is further supported by the fact that both documents do not contain the extensive discussion protocols which can be found in the versions of 1896 or 1912, as they are drafts of the criminal code, focused on wording of the laws as opposed to legal debates.

In 1912, a second expert commission convened with some familiar members. Present in this commission is again Professor of law at the University of Zurich, Ernst Hafter and the previously mentioned Dr. Emil Zürcher, Parliament member and Professor at the University of Zurich.[95] Missing from the list of names, however, is Professor Carl Stooss, which seems a little surprising considering his influence on the document being discussed. While the document contains rich descriptions for case examples of murder, the document does not discuss Articles 65 to 74, with 65 and 66 being the ones of interest to this paper. According to the protocol of the

[93] Carl Stooss "Vorentwurf zu einem Schweizerischen Strafgesetzbuch", in *Vorentwurf Neu Gefasst* (Stämpfli & Co.: Bern, 1908), 21.
[94] The document, provided as so many others in this work by the University of Zurich's law department, does not mention who made these comments originally. Since Carl Stooss was affiliated with this department in his own time, it is possible he made the changes. The barely legible handwriting of the notes, written in cursive, suggests that the notes were written closer to the time of the document as opposed to the present. This is further supported by the fact that the writing pertains to the wording and content of the document and does not intend to analyze the content. However, the black ink used for the comments looks almost felt-pen like, suggesting a later dating of the comments.
[95] Ed. Müller "Protokoll der Zweiten Expertenkomission, Band 1", in Verhandlungen (Buchdruckerei Keller: Luzern, 1912), 1-2.

discussion there had been no desire to discuss these articles and their wording was accepted without objection.[96] However, the fact that the discussion surrounding the two articles did not completely disappear during the heightened efforts surrounding the civil law code, which took attention away from the *StGB*, is supported by the draft of the criminal code published in 1916. Although the two articles pertaining to assisted suicide were moved to Articles 106 and 107 respectively, the text of the first one had not undergone any alterations since the draft of Stooss in 1908.[97] However, the text of the second article had undergone significant changes. The most significant one being the inclusion of the "selfish motives" of the culprit.[98] In the "Erläuterungen" (explanations) of the draft by Professor Zürcher in 1908, he explicitly states that the discussions did continue. Zürcher explains that the police and justice department, knowing the more pressing work around the *ZGB* needed to be prioritized, ordered Stooss and a small commission of experts to keep the draft "updated".[99] In Zürcher's comments on the draft which resulted from this commission, we can see another specific case example. The example of Zürcher is noteworthy as it seems to precedent the case of the two lovers, mentioned in the *StGB* draft of 1918.[100] On one hand, the mitigating factors for privileged treatment of the culprit for Zürcher is the wish for easy pain for the hopelessly sick or wounded individuals, centering intent for socially accepted assisted suicide around medical reasonings. On the other hand, we can find said example of two people planning on committing suicide out of shared desperation, with one of them helping the other one first but then being rescued and thus extending the acceptance of the practice beyond medical

[96] Ed. Müller "Protokoll der Zweiten Expertenkomission, Band 3", in Verhandlungen (Buchdruckerei Keller: Luzern, 1914), 46.
[97] "Vorentwurf zu einem Schweizerischen Strafgesetzbuch" (Art. Institut Orell Füssli: Zürich, 1916), 70.
[98] Ibid.
[99] Zürcher "Erläuterungen zum Vorentwurf zu einem Schweizerischen Strafgesetzbuch" (Buchdruckerei Stämpfli & Cie.: Bern, 1914), XIV.
[100] "Schweizerisches Strafgesetzbuch, July 23, 1918" In *Schweizerisches Bundesblatte*, BBI 1918 IV 1, (Bern, 1918), 32.

reasoning.[101] He argues that this case is the reasoning behind the existence of article 65, as these killings are not the result of "mitleidloser Rohheit" (merciless brutality) but a high degree of pity and connection to the individual.[102] However, Zürcher adds that the principle that all lives should be untouchable prevents them from not punishing the culprit to some extent.[103] Thus, Zürcher argues for the limitation of the morals of a society by a higher, religious, authority. While this example of the friends directs us towards the future of argumentation surrounding medical narratives, another aspect of Zürcher's previous argumentation towards preventing shame can also be found in this text, bringing back earlier reasonings. In his discussion of Article 66, incitement to commit suicide, he returns to the imagery of one friend suggesting to another one to commit suicide. He states that it is rightfully unpunished if the friend suggested so his friend could prevent impending shame from himself and his family.[104] Zürcher once again extends the debate beyond terminally ill patients. Although this line of the debate is nourished again by Zürcher and could be seen as an isolated strand of the debate, the fact that this work has been ordered by the department of justice and police, as well as the interpretation of Article 66, show a certain degree of support for his opinion. In this part of the debate, we can see the presence of both sides of reasonings, morality and medical, with the perceived moral dominance of the medical reasoning eventually constituting the entire debate.

Although the debate surrounding the topic seems to have continued to a certain degree, the documents which followed show that the wording had hardly changed. In Carl Stooss' comment on the second expert commission, he does not comment on the two articles, and the review commission in 1917 also does not mention any debate surrounding assisted suicide. At this point

[101] Zürcher "Erläuterungen zum Vorentwurf zu einem Schweizerischen Strafgesetzbuch", 122.
[102] Ibid.
[103] Ibid.
[104] Ibid.

in the debate, after much discussion surrounding minute wording changes which resulted in little to no change, and different wide-ranging case examples, the discussion had seemingly reached its final stretch. After the council and its commissions had come to an agreement, the document had now to pass through the two chambers of the Swiss Parliament. In Spring 1928 the document *finally* reached the larger of the two Parliament chambers the "Nationalrat". The report of the discussion of the *StGB* in the *Nationalrat* (small Parliament chamber) notes the delay of the discussion and remarks that this delay could cause a decrease in the zeal of pursuit of this criminal code.[105] The author also mentions unification efforts and the number of votes which laid the legal foundation for the criminal code, showing that even in 1918 the criminal code must have still faced some degree of opposition. The introduction mentions the influential work of Stooss and Zürcher in creating the criminal code. The author also states that the opinion of Gautier, a jurist from the French speaking part of Switzerland, is explicitly mentioned in the report not only because of his *outstanding* opinion, but because it shows the inclusion of other parts of Switzerland in the creation of this document.[106] This note further enforces the explicit and intended unification effort of the document. Apart from showing clear reference towards disagreement in the commission, the report also mentions alterations to the "Schuldlehre", the idea of legally repenting sins caused by one's crimes.[107] Further, the mentioning of the death penalty supports the conclusion that these two topics, in addition to events such as World War I, were fundamental in delaying the *StGB* while further suggesting a low point of the debate surrounding assisted suicide.[108] In addition, the author states that the draft of the criminal code requires the judge to become a *psychologist* and interpret

[105] Seiler "Schweizerisches Strafgesetzbuch," in *Stenographisches Bulletin der Bundesversammlung* (1928), 1.
[106] Ibid.
[107] Ibid., 3.
[108] Ibid., 4.

the articles and thus suggests too high of an importance of intent within the *StGB.*[109] He further states that the goal of the new criminal code, although unrealistic, would be the elimination of crime.[110]

According to the protocol of the discussion, the commission requested to accept Articles 101 and 102 as suggested by the Federal Council.[111] Seiler, who was responsible for documenting the meetings of the *Nationalrat* and representing the majority opinion, notes that there had not been much discussion on the two articles during the previous debates.[112] He continues that these cases are *rare* and the punishment for these crimes is "naturgemäß wesentlich milder" (naturally).[113] Seiler explains that the aspect of these cases which had been discussed in the expert commission whether helping somebody commit suicide, which was unsuccessful, should be punished.[114] Seiler then moves on with the discussion to the topic of abortion.[115] Noteworthy is the clustering together of the two articles on assisted suicide with the article on abortion. The fact that this clustering is not unintentional, but reveals underlying ethical tensions, is shown by its repetition during the initiative "Recht auf Leben" (right to live) in 1985. Apart from being intentional, the clustering also shows religious controversy within the assisted suicide debate. These tensions might be of little surprise, yet religious actors of the debate have received little attention within this paper. The issue with the analysis of these religious tensions is that there has been little change in its discussion over time, with the important principle being that God alone should decide over life and death. This consistency and the lack of influence this debate has outside of religious circles led to this neglect within this paper.

[109] Ibid.
[110] Ibid., 5.
[111] Seiler "Schweizerisches Strafgesetzbuch," in *Stenographisches Bulletin der Bundesversammlung* (1929), 3.
[112] Ibid., 4.
[113] Ibid.
[114] Ibid.
[115] Ibid.

Returning to the document, it finally found its way into the smaller of the two Parliament chambers, the "Ständerat", in the year 1931. The discussion protocol shows that the two articles again were accepted with the debate shifting to the next article on abortion.[116] Interestingly, the protocol mentions the reason for the lack of debate surrounding the articles, stating that they had been copied identically from the military code of law.[117] Although the analysis of the military code of law and its surrounding debate would surely prove to add to the debate surrounding assisted suicide, its consideration would go beyond the scope of this paper.

Finally, in 1937, the final version of the *StGB* was presented to the public.[118] The only major difference in the two articles from 1918 to 1937 being the reversal of the words "ernstlich" (serious) and "dringendes" (pressing) and the numbers of the Articles, which were now and will remain Article 114 and 115.[119]

Although the *StGB* underwent significant revisions over the decades, considerable change to the two Articles in question would not happen until 1985. This silence must be contextualized with Germany's history during this period, which had likely influenced the debate surrounding assisted suicide. The influence of these events can hardly be overstated and even changed the usage of the term previously used for the practice: Euthanasia.

As opposed to the history of assisted suicide in Switzerland, the literature on the topic in Germany has gotten much more attention. Out of the many noteworthy books Udo Benzenhöfer's "Der Gute Tod?" contains one of the most comprehensive accounts. While reaching as far back as ancient Greeks and Romans, he also focuses on more contemporary events in Germany during the

[116] "Schweizerisches Strafgesetzbuch," in *Stenographisches Bulletin der Bundesversammlung* (Bern, 1931), 483.
[117] Ibid.
[118] "Schweizerisches Strafgesetzbuch," in *Bundesblatt* (Bern, 1937).
[119] Ibid., 660.

Second World War.[120] It would go beyond the scope of this paper to trace the genocide committed under the guise of mercy against vulnerable individuals during the "Aktion T4" in Germany. Yet, the geographic and ideological proximity of the two countries and the previously mentioned involvement of the medical community requires a look into the *SAMW*. The book recommendations of the journal in 1944 shows just how close this ideology was aligned in some cases, with the publication of the preliminary results from psychiatric and biological inheritance studies on Jewish refugees.[121] The author of this study, Theo Lang, had worked at the German Research Institute for Psychiatry until 1941 and had been one of the founders of the Nazi Physicians' League, before conveniently making his way into Switzerland where he continued practicing.[122] Lang was far from being the only physician who made his way across the border and managed to keep practicing medicine without facing the consequences of his actions. With this movement and the limited yet public discussion surrounding Euthanasia and "Aktion T4" it seems remarkable that the Bulletin of the *SAMW* does not show any type of debate surrounding the topic until the early 1980s.[123] The lack of debate surrounding the topic during this time is both remarkable and hard to explain. On one hand, the war crimes committed in neighboring Germany could explain an increase in sensibility towards the topic and thus heightened discussions. On the other hand, it seems likely that with the regulation of the topic in the *StGB* there was no more need for a public debate for some time, the practice had been regulated sufficiently for the meantime. With that being said, it is important to mention that the legal regulation of assisted suicide through the *StGB* is not to be equated with the legalization of the practice. The extensively discussed

[120] Udo, Benzenhöfer, *Der Gute Tod?* (München: Beck, 1999), 13.
[121] Theo Lang, "Erste Ergebnisse psychiatrisch-erbbiologischer Untersuchungen and jüdischen Flüchtlingen," in *Bulletin der Schweizerischen Akademie der Medizinischen Wissenschaften*, Vol. 1, 6 (1945), 281-295.
[122] Paul Weindling, "Too Little, Too Late," In *Psychiatry and the Legacies of Eugenics: Historical Studies of Alberta and Beyond* (2020),190.
[123] Hans Saner "Würde und Rechte des Patienten," in Bulletin der Schwizerischen Akademie der Medizinischen Wissenschaften, 36 (1980), 235-245.

articles state that assisted suicide remains illegal, however, the intent of the assisting party will be taken into consideration by a court of law, showing the importance of intent. The effective impact of the *StGB* on the practice thus remains questionable. Empirical evidence from the Netherlands shows that doctors are not inhibited in participating in the practice by the threat of criminal prosecution.[124] It is likely that this study is at least to some degree applicable to Switzerland. In addition, the prominent arrest of Professor Urs Hämmerli for admitting to having participated in the practice, which will be discussed in the next section of this paper, provides tangible evidence that the same is likely applicable in Switzerland.

From Legalization to Tourist Attraction

The previous part of this paper has analyzed how assisted suicide was discussed in the creation of the *StGB*. The next part of this paper will analyze how the practice, which can barely be considered legal at the time transformed into a widely practiced phenomenon, largely tolerated by society. Additionally, as opposed to the previous section, this part offers a richer public discussion of the topic with more diverse strands of the debate coming from political and public angles. While the last section has shown a decrease in debate activity, the mid 1970s showed a rapid acceleration of activity surrounding the topic. The end of the year 1974 brought about the first act of the *Hämmerli Affair*. The controversy surrounding Urs Hämmerli, chief doctor at the renowned Triemli hospital in Zurich, gave rise to new and for some parties undesirably public discussions surrounding assisted suicide. In December of 1974, Hämmerli had approached his political superior, city council member Regula Pestalozzi, about the overcrowding in his hospital.[125] According to Pestalozzi, he mentioned in this discussion, which revolved mainly around chronically ill patients,

[124] Markus Zimmermann-Acklin, *Das niederländische Modell*, (Freiburg: Universitätsverlag Freiburg Schweiz, 1998), 355.
[125] Christoph Wehrli, "Eklat um die Sterbehilfe," in *Neue Zürcher Zeitung* (2015), par. 1.

that occasionally those deemed as "hopelessly ill" patients had been deprived of food and were only provided with water.[126] The article, written by the city council, noted that Hämmerli had explicitly mentioned that "even with zero calories a human that only lies motionless in bed can live for a few months", meaning that he purposefully withheld food to accelerate their passing.[127] The article also highlights that Hämmerli's argumentation was not focused on the patients being in pain, having desired the absence of treatment, or any ethical considerations which would fall into the previously discussed consideration of intent. Initial research by the health department, of which Pestalozzi was an integral member, had indicated that there was a possibility that this conversation had not been "leeres Gerede" (empty talk) but there was no knowledge of a specific case at the moment.[128] Pestalozzi is quoted in the article, stating that after hearing the statement by Hämmerli, she immediately ordered the end of this practice.[129] Further, she said that she had ascertained that other doctors were opposed to the practice.[130] Pestalozzi does not provide a detailed explanation on how exactly she assured herself that the case of Hämmerli was indeed an isolated one. In addition, the support Hämmerli received from his colleagues after the incident had gone public suggests at the very least ideological support for his actions by the medical community. In addition, Pestalozzi mentions that, as required by law, a criminal investigation into the case had been opened, and Hämmerli was suspected of "Vorsätzliche Tötung" (deliberate homicide).[131] The application of this Article, instead of one related to assisted suicide, seems striking at first yet considering the absence of desire by the patient and the mediating factor of intent renders it a logical conclusion. The article then shifts its attention to the "Bezirksanwaltschaft" (office of the

[126] "Chefarzt des «Triemli» im Amt eingestellt," in *Neue Zürcher Zeitung*, Nr. 12 (1975), 37.
[127] Ibid.
[128] Ibid.
[129] Ibid.
[130] Ibid.
[131] Ibid.

district attorney) who states that the suspected patients are thought to have been paralyzed and unconscious and were thought to be without a chance of recovery.[132] The office states that the problems which go alongside the treatment of very sick patients who will never be able again to live a "menschenwürdiges" (humane) life is very complex – both from medical and legal perspective.[133] This short account of the "Bezirksanwaltschaft" highlights the moral and ethical considerations which would influence the case Hämmerli. On one hand, the patients were, according to all sides of the story, unable to consent or show desire to participate in the practice. Yet on the other hand, the article also shows that the view of society regarding a desirable life has a substantial influence on the debate. This discussion surrounding the *Hämmerli Affair* begs the question of the importance of intent. The first segment of this paper highlighted the importance of intent, but this discussion suggests a shift regarding the importance of mediating factors away from the desire of the patient and towards the authority of medical professionals. This is especially noteworthy regarding the abuse of this power in the actions of medical professionals in Germany during the "Aktion T4", only 30 years prior to this. To better understand the change in mediating factors and who influenced them, one must keep following the *Hämmerli Affair*. This article marked only the first stage of the renewed debate surrounding assisted suicide and was soon followed in the same newspaper by various articles on Hämmerli. The reactions on the previous article were noted by the newspaper the following week. According to the article, Hämmerli had received a large amount of support from fellow medical professionals while Pestalozzi had been harshly criticized for bringing the practice to legal attention.[134] The author of the article claims that the case is indeed complex, as Hämmerli had confided in Pestalozzi in private, even though the

[132] Ibid.
[133] Ibid.
[134] PZ, "Das Dilemma einer Stadträtint," in *Neue Zürcher Zeitung*, Nr. 18 (1975), 41.

situation is widely known in medical circles and beyond.[135] This claim goes against what Pestalozzi had stated regarding the isolation of the case. The author further claims that this painful problem which medical professionals and family were confronted with has always been controversial yet accepted "stillschweigend" (quietly).[136] This statement clearly suggests the presence of the practice of assisted suicide and the knowledge of this practice within the medical community. It is interesting to note that this "silent acceptance" of the practice stems from the power dynamic which is created as the physician is the sole authority over life and death of the patient. Instead of addressing this power dynamic directly, the author focuses on the burden this poses for the physician. This burden, the author claims, is one from which no regulation, rule, or law, at this point or in the future, will be able to remove from him.[137] Thus suggesting that the power to decide over life and death is part of the profession. The author states the authority in such cases should rest with the physician, but Pestalozzi had violated this power dynamic by acting according to *her* rules.[138] The negative sentiments towards Pestalozzi are surprising considering the circumstances of how Hämmerli had practiced assisted suicide and how the topic had been discussed as acceptable previously. The articles show that although the medical circles and the public were aware of the practice of assisted suicide, there was explicit desire not to discuss the topic publicly. Furthermore, even Pestalozzi seems to see the need to defend her actions and states that she had no choice and was bound by law to report the case and thus bring attention to it. Even while recognizing the legal situation the author suggests that the council woman had not acted with enough sensitivity regarding the difficult situation.[139] Even though she had waited weeks after the

[135] Ibid.
[136] Ibid.
[137] Ibid.
[138] Ibid.
[139] Ibid.

discussion with Hämmerli before reporting it to the authorities, she should have had another talk with him in private. The author continues that a further confrontation characterized by mutual trust could have avoided the "aufsehenerregende" (attention attracting) walk to the district attorney, a walk which might be legally correct, but not politically.[140] Thus, the author states explicitly that the issue of the case is the publicity and not the actions of either party. The "status quo" of not acknowledging the practice had been violated and had forced the resurface of the debate and as we will see demands more regulation.

The public attention forced the medical faculty of the University of Zurich to publish a defense of Hämmerli. The statement clarifies that Hämmerli's behavior had in no way given rise to suspect any issues with his conscientiousness or integrity.[141] Further, the statement proclaims that the medical faculty is determined to help Hämmerli continue his duties at the university.[142] The article reads like a character witness, attesting to the fact that Hämmerli must have acted with good intentions in mind. Just as the previous article, this one highlights the public attention surrounding the topic. Although the topic is very "heikel" (delicate), the statement "hopes" that the debate which is held "leidenschaftlich" (passionately) in the public sphere will result in what is best for the patients.[143] While being diplomatic towards the public, the statement argues that this publicity is not necessarily beneficial for the patients and should be discussed in a less *passionate* manner and likely a more private one.

Professor Rossier, a former director of the Medical University Clinic of Zurich, further criticizes Pestalozzi for the legal attention she had brought to the topic. Rossier states that during his time at the hospital he had treated many patients in similar states as Hämmerli's patients;

[140] Ibid.
[141] "Stellungnahme der Medizinischen Fakultät," in *Neue Zürcher Zeitung*, Nr. 18 (1975), 41.
[142] Ibid.
[143] Ibid.

unconscious and or paralyzed individuals.[144] Rossier highlights the "Tortur" (torture) which was caused for the relatives by seeing the "menschlichen Hüllen ohne Seele" (human shells without souls).[145] He claims that he himself had acted in the same manner as Hämmerli, only giving the patients water and "proper care".[146] Rossier argues that the difference between right and wrong does not lie in the hands of the authorities, the office of the district attorney, or a judge, but God alone, and he would act according to his own conscience again.[147] Although not quite as explicitly as the previous articles, Rossier's statement presents another voice criticizing the public attention towards the matter of assisted suicide and advocating subtly for the return of the authority over the matter to medical professionals. Yet Rossier goes even further than previous statements and argues that physicians in this case are beyond the judgement of earthly law and their authority can only be questioned by God himself, elevating the authority of physicians alarmingly.

No matter the agreement or disagreement of the public regarding the handling of the situation by Pestalozzi, with the reporting of the case, the topic had gained public attention and could no longer be ignored and left to the sole authority of medical professionals. The extensive articles and discussion of the Hämmerli case show noteworthy themes surrounding the debate of assisted suicide. One notion being the advancements of medicine. This notion would eventually find its way into the text of the initiative launched in 1994; the face of medicine had changed in the past decades. With advancements in medicine such as artificial nutrition and ventilators, patients could now be kept alive beyond the "natural" capacities of their bodies, giving new rise to the discussion of what constituted a life worth living.

[144] Prof. Dr. Ph. Rossier "Eine Erklärung von Prof. Rossier," in *Neue Zürcher Zeitung*, Nr. 18 (1975), 41.
[145] Ibid.
[146] Ibid.
[147] Ibid.

Confronted with the question of where the duties of the physician lay in the sphere of these new possibilities, the Swiss Academy of Medical Science (hence SAMW) published a document containing regulations and guidelines in 1976. Undoubtedly influenced by the attention surrounding the *Hämmerli Affair*, the document defines the duties of the physician as revolving around the mighty goals of "healing, helping, and reliving of suffering" until the dying patient had passed away.[148] The document further defines that this help constitutes of treatment, support, and nursing.[149] Under the section "treatment", the document states that the will of the "*urteilsfähigen*" (individual competent to judge) patient is to be respected, even if the medical indications do not align with it.[150] However, if a patient is unconscious or unable to judge, the medical indicators should be the foundation for the physician.[151] The document further states that although the opinions of the relatives must be heard, ultimately the legal decision lies with the physician. In addition, if there is a chance for improvement of the condition of the sick or injured patient, the doctor must administer the necessary treatments. However, if the physician decides that there is no chance of improvement of the condition or the patient is due to their condition unable to live a conscious and outwardly life according to their personality, the physician is not required to administer all possible treatments. Noteworthy about the last part of the section is the attempt to define a life worth living. The definition offered takes into account the personality of the individual and makes their interaction with the environment a vital part of this definition. Thus, a human life without interaction with other individuals or the possibility to participate in society would not constitute a life worth living. Amongst other definitions and guidelines, the document also defines the terms for passive and active assisted suicide. Active assisted suicide is defined as the calculated

[148] SAMW. "Richtlinien für die Sterbehilfe," (Schwabe und Co.: Basel, 1976), 2.
[149] Ibid.
[150] Ibid.
[151] Ibid.

shortening of a dying individual's life by killing them.[152] The statement quotes the *StGB* and reminds the reader that this practice is illegal, even if the patient asked for it.[153] Further, the guidelines explain that passive assisted suicide is the waiver of life extending treatments for a "Todkranken" (terminally ill).[154] Overall, the discussion suggests the importance of the authority of the physician, while attempting to align this authority with the status of the patient. The discussion also marks a departure of the notion of intent as it suggests that physicians have the best intentions of their patients in mind. Further, the notion of relationship towards the two parties has lost most of its importance.

An interesting theme that presented itself during this discussion is the advancements of medicine influencing the view of quality of life. The guidelines from the *SAMW* state, that possible treatments in some cases, do not have to be applied by the physician, further increasing the authority of the physician over the patient. With the advancements of medical technology, possibilities of keeping patients alive beyond what some sources call the "natural path of life" have emerged.[155] In these lines of the debate, one also finds a repetition of previous themes and expressions such as "sinnloses" (senseless) and "lebensunwertes Leben" (life unworthy of living). It seems that with this advancement physicians and medical professionals are demanding an increasing authority on the topic of assisted suicide. Simultaneously the debate surrounding assisted suicide becomes increasingly centered around medical diagnoses. As in previous debates, case examples are being presented, yet the types of examples have changed. In the article of Wegmann, chief doctor at the state hospital in St. Gall, the common theme of cancer can be seen,

[152] Ibid., 3.
[153] Ibid.
[154] Ibid.
[155] T. Wegmann, "Krankheit und Tod aus der Sicht des Klinikers," *Fachblatt für schweizerisches Heim- und Anstaltswesen* 46, no. 12 (1976): 387.

showing how illness has become the center of discussion. Wegmann talks about a young officer, diagnosed with lung cancer. In accordance with the family of the patient, he sent the young man home, without informing him of his diagnosis or offering treatment. After renewed admission into the hospital due to his diagnosis, Wegmann states that the patient did not take his diagnosis well, however, he does not show understanding for the potential of controversy behind his statements.[156] Another example Wegmann presents is of a man who had been paralyzed and subsequently intubated for the length of 18 years. He uses this example to demonstrate that medicine has been confronted with new limitations and ethical discussions.[157] He continues that the Hippocratic oath did not predict the possibility of organ transplants and had asked physicians to only take responsibility for their one patient and treat them until their last breath.[158] However, today the physician also has a moral duty to think about the unknown patients waiting feverishly for their organ transplant.[159] With the topic having so many different levels, Wegmann states that he does not want to dwell on it longer.[160] In his article, Wegmann demonstrates the level of authority physicians hold over their patients. Apart from medical treatment, patients are subjected to their moral and ethical guidelines without their consent. Physicians such as Wegmann not only diagnose patients but determine the quality of life resulting from this diagnosis, which in addition to the lack of governmental regulation leaves much room for abuse of this power. It seems understandable that this level of authority would result in strong critical voices of medical professionals and the practice of assisted suicide itself. Surprisingly, these voices represent a minority, both in this paper focus and outside of it, yet some voices of concern and stern disagreement can be found throughout

[156] Ibid.
[157] Ibid., 388.
[158] Ibid.
[159] Ibid.
[160] Ibid.

the discussion. While often dominated by Christian viewpoints, their voices often did not reach the political or even widely recognized public sphere. However, this changed with the renewed discussion after the *Hämmerli Affair*. In 1975 an initiative in the Nationalrat, led by Walther Allgöwer, demanded amongst other things that the right to passive assisted suicide should be recognized in the Swiss Constitution.[161] This recognition might not sound like criticism, but its demand for more regulation shows the uneasiness the practice caused for some individuals. However, the initiative did not receive the same support as Hämmerli's case had, and the commission decided that the situation was adequately regulated, providing an example of how unsuccessful these efforts of criticism were.[162] Although authorities were being reluctant regarding further regulation of the practice, 5643 signatures on the Cantonal initiative "Volksinitiative Sterbehilfe auf Wunsch für Unheilbar-Kranke" forced the government's hand.[163] The initiative committee, which included Allgöwer, mentioned the "rejective" attitude of the local government.[164] The initiative demanded the legalization of assisted suicide in certain cases. For an individual to qualify, they had to be diagnosed by two different physicians to be suffering from a disease which is unhealable, painful, and which will with certainty lead to their death. In addition, the patient would have to attest their wish to die in two different public certificates, with a psychiatrist being present for the second one to ensure the ability to make such a decision.[165] After this process, a third physician will then be allowed to end the patient's life.[166] The initiative gained enough signatures to force a public vote and even though there had been hesitance towards further regulation in the past, was surprisingly accepted. This acceptance forced the Government to

[161] "Initiative Parlementaire sur l'euthanasie passive," Feuille fédérale 127, no. 39 (1975), 1359.
[162] Ibid., 1358.
[163] "Bericht des Nationalrates, Standesinitiative des Kantons Zürich Sterbehilfe für unheilbar Kranke," Bundesblatt 49, no. 2 (1978), 1529.
[164] Ibid.
[165] Ibid.
[166] Ibid.

recognize the public demand for regulation and the Canton of Zurich was forced to submit a "Standesinitiative", an initiative which would change the Swiss Constitution.[167] The internal commission of the Nationalrat decided, after hearing two representatives of the initiative commission and a commission of the *SAMW* that they will not be adjusting the Constitution.[168] In their explanation, the commission recounts the previous initiative by Allgöwer, which they deemed unable to provide more regulation to the practice of assisted suicide.[169] The decisions which have to be made on an individual level in such cases, are not suitable to be regulated by law and are better regulated in accordance with the guidelines published by the *SAMW*.[170] As opposed to these guidelines, the aim of the initiative had been to allow physicians to deliberately end the life of a patient in the form of a "Gnadentod" (mercy death) is not part of a physician's profession.[171] The commission continues stating that the physician is supposed to heal and help, the active killing of a human being is not compatible with this.[172] Interestingly, the commission admits, that the boundaries between active and passive assisted suicide is not always easily distinguishable.[173] However, the overly complicated procedure proposed by the initiative in addition to the moral and ethical issues led to the unanimous rejection of the initiative.[174] This rejection left both sides of the debate unsatisfied as it provided neither better access to the practice nor further regulation of it. This void of unsatisfaction would proof to be the opportunity of privatization. According to the right to die organization *EXIT*, the public support which the topic had received during this time shows that the public had accepted assisted suicide.[175] Arguing that since the government was not

[167] Ibid.
[168] Ibid., 1530.
[169] Ibid.
[170] Ibid.
[171] Ibid.
[172] Ibid.
[173] Ibid.
[174] Ibid.
[175] "Geschichte," *EXIT*, access June 16 2021, https://exit.ch/verein/der-verein/geschichte/.

going to provide the evidently demanded regulation and access to this practice, they would do so themselves. The push towards privatization occured by Hedwig Zürcher, a retired teacher.[176] In 1979 Zürcher reads a "Handbuch zum Selbstmord" (manual to suicide), published in the national newspaper "Tages-Anzeiger" by the London "Voluntary Euthanasia Society".[177] Zürcher is quoted as having read the manual with interest and repeatedly.[178] She orders the 31-page suicide manual advertised in the newspaper, which will become the role model for the organization.[179] In March of 1982 Zürcher publishes a short ad in a newspaper, stating that some unsatisfied individuals were preparing the founding of an organization which would revolve around the rights and duties of patients and physicians.[180] If interested in participating, the readers are supposed to manually write their information down and send it to Zürcher's home address.[181] According to *EXIT*'s own records, more than 200 interested individuals wrote to Zürcher, and the *Hotel Du Pont*, where the subsequent event was held, was filled to capacity on the day of the first meeting.[182] Apart from offering a "dignified" passing, the organization's claims that their service goes beyond this and is mainly concerned with advocating for patients, hence their most frequently demanded service - patient decrees.[183] Detailing the many legal and political struggles of the organization would go beyond the limits of this paper and is well documented by the organization itself. Additionally, it must be noted, that *EXIT* is not the only organization of its kind in Switzerland.

A noteworthy aspect about the Festschrift[184] in which this information can be found, is the repetition of a familiar theme – specific case examples. On pages 10 and 11 of the document, one

[176] Ibid.
[177] Daniel Suter, "30 Jahre Einsatz für die Selbstbestimmung," (Zug: 2012), 8.
[178] Ibid.
[179] Ibid.
[180] Ibid., 9.
[181] Ibid.
[182] Ibid., 12.
[183] Ibid., 14.
[184] Publication published in remembrance of a person or significant date.

finds an illustration of an elderly man, with one hand resting on his face, and the other on the railing of a balcony.[185] The deep furrows that mark his face and crutches resting to his side illustrate his age and fragility. His face looks sad, and his story, printed underneath the illustration, explains this sadness. The man is 92 years old, and after a stroke, has very limited physical abilities.[186] In addition, his hearing and seeing abilities have made it impossible for him to leave his room at the retirement home.[187] This situation is an unbearable torture for the man, and he has stated multiple times that he would like to die.[188] He would jump off his balcony but does not want to burden the hospital staff and other residents with the aftermath.[189] The text claims that the man contacted *EXIT* about his wish to die and his family understood his decision. After having received the necessary medication for his passing from his doctor, the man passed away peacefully.[190] What is interesting about this account is the focus on the mental capacity of the man and his ability to consent to this practice; he explicitly asked for it. Other illustrations show family members surrounding the bed of the patient, which doctors holding charts in the background.[191] The center of attention being family and the repetition of the words *peaceful*, and *in their sleep.*[192] Yet mindful of illustrating the patients as being in charge; holding the infusion pump containing the deadly medication.[193] This highlight of the authority of the patient and their ability to consent to the practice marks the final shift in argumentation. With the patient itself having the final authority, intent has fallen into the background on the discussion. In these examples, physicians are mentioned as being part of the background, having lost their primary authority.

[185] Ibid., 10-11.
[186] Ibid.
[187] Ibid.
[188] Ibid.
[189] Ibid.
[190] Ibid.
[191] Ibid., 22-23.
[192] Ibid.
[193] Ibid.

Just as with other areas of life, privatization proofed successful yet highly controversial, with a steadily increasing number of individuals travelling to Switzerland from all over the world to commit suicide as their own countries have yet to legalize the practice.[194][195] According to the assisted suicide and suicide prevention organization *Dignitas*, the majority of these individuals are from Germany, with France and Great Britain also outranking Swiss participants.[196] In 2004 the increasing influx of these tourists forced the Federal Government to fund a commission to the discuss this form of tourism. Unsurprisingly, the resultant decision was that no new regulations were needed; once again supporting the privatization of the practice by refusing to subject it to governmental guidelines.[197]

Conclusion

The aim of this paper was the uncovering of different strands of discussion surrounding assisted suicide in Switzerland and the subsequent discussion of themes in this discussion. A surprising result of this analysis was the continuous presentation of specific case examples. There seems to be a need to humanize the topic and illustrate the moral and ethical aspects with examples from the private life of the different narrators. Throughout the discussion, there was a shift away from themes such as honor and family. Examples at the beginning and towards the large gap in the middle of the 20th century included young officers who had brought shame to themselves and their family by committing a crime. After the gap, the discussion moved towards medical diagnostics such as cancer and in the past decades towards mental health. Additionally, organizations and media outlets have moved on to giving the practice a *face* by including pictures and illustrations of individuals.

[194] "Statistik Wohnsitz 1998-2020," *Dignitas*.
[195] The numbers have steadily increased apart from the year 2020, which could be due to the Covid-19 pandemic.
[196] Ibid.
[197] "Palliative Care, Suizidprävention und organisierte Suizidhilfe," in Bericht Bundesrat (Bern, 2011), 6.

Another interesting aspect of the debate is the simultaneous increase and decrease of the physician's authority over time. On the one hand, physicians removed themselves to some degree from the active participation in the practice or were removed by legal constraints. On the other hand, physicians gained an increasing authority over determining patient's quality of life. The desire to keep this authority was especially tangible in the public discussion after the *Hämmerli Affair*.

Starting the paper so far back in time allowed for a long enough timeline to the trace of the development of the legal guidelines. This allowed me to attempt an answer for the question of how assisted suicide had become from a taboo to a tourist attraction. The question of how the practice itself had changed radically from individual decisions by physicians to organized, private, member-organized companies while the two short legal articles have changed very little. While these laws changed little, the understanding and interpretation of them changed substantially.

I believe that the legalization of assisted suicide is to be understood alongside the case examples in the debate. If one thinks about assisted suicide, we attempt to put this controversial topic within a personal context, we humanize it. We might think of a relative who suffered during the last moments of their life and wish we could have alleviated their suffering. It is understandable that medical professionals, dedicated to the aid of patients feel compelled to ease this suffering. In believing this, Switzerland extends the concept of "Treue und Glauben" towards physicians and private organizations. In doing so, Switzerland walks a fine line of naïveté between empathy and abuse of power dynamics. Meanwhile, the Federal Government refuses to regulate the practice beyond collecting the increasing numbers of individuals participating in assisted suicide. The question which remains is whether this refusal of regulation is due to a struggle of acceptance of assisted suicide or the fear of taking moral responsibility. The issue of taking moral responsibility

also extends to the physicians which in the past have argued for keeping their patients in mind. Hiding behind societal definitions of passive and active assisted suicide allows physicians to remove themselves from the situation; they need not be present in the same room with their patients as the patients take the medication they prescribed. These patients having come from all over the world since assisted suicide is *legal* in Switzerland. Legal in the sense that it is unregulated, ambiguous, and privatized. But ultimately, *legal*. The knowledge that we will all one day die, and this death might not be quick, painless, and dignified, is scaring the Swiss society just enough to keep this door open.

A further step that can be done to improve this study would be to quantify, through statistical analysis, the development of assisted suicide. The inclusion of such datasets would provide color and bring forth discussions such as why women dominate as participants in the practice. Additionally, further analysis can also be done to understand trends surrounding religion and age groups, which will surely illuminate the discussion.

Appendix

Date	Actor	Summary of Events
1777	"Preisauschreiben" in Bern	• Writing competition in Bern that shows the Influence of Voltaire and the Enlightenment
1798	"*Helvetische Staatsverfassung*"	• Shows influence of the Enlightenment movement • Significant legal document
1799	"Peinliches Gesetzbuch der helvetischen Republik"	• Shows further influence by "code penal" and French Enlightenment • Concept of "Treu und Glauben" present • Did not have much influence and was disregarded quickly
1888	Carl Stooss	• Order to create draft for criminal code
1888	Professor Lammasch	• Lammasch stated his views on the "Sühnegerichtsbarkeit" in correlation with assisted suicide: motive of the sinner should dictate the severity of the punishment
1907	Ossip Bernstein	• Analyzes the "Preisausschreiben" of 1777 • Concludes that there was no clear tendency towards decriminalization
1907	Zivilgesetzbuch	• Renewed importance of the concept "Treu und Glauben"
1918	Strafgesetzbuch: First Public Draft	• Short articles, introduction shows case examples • Intent is presented as important factor deciding over legality
1942	Strafgesetzbuch is enforced	
1975	Professor Urs Haemmerli	• Arrested after his confession of active assisted suicide on a large scale • National support in his favor and against public regulation and attention • His case was defended by Walter Baechi; one of the founders of *EXIT*
1975	Walther Allgöwer (and others)	• Attempt to regulate practice presented in "Nationalrat" • Unsuccessful due to lack of support
1975	Public Initiative in Zurich	• The initiative demands that the involvement of doctors in the practice should be allowed (legalizing ACTIVE assisted suicide) • Denied by the Canton Parliament but accepted by public
1976	Europarat Strassburg	• Wish of the patient should be the most important aspect • Guidelines by the medical community are necessary

1976	Swiss Academy of the Medical Sciences	• Guidelines for assisted suicide • Physician should respect wishes of patient that is able to consent to practice • Physicians are supposed to minimize pain, but not obligated to do so
1977	Initiative in Zurich	• 58,4% of voters vote in favor of the legalization of active assisted suicide • Denied by Parliament in 1979
1979	«Voluntary Euthanasia Society» London	• Publishes an article in a newspaper which inspires Hedwig Zürcher (founder of *EXIT*) • Publishes manual on how to die in *Tagesanzeiger* in 1980
1982	*EXIT* Organization is founded	• January 23rd, 1982: 20 people found "Association pour le Droit de Mourir dans la Dignité" in Geneva (independent from the German speaking organization)
1982	Swiss *EXIT*	• Publishes their own manual on assisted suicide • Only intended for very sick and terminally ill individuals
1985	National Inititiative	• Catholic organization; "Recht auf Leben" • Would have made abortion and assisted suicide illegal • 69% of voters voted against it
1986	Hedwig Zürcher	• Hedwig Zürcher commits suicide with the help of *EXIT*
1994	Weltwoche	• The newspaper claims that *EXIT* has helped someone commit suicide to get to her inheritance (donation) faster
1994	"Motion Ruffy"	• Movement in Parliament aiming to legalize active assisted suicide
1996	Federal Council commission analyzing practice of assisted suicide	• Initiative was started in 1996 but hand in their report in 1999 • Unanimous recommendation to regulate active and passive suicide further • No recommendation on how this regulation should look like
2004	Focus group regarding assisted suicide tourism	• Decides that no new regulations are necessary neither for the approval or observance of the organizations or the tourism
2006	Supreme Court decisions	• Assisted suicide for mentally ill patients not generally out of the question, but with the highest reluctance • Natrium-Pentobarbital (medication used for assisted suicide) remains legal to be given by the doctors
2006	Report Department of Justice	• Decides there is no need for new federal regulation of the practice
2011	Initiative by EDU (political party)	• Initiative organized by religious party in Zurich • 84.5% of voters voted against making all forms of assisted suicide illegal (punishable)

Bibliography

Secondary Literature

Benzenhöfer, Udo. *Der Gute Tod? Euthanasie und Sterbehilfe in Geschichte und Gegenwart*. München: Beck, 1999.

Bühler, Theodor, and Alain Prêtre. "Gesetze." In *Historisches Lexikon der Schweiz (HLS)*, Published February 10, 2011. Accessed March 13, 2021. <https://hls-dhs-dss.ch/de/articles/030903/2011-02-10>.

Geschwend, Lukas. "Strafrecht." In *Historisches Lexikon der Schweiz (HLS)*, Published November 26, 2013. Accessed March 14, 2021. <https://hls-dhs-dss.ch/de/articles/009616/2013-11-26/>.

Kley, Andreas. "Verfassung." In *Historisches Lexikon der Schweiz (HLS)*, Published February 25, 2013. Accessed March 13, 2021. <https://hls-dhs-dss.ch/de/articles/009615/2013-02-25>.

Luther, Christoph, ed. *Ein Strafrecht der Gerechtigkeit und der Menschenliebe: Einsendungen auf die Berner Preisfrage zur Strafgesetzgebung von 1777*. Universität Potsdam: Potsdam, 2014.

Schnyder, Bernhard: "Zivilgesetzbuch (ZGB)." In *Historisches Lexikon der Schweiz (HLS)*, Published November 18, 2014. Accessed March 13, 2021. <https://hls-dhs-dss.ch/de/articles/030734/2014-11-18>.

Schöne-Seifert, Bettina. "Ist Assistenz zum Sterben unärtztlich?" In *Das medizinisch assisitierte Sterben*, Edited by Adrian Holderegger, 98-119. Freiburg: Universitätsverlag Freiburg Schweiz, 1998.

Schumann, Eva. *Dignitas: Voluntas-Vita-Überlegungen zur Sterbehilfe aus rechtshistorischer, interdisziplinärer und rechtsvergleichender Sicht.* Göttinger Antrittsvorlesung im Januar 2006. Universitätsverlag: Göttingen, 2006.

Suter, Daniel. "30 Jahre Einsatz für die Selbstbestimmung." Zug: 2012.

Wehrli, Christoph. "Der Eklat um die Sterbehilfe." In Neue Zürcher Zeitung (2015). Accessed June 16, 2021. <https://www.nzz.ch/schweiz/schweizer-geschichte/eklat-um-die-sterbehilfe-ld.13227#register>.

Weindling, Paul J. "Too Little, Too Late." In *Psychiatry and the Legacies of Eugenics: Historical Studies of Alberta and Beyond* (2020), 181-198.

Zimmermann-Acklin, Markus. "Das niederländische Modell – ein richtungsweisendes Konzept?" In *Das medizinisch assisitierte Sterben*, edited by Adrian Holderegger, 351-370. Freiburg: Universitätsverlag Freiburg Schweiz, 1998.

Primary Sources

Bernstein, Ossip. *Die Bestrafung des Selbstmords und ihr Ende*. Breslau, 1907.

"Bericht des Nationalrates, Standesinitiative des Kantons Zürich Sterbehilfe für unheilbar Kranke," Bundesblatt 49, no. 2 (1978), 1529-1539.

"Botschaft über die Änderung des Schweizerischen Strafgesetzbuches und des Militärstrafgesetzes." In *Schweizerisches Bundesblatte*, BBI 1985 II 2, 1009-112. Accessed July 17, 2021. <https://www.fedlex.admin.ch/eli/fga/1985/2_1009_1021_901/de>.

"Statistik Wohnsitz 1998-2020." *Dignitas*. Access July 20, 2021. <http://www.dignitas.ch/images/stories/pdf/statistik-ftb-jahr-wohnsitz-1998-2020.pdf>.

"Document Nr. 188, Der französische Regierungskommissär Lecarlier befiehlt die unveränderte Annahme der helvetischen Konstitution, March 28 1798." In *Quellenbuch zur Schweizergeschichte: Für Haus und Schule*, 2nd edition, edited by Wilhelm Oeachsli, 579-580. Zurich, 1901.

"Document Nr. 191, Die Helvetische Staatsverfassung, April 12, 1798." In *Quellenbuch zur Schweizergeschichte: Für Haus und Schule*, 2nd edition, edited by Wilhelm Oeachsli, 583-595. Zurich, 1901.

"Geschichte," *EXIT*, access June 16, 2021. <https://exit.ch/verein/der-verein/geschichte/>.

Hafter, Ernst. "Die vergleichende Darstellung des deutschen und ausländischen Strafrechts." *Schweizerische Zeitschrift für Strafrecht*, no. 19/20 (1906/1909), Edited by Carl Stooss et. al., 133-159. Accessed June 4, 2021. <https://hdl.handle.net/2027/mdp.35112102570522>.

Hafter, Ernst. "Bibliographie und kritische Materialien zum Vorentwurf eines schweizerischen Strafgesetzbuches." *Schweizerische Zeitschrift für Strafrecht*, no. 20/21 (1908/1909), Edited by Carl Stooss et. al., 97-316. Accessed June 5, 2021. <https://hdl.handle.net/2027/mdp.35112102570530>.

"Ich bin Mitglied bei EXIIT." Tagesanzeiger. Tamedia, October 10, 2018. Accessed July 15, 2021. <https://www.tagesanzeiger.ch/kultur/pop-und-jazz/ich-bin-mitglied-bei-exit/story/23070716>.

"Initiative Parlementaire sur l'euthanasie passive," Feuille fédérale 127, no. 39 (1975), 1356-1374. Accessed June 16, 2021. <https://www.fedlex.admin.ch/eli/fga/1975/2__1356_/fr.>

Lang, Theo. "Erste Ergebnisse psychiatrisch-erbbiologischer Untersuchungen and jüdischen Flüchtlingen." In *Bulletin der Schweizerischen Akademie der Medizinischen Wissenschaften*, No 1, 6 (1945). Accessed June 4, 2021.

<https://www.e-periodica.ch/digbib/view?pid=sam-001%3A1944%3A1%3A%3A6#385>.

Lammasch, Heinrich. “Der Entwurf eines schweizerischen Strafgesetzbuches.” *Schweizerische Zeitschrift für Strafrecht*, no. 5/6 (1888), Edited by Carl Stooss, 121- 142. Expedition der Buchdruckerei Stämpfli & Cie.: Bern, 1888. Accessed June 3, 2021. <https://archive.org/details/bub_gb_rC8wAQAAMAAJ/page/n3/mode/2up?q=Verlangen>.

Medizinische Fakultät. “Stellungnahme der Medizinischen Fakultät.” In *Neue Zürcher Zeitung*, Nr. 18, January 23, 1975. Accessed June 12, 2021. <https://static.nzz.ch/files/7/1/3/H%C3%A4mmerli+Pestalozzi_1.18482713.pdf>.

Neue Zürcher Zeitung. “Chefarzt des «Triemli» im Amt eingestellt.” In *Neue Zürcher Zeitung*, Nr. 12, January 16, 1974. Accessed June 12, 2021. <https://static.nzz.ch/files/7/1/1/H%C3%A4mmerli+eingestellt_1.18482711.pdf>.

“Peinliches Gesetzbuch: Im Namen der helvetischen einen und unteilbaren Republik, April 1, 1799. ”, 1-110. Lucern, 1799. Accessed March 14, 2021. <http://mdz-nbn-resolving.de/urn:nbn:de:bvb:12-bsb10704179-7>.

“Palliative Care, Suizidprävention und organisierte Suizidhilfe.” In *Bericht Bundesrat*, Bern, 2011. Accessed July 19. <https://www.ejpd.admin.ch/dam/bj/de/data/gesellschaft/gesetzgebung/archiv/sterbehilfe/ber-br-d.pdf>.

PZ. “Das Dilemma einer Stadträtint.” In *Neue Zürcher Zeitung*, Nr. 18, January 23, 1975. Accessed June 12, 2021. <https://static.nzz.ch/files/7/1/3/H%C3%A4mmerli+Pestalozzi_1.18482713.pdf>.

Rossier, P. H. “Eine Erklärung von Prof. Rossier.” In *Neue Zürcher Zeitung*, Nr. 18, January 23, 1975. Accessed June 12, 2021. <https://static.nzz.ch/files/7/1/3/H%C3%A4mmerli+Pestalozzi_1.18482713.pdf>.

Ruffy, Eugène. “Verhandlungen der vom Eidgenössischen Justiz- und Polizeidepartement einberufenen Expertenkomission über den Vorentwurf zu einem Schweizerischen Strafgesetzbuch. 2. Teil. ” Stämpfli und Co.: Bern, 1896. Accessed June 9, 2021. <https://hdl.handle.net/2027/mdp.35112105209466>.

SAMW. “Richtlinien für die Sterbehilfe.” Schwabe und Co.: Basel, 1976.

Saner, Hans. “Würde und Rechte des Patienten.” In *Bulletin der Schweizerischen Akademie der Medizinischen Wissenschaften*, 36 (1980), 235-245. Accessed June 5, 2021. <https://www.e-periodica.ch/digbib/view?pid=sam-001%3A1980%3A36#241>.

“Schweizerisches Strafgesetzbuch, July 23, 1918.” In *Schweizerisches Bundesblatt*, BBI 1918 IV 1, 1-231. Bern, August 7, 1918. Accessed March 15, 2021. <https://www.fedlex.admin.ch/eli/fga/1918/4_1_1_1/de>.

"Schweizerisches Strafgesetzbuch." In *Stenographisches Bulletin der Bundesversammlung*. Bern, 1931. Accessed June 15, 2021. <https://www.ius.uzh.ch/dam/jcr:00000000-1d98-62cb-0000-00002bd3969f/32_Erstes_Schweizerisches_Strafgesetzbuch_Amtliches_Bulletin_Staenderat_1931_1932_klein.pdf.>

"Schweizerisches Strafgesetzbuch." In *Bundesblatt*, No. 3, 625 – 736. Bern, March 29, 1937. Accessed June 17, 2021. <https://www.ius.uzh.ch/dam/jcr:00000000-1d98-62cb-ffff-ffffa671a95e/35_Referendumsvorlage_StGB_1941_BBl_1937_S_625.pdf.>

"Schweizerisches Strafgesetzbuch, 26. Juni 1985." In *Schweizerisches Bundesblatt*, BBI 1985 II 35, 1009- 1121. Bern, June 26, 1985. Accessed March 19, 2021. <https://www.fedlex.admin.ch/eli/fga/1985/2_1009_1021_901/de>.

"Schweizerisches Strafgesetzbuch, Änderungen vom 13. Dezember 2002." In *Amtliche Sammlung*, AS 2006 3459, 3459- 3538. Bern, September 4, 2006. Accessed March 19, 2021. <https://www.fedlex.admin.ch/eli/oc/2006/549/de>.

"Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907, Ausgabe in den Drei Nationalsprachen, 1907." In *The Making of Modern Law: Foreign Primary Sources, 1600 – 1970*, edited by A. Francke, 1-622. Bern, 1908. Accessed March 14, 2021. <https://link.gale.com/apps/doc/GN0102763460/MLFP?u=chic_rbw&sid=MLFP&xid=959bfb0 5&pg=1>.

"Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907." In *Schweizerisches Bundesblatte*, BBI 1907 VI 589, 589- 890. Bern, December 21, 1907. Accessed March 14, 2021. <https://www.fedlex.admin.ch/eli/fga/1907/6_589_429_/de>.

Seiler. "Schweizerisches Strafgesetzbuch." In *Stenographisches Bulletin der Bundesversammlung*. Bern, 1928. Accessed June 15, 2021. <https://www.ius.uzh.ch/dam/jcr:00000000-1d98-62cb-0000-00004ad55842/31_Erstes_Schweizerisches_Strafgesetzbuch_Amtliches_Bulletin_Nationalrat_1928_1930_klein.pdf.>

Stooss, Carl. "Vorentwurf zu einem Schweizerischen Strafgesetzbuch." In *Vorentwurf Neu Gefasst* (Stämpfli & Co.: Bern, 1908), 21. Accessed June 11, 2021. <https://www.ius.uzh.ch/dam/jcr:00000000-1d98-62cb-ffff-ffffc08d20d4/15_Vorentwurf_zum_STGB_1908_klein.pdf>.

"Verhandlungen." In *Schweizerisches Strafgesetzbuch, Protokoll der Zweiten Expertenkomission, Band 1*. Buchdruckerei Keller: Luzern, 1912. Accessed June 11, 2021. <https://www.ius.uzh.ch/dam/jcr:00000000-1d98-62cb-ffff-ffffee4cf372/16_Schweizerisches_StGB_Protokoll_2_Expertenkommission_Band_I_April_1912_klein.pdf>.

"Verhandlungen." In *Schweizerisches Strafgesetzbuch, Protokoll der Zweiten Expertenkomission, Band 3*. Buchdruckerei Keller: Luzern, 1914. Accessed June 11, 2021. <https://www.ius.uzh.ch/dam/jcr:00000000-1d98-62cb-ffff-ffff9e0b7fd5/18_Schweizerisches_StGB_Protokoll_2_Expertenkommission_Band_III_April_1913_klein.pdf>.

"Vorentwurf zu einem Schweizerischen Strafgesetzbuch. Fassung der Zweiten Expertenkomission." Art Institut Orell Füssli: Zurich, 1916. Accessed June 13, 2021. <https://www.ius.uzh.ch/dam/jcr:00000000-1d98-62cb-ffff-ffffc2dc98d2/27_Vorentwurf_zu_einem_schweizerischen_Strafgesetzbuch_Fassung_der_zweiten_Expertenkommission_oktober_1916_wba16.pdf>.

Wegmann, T. "Krankheit und Tod aus der Sicht des Klinikers." In Fachblatt für schweizerisches Heim- und Anstaltswesen 46, no. 12 (1976): 385-389. Accessed June 14, 2021. <https://www.e-periodica.ch/digbib/view?pid=cuv-004%3A1975%3A46%3A%3A702&referrer=search#699>.