UC Berkeley
Recent Work

Title
The Inversion of Morals in Markets: Death, Benefits, and the Exchange of Life Insurance Policies

Permalink
https://escholarship.org/uc/item/0qv6h4cn

Author
Quinn, Sarah

Publication Date
2006

eScholarship.org Powered by the California Digital Library
University of California

The Inversion of Morals in Markets:
Death, Benefits, and the Exchange of Life Insurance Policies

Sarah Quinn
squinn@berkeley.edu
University of California, Berkeley
Department of Sociology

It seems that as long as there has been life insurance, there have been insured people willing to sell their policies for cash. And as long as people have been willing to trade policies for cash, the legitamacy of the practice has been questioned. Although legal, exchanges of life insurance policies remained informal and diffuse in the United States for most of the 20th century. It was only in the 1990s, in the midst of the AIDS epidemic, that a wave of entrepreneurs began to systematically organize the sale of life insurance policies among strangers. Some immediately denounced this new market as a moral abomination. Others hailed it as a godsend to the dying. And a few in the industry dismissed such comments as irrational, arguing that this exchange is no different from any other type of sale.

In the secondary market for life insurance, people use a settlement contract to buy and sell the life insurance policies of the wealthy, the elderly, and the terminally ill. In a typical transaction, an insured person sells her policy for a lump sum. The new owner, now the beneficiary of the policy, proceeds to pay the premiums to the insurance company. When the original policyholder dies, the new owner receives the full death benefit. This means that the buyer has an interest in the early demise of the seller, for if the original policy holder – called a viator – passes quickly, fewer premiums are paid, and the investor makes a larger profit. Conversely, the investor's profits decline as life of the original policyholder is prolonged. There are two main branches of this market. If the original policyholder was diagnosed with a 'catastrophic' terminal illness, the trade is called a viatical settlement. In all other cases the transaction is commonly referred to as a life settlement.

This secondary market for life insurance has a complex relationship with the primary market.[1] In her study of the early insurance industry, Viviana Zelizer observed that life insurance was established as a ritualized part of the good death as it successfully "redefined death as an economic episode and life as an economic asset" (Zelizer 1983: 65). As a secondary market for life insurance policies, viaticals and life settlements can be thought of as part of this trend. Yet this market also signals a change in the logic of life insurance. The instantiation of insurance as a ritual in the face of death was in part predicated on two moral pillars. First is that the interests of the bereaved are paramount. Second is that the person benefiting from the policy should have an 'insurable interest' in the life of the insured (that is, the beneficiary should have more to gain if the insured lived than died). The first pillar spoke to the *necessity* of life insurance; the second spoke to *decency* of life insurance, as it would prevent a stranger from having a perverse incentive in the early death of another. It is the second pillar which is supposed to distinguish insurance from speculative bets on others' lives.

If the moral logic of insurance is that the bereaved should be financially secure, and that this financial gain is fundamentally decent because the beneficiary holds a pronounced interest in the prolonged life of the policyholder, then how did the industry gave rise to a secondary market that, to some extent, inverts these logics – that takes payments earmarked for the bereaved and divvies them up between the insured and strangers? That is, how did the market expand to incorporate a set of practices once thought to be offensive?

---

[1] Here I refer to the settlements industry as a secondary market in a general sense, as the resale of a product. However, as will become clearer later in the paper, this industry also contains a secondary market in the more technical sense of the resale of a security to a party other than the original issuer.

This is all to say that there are specific practical and moral logics to the commensuration of death that have been institutionalized in the life insurance industry. The secondary market for life insurance both represents an extension of this institution, and an inversion some of its central logics. I proceed by introducing the theoretical and methodological considerations for this paper, before providing a brief outline of the development of the market. As you might expect of a business that derives profits from the death of strangers, the burgeoning market was seen by many as exploitative, ghoulish, and immoral. I next focus, then, on the morally-grounded critiques of the industry. The remainder of my analysis explores rejoinders to such critiques, first, as an example of how market participants have sought legitamacy, and secondly, as indicative of the broader social transformations that underscore the market.

I start with arguments put forth by defenders of viaticals, who assert that the practice promotes a good and dignified death. Here I argue that viaticals may in fact be symptomatic of much broader social, cultural and demographic shifts. Still, this is not to imply that viaticals simply reflect larger trends. Although relatively limited, they nevertheless are part of the enactment of social relations in the face of death, and so they participate in the transformation of the meaning and ritual of death in America. In this way, entrepreneurs in the viatical industry are not unlike the early life insurers, who had similarly worked to transform the proper death over a century earlier.

I next examine how market participants account for the trade of life settlements. As the industry has switched from the terminally ill to the wealthy and elderly, and as investors have shifted from non-professionals to large institutions, claims about the moral nature of the practice have shifted in step. While viaticals have been defended on the

grounds that they help alleviate the needs of the dying, life settlements are defended on the grounds that the insured are wealthy and without need, and that the relationship between insured and investor is distant and anonymous. In this way, the practice is recast as moral precisely because it is envisioned as a purely rational, calculative, impersonal endeavor. This section highlights both the fluidity of moral claims and the importance of specific institutional contexts in which they arise.

By thus tracing the moral life of a particular market, over time and on a variety of fronts, I hope to show that people use cultural arguments to promote specific financial interests within specific institutional environments. I also hope to show that these efforts are not reducible to calculated self-interest or the confines of a given industry. Instead, I believe that the settlement contract should be thought of *both* as a diagnostic of larger social trends *and* as a constitutive practice that helps to redefine social relations in the face of death.

Sociological Theories of Economic Life

This study is grounded in a set of distinct but related theories that stress the social and cultural components of economic life. Specifically, I draw on four specific insights prevalent in economic sociology. First is the notion that market practices are situated within, subject to, and constitutive of broader cultural systems. Second is the idea that market practices proceed within specific institutionalized contexts, which themselves may be understood as relatively autonomous cultural systems. Third is an understanding of markets as sites of power and political struggles. The fourth insight is that market practices are performative acts that constitute economic life. I explore these notions,

below, not as distinct theoretical schools but rather as distinct analytical moments that are emphasized to a greater or lesser extent in different works.

Viviana Zelizer's work on the life insurance industry is relevant to this study not only empirically, but more broadly as emblematic of the sociological effort to illuminate connections between markets and culture. In *Morals & Markets: the Development of the Life Insurance in the United States,* Zelizer (1983) notes that by the 19th century urbanization had given rise to a new problem: the dependence of women and children on the income of a lone male breadwinner left them in a financially precarious situation if he died. Though life insurance proposed to solve this problem, it was at first widely criticized as a troubling innovation; it offended Judeo-Christian notions about the incommensurability of life, and many thought it perverse to profit from the death of a loved one. Yet entrepreneurs in the insurance industry effectively challenged these critiques and established the practice as legitimate institution. They did so by asserting it as a rational endeavor (and as such a part of the popular march towards scientific progress), and by successfully arguing that an integral part of dying was providing for vulnerable family members (thus aligning insurance with notions of "the good death" (1983: 55)). Zelizer therefore notes that while life insurance served to rationalize death, it did not "de-ritualize" it, but instead it became "a legitimate vehicle for the symbolic use of money at the time of death" (Ibid. 48).

Zelizer not only sheds light on the specific case of life insurance, but more generally reminds that innovations in markets reflect and contribute to broader social and cultural transformations. This in turn suggests that sociologists can use market innovations as diagnostic indicators of exogenous trends, even as we recognize that

markets may be actively contributing to them. Thus, in *Pricing the Priceless Child* (1985) Zelizer details the central importance of market practices in the transformation the general value of children. Such connections are not limited to the insurance industry. Frank Dobbin (2001), for example, has demonstrated that the organization of the railroad industry in the US, France, and Britain was reflective of the specific political and cultural context of each country.

Other studies have emphasized the specific institutional contexts in which markets are situated. Institutions are systems of rules, semiotic codes, and concrete practices that orient human action (DiMaggio and Powell 1990; Fligstein 1996; Meyer and Rowan 1997; Jepperson 1990). Institutions involve formal and informal guidelines, some explicit and some taken-for-granted, that suggest specific courses of action while eliding others, and that may unconsciously shape understandings (and subsequent behaviors) by directing perceptions and suggesting models of causal relationships. Institutional approaches suggest that notions of the proper way of 'doing' markets are not simply floating in some kind of cultural ether, but are crystallized in structures that may be specific to a given industry, organizational field, or firm. This suggests that institutions are themselves relatively distinct, localized and coherent systems. Neil Fligstein (1996) has coined the phrase "conceptions of control" to discuss the normative and semiotic component of institutions, and in his explanation of the semiotic understanding of institutions, he notes that they can be specific to a given market: [2]

> *Conceptions of control* refers to understandings that structure perceptions of how a market works and that allow actors to interpret their world and to act to control situations. A conception

[2] In Fligstein's (2001) model, the other three components of market institutions are property rights, governance structures, and rules of exchange.

> of control is simultaneously a worldview that allows actors to interpret the actions of others and a reflection of how a market is structured. Conceptions of control reflect market specific agreements between actors in firms on principles of internal organization (e.g. forms for hierarchy), tactics for competition or cooperation, and the hierarchy or status ordering of firms in a given market. (1996: 658)

This implies that specific markets or organizational fields are themselves semi-autonomous systems that contain distinct institutional structures, which are bearers of unique organizing logics. Empirically Fligstein (2001) has put this to use by showing how certain conceptions of control (notably, the finance and shareholder value conceptions of the firm) have at times resulted in large-scale reorganizations of U.S. corporations.

A theory of institutions that recognizes their relative autonomy in fact helps specify the relationship between specific markets and broader culture contexts. If culture may be broadly thought of as the semantic dimension of social life (Sewell 1999), institutions may serve as lenses that filter, focus, and direct it within specific contexts. In other words, specific market institutions may organize and refract larger cultural logics. In thus way, institutions can account for the congruence between specific market practices and more general cultural or political logics.

In addition to tracing links between markets and culture, sociological theories of economic life note that markets are sites of power struggles and political contests. This is perhaps most central to Bourdieu's economic sociology. Bourdieu avers that the organization of market activity (like other kinds of human activity) should be thought of in terms of social *fields* in which actors struggle to realize interests, often by working to define the field and its rules of engagement in a way that is favorable to their own

position and skills (Bourdieu & Wacquant 1992). (Here interests are understood broadly as desired ends, and not in the sense of a profit-maximizing, rational actor model.) Building on this, Fligstein (1996) recasts markets as political arenas wherein actors use social skills to jockey for position and advantage. This approach places politics squarely in the center of an analysis of markets, first as a means to theorize power struggles between actors within markets, and secondly in terms of a sustained interaction between markets and states. This approach stresses a model of human action along the lines posited by Swidler (1986), in which actors are thought to strategically draw on cultural codes to achieve desired ends.

Approaches that stress the performative nature of economic life place a particular emphasis on the capacity of actors to construct their environments. Callon (1998), for example, argues that when we participate in market practices we in fact are using market tools to "perform the economy" (1998: 27). For Callon, the economy is a collection of practices that are constructed as a coherent whole through performance, and it follows that as we change those performances we also change the economic and social world. While Richard Titmuss is not commonly associated with performative or practice-oriented approach, I nevertheless believe that his insights inform this kind of work. Comparing blood collection regimes in the U.S. and the U.K., Titmuss (1997 [1970]) argues that the social organization of exchange could alternately encourage or inhibit altruistic behavior. Titmuss' contribution is not simply to demonstrate that government policies influence altruism, but rather to show (in the tradition of Mauss) how modes of exchange are broadly constitutive of social relations and moral codes.

In practice, sociological theorists tend draw on many of these insights in order to explain economic life. Fourcade-Gourinchas, for example, examines the discipline of economics as an institutionalized field that refracts an array of historically and socially unique meanings in the United States, France, and Britain. Her comparative investigation elaborates not only on the cultural contexts in which the discipline of economics is embedded, but also the struggles among interested actors to define the field in ways that benefit them. She also strikes a more performative note, arguing that distinct economic systems are *constitutive* of unique configurations of culture, identity, and power in each country. Thus the field of economics is thought to have "dual" character in that it is both "culturally constructed and culturally efficacious" (Fourcade-Gourinchas Forthcoming: 24).

In a similar vein, I have sought to integrate each of the four insights discussed above into my analysis of settlements. First, I have approached the market as emblematic of broader cultural and social trends. That is, throughout my analysis I use the market as a kind of diagnostic tool that points to underlying social changes that make this market possible. Second, I have envisioned the market not simply as a diagnostic tool, but as a coherent system in its own right. This is to say that I approach settlements as a practice undertaken by actors within the field of insurance. While this field incorporates many institutions, the most relevant ones for this study are technologies and techniques that facilitate the commensuration of mortality (such as mortality tables and underwriting expertise), and an understanding of the commensuration of death as a moral endeavor. Third, I have sought to understand how interests and politics are at play in the field by

examining how they have infused the moral claims made by market participants.[3] Fourth, I have examined the settlement contract as a technology that is used to perform social relations.

Together, this all suggests a model wherein actors perform economic life through practices that involve the deployment of cultural logics within specific market institutions and in accordance with their interests. By this logic, culture, politics and economics are not parsed into irreducibly separate (and neatly bounded) spheres that sometimes overlap; instead, they are envisioned as different dimensions in which any given practice is simultaneously situated. It is with this in mind that I examine the secondary market for life insurance policies.

Data and Methods

This paper draws on press coverage of the settlements industry, and interviews with key market participants, in order to examine the development of the secondary market for life insurance. Like many new markets, this one was turbulent and scattered in its early years, with a high degree of turn-over in companies and no central organizing locus for keeping track of them. Many practitioners operated, and continue to operate, across state lines, although the industry tends to concentrate in the most largely populated states.

To get a broad picture of this diffuse market, I reviewed all articles on viaticals published in the *Wall Street Journal* through 2005, and in the insurance trade journal

---

[3] For the sake of brevity and clarity I have bracketed some of the more explicitly political efforts at defining the field (such as battles over regulations, disputes between insurance and settlement companies, and conflicts within trade associations), and instead focused on the ways that interests have influenced moralistic discourse.

National Underwriter. I augmented this with a content analysis of press coverage in states that have sustained a vibrant trade in policies. I therefore reviewed articles on viaticals and life settlements published between 1990 and 2005 in major newspapers that serve four of the largest secondary insurance markets in the U.S., namely, New York, Florida, California, and Texas: *The New York Times*, *The Los Angeles Times*, *The Miami Herald*, and *The Dallas Morning News*. In total I analyzed 247 newspaper articles from the five papers. In addition, my analysis draws on miscellaneous articles culled from other trade journals and magazines. Finally, the content analysis was augmented by a review of regulatory statutes in California, Florida, New York, and Texas. When possible, this review was also supplemented by ad hoc materials and industry documents.

I also interviewed leaders in the field in order to reconstruct in greater detail the rise and regulation of the market. From the press coverage I came up with a short list of key industry participants, who then served as the foundation for a small snowball sample of dominant players in the field (n = 10). Interviewees were selected to cover a range of perspectives and experiences in the secondary market. Interviewees include (but are not limited to) brokers, providers, lawyers, and people involved in insurance regulations. Interviews were open-ended and generally lasted from forty-five minutes to an hour and a half. Most were conducted over the phone, but when possible subjects were interviewed in person. To some extent all interviews were tailored to the respondents' area of expertise. So while a set of general questions were asked of all respondents, there was also a good degree of variation among the questions asked. For example, interviews with business leaders tended to focus on market trends, whereas interviews with lawyers

delved more deeply into regulatory developments. In order to ensure anonymity, I have refrained from presenting identifying characteristics in the analysis below. [4]

I use the data in a double sense. On one hand, these interviews and articles illuminate the history of the market, and I have used them to reconstruct the rise of the field. On the other hand, the data represent cultural artifacts that can be mined for a richer understanding of the social construction of the marketplace. Through my analysis, then, I attempt to understand not only what happened, but how events were interpreted.

Through the interviews and content analysis I have worked to reconstruct and understand key moments in the rise of the field. The analysis that follows does not purport to be a complete or definitive history of viaticals and life settlements. Rather this study focuses on important elements of the development of the market that inform and are informed by a sociological analysis of institutions, power, and culture. More specifically, I have focused on those constructions that I think are most relevant for a sociological analysis of culture and morality in markets – namely, arguments about dignity, death, and commensuration. Discourse about fraud, regulations, trade organizations, free markets and property were all important aspects of the development of the industry, but are not discussed for the purposes of this paper.

A Burgeoning Market as a Moral and Economic Frontier

In 1911 an ill man sold his life insurance policy to his doctor in order to pay for surgery (Linn 1999). The insurance company then contested the policy on the grounds

[4] For this study I interviewed a handful of big fish in a relatively small pond, and due to their standing within the field, even basic identifying characteristics (such as age, gender, geographic location, or job title) could give them away. Throughout this paper I have therefore chosen to exclude all but the most basic details about interview subjects.

that this violated insurable interest laws, and the ensuing case went up to the U.S. Supreme Court. In the Court's decision, Oliver Wendell Holmes, Jr. noted that "life insurance has become in our days one of the best recognized forms of investment and self-compelled saving. So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property." (Grigsby v. Russell, 222 U.S. 149) The court therefore concluded that if the insured agreed to sell a policy to a trusted third-party, the burden of insurable interest was lifted. Such a trade was deemed distinct from wagering on the lives of strangers:

> The danger that might arise from a general license to all to insure whom they like does not exist. Obviously it is a very different thing from granting such a general license, to allow the holder of a valid insurance upon his own life to transfer it to one whom he, the party most concerned, is not afraid to trust . . . (Ibid.)

This might imply that the issue of settlements' legitimacy was definitively settled in 1911. Yet the sale of a policy between acquaintances on a one-off basis is a very different sort of transaction than the systematic trade of policies among strangers. Questions of wagering, speculation, and trust grow increasingly complicated in accordance with the widening social distance between seller and purchaser. Moreover, sheer legality is no guarantee of wide-spread social acceptability, and the fact that the social ramifications were not so clear-cut became abundantly clear once a trade in the industry was rationalized, as I will show below. Yet these complications would not soon come to the forefront, as the practice remained informal and diffuse for nearly 80 years.

There was no systematically organized trade in policies, no substantive coordination of market participants, and there were no companies incorporated for the

specific purpose of trafficking life insurance policies until 1989. In the early 1990s a robust trade in life insurance swept across the country, as a wave of entrepreneurs began to specialize in the sale of life insurance policies. Overwhelmingly, industry participants agree that the early success of the industry owed much to the AIDS epidemic:

> HIV and AIDS was the predominant illness up to early 1998 . . . and sociology-wise, you will appreciate this – the reason that it took off with AIDS . . . was that the primary people with AIDS during that time were gay white males. And they were gay white males with relatively decent jobs, with insurance policies, and with non-standard beneficiaries for those insurance policies. . . . Their beneficiaries tended to be their mothers, their fathers their sisters, their brothers, and in some cases, their lovers. But in all cases, they weren't necessarily trying to have a life insurance policy that was going to send somebody to college or support a family over the next five to ten years, or pay off the mortgage or anything like that. (Interview 3/23/05)

The quote above highlights how the AIDS epidemic gave rise to a large pool of likely viators. First, HIV disproportionately affected younger people. The Center for Disease Control (CDC) has reported that 70% of all HIV related deaths were among people age 25 to 44, and that HIV was the leading cause of death for men ages 25 to 44 from 1988 to 1995 (CDC 2003). To the extent that this young population had life insurance policies, the policies were likely to have little accrued equity to borrow against, and the surrender value of these policies would not have been substantial. Secondly, as terminally ill persons they may have had a heightened need or desire for money. (The cost of terminal illness is a primary trope in settlement-related discourse, and I will return to this point in greater detail later in the paper.) Third, the men who were disproportionably affected by the AIDS epidemic were unlikely to have financially dependent beneficiaries. Most obviously, this helps explain a boom in both the existence and perception of the number

of people willing sell a policy.[5] However, I will later argue that this also may also help explain an increase in the number of people willing to *buy* a policy.

The introduction of Highly Active Anti-Retroviral Therapies (HAART) in the mid-1990s dramatically improved the life expectancies of the HIV-positive, and sent shockwaves through the new industry.[6] Investors who had purchased policies from people with AIDS now found that viators were living for years instead of months, and they saw their expected profits plunge accordingly. As noted by a source in a *Wall Street Journal* article, "if the guy gets the magical cocktail [a combination of drugs that prolongs the life of AIDS patients], then obviously the value of your investment just went down the tubes" (Mollencamp 1998).

In response, the industry expanded and diversified.[7] Newly popular were policies of people diagnosed with other terminal illnesses, and life settlements that targeted the elderly and wealthy. The institutional framework for a secondary market constructed within the AIDS epidemic had underscored this transition into life settlements. Most fundamentally, the viatical contract served as the basis for the life settlement contract. Hence one interviewee argued that turning a viatical contract into a life settlement was the equivalent of putting a new auto body on an existing chasse (Interview 4/8/05a). This institutional foundation also included refined actuarial techniques for measuring the life expectancy of the terminally ill. (In order to price life settlements, it was crucial that life expectancy estimators could gauge with greater precision the progression of a larger

[5] See Sood (2003) for a more in depth discussion of why absence of a bequest motive among those lacking financially dependent beneficiaries would increase the likelihood of viatication.
[6] The CDC reports that this treatment was largely responsible for a 25% decrease in the age-adjusted death rate from 1995 to 1996, a 45% decline from 1996 to 1997, and an 18% decline from 1997 to 1998. The proportion of HIV+ persons surviving 5 years increased from 11% of persons diagnosed in 1984/1985 to 60% of those diagnosed in 1996 (CDC 2002).
[7] Interviews suggests that although some in the industry had begun trading life settlements before HAART, the later was the primary factor behind the general industry-wide turn to settlements.

number of ailments, and the relative impact of a variety of treatments).[8] Obviously, there was also an enduring organizational basis, in terms of a network of incorporated companies and market participants, as well as an established a regulatory framework in many states. Finally, on a more cultural level, viaticals had led to a widespread recognition of life insurance as something to be traded, and a heightened sensitivity to the financial interests of the insured.

Today the industry is flourishing. Businessmen interviewed report that life settlements now constitute the largest portion of the settlement trade today, and that viaticals, which are still traded, tend to be associated with non-HIV terminal illnesses. A report by insurance research group Conning Co. estimated that $2 billion in face amount of insurance had been traded in 2002, and the *Wall Street Journal* has reported that the face amount of policies traded in 2004 was estimated around $10 billion by the Viatical and Life Settlement Association of America (VLSAA) (Deloitte 2005, Jenkins 2005).[9] The business continues to evolve, and in the past year the first securitization of settlements was successfully accomplished. The trade of life insurance had been transformed from a scattered practice to a field that is rationalized, and that has sought recognition and favor, often in the face of disdain.

[8] Settlements depend on the ability to estimate how certain illnesses progress, which allows experts to predict death in terms of months and years (and therefore come up with a purchasing price for a life insurance policy). Thus the measurement of life expectancy is a technology that underscores this industry, and although a comprehensive analysis of its history lies beyond the scope of this paper, it is nevertheless worth noting that the rationalization of life insurance relies upon the capacity to measure life and calculate the probability of death, as well as the ability to recognize with any degree of precision when a given sickness is terminal.

[9] Note that the face value represents the death benefit associated with the policy, and not the net profits of the buyer or investor. The profit for a buyer would be offset by premiums paid to the insurance company, the lump sum paid to the seller of the policy, and any additional brokers fees/costs associated with the transaction. Thus this face-value amount represents a much larger figure than we would expect to find if we looked at the actual profit margins.

Beneficiaries, Bets, and Ghouls: Questioning the Morality of the Market

Legally, life insurance policies may be endowed with the “ordinary characteristics of property,” but for many coming into contact with settlements for the first time, little seemed ordinary about it. From its inception the settlement industry has been faced with charges that it is unscrupulous. The market has faced a particularly ambivalent reception in the press, evinced in headlines such as “Making a Killing” (*Time* 1999), “Rolling the Dice on Death” (*Money* 1999), and “Death and Profits: Investors' Purchase of AIDS Patients' Insurance Policies Raises Ethical Questions” (*The Dallas Morning News* 1994). While these headlines were often more critical than the actual news coverage (no doubt their polemical tone was designed to attract readers) they nevertheless tapped into suspicions about the market.

By invoking a vampire-like extraction from the ill and their bereaved, such articles suggest that viatical companies exploit illness or divert resources from potentially needy beneficiaries. The insurance industry had long sanctified widows and orphans, and viaticals threatened to shortchange them. As one interviewee noted of the regulators, “a number of people felt that this was not a traditional or acceptable purpose for life insurance. That life insurance was always designed to assist the beneficiary, not the insured” (Interview 1/12/05).

Moreover, titles such as “Rolling the Dice on Death” implicitly question the intrusion of speculation and financial interests on the sanctity of death. If the objection above concerned the relationship between the insured and his beneficiary, here the trouble lies in the relationship between the dying person and the stranger who might

profit from his death. This point was well argued by Michael Sandel (1998) of *The New Republic*, who argued that "The financial risk in viaticals creates a morally perverse feature not present in other investments: the investor must hope for the early demise of the person whose life insurance he buys." Such concerns were evinced in the press through testimonials of viators who had the good fortune to outlive their estimated life expectancies, only to be harassed or disparaged by frustrated investors (a problem that was particularly pronounced following the diffusion of a treatment for AIDS):

> "I've never felt like anybody wanted me dead before," says Kendall Morrison, a 35-year-old New Yorker with AIDS. But an unnamed Michigan investor who purchased Morrison's life-insurance policies in 1993 surely did. Earlier this year, the investor threatened to sue the broker who sold him the policies for fraud and breach of contract. He was upset that, five years later, Morrison was still alive. (Anonymous 1998)

Similarly, in a letter to a financial advice column in the *Los Angeles Times* – which carried the headline "Few Investors Can Live with Profiting from a Stranger's Death" – a concerned citizen pleads, "Please warn people that this is not the most sound, practical or ethical way to make money. We are distressed that we need to keep checking to see whether someone has passed away to get Dad his funds" (Weston 2002). Thus the perverse incentives associated with settlements were potentially unsettling to sellers and buyers alike.

This is not to imply that such concerns were the exclusive domain of journalists, viators, and mom-and-pop investors. There are reports that industry professionals and seasoned regulators also wrung their hands over the strange new business:

> "We thought at first that it was a bit ghoulish and exploitative," said Nicholas Sprayregen, president of Accelerated Benefits of New York, which has bought more than 20 policies. "Then we thought about it and decided no one is forcing a customer to do this." (Steinmetz 1992)

> There was concern on part of some of the regulators that people would get impatient and take matters into their own hands so that they could get the proceeds of the policy. So that there was a lot of feeling in the regulator community that these were just kind of *nasty* – you were betting that somebody would die, and you did better if they died sooner rather than later, and so it had a really 'ewwwww' factor to it. (Interview 1/13/06)

As is clear in the quotes above, the varied concerns about settlements tend to be intertwined. In the press and in interviews, not only perverse incentives, but also the general association of profits and death is invoked. Sandel, for example, concludes that viaticals are "bets against life that coarsen the culture and make death a commodity" (1998). His argument thus expands to include not only an indictment of wagering but a broader warning about cultural erosion resulting from the commodification of death. In many instances such concerns are alluded to but not fully articulated. Thus a common trope in the articles is to refer to the business as "ghoulish" – as something generally unsettling and morbid.

Assertions that settlements are disturbing, ghoulish, and corrosive bear a striking resemblance those levied against the early life insurance industry. Perhaps it is not surprising, then, that champions of the market have responded in similar manner. Like their predecessors in the insurance industry, settlement entrepreneurs have attempted to circumvent taboos by invoking notions of the proper death and the beneficial march of rational progress. The following sections trace the claims made by defenders of the

industry. On one hand, I examine them as efforts to achieve legitamacy. On the other hand, I consider them partial indices of the social forces that contributed to the rise of the industry. I begin by addressing arguments specific to viaticals settlements before examining those that are most relevant for life settlements.

The Costs of Catastrophic Illness

When asked to respond to accusations that the business is ghoulish, a common response from industry professionals interviewed was to discuss the demand for settlements, and to recount testimonials of satisfied customers, in order to argue that viaticals help the terminally ill *die with dignity*.

While there are many facets of this, one important aspect is that viators are desperate to manage the mounting costs associated with terminal illness. Thus one interviewee noted that the HIV-positive viators who dominated the industry in the early years "sold their policy so that they could pay for a roof over their head or for medical treatment when they were dying" (Interview 4/4/05). At times the press recounted harrowing statistics of desperate financial straights face by people with AIDS.

> A 1992 survey assessing the needs of people with AIDS conducted by the U.S. National Association of People with AIDS . . . found that an overwhelming percentage of respondents to the survey cited financial assistance as their most pressing need. Almost three out of ten respondents said they live on less than $500 per month, and an additional three in ten said they live on between $500 and $1,000 per month. A person living with AIDS participating in the needs assessment commented: "Every month I decide either to eat or buy medication" (Anonymous 1994)

Discussions of high medical costs are not limited to the AIDS epidemic, but are understood to be a burden faced by many of the catastrophically ill. Thus one article cites a study in the *Journal of the American Medical Association* that reports "nearly a third of families caring for a seriously ill member lose most or all of their life savings. This fact was found to be true even though 96% of these patients had health insurance coverage" (Giacalone 2001).

The mounting costs associated with terminal illness discussed are not limited to medical expenses, but include day-to-day expenses that many out-of-work terminally ill people struggle to afford. Thus, when asked to respond to those who call the practice ghoulish, a businessman points to an array of costs that justify viaticals:

> I think people who say that [it's ghoulish] really don't understand the benefit that in the viatical industry, most of these people had good jobs, but when they got AIDS and they were significantly sick. They might have had health insurance, but health insurance didn't pay their mortgage, didn't pay for food, didn't pay for transportation, didn't help them get their house cleaned. (Interview 3/23/05)

Nor are all expenses thought to be so humble. In the viatical literature the good death tends to be marked by consumerism and leisure. Viators quoted in the press talk about buying cars, taking trips, or finishing renovations. One financial planner remarked in the press that: "People in this situation often want to pamper themselves through this" (Davis 1997). It is as if part of the good death today is experiencing as much of life as you possibly can in the time before you die, and this is understood largely in financial terms. Economist Dora Costa, discussing patterns in retirement over the last two centuries, argues that leisure in retirement is now the hallmark of aging (Costa 1998). She

contributes this to an increase in disposable income for many Americans, and new technologies that have increased life expectancies while lowering recreation costs. With viaticals, one can see that these changing expectations may in fact constitute normative notions of what you are supposed to do before you die – at any age.

One aspect of this association of death and money is the notion that dying poor or in debt is degrading. This is illustrated in the following testimonial from the press:

> Mills still had one big asset – a $250,000 life insurance policy. So last year, he tapped it for $100,000. By the time he died in July, all his debts were paid off. "He didn't have to think he was a failure," says his widow, Shirley. "He was able to die with dignity" (Gleckman 1999).

If Mills had not felt a need to erase his debt for the sake of dignity, his wife would have received the full death benefit – an additional $150,000 – upon his death. Put differently, he essentially paid $150,000 for the satisfaction of getting to see his debts erased while he was alive. The implication here is that to die in debt is to die a failure, and to be financially strapped before death so undignified that this man was willing to sacrifice an impressive sum to avoid it.

From Ghouls to Angels: Financing a Dignified Death

In all it seems that it is better to die with money than without, and that a greater social value is placed on more expensive deaths. Yet what also emerges in the discourse examined is troubling paradox: Many terminally ill people are financially strapped precisely when financial ease is seen as most necessary. We may want the dying to be

unburdened by financial worries, but the ideal death today may be staggeringly expensive.

Viaticals both raise these conflicting notions of death and offer a resolution for them. For insofar as viaticals can allow for a more dignified death by providing for a better funded death, with the peace and comfort that money is said to bring, this is thought to ameliorate their macabre or predatory connotations. Evidence of this can be found in the press, where the notion of a dignified death is weighed directly against accusations of ghoulish exploitation:

> Although it may sound ghoulish, people like Jones [a viator] say this is a needed service that allows them to live out their remaining months with some modicum of financial security and dignity (Kristoff 1991).

> To some it [a viatical company] is a pawn shop of human life, offering quick cash to terminally-ill AIDS patients in exchange for the full proceeds of their life insurance . . . To others, it is a final resource, a matter of choice, whereby a person gains financial security, independence and dignity before death (Tomb 1992).

> “We're talking about a very simple transaction to allow a person to live with dignity,” says Bill Freeman, executive director of the National Association of People With AIDS, a Washington, D.C., advocacy group. “No one is getting hurt here.” (Scism and Taylor 1994)

> “Back then, people did call me everything from bloodsucker to you name it,” he [Bryan Freeman, founder of Benefits America Inc.] says. But, he adds, “it's gratifying to be able to help somebody” with the cash from the sale of a policy. (Mollencamp1998)

In the interviews a similar connection is often made. While frequently admitting that this is a business from which they profit, industry professionals nevertheless stressed

that settlement transactions have helped many die with comfort, peace, and dignity. As one businessman recounts:

> We help out terminally ill people, we – they've thanked us – I mean we're helping them. They usually need the cash, if they are selling their policy with that little time to live. But I don't believe it's ghoulish at all. I think that it's an avenue to use if they require additional capital. One particular case I recall, a lady had ovarian cancer, and her husband was out of work, and she had very little time to live. I think she was given 12 months. And this is way back when we first started in the business. And she couldn't work any longer, she had two children, and the banks were foreclosing on her house because she had missed mortgage payments – and they didn't care how sick she was, they were taking the house. And we purchased her policy and gave her some capital, to allow her to stay home comfortably, pay her mortgage payment, and she passed on I think within three or four months, and her parents contacted us at the time and actually made sure that we were thanked for allowing her to have that peace at the end. . . . You're not preying on the terminally ill, really . . . No, I don't think it's ghoulish, I think it's – if someone has a need, the industry's there to [provide] support. (Interview 3/4/05)

Here again viaticals are aligned with the notion of a dignified death, made possible by financial security, and this alignment with such a highly a valued outcome implicitly excuses the potentially undignified act of profiting from the death of others. In the story above the businessman stresses that he was *thanked*, suggesting that he is not exploiting but helping the ill. Industry professionals are transformed from ghouls to angels – benevolent guides who shepherd their clients through dark and difficult times. This is reflected in the very term 'viatical', as the *Wall Street Journal* reports:

> The term "viatical settlement" was coined by Richard Bandfield, a financial planner whose practice assisted the terminally ill. According to Mr. Simon, viatical-settlement transactions had been under way for a couple of years when Mr. Bandfield, who later died of cancer, decided the nascent industry needed a phrase to

> describe what it did. “It was a poetic and spiritual definition,” said Mr. Simon. The term is from the Latin viaticum, which refers both to Christian communion given to the dying and to provisions given before a journey. (Colden 1995)

Some of the industry professionals I interviewed recounted that they had decided to stay in the business precisely because they wanted to help the terminally ill. Furthermore, appears that this notion of viaticals as a boon to those in need may have been integrated into sales-pitches targeting investors:

> The investors buying the so-called viaticals had presumed they were doing AIDS patients a good turn by giving them cash to pay medical bills in exchange for the patients' life-insurance policies. (Brinkley-Rogers 1999)

> “The reason they [viatical sellers] target the elderly is because they promise a high rate of return in relation to CDs and because they appeal to the elderly person's desire to do good by his fellow man,” she added. (Yip 2001)

Underlying all of this is the assumption that the significant financial needs of the terminally ill are the natural and perhaps inevitable result of modernity and markets. The sellers are developing scripts that legitimate and justify the practice, and so they support the market by ameliorating the drag of ghoulishness. Yet entrepreneurs are not simply offering a solution to a historical problem. They offer a particular kind of solution – a market solution. The scripts they offer to come to terms with ghoulishness reinforce the idea that a dignified death is an expensive death, and they reproduce this trope through the testimonials recounted in conversations, in the press, and in advertisements. In this

way the discourse about death repeatedly sells not just viaticals, but recreates the very needs that they are thought to merely reflect.

This serves not only to feed the desire for money at the time of death and in doing so cultivate a sense of scarcity,[10] but also to elide alternative interpretations and courses of action. Thus the notion that to die in debt is *to die with less dignity* was a statement that went unchallenged. The question raised is not whether to challenge the notion that a dignified death must be an expensive one, or to somehow lessen the cost of dying, but how best to go about subsidizing it. In this way the notion that the financial needs of the terminally ill will be solved only by a market solution is wholly naturalized. No other potential collective and political courses of action are weighed. Yet one might ask if the solution to all of these problems should be limited to the marketplace; if banks should be allowed to foreclose on dying women who don't have life insurance policies to sell, or if some other solution might better protect against such hardships.[11]

None of this is to say that market participants are alone in developing these arguments. On the contrary, it is clear in the press that many buyers, journalists, and community activists participate in the construction of these narratives. Nor is this to imply that they are constructing these scripts from whole cloth, or that such constructions and elisions are uniformly conscious and strategic. Rather, my intention is simply to point out that defenders of settlements do in fact contribute to the construction of a market solution that facilitates a sense of scarcity among the dying, a sense of scarcity that

[10] Nancy Scheper-Hughes (2001), writing about organ donors, argues that much of the desire for organs is a "false scarcity" that rests on the faulty assumption that every person facing organ failure needs or deserves a replacement, and the fetishism involved in the false illusion that life can be endlessly manipulated. A similar argument can be made here, insofar as one might argue that the intense need for money before death is a false scarcity.

[11] COCs

ultimately serves the interests of settlement entrepreneurs, and that asserts the interests of the dying over those of the bereaved.

Redirecting Benefits and Inverting the Logic of Life Insurance

The notions of dignity and death presented above have important ramifications for the logic of insurance. If the ritual introduced by life insurance involved sacrifice in order to protect one's beneficiaries, the new notion promoted by viaticals is that the dying person should be privileged. Most often the justification for this reversal takes the form of an appeal to the financial needs of the dying, as recounted above. Related to this is the notion that the insured should be allowed to participate in the beneficiaries' enjoyment of the death benefit. As one businessman noted, "Some of these guys wanted to pay off their mothers' house and make sure that while they were still alive they got to see the smile on her face." This was also a theme manifest in the press: "Ferreira sold his $200,000 term life policy to Living Benefits for $150,000. He and his wife, now debt free, are adding a long-coveted terrace on his house so that, as he says, "I can enjoy it now"" (Sherrid 1995).

As previously noted, Zelizer argued that the success of life insurance hinged on its instantiation as part of the ritual of the good death. That is, its successes owed to the notion that part of the good death involves providing for loved ones. By privileging the insured and not the beneficiary, narratives like the ones above invert the ritual of the "good death." Put differently, the notion of the dignified death so closely aligned with viaticals – wherein the needs of the dying are paramount – contradicts the notion of the good death associated with life insurance (wherein the needs of the survivors are

paramount). Understanding this contradiction sheds additional light on why the settlement industry did not flourish until the 1990s. AIDS was fertile ground for the emerging industry in part because it neutralized the problem of beneficiaries. That is, the absence of beneficiaries may have relieved some of the social pressure on the insured and entrepreneurs, who might otherwise be seen as fleecing the needy and bereft.

This is not to imply that the interests of beneficiaries are completely ignored. On the contrary, the interests of the beneficiaries must be carefully handled by those in the industry. Many settlement professionals grant that a sale of a policy is not a good option if there are vulnerable dependents, and in many states laws exist that require that any dependents are notified before a settlement. Nevertheless, with the onset of viaticals, the interests of the beneficiaries were newly questioned, and balanced against the needs of the insured.

The changing relations between beneficiaries and the insured show how a practice may both reflect broader changes and constitute new social relations. On one hand, this shift in priorities likely reflects broad structural and demographic changes that have served to decrease familial dependency on the sole male breadwinner. The entrance of women into the labor market, for example, would have had a dramatic impact on this. Yet I believe that this only represents a partial understanding of settlements. Callon (1998) argues that market technologies are quintessentially performative; a theory of practice reminds that these contracts actually constitute specific relations between people. By this logic, each time a settlement contract is implemented, a set of social relations are redrawn, as funds once intended for friends and family are redirected towards the insured

and any brokers, investors and assorted middlemen. By this logic, settlements do not just reflect preexisting social relations, but serve to reconstitute them.

From Viaticals to Life Settlements: Shifting Markets & Moralities

In the years following the diffusion of a treatment for HIV, the industry has shifted away from viaticals and towards life settlements. Today the most common life settlements include senior settlements (typically a policy on a person age 65 or older diagnosed with an impaired life expectancy of less than 12 years) and high net worth policies (unusually large policies taken out on the lives of the wealthy). The latter are often used as estate management tools, or by companies looking to unwind “key man” policies for former executives.[12] According to one leader in the field, “the transition has been from small policies with desperate people to big policies with very sophisticated people” (Interview 4/4/05).

If viaticals invoke the costs associated with terminal illness, discussions of life settlements tend to speak to the shifting risks faced by an aging population. Since the 1970s new medical knowledge and technologies have resulted in longer lives (Wilmoth 2003). It is much less likely today that a single male breadwinner will die young and leave his family destitute; as women have entered the workforce, the need to insure the income of a sole male wage earner has receded, and as the population ages, it is less likely that the insured’s beneficiaries would still be financial dependent when she dies.

[12] A key man policy is insurance purchased on the life a high ranking employee, such as a Chief Financial Officer or Chief Executive Officer, purchased by a company. Often this policy will be unwound if the employee leaves the firm.

Conversely, it is more likely that an aging person will have trouble maintaining income at the end of life. As noted in one testimonial in the press:

> He no longer needed the coverage – his son was grown, and his wife had a good job. And there were many other ways that Mr. Oxenberg, a retired advertising executive in Brookline, Mass., would have liked to be spending the $5,000, soon to be $6,000, that he was paying in annual premiums. (Treaster 1998)

Insurance trade journals have recognized the financial ramifications of such changes for life settlements industry:

> Americans aged 65 and older are the most affluent and fastest-growing segment of the population. People in this demographic hold more than $492 billion in life insurance in force – a huge potential market for the viatical industry. . . . (D'Allegro 2000)
>
> One of the forces shaping these products [settlements] is that ubiquitous buzzword demographics, and the fact that medical technology has evolved to the point that three-digit birthday cards may be necessary for many of us. (Chevreau 1999).

In this light, life settlements join long-term care insurance, annuities, mutual funds, and reverse mortgages as part of a constellation of products that address the new risks and concerns faced by an aging population.[13]

In fact, the avoidance of taxes is one particular concern faced by the aging wealthy that has been identified by settlement professionals. Life settlements owe part of their success to the proliferation of "estate management" technologies – sophisticated tax shelters used by the aging and wealthy. The death benefit of a life insurance policy is taxed at a lower rate than comparable assets, which makes it an effective tax-shelter when

[13] According to the Life Insurance Marketing and Research Association (LIMRA), annuity sales ballooned from $29 million in 1985 to $126 million in 1997, while the sale of mutual funds during the same time period skyrocketed from $496 million to an estimated $4,600 million (Weckler 1998).

paired (through complicated but legal means) with certain investments. However, a change in the value of an underlying asset or a change in tax law can negate the purpose for the policy. In these cases the insured person may decide to unwind the policy, using a settlement contract. For example, as estate taxes are rolled back, insurance policies put in place to defray such taxes may no longer be needed, and so may be resold (interviews).

Rationality, Morality, and Institutions

Whereas viatical settlements are often defended on the grounds that they help meet the needs of the dying, among those working in life settlements there is a shift in the rhetoric towards the assertion that the practice is *not ghoulish precisely because the insured are not needy*. A corollary to this is the notion that life settlements are not ghoulish because they are *rational and impersonal*. Thus there was an effort to argue that the ghoulishness associated with settlements reflected a critical appraisal of problems specific to viaticals: the macabre nature of terminal illness, the insensitivity of unsophisticated investors who were compelled to harass living viators because their investments were not diversified, and the proliferation of unsavory conmen who thrived in the early days of the market when regulations were scarce. There was, in other words, little recognition of any general discomfort that might be associated with the commensuration of death. Having thus ghettoized ghoulishness, settlement professionals distanced themselves from it. This effort is revealed in the somewhat political act of giving the practice a new name – life settlements – in order to distinguish it from

viaticals.[14] In 2002 a businessman in the industry responded to a critical account of fraud in the *Los Angeles Times* with a letter to the editor titled "Life Settlements Not Same as Viaticals" (Moe 2002). Similarly, in an interview with a life settlement professional I was gently chided for referring to his work as involving viaticals. Laughingly, he informed me, "We don't use the "V" word" (Interview 4/8/05b).

An important aspect of this is the trend towards securitization in the field.[15] The largest provider firms increasingly securitize the settlements, that is, they bundle a group of life insurance policies together and sell rights against the group of policies. Since the policies are pooled, risks associated with any single policy are diffused. Moreover, the risks and rights to the pool of policies can be disaggregated and redistributed in accordance with investor interest. Overall, the trend means that those paying for settlements are less likely to be amateur investors turning over life savings, and more like to be major market participants such as banks, insurance companies, and fund managers. It also means that any direct link between an investor and the death of the insured is severed. Many life settlement entrepreneurs argue that the moral conundrums associated with the practice are severed along with it.

The idea that settlements are moral precisely because they are an impersonal transaction, and the effort to distinguish settlements from viaticals, was well-articulated by a businessman involved in the settlement industry:

> Once those policies are purchased they become numbered accounts. Literally. And they become one account of numerous

[14] In various articles settlements were sometimes referred to as "death futures" (see Mollencamp 1998, Danner 2004, Chua 1994, Kristoff 2000, Sander 1994). Not surprisingly, this does not appear to be a term preferred by entrepreneurs on *either* the viatical or life settlement side of the market.

[15] See Cummins 2004 for an excellent review of the history and ramifications of securitization of insurance products.

> other accounts. Strictly by the numbers. Typically they are going to end up as aggregate assets that are securitizing – or collateralizing, rather – some securities wrapped around those life insurance polices. So there's no individual human being, if you will, sitting out there waiting for the insured to die. It doesn't exist. So this ghoul element is basically non-existent.
>
> I really think, Sarah, that that whole notion came up 15 years ago when this business first started, where people who were just in catastrophic physical condition, literally dying, and desperate for money, sold life insurance policies in order to get some money. In those days the thinking was whoever bought the policy was literally sitting back rubbing his hands together eagerly awaiting the demise of the poor soul who sold the policy; that's sort of the picture that was painted. But you can see, in those days the person who sold the policy really did warrant empathy and downright sympathy, just because they were very, very sick. Literally dying. *Today dying has nothing to do with selling an insurance policy*. It's a function of age, and personal interest and intent. Whether the individual has decided that they've had enough of the insurance policy . . . . Strictly business. There are no ghouls in business today. (Interview 04/08/05a, my italics)

Of course, today there are still investors buying the policies of the catastrophically ill. Still, one can see from the above commentary that securitization and the beneficial march of finance are thought to erase the human element from the field, such that death is thought to have nothing to do with the transaction, even though the cash-flow is, by definition, predicated on a death.

Espeland and Stevens (1998) work on commensuration can help account for these arguments. The authors write that:

> Commensuration can be understood as a system for discarding information and organizing what remains into new forms. In abstracting and reducing information, the link between what is represented and the empirical world is obscured, and uncertainty is absorbed (March & Simon 1958: 138-39, 150-51). Everyday experience, practical reasoning, and empathetic identification become increasingly irrelevant bases for judgment as context is

> stripped away and relationships become more abstractly represented by numbers. (1998: 317)

Certainly this sort of erasure is accomplished in the description of life settlements quoted above. Any moral considerations about the proper role of markets in the face of death fall to the wayside, as the transaction is stripped down to numbered accounts and filtered through a series of companies that progressively distance investors from the insured. What some may find most repulsive – the reduction of mortality to a mere financial asset, the complete dehumanization and abstraction achieved through these financial instruments – is instead understood as a great leap forward, technologically and morally. It is to be free of the demands of hardship, to deal only within the rational sphere of commensuration and financial value.

Espeland and Stevens' work speaks not just to the social ramifications of commensuration, but the process by which it is extended. They argue that as commensuration is institutionalized, it comes to shape perceptions of possible courses of action. On one hand, this helps account for why non-market alternatives to the needs of viators, particularly the terminally ill are elided; especially for those involved in building the industry, perceptions of mortality and risk were likely already thought of in terms of the insurance market. In fact, the secondary market was mainly developed by people who already had a good deal of experience managing mortality risk and insurance contracts. Of ten interviewees working within the industry, eight had previously worked in insurance or had extensive experience with its regulations or financial applications. Unlike many of the journalists who express distaste for the commensuration of life and

mortality, for businessmen with a background in insurance and finance, the commensurability of mortality seemed a commonsensical occurrence:

> A life insurance policy is in a lot of ways something else that we buy, like a house, car, a boat, a painting, a condo. It's an asset. . . . It's a financial transaction. It's an absolutely straightforward financial transaction. I don't see anything there that's ghoulish. . . (Interview 4/8/05a)
>
> It's a receivable, just like credit card receivables, and movie royalties. Whatever. I really see it from a capital market perspective. It's an income producing asset that just doesn't mature until there's a death. . . . [People] have an asset called their insurability and that translates into a financial product . . . (Interview 4/8/05b)

When asked about whether the product was ghoulish, the businessmen quoted above simply asserted that it was like any other asset. They did not entertain the thought that some may be offended by the notion that life insurance was simply an asset on par with a boat or movie royalty. From their positions within the field, and vast experience dealing with the commensuration of life and mortality, it is unlikely that either would find such an abstraction disconcerting.

This is not to imply that an appeal to rationality, or the equation of a life insurance policy with other types of property, is the *exclusive* domain of people working in life settlements. Such understandings are in fact prevalent in discussions of viaticals as well; however, in the case of viaticals they tend to be balanced with arguments that appeal to the financial needs of viators in the face of death. Nor is this to imply that such an argument is exclusively put forth by those working within the field of insurance. On the contrary, if institutions refract larger social and cultural trends, effects that are intensified for those closer to the locus of institutionalization may still have important ramifications

for those more removed. While those working in settlements had the most confident assertions about the rationality of commensuration, similar arguments appeared among regulators and in the press – however, in those cases they tended to be *qualified* to a much greater extent. This can be seen in the following statement by an expert on settlements regulations: [16]

> As time past, the investment part of it became much more sophisticated. Companies would go in and buy many policies and they would securitize them and sell interest in that, so you didn't necessarily know whose policy you had in an interest in, there were a whole bunch of them, and if one of them lived longer or lived shorter it didn't make that much difference because it was a large pool of policies. So that changed the marketplace dramatically . . . now it's just another investment. And if you stop and think about it, you know that its based on, your return is based on people dying sooner rather than later, but you're so far removed from the actual death of someone, you don't know when you get your return who died or when they died or any of that information. (Interview 1/13/06)

The interviewee above had implied that a more sophisticated, impersonal and rationalized market is a less troubling market; yet in the above statement, the more 'ghoulish' elements of the market, while downplayed, were nevertheless recognized.

In a similar vein, in 2004 the *New York Time*s "The Ethicist" column responded to an inquiry about viaticals. The Ethicist argued that while the practice may be "macabre", it is not necessarily immoral, writing, "You might better see that insurance policy as akin to any asset a person sells to raise cash: a car, a savings bond, a record collection. If you buy it at a fair price – that ambiguous but significant term – you do no wrong" (Cohen 2004). While no less of an expert in virtue than 'the ethicist' compared viaticals to a

---

[16] Here it is important to note that the front-end sale of viaticals falls under the jurisdiction of state insurance departments, so the regulators, like the businessmen, tended to come to the secondary market by way of the insurance industry. See the Appendix for a more complete discussion of the different aspects of the industry and their regulations.

record collection, he also repeatedly warned against "profiteering" from the terminally ill, and ultimately concluded that the problem lies not with the market but the sources for its demand: "The real solution to this problem? Make affordable health care available to all and the viatical market will diminish" (Ibid.) Thus while he invoked a more rationalized view of commensuration, unlike those central to the field, he qualified this with a call for a more political and less market-oriented solution to the problems faced by the catastrophically ill.

Conclusion

In this paper I have argued that settlements are a new frontier in the field of life insurance, and that life insurance represents the institutional locus of the commensuration of death in America. Viviana Zelizer has shown that this institutionalization was a hard-won accomplishment for the insurance industry, which was able to thrive only after life insurance was instantiated as part of the ritual of death. The earliest defenders of life insurance successfully argued that to sacrifice now for the later benefit of beneficiaries was both a moral necessity and a rational act. The legitimacy of the practice was reinforced by the principle of insurable interest, which distinguished life insurance from crass speculation on human life.

In 1911 the Supreme Court ruled that life insurance was a man's property to sell to whomever he trusted. If the insured felt no qualms about letting another take a stake in his mortality, the state would not get in his way. Yet the systematic trade of policies among strangers is a very different sort of practice than the one weighed by the Court in 1911. The secondary market for life insurance, as the organized and rationalized trade of

life insurance policies, constitutes the systematic exchange of policies among strangers, and the large-scale redirection life insurance benefits from the bereaved. This challenges the moral logic of life insurance in important ways. On one hand, it strains the logic of insurable interest. While a viator consents to the trade of her policy (and so is not unwittingly bet upon), the person buying the policy is most often a stranger. This investor is, in fact, making a bet that the insured will die sooner rather than later – what amounts to taking a short position in a human futures market. It is, in the final instance, a wager on the life of a stranger. On the other hand, the secondary market calls into question the premise that life insurance is for the bereaved, and that a person's primary concern in the face of death should be the financial interests of her beneficiaries. While the bereaved remain a central concern in the market, their interests are increasingly weighed against those of the aging and the terminally ill. How, then, to account for this transformation?

To begin, I have argued that moral defenses of the practice may point to larger trends that propelled the settlements industry. The social and demographic conditions that gave rise to life insurance may have since shifted. Familial dependence on a sole wage-earner has receded, while health care costs, expectations about consumption and leisure, risks associated with aging, and estate-management have come to the forefront. My research suggests that these all may be important social trends worthy of further sociological investigation. It also suggests that in the midst of these changes, the AIDS epidemic catalyzed the market, and although the development of HAART threatened the early industry, the organizational and institution framework forged managed to endure. AIDS was an important moment in the history of settlements because it gave rise to a remarkable congruence of economic and social conditions favorable to the market. The

concentration of a sick population that was insured but without beneficiaries simultaneously provided a ready pool of viators and alleviated the stigma of diverting funds from beneficiaries.

Yet larger trends, taken alone, do not provide a complete account for the rise of the secondary market. Like the life insurance industry before it, the secondary market for life insurance has striven to be recognized as a moral and legitimate practice. Its defenders have done so in a manner reminiscent of their predecessors – they have attempted to circumvent taboos about profiting from death by making quintessentially moral claims about the rational management of ones' mortality, and the proper way to die with dignity.

The moral claims presented by those active in the industry, of course, emerge out of strategic efforts to promote specific interests. That is, the settlements market is itself the site of political struggles among actors who seek to define the practice in such a way that aligns as to promote their own position in the field. Thus professionals active in life settlements put forth different sort of arguments than those specializing in viaticals. The former were more likely to make an appeal to the moral superiority of impersonal rationality. The latter more often invoked the struggles of the terminally ill to afford their own deaths (all the while eliding non-market solutions to such problems, which might undercut the impetus to viaticate). This suggests that actors in the life settlements industry are not reflexively or mindlessly responding to exogenous forces, but that they are involved in the construction of particular understandings, practices, and rules – that is, particular institutions – that promote their own interests.

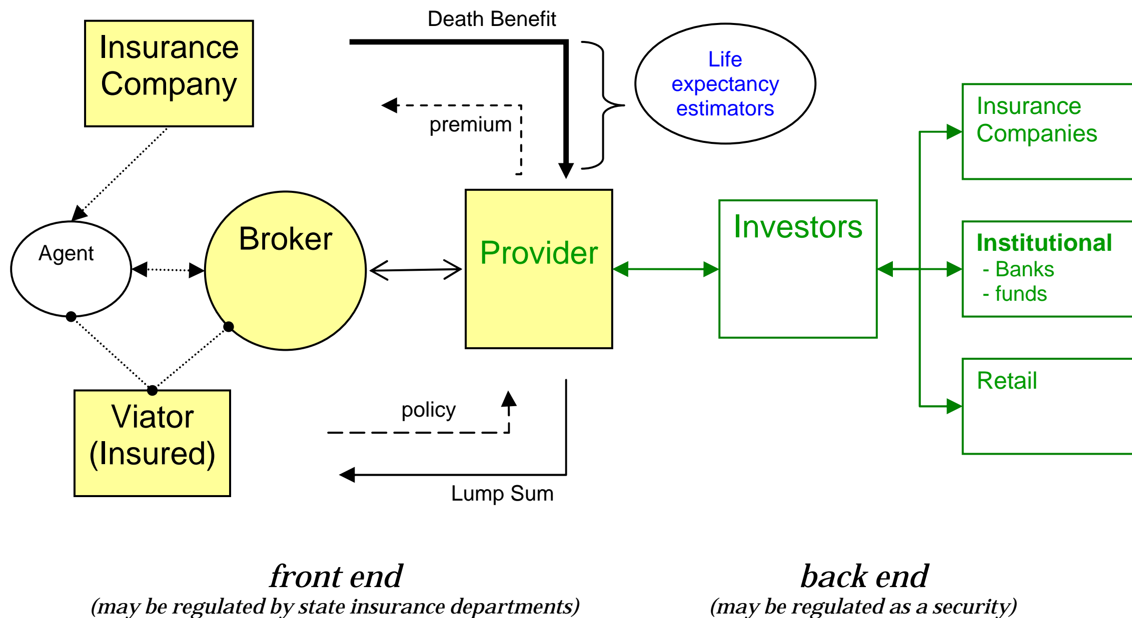
Such efforts have important consequences within and beyond the insurance industry, because they serve to reconfigure relationships between the dying, the bereaved, and strangers. In its own limited way, the redefinition of life insurance policies achieved by settlements simultaneously recasts desires (including the aspirations of the terminally ill), intimate relations between people (such as those between the insured and their beneficiaries), and material outcomes (such as the distribution of benefits among the insured, their beneficiaries, settlement professionals and insurance companies).

This is not to imply that such market participants are free-agents, somehow unmoored from the social context in which they operate. On the contrary, I have argued that institutions shape perceptions and limit possibilities for future courses of action, and that much of what occurred in the new market must be understood in terms the continuing institutionalization of the commensuration of death. The very effort to trade an insurance policy by definition depends on the existence of a well-established insurance industry. The new appeals to a more rationalized and dignified death promoted by those in the secondary market are elaborations on those presented over a century earlier by the burgeoning life insurance industry. Actors in the life settlements market are in fact drawing on existing structures and logics, recombining in ways that facilitate new possibilities. Innovators in the secondary market challenge the insurance industry, but they do so with the very tools it had forged.

The life insurance industry incubated specific technologies of commensuration (i.e., actuarial tables and contractual structures), *as well as* the notion that the commensuration is not simply a rational phenomenon, but also a moral one. With the success of the secondary market, we might wonder if life insurance was so successful in

institutionalizing commensuration that it could be detached from it original moral ramparts. It would appear that offering up ones mortality for the speculation of strangers, in exchange for cash, is increasingly acceptable in America. Ultimately, the continuation of this trend, and the challenge to the initial moral logic of life insurance implied therein, may in fact be a testimony to the incredible success of the life insurance industry, and the successful institutionalization of the commensuration of mortality that it pioneered.

Appendix: The Viatical and Life Settlement Industry



Typically, a potential policy seller, called a *viator,* is put in touch with a broker by his insurance agent or financial advisers. Thus a *broker* is akin to a real estate agent, matching potential sellers and buyers for a fee. A *provider* is a company that purchases life insurance policies. The actual buying and selling of policies is referred to as the "front-end" of the industry, and is subject to the regulatory authority of state insurance departments.

A provider may arrange financing in a number of ways. In the early days of the industry it was common for providers to rely on retail investors, individuals who lacked a sophisticated understanding of the market, and who would either purchase a single policy, or else purchase a portion of a policy (called a fractional-share investment). Today, many larger providers rely on institutional backing, which may include a bank

line of credit, or financing from an "institutional investor." An institutional investor is a financially savvy organization, such as an investment fund, insurance, or reinsurance corporation. In 2004 Living Benefits Corp. arranged the first settlement securitization (rated by Moody's). The investment side of the trade is commonly called the "back-end," and may be subject to the regulation of state securities departments.

Brokers, providers, and investors rely on *life expectancy estimators* to determine the life expectancy of potential viators. These life expectancies help determine the present-value of the policy, and therefore the purchase price of the policy. There are a range of estimators in the industry, including non-professionals ("guess-timaters") and doctors. However, there are four firms that specialize in estimating the life expectancies of the terminally ill. These firms use actuarial methods much like those used by insurance companies, but they further specialize in estimating how life expectancies are impacted by the progression and treatment of catastrophic illnesses.

References

Bourdieu, P. and L. Wacquant. 1992. *An Invitation to Reflexive Sociology*. Chicago: University of Chicago Press.

Callon M. 1998. "The Embeddeness of Economic Markets in Economics." In *The Laws of Markets*, ed. M Callon: Blackwell

CDC 2002. (Last update: 01 Mar). "CDC - HIV/AIDS Slides/Graphics: Mortality - L285 slide series (through 2000)". Available online: *http://www.cdc.gov/hiv/graphics/mortalit.htm*

Costa D. 1998. *The Evolution of Retirement*. Chicago: University of Chicago Press.

Cummins, J. David. 2004. "Securitization of Life Insurance Assets and Liabilities." Wharton Financial Institutions Center Working Papers Series. Available online: http://fic.wharton.upenn.edu/fic/papers/04/0403.pdf

Deloitte Consulting LLP and the University of Connecticut. 2005. "The Life Settlements Market: An Actuarial Perspective on Consumer Economic Value." Available online http://www.quatloos.com/uconn_deloitte_life_settlements.pdf

Dobbin F. 2001. "Why the Economy Reflects the Polity." In *The Sociology of Economic Life*, ed. M Grannover, R Swedberg. Boulder: Westview press

Espeland, Wendy Nelson and Mitchell L. Stevens. 1998. "Commensuration as a Social Process." *Annual Review of Sociology* 24:313-343.

Fligstein, N. 1996. "Markets as Politics: A Political-Cultural Approach to Markets." *American Sociological Review* 61: 4 656-673.

Fligstein, N. 2001. *The Architecture of Markets*. Princeton: Princeton University Press

Fourcade-Gourinchas M. Forthcoming. "Chapter 1: Economics as a Cultural Form."

Grigsby v. Russell, 222 U.S. 149

Hamwi, I., and D. Ruegger. 1994. "Past and Present Changes in Living Policy Values." *Journal of the American Society of CLU & ChFC*. 48: 6, 76-86

Jepperson, R. 1990. "Institutions, Institutional effects, and Institutionalization" In *The New Institutionalism in Organizational Analysis,* Powell, W. and DiMaggio, P. (eds.) Chicago: University of Chicago Press. Pp.143-63.

Meyer J, Rowan B. 1977. Institutionalized Organizations: Formal Structure as Myth and Ceremony. *American Journal of Sociology* 83: 340-63

DiMaggio, P. and Powell, W. 1990. "Introduction" In *The New Institutionalism in Organizational Analysis* DiMaggio, P. and Powell, W.(eds.):1-40

Scheper-Hughes, N. 2001. "Bodies for Sale – Whole or in Parts." *Body & Society* 7(2-3)

Sood N. 2003. *Cashing Out Life Insurance: An Analysis of the Viatical Settlements Market*. Graduate Dissertation Thesis. Santa Monica: RAND Graduate School.

Sewell, W. 1999. "The Concept(s) of Culture." In V. Bonnell and L. Hunt (eds.) *Beyond the Cultural Turn: New Directions in the Study of Society and Culture.* Berkeley: University of California Press.

Swidler, Ann. 1986. "Culture in Action: Symbols and Strategies." *American Sociological Review.* 51: 273-286.

Titmuss, R. 1997 [1970]. The Gift Relationship: From Human Blood to Social Policy. A. Oakley and John Ashton (eds). New York: The New Press

Weckler, R. 1998. Is the Glass Half Full or Half Empty? An Examination of the Past 20 Years of Life Insurance Marketing, What Went Wrong, and How it Can Be Fixed. LIMRA International. Strategic Issues Series: 1998-1

Wilmouth J. 2003. "Human Longevity in Historical Perspective." In *Physiological Basis of Aging and Demographics*, ed. P Timiras. New York: CRC Press

Zelizer, V. 1983. *Morals and Markets: The Development of Life Insurance in the United States*. New Brunswick: Transaction Books

Zelizer, V. 1994 [1985]. *Pricing the Priceless Child*. Princeton, NJ: Princeton University Press.

Press

Anonymous 1994. "SEC Files Complaint Against LPI." In *Life Insurance International**

Anonymous. 1998, July 19. "AIDS; Still Waiting" *New York Times*. Section 6, 11.

Brinkley-Rogers, P. 1999, July 30. "State Investigates Deals of High-Flying Broward Financier" *The Miami Herald*. 1B

Chevreau J. 1999. "Insurance for the Living: Disability Coverage, Viatical Settlements Gain Importance as Life Expectancy Grows." *National Post (Canada)**

Chua, L. 1994, August 27. "'Death Futures' Firm Faces SEC Complaint" *The Miami Herald.* 1C

Cohen, R. 2004, September 5. "Dead to Rights*?" The New York Times*. P. 20

Colden, A. 1995, November 10. "Dignity partners IPO may help 'viatical settlement' firms' image" *Wall Street Journal* (Eastern edition). A7A

Danner, P. 2004, May 6. "Death Benefit Firm Closed in Scam." *The Miami Herald*. 1A

Davis, K. 1997, April. "Dealing with Dying." *Kiplinger's Personal Finance Magazine.* 51(4): 90-95

D'Allegro J. 2000, January 10. "Study: Seniors Will Fuel Viatical Growth." *National Underwriter. p13*

Eisenberg, D. 1999, November 29. Making a Killing: Viaticals let Sick People Sell their Life Insurance, But Investing in Death may not Always be the Best Bet. *Time Magazine*: S15-S6

Giacalone J. 2001. "Analyzing an Emerging Industry: Viatical Transactions and the Secondary Market for Life Insurance Policies." *Southern Business Review* 27 (Fall)

Gleckman, H. 1999, June 28. "Staying Afloat When Your Health Sinks: These are the Toughest Financial Decisions You'll Ever Make." *Business Week*

Housewright E. 1994, February 7. "Death and Profits: Investors' Purchase of AIDS Patients' Insurance Policies Raises Ethical Questions*." The Dallas Morning News*. 1-A

Jenkins, H. 2005, June 22. "The Liberation of Life Insurance." *Wall Street Journal* (Eastern edition). A.11

Keating P. 1999. "Rolling the Dice on Death." *Money* 28(9): 73-5

Kristoff, K. 2000, October 27. “Law Aims to Protect 'Death Futures' Buyers.” *Los Angeles Times.* C-5
Kristoff K. 1991, October 20. "Selling Your Insurance Policy if You're Dying." *Los Angeles Times.* D-4
Linn G. 1999, April 27. “Viaticals Traced to 1911 Ruling.” *Journal of Commerce*.
Moe, P. 2002, March 17. “Life Settlements Not Same as Viaticals” [Letter to the Editor]. *Los Angeles Times*. C-3
Mollencamp, C. 1998, May 20. “Death Futures Scrutinized In Alabama. *Wall Street Journal* (Eastern Edition). S.1
Sandel M. 1998. “You Bet Your Life.” *The New Republic*. 219(10): 9-10
Sander, E. 1994, May 22. “‘Death Futures’ May Ease Lives of the Terminally Ill, Proponents Say” *Los Angeles Times*. B-4
Scism, L. and Taylor, J. 1994, August 18. “SEC questions insurance deals for the dying” *Wall Street Journal* (Eastern Edition). B.1
Sherrid P. 1995, August 21. "Enriching the Final Days". *U.S. News & World Report* 119(8):56-60.
Steinmetz , G. 1992, July 31. “New Firms Buy Policies of AIDS Patients – Offering Cash for Insurance Is a Growing Business.” *Wall Street Journal* (Eastern Edition). A.4
Tomb**,** G. 1992, August 22. “Insurance Industry Rushes to Regulate Sale of Death Benefits.” *The Miami Herald*. 1B
Treaster, J. 1998, September 27. “Death Benefits, Now for the Living.” *New York Times*. Section 3, P1
Weston, L. 2002, January 27. “Few Investors Can Live with Profiting from a Stranger's Death” *Los Angeles Times.* C-3.
Yip, P. 2001, December 17. “Preying on financial worries - Elderly prime targets in bilking plots.” *The Dallas Morning News*. 1D