

PHL271 Handout 11: Suicide and the Law

§1 A Taxonomy of Acts

Suicide takes many forms. Those who commit suicide *bring about their own deaths*, and do so *intentionally*. In order to bring the moral and legal status of suicide into focus, we must begin with a non-exhaustive taxonomy of the different kinds of suicide.

Note: this definition of suicide does not cover ‘non-voluntary’ or ‘involuntary euthanasia’. *Non-voluntary* euthanasia occurs when a subject is unable to express an intention to die, or hasn’t appropriately expressed a prior intention to die under specific circumstances (e.g. if they enter a permanent coma). Involuntary euthanasia occurs when a subject’s death is brought about despite her express intention to not die. Everyone declares involuntary euthanasia morally impermissible; non-voluntary euthanasia may be permissible in cases of certain terminally ill children.

To generate the taxonomy, we must ask: by what means could someone intentionally bring about her own death? And with what kind of intention could she bring about this end?

Intentions

1. *Rational?* Is the intention rational, given some appropriate standard of rationality?
 - *Question:* Would Hobbes allow that such an intention could be rational?
2. *Stable?* Has the subject possessed the intention continuously over a significant period of time?
3. *Self-Motivated?* Is the subject’s intention motivated by a concern for her own wellbeing (broadly construed)?
 - People might choose to bring about their own death because of self-loathing, or an exclusive concern for friends or family. Yet should the law permit people to bring about their own deaths when they are motivated by these kinds of reasons?
 - Also: substantial disagreement exists over what sort of concern for one’s own wellbeing *should rationally* motivate a person to end her own life.
4. *Self-Generated?* Is the subject’s intention the product of a free and conscious process of deliberation, or has the subject generated the intention in part because of outside influence?
 - Along with stability (and perhaps also some version of rationality), that an intention be self-generated is part of our intuitive conception of consent.
5. *Future-Directed?* Is the intention meant to establish a procedure that could come into effect after the subject loses the ability to form the requisite intentions?
 - There exists a debate over whether it is permissible to assist someone to commit suicide when that person’s intentions were expressed well in advance (and when the person can no longer express, or perhaps even form, such

intentions). If the answer is ‘no’, then assisted suicide isn’t permissible when patients incur certain kinds of brain damage, or enter a coma, and so on.

6. *Death-Directed?* Is death the intended consequence, or merely a foreseen outcome of the intended consequence?

- *Example:* So-called ‘passive euthanasia’ has long been permitted under certain circumstances in Canada. For instance, doctors have been permitted to provide palliative treatment—such as pain medication—which also happens to shorten a patient’s lifespan. They’re also permitted to withdraw treatment. In both cases the intention is to relieve suffering, not to kill the patient, though the death of the patient is a foreseen consequence.

Aside: Intending vs. Foreseeing; Doing vs. Allowing

Moral philosophers often draw a pair of controversial distinctions. The first holds that all else being equal, it is worse to *intend* to bring about a bad outcome than to merely *foresee* that one’s actions will bring about the same outcome. Here’s a quick test: you act while merely foreseeing an outcome, rather than intending it, if you would have acted even if your action didn’t result in the outcome.

Proponents of the so-called ‘Doctrine of Double Effect’ hold that it is sometimes morally permissible to act to bring about an otherwise good outcome even when that same act has a foreseeable bad consequence. This doctrine is often used to justify passive euthanasia.

Unlike the intending/foreseeing distinction, the distinction between doing and allowing doesn’t concern a subject’s intentions. It holds that all else being equal, it is worse to bring about some harm through one’s actions than to merely allow an equal harm to come into being. (Compare: ‘Let the lie come into the world, let it even triumph. But not through me.’ *Aleksandr Solzhenitsyn*)

Means

1. *Autonomous:* A subject brings about her own end without the knowing (or suspecting) aide of anyone else.
2. *Enabling:* A subject brings about her own end using resources provided by knowing (or suspecting) accomplices (e.g. friends, family, etc.).
3. *Assisted:* A subject brings about her own end by delegating the task to knowing (or suspecting) accomplices.

The debates over suicide are rife with conflicting and confusing terminology. The contemporary legal debate in Canada primarily concerns so-called ‘Physician-Assisted Suicide’: cases in which a person brings about her own death either by being *enabled* by a doctor or by being *assisted* by a doctor. The recent *Carter v. Canada (Attorney General)* [2015] decision by the Supreme Court of Canada struck down the existing legal prohibition against physician-assisted suicide (in particular, s. 241 (b) of the Criminal Code).

§2 Questions

We've seen that serious problems arise when we uncritically move from questions about morality to questions about legality (and vice versa). Hence as in the case of abortion, we must distinguish some of the various legal and moral questions to which suicide and assisted-suicide give rise.

General Question: how should our answers to these legal and moral questions inform one another?

Moral Questions:

1. *Deliberative Question:* Under what conditions, if any, are individuals morally permitted to commit suicide?
2. *Interference Question:* Under what conditions, if any, are others (e.g. agents of the law) morally permitted to prevent individuals from committing suicide?
3. *Accessory Question:* Under what conditions, if any, are others (e.g. doctors) morally permitted to assist/enable individuals in committing suicide?

Legal Questions:

1. *Standing Question:* Is the state permitted to pass laws governing the conditions under which individuals can commit suicide?
2. *Scope Question:* Should the state pass laws governing when individuals can commit suicide?
3. *Restriction Question:* Should the state pass laws restricting when individuals can commit suicide?
4. *Legal Accessory Questions:* Should the law permit others to assist/enable individuals in committing suicide (and under what conditions, if any, should this permission stand)? Should it block those who seek to prevent individuals from committing suicide?

Unlike the case of abortion, where as much of the debate concerns *whether* abortion is permissible as *when* it is permissible, the moral and legal debate over suicide primarily concerns the *conditions* under which suicide is morally or legally permissible.

The debate over assisted suicide, for instance, almost entirely concerns the *Accessory* and *Legal Accessory* questions.

§3 Standard Arguments Against

We're going to do a quick tour of some standard arguments against the moral or legal permissibility of suicide (in general) and physician-assisted suicide (in particular).

Note: This list isn't exhaustive, nor are the sketches provided below the most developed versions of the arguments.

Suicide is Irrational

Many deny that an intention to bring about one's own death can ever be rational, and thus deny that committing suicide can ever be rational. (We'll see David Velleman give a highly sophisticated version of this sort of argument.)

1. Suicide manifests a specific form of irrationality
2. It is morally impermissible to either engage in actions that manifest this kind of irrationality or to aide someone who seeks to engage in such actions.
3. So it is morally impermissible to commit suicide or to help others to do so [From 1 and 2]

We could turn this argument into a (perhaps more plausible) argument for the legal impermissibility of suicide by substituting 4 for 2:

4. The state should prevent its members from engaging in (or aiding) actions that manifest this kind of irrationality

On its face, 4 constitutes a kind of limited paternalism: the state must protect us from ourselves. Combined with 1—and the assumption that the state can and should use the law to bring about its aims in this case—4 entails that the state should impose legal restrictions on suicide and assisted suicide.

Question: why accept 1? Well, one route is to adopt a Hobbesian line:

- i. Our continued existence is a precondition for the satisfaction of our interests
- ii. Rationality requires that we seek the means to the satisfaction of our interests
- iii. Assuming we have interests, rationality requires that we seek the means to our continued existence (From i and ii)
- iv. To intend to bring about one's own death is to fail to seek the means to one's own continued existence
- v. So: assuming we have interests, rationality requires that we not intend to commit suicide (from iii and iv)

Possible Reply: deny (i) on the grounds that we can have interests that both require our own death (e.g. an interest in bringing about the end of extraordinary suffering) and which outweigh those interests that require our continued existence. [*Question:* what restrictions, if any, does the second of these conditions place on when it would be rational to intend to bring about one's own death?]

Suppose we grant 1, and so accept that suicide is always irrational. What about 2 and 4? Followers of Mill might deny both 2 and 4 on the grounds that irrationality is not grounds for moral condemnation or state intervention. If we make the controversial assumption that the morally (or legally) relevant harm done in cases of suicide is confined to the person who commits suicide, then Mill's Principle would seem to preclude state intervention.

Questions: Can you think of a Hobbesian argument for 4? What would Devlin say about 4? Also, what happens to the Millian position when we acknowledge the harm done to *others* by acts of suicide?

Suicide Harms Society

Another argument against suicide comes from a kind of hard-nosed consequentialism. It runs as follows:

1. If suicide were legally permitted, it would constitute a serious harm to society.
 - Compare Devlin's remarks about drunkenness: even if one drunk weren't a serious threat to society, at some point mass drunkenness does pose a threat.
2. The state should use the law as an instrument to prevent serious harm being done to society.
3. Hence: The state should use the law to restrict suicide

Should we accept this argument? In order to accept 1, much more must be said about the kind of threat suicide poses to society at large. By contrast, 2 seems much less uncontroversial.

Question: often a liberal state must accept a degree of social harm in the name of protecting other rights or social values. Might not a proponent of assisted suicide argue that the social harm of suicide is justified by a concomitant respect for individual autonomy?

Assisted-Suicide Risks Involuntary Euthanasia

One of the most common objections to assisted-suicide comes from a practical worry about how to distinguish permissible physician-assisted suicide from involuntary euthanasia.

The worry runs as follows:

Whether a patient meets a suitably high standard for receiving suicide assistance will depend upon features whose presence cannot always be reliably detected by doctors (and other relevant professionals) either at the time or after the fact.

Given this inherent unreliability, a law that permits assisted-suicide risks setting the bar for assisted-suicide in a way that risks providing legal protection for what are in fact cases of involuntary euthanasia.

Yet involuntary euthanasia should be avoided at almost any cost, since it is both highly immoral and (rightly) illegal.

So a law that permits assisted-suicide must set the bar high enough so as to restrict assisted-suicide to only those who ought to have access to it; and it must do so without creating an unacceptable risk of involuntary euthanasia.

Something like this general worry helps frame the discussion of how exactly to implement physician-assisted suicide, once we've granted that the act is permissible (at least in principle).

Question: do you have any thoughts about how best to prevent physician-assisted suicide from sliding into involuntary euthanasia?

Suicide Violates The Sanctity of Life

A well-known argument against suicide comes from a concern for the so-called 'sanctity of life'. Though usually associated with certain religious perspectives, there are those who make the argument who offer secular grounds for recognizing the sanctity of life.

The argument is quite simple: (a) suicide requires killing oneself; (b) to take a life (or to help to take a life)—even one's own—manifests a failure to respect the sanctity of life; (c) but we have a moral duty to respect the sanctity of life. (a)-(c) entails that we have a moral duty not to commit suicide (or to help others do so).

Some Obvious Questions:

1. *Quality of Life:* Does the sanctity of life outweigh the quality of life? For instance, if a person's life is full of suffering and nothing else, and they know that this situation won't change, surely the badness of this miserable quality of life outweighs the sanctity of the life.
2. *Animals and Personhood:* Do only human lives enjoy the requisite sanctity? Think back to the debate about personhood from our discussion of abortion. If sanctity of life tracks personhood, and animals could have personhood, then doesn't respect for the sanctity of life preclude the killing of animals? Put another way: is suicide impermissible only if the killing of animals is impermissible?
3. *Self-Defence:* Judith Jarvis Thomson argued against the existence of an unrestricted right not to be killed. She claimed that at best we have a right not to be killed *unjustly*. Isn't a similar restriction necessary when it comes to the sanctity of life? And if it is, does that open the door to 'just' suicide?

§4 A Standard Argument In Favour

We're going to restrict our attention to the argument for assisted suicide that David Velleman sketches (only to later attack) in his paper 'A Right to Self-Termination?' He calls it 'The Philosophers' Defense'.

Here's the argument (cf. pp. 607-608):

1. All else being equal, we ought to defer to a person's judgment concerning his own good.

2. A patient has a right ‘to end his life on the grounds that it is no longer worth living.’ (p. 608)
3. A patient has a right ‘to live and die in the light of . . . his own convictions about why his life is valuable and where its value lies.’ (p. 607) [from 1 and 2]
4. If this is a right, we must respect it, and in order to do so we would have to permit physician-assisted suicide.
5. So we ought to permit physician-assisted suicide. [From 3 and 4]

Velleman accepts 1, but argues against 2.

Question: why accept 4? We might think that while people have a right to choose to end their own lives, we should let not other people help them in this project.

Here is what Velleman says in defence of 1:

I think that we generally ought to defer to a person on the question whether his life is worth living, since the living-worthiness of a life measures the extent to which the continuation of that life would be good for the person living it. The person living a life is the best judge of the value that its continuation would afford him—not an infallible judge, of course, but usually more reliable than anyone else is likely to be. Indeed, his judgment of this value is to some extent self-fulfilling, since his merely liking or disliking aspects of his life can to some extent make them good or bad for him. The reasons for deferring to a person’s judgment about his good go beyond his reliability as a judge. Respect for a person’s autonomy may require that we defer to his considered judgment about his good even when we have reason to regard that judgment as mistaken. Letting him live his own life may sometimes entail letting him make his own mistakes about what’s good for him—including, perhaps, mistakes about whether it would be good for him to go on living. Forbidding a person to make such mistakes can be objectionably paternalistic, because it would usurp his role as the primary agent of his own affairs. (p. 608, emphasis added)

Question: why think that it’s important to respect the autonomy of others? Also, why think that the continued value of a life is the kind of thing that people can discover ‘from the inside’?

§5 Velleman’s Argument Against The Standard Argument

Velleman nicely sums up his complaint against 1 as follows:

I don’t deny that there are circumstances under which it would be better for one’s life to end and permissible to hasten its ending. What I deny is that one may end one’s life simply because one isn’t getting enough *out* of it. One has to consider whether one is doing justice *to* it. If a person possesses no value that he must live up to, or do justice to, then his life becomes a mere instrument, to be used or discarded according to whether it serves his interest. (p. 612)

We get in Velleman a Kantian version of the Hobbesian point about the relationship between the relative importance of oneself and one’s other interests. Whereas Hobbes thought that continued life was a precondition for satisfying one’s other interests—and as such we have a rational reason to preserve our life in order to satisfy these interests—Velleman argues that a person—and thus her life—is valuable because it is *for the sake of this value* that our other interests are valuable:

[V]alue *for* a person stands to value *in* the person roughly as the value of means stands to that of the end: in each case, the former merits concern only on the basis of concern for the latter. (p. 613)

And this view undermines any picture (perhaps including Hobbes) on which one's continued life is merely one interest among others:

[O]ptions are worth protecting, not for their own sake, but for the sake of the person whose options they are. So how can morality treat the person as worth protecting only for the sake of protecting one of his options? If he doesn't already merit protection, how can they? (p. 612)

Given this sort of asymmetry between our own value as persons and our other interests, Velleman claims individuals cannot claim any special access to this value:

Although his good is a value that accrues to him alone, in the first instance, his value as a person inheres in him among other persons. It's a value that he possesses by virtue of being one of us, and the value of being one of us is not his alone to assess or defend. The value of being a person is therefore something larger than any particular person who embodies it. (p. 612)

Thus individuals cannot simply declare their own lives no long worth living—at least not when this judgment involves merely putting one's own value as a person on a par with the value one attaches to one's other interests.

To treat the satisfaction or non-satisfaction of interests as the only relevant factor in deciding whether to end one's life, we implicitly ignore the value of people as such (cf. 614).

Despite his view that suicide done for the sake of one's other interests—for the sake of certain benefits—is immoral, Velleman doesn't think we can stop other people from doing it. He just thinks it would be immoral to help them commit suicide:

And I'm not sure that I would forcibly try to stop someone from committing suicide solely because it would be immorally self-destructive. The impermissibility of someone else's conduct doesn't necessarily give me permission to interfere with it. By the same token, however, I think that encouraging or assisting others in impermissible conduct is itself impermissible. (p. 614)

However Velleman thinks that suicide *is* morally permissible when a subject can no longer live with dignity (cf. p. 617).

To treat a dignity value as capable of degrees, all of them worth preserving, would be to treat it like an ordinary good—which would in fact be disrespectful. Respect for an object of dignity can sometimes require its destruction. (p. 617)

Question: how does this bear on our discussion of Warren's personhood criterion? See p. 618 for Velleman's discussion of abortion.

Here's a case:

Kamm has described a case in which pain is more than painful, since it not only hurts the patient but also becomes the sole focus of his life. Pain that tyrannizes the patient in this fashion undermines his rational agency, by preventing him from choosing any ends for himself other than relief. It reduces the patient to the psychological hedonist's image of a person—a pleasure-seeking, pain-fleeing animal—which is undignified indeed. (p. 618)