Permitting Suicide in Philosophical Counseling

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ABSTRACT: This paper introduces and examines the concept of permitted suicide in the context of philosophical counseling. It argues that clients suffering from serious, irremediable physical illnesses, such as Lou Gehrigs, multiple sclerosis, cancer, and HIV, should be free to philosophically explore the option of suicide with their philosophical counselors without undue fear of paternalistic intervention to thwart a rational suicide decision. Legal liability, professional duties, and qualifications of philosophical counselors who counsel such clients are explored. It is argued that, within certain professional and legal limits, philosophical counselors are uniquely qualified to take on this professional challenge.

Legal and ethical standards in mental health practice typically permit or require paternalistic intervention to prevent clients from committing suicide. These standards address cases of incompetent clients who, due to clinical depression or other mental defect, desire their own demise, and wherein paternalistic intervention to prevent such action is a reasonable response. Unfortunately, these standards do not contemplate the possibility of *fully rational* clients desiring suicide.

I have argued elsewhere that, in cases of fully rational clients who suffer from serious irremediable physical diseases such as Lou Gehrigs, multiple sclerosis, cancer, and HIV, a mental health practitioner may have both legal and moral grounds for *permitting* the client's suicide.[1] In such cases, where traditional therapeutic grounds for

intervention do not apply, restricting the liberty of the said clients (as through involuntary commitment, detention, surveillance, and mandatory referral) constitutes undue abridgment of personal freedom, welfare, dignity, trust, and autonomy.

This paper will explore the possible roles and duties that philosophical counselors may have in counseling clients who fall within this special population. Because of philosophical counselors' philosophical training, especially in applied logic, they may provide a needed resource for confronting the exigencies faced in counseling these clients.

The Definition of Permitted Suicide

The idea of philosophically counseling suicidal clients, without an unconditional paternalistic mandate to prevent the suicide, liberates both client and philosophical counselor to explore with impunity the client's issues. The client's knowledge that suicide can be a genuine option not itself legally preempted can have profound effects upon the willingness of a client to confide in the counselor and to seek counseling in the first place.

A fundamental point about permitted suicide is its intentional character. Counselors who permit suicide deliberately omit to prevent the suicide. The following conditions provide necessary and sufficient conditions for applying this concept:[2]

A philosophical counselor (P) *permitted* a client (C) to commit suicide if and only if,

(1) C successfully attempted suicide;

(2) P reasonably anticipated that C would attempt suicide;

(3) P was aware of at least one accessible intervention which could have thwarted C's anticipated suicide attempt;

(4) P intentionally elected *not* to employ any such intervention;

(5) The proximate (legal) cause of C's death was C's lethal act.

The intentional character of permitted suicide is captured in conditions 2 through 4. However, as condition 5 suggests, the intentional character of the philosophical counselor's failure to intervene does not necessarily make the counsel legally liable for the client's suicide. In fact, the inclusion of condition 5 in the definition accommodates the legality of permitted suicide by assigning proximate causality to the suicidal client rather than to the philosophical counselor. This would be in contrast to cases in which mental health workers, such as psychologists or psychiatrists, would be held legally liable for failing to intervene in the suicide of clients who, due to mental disease or defect, desire their own demise.

As I have argued in the context of mental health counseling,[3] potential candidates for defensible cases of permitted suicide include fully rational clients suffering from irreversible *physical* maladies or diseases causing unmitigated (mental or physical) pain and suffering. In such cases, the assignment of legal causation to the suicidal client rather than to the counselor (condition 5) can arguably be made.

Legal Liability of Philosophical Counselors

Since philosophical counseling is a relatively new frontier, the degree of legal liability incurred by a philosophical counselor in permitting suicide in these special cases is not clear. As a newcomer to the counseling community, the general legal boundaries

of philosophical counseling have not to date been adequately defined. In other more established areas of professional counseling such as mental health practice (wherein the issue of legal liability for permitting suicide is still far from clear), there is a substantial body of applicable case law and statutes.[4] In philosophical counseling, what constitutes negligent philosophical practice can only be gleaned by analogy from these other more established areas of practice. Thus, the extent to which philosophical counselors may be held liable for permitting the suicide of irremediably, physically ill clients, whom they deem to be fully rational, is not clear.

The legal liability of philosophical counselors who engage in permitted suicide with the population in question may be a function of how, legally, philosophical counselors are to be classified. In finding negligence, it is necessary that a plaintiff show that (1) a defendant had a duty to take due care, (2) that the defendant breached that duty, and (3) that the proximate (legal) cause of the resulting injury was the breach.[5]

The first provision—that there be a duty of due care—cannot be presumed to apply to philosophical counselors in the case of clients who commit suicide while under their counsel. Whether such a duty applies appears to depend upon whether philosophical counselors are to be considered therapists. Thus, according to *Nally*, "[t]he duty to prevent suicide imposed only on psychiatrists and hospitals while caring for a suicidal patient or the general professional duty of care imposed only on psychiatrists when treating a mentally disturbed patient should not be extended to a *non-therapist* [my italics] counselor who offers counseling to a potentially suicidal person on secular or spiritual matters. Mere knowledge by defendants that decedent may have been suicidal did not give rise to a duty to refer."[6]

Nally involved pastoral counselors who did not intervene to prevent the suicide of a counselee. Whether philosophical counselors are to be considered non-therapist counselors such as pastoral counselors or therapists such as psychologists and psychiatrists, may well depend upon how the profession ultimately perceives itself. Currently this is an unsettled matter, with some philosophical counselors arguing that the mission of philosophical counseling is more educative than it is therapeutic,[7] while others arguing that a therapeutic model is appropriate or at least not inappropriate.[8]

Such a determination may be further complicated by the fact that philosophical counseling modalities may themselves differ in direction. While some focus on interpretation of "world views",[9] others have affinity to cognitive-behavioral approaches to psychotherapy, for example, my own logic-based approach, which I have aligned with Rational-Emotive Behavior Therapy.[10]

It appears that a logic-based philosophical modality would be useful in the counseling of clients who are contemplating suicide, however, not to the exclusion of broader philosophical approaches. Inasmuch as permitting suicide depends upon whether the client is fully rational, the contribution of a modality that focuses upon applying logical standards in assessing client rationality should be obvious.

The cognitive assessment aspect of permitting suicide suggests a therapeutic model of philosophical counseling and may thus support a legal duty of due care incurred by philosophical counselors in addressing suicidal clients expressly in counseling for consideration of suicide. This duty, in tandem with that duty existing in mental health practice, would generally include taking appropriate measures to protect against the potential suicide of *incompetent* clients.

An incompetent client is one who, due to a diagnosable psychiatric disorder, lacks a requisite *capacity* for rational choice.[11] On the other hand, I have argued that, at least in the case of mental health practice, there is ample case law to militate against such a duty with respect to *fully rational* clients.[12]

The Oregon Death with Dignity Act,[13] which provides a qualified version of physician assisted suicide on demand, includes a provision granting authority in some instances to therapists to determine whether patients are competent to commit suicide. The law states,

> [i]f in the opinion of the attending physician or the consulting physician a patient may be suffering from a psychiatric or psychological disorder, or depression causing impaired judgment, either physician shall refer the patient for counseling. No medication to end a patient's life in a humane and dignified manner shall be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder, or depression causing impaired judgment (Section 3.03).

Mental health practitioners can thus expect to serve a legislatively defined role in the determination of whether non-intervention or assistance in clients' commission of suicide is warranted.[14] By extension, the scope of such legislation could constructively be expanded to include the services of philosophical counselors who, upon referral, may assist clients to clarify or work through any logical, ethical or philosophical issues underlying clients' requests for suicide. Such cooperative efforts and divisions of labor between physicians, mental health practitioners, and philosophical counselors may hone training and areas of specialization to insure utmost regard for client welfare and rational self-determination.

The Qualifications of Philosophical Counselors

Rational suicide decisions cannot be the result of psychiatric illness such as clinical depression or psychosis.[15] Determination of freedom from this form of cognitive

dysfunction belongs to psychological assessment and is a proper domain of psychological training. On the other hand, such rudimentary psychological criteria may be satisfied while the client still has an unresolved ethical conflict or some other logical or philosophical problem within her belief system. For example, she may have decided that there are no desirable alternatives to dying consistent with her perceived values and goals. This determination may derive from a hasty generalization without adequate exploration of all possible life options. Thus, a quadriplegic scholar may not have considered the use of recent advances in computer technology (such as voice recognition software) to overcome apparently insurmountable obstacles to being a productive scholar. Such deficiency may be rooted in fact or logic. If it is a matter of fact or logic, then realization of the error may dissuade the client from committing suicide.

Accordingly, philosophical counselors need to possess an adequate grasp of the technical skill required for assessing reasoning processes. This includes competence in applying syllogistic and truth functional logic.[16] For example, a client who reasoned from the premise, *If I kill myself, then I will escape my suffering,* to the conclusion, *If I don't kill myself, then I will not (ever) escape my suffering,* would have invalidly deduced his conclusion. The philosophical counselor should possess as "second nature" the ability to assess such invalidity and to clarify, in practical terms, its significance for the client (for example, the fact that this inference discounts even the possibility of a future cure). Philosophical counselors should have similar adeptness at applying inductive logic and informal fallacies.[17] As philosophical counseling matures, courses especially designed to teach applications of logic explicitly to the analysis of suicide decisions, could also be added to curricula for training philosophical counselors.[18]

The repertoire of philosophical theories and methods included in philosophers'

training can also provide useful input into counseling suicidal clients. For example, attention to the tension between deontological and consequentialist theories of ethics might help in clarifying clients' own ethical conflicts. Virtue ethics such as Aristotle's might help to enlighten about the nature of such virtues as courage and temperance in confronting death. Inconsistency between a client's materialistic reductive view of mind and her commitment to survival after death might be exposed, or the Cartesian theory might be explored as a challenge to the client's view that survival is impossible. The view that human beings possess free will might be posed as a challenge to the client's refusal to admit control over his emotions, and views about emotional responsibility from Epictetus to Sartre might usefully be applied. Phenomenological investigation into the client's emotions of grief and loneliness might expose the role of these emotions in the client's desire for suicide as an escape.

The significant possibility that much suffering endured by suicidal clients with serious physical impairments may be mental, spiritual, or emotional in nature, as distinct from physical, signals the need for philosophical adeptness at phenomenological exploration and analysis of client *suffering*. While suffering is typically taken to be a negative phenomenon, it need not always be viewed as such. For example, according to Nietzsche, suffering can be perceived as life-affirming rather than negative, providing an occasion for a (psychologically) healthy overcoming of misfortune.[19] Through philosophical analysis and phenomenological introspection of the suicidal client's suffering, the client may paradoxically discover a reason for living.

The Limits of Philosophical Training and the Duty to Refer

Philosophical counselors' unique qualifications for helping clients deal rationally with the philosophical complexity of suicide decisions should not be underestimated, nor should they be overstated. Training in cognitive modes of psychotherapy and assessment such as Rational-Emotive Behavior Therapy and Cognitive Behavior Therapy can also be constructively applied in managing suicide decisions.[20] While not ordinarily part of training in philosophy, these modalities provide useful insight into types of faulty thinking (catastrophizing, damnation, low frustration tolerance, and demanding perfection) commonly involved in suicidal ideation. These approaches feature training in identifying and disputing irrational ideas that instigate and sustain self-defeating emotions and behavior.[21]

Training in the use of cognitive assessment tools and the construction of mental status reports can also be used to screen for cognitive impairments including depression and dementia.[22] Insofar as philosophical counselors lack adequate independent training (and fail to satisfy state practice requirements) in use of cognitive assessment tools or of the aforementioned cognitive-behavioral modalities, philosophical counselors have a professional duty to seek the assistance of mental health practitioners duly trained in these areas. Discharging this duty would include referring the client for psychological evaluation. "When a client's problem or reason for seeking philosophical services falls outside the purview of the practitioner's qualifications or areas of competence, then the practitioner should provide the client with an appropriate referral."[23] In such cases, the philosophical counselor may additionally retain a licensed mental health practitioner as supervisor or consultant.

A consequence of such duty to refer for psychological evaluation is that

philosophical counselors who are not otherwise competently trained to make such an evaluation may be at least partially insulated from potential legal liability for failure to intervene in a mentally disturbed client's suicide. This is because the mental health practitioner to whom the client is referred, and who subsequently diagnoses the client's psychiatric disorder, assumes some or all of this liability.

Philosophical counselors need to be versed in the signs of impending suicide. There can be noticeable differences between the behavior, affect, and cognition of a client who is merely contemplating suicide and one who has already *decided* to perform the act. For example, a decision to commit suicide typically includes an articulated plan.[24] Insofar as philosophical counselors have a duty of due care toward incompetent, suicidal clients, they have a duty to recognize the signs and symptoms of an impending suicide.

Philosophical counselors should exercise compassion in confronting the pain and suffering of clients contemplating suicide. If these clients are aware that their counselors care about their plights, then they will be more likely to trust their counselors with intimate life details.[25] Thereby, the probabilities of attaining a thorough inspection of clients' arguments are increased. In this regard, approaches such as care-based ethics and person-centered therapy should have special significance for philosophical counselors who counsel clients entertaining suicide.

The person-centered modality, as developed by psychologist Carl Rogers, emphasizes empathy, genuineness, and acceptance of clients as persons.[26] Arising out of feminist psychology, care-based ethics stresses regard for concrete personal and interpersonal relationships in resolving ethical disputes, and it relies upon counselors' own concrete personal life experiences in relating to, clarifying, and comprehending

clients' problems.[27] Here, genuine caring requires trying to "connect" with clients, empathically trying to see what's true in clients' perspectives rather than approaching them with detachment and incredulity.[28] Such affective, attitudinal, and relational aspects of the counselor-client relationship should not be discounted in the philosophical counselor's effort to perform an objective philosophical analysis.

Philosophical counselors should also guard against their own tendencies to distort information, and to interpret clients' cognitive, behavioral, and emotional responses in terms of their own preconceptions and biases (for example, biases with respect to age, race, gender, appearance, and socioeconomic status) when drawing conclusions about client rationality.[29] Philosophical counselors must also be cognizant that client reality is substantially a social construct and that, therefore, assessment of client rationality must take into account the client's surrounding cultural environment.[30] While philosophical counselors may pride themselves on their ability to make objective assessments, they are still human beings and are therefore not beyond the pale of personal and cultural bias.

In applying logical rules, philosophical counselors should not confuse fundamental value disagreements with cognitive dysfunction, fallacious thinking or false premises. While a counselor may not share the client's value assessments or plan of life, this does not itself make the client decision irrational. On the other hand, an inconsistency or other logical failure in the client's belief system might be challenged *according to the client's own value system*.

Perhaps there are values that engender no logical or factual error on the part of the client but that are so intrinsically untenable that they fly in the face of reason. For example, suppose the client argues that he does not wish to live without being able to

have sexual intercourse. Suppose also that the client's medical condition permanently excludes such activity. While a philosophical counselor may argue that there are alternative activities that may compensate for this inability, it is the client who must remain the ultimate arbiter of such value discernment. Disagreement about values does not in itself qualify as a breach in rationality. "Philosophical practitioners should facilitate maximum client participation in philosophical explorations. They should avoid dictating "correct" answers to queries and issues, but should actively encourage the client's own engagement of reflective powers and rational determinations . . . philosophical practitioners may, in the light of philosophical exploration of the matter, suggest possible courses of action. However, the practitioner should make clear to the client that the final decision rests with the client."[31]

Professional Duties toward Clients with Reasoning Errors

Still, what if a suicidal client were intent upon committing suicide based on misinformation or lack of information about future prospects, or was resting the decision on an invalid inference? In such a case, what should the philosophical counselor do?

Legally, this may depend upon whether the unsound reasoning is to be construed as a mental illness or defect. As previously stated, recognition of a philosophical counselor's duty of due care to prevent the suicide appears to depend upon whether the practitioner is administering therapy. Insofar as the philosophical counselor is not treating the client for clinical depression, psychoses, or other underlying psychiatric condition that renders the client incompetent to make such a decision, the practitioner may not have a duty to intervene to prevent the suicide. Further, in the absence of such mental defect, the client may have a right of self-determination that militates against nonintervention by the philosophical counselor. The client, in other words, may still retain the right to be wrong as an aspect of his right to privacy.

On the other hand, it might be argued that such a client's decision would *not* be *rational enough* to warrant non-intervention, and that the philosophical counselor therefore has a duty to take appropriate measures to prevent the suicide. If the client had unreasonably decided to sell a piece of real estate, there might be no sufficient reason for interfering. However, a decision to destroy the very condition of all other autonomous choice, namely one's own life, has such far-reaching and irreversible consequences, that there can be compelling reasons to permit suicide only if the decision is a fully rational one. Insofar as the client is subject to a dangerous and irreversible mistake in judgment due to lack of clear thinking, the philosophical counselor must take reasonable measures to safeguard the client's welfare.

Whether and the extent to which either of these arguments hold legal water is questionable. While the first argues for a duty *not* to intervene, the second argues the contrary duty *to* intervene. In fact, a *permissive* rule may be more in tune with present practice rules concerning disclosure of confidential information to prevent suicide. For example, according to Florida Statute 491.0147, confidentiality between a therapist and a client *may* be waived "when there is a clear and immediate probability of physical harm to the patient or client…" Similarly, ethics codes of psychologists, counselors, social workers, and philosophical counselors permit rather than require intervention.[32]

From the perspective of professional ethics, it is clear that the philosophical counselor has a duty to point out to the client the error in his reasoning and to argue against the client's argument for committing suicide. Such a professional duty follows from what philosophical counselors do. While philosophical practitioners may differ in method and theoretical orientation, they characteristically facilitate such activities as the examination of clients' arguments and justifications, and the exposure and examination of underlying assumptions, logical implications, conflicts and inconsistencies.[33] If, in the end, such a client chooses to disregard the philosophical counselor's admonition, then it seems that the philosophical counselor *may* (legally) take reasonable measures to prevent

the suicide.

Philosophical counselors, as professionals, should exercise discretion with due care in this area of permissive intervention. Here, reasonable standards and precedents must be established in guiding professional practice. Thus, in cases where the client has two, independent, sufficient arguments for suicide, one flawed and the other not, it would appear unreasonable to intervene on the grounds that the client's one argument engenders a logical defect.

A weak variant of paternalism might be applied in distinguishing errors warranting intervention from those not warranting it. Thus, warranted interventions might include ones based upon consideration of whether the client would come to appreciate and consent to the intervention after it is undertaken.

In cases in which an argument is in dispute, a unilateral contract might be made between counselor and client according to which the client agrees not to commit suicide for a mutually agreed upon amount of time deemed suitable for trying to clear up the cloud.[34] In the end, determination of whether a client's arguments rationally support permitting suicide must be guided by due regard for the client's autonomy, dignity, and welfare, and not by a desire to preserve the client's life at all costs.

This does not mean that fully rational clients are *ipso facto* entitled to non-intervention by philosophical counselors. Some arguments for suicide prevention have focused on the prevention of harm to others as when the suicidal client has dependent children.[35] Thus, a philosophical counselor may have reason for intervention in a fully rational client's decision to commit suicide notwithstanding the fact that the client is fully rational. This argument in terms of the prevention of harm to others must not be confused with the paternalistic protection of the client. Nor should it be confused with the distinct question of whether the client's decision to commit suicide is a logically sound one.

Conclusion

Clients who, due to irremediable, serious physical illness, contemplate suicide should be afforded the legal option of seeking competent professional counseling to work through their decisions without fear of suffering undue constraints upon their personal liberties. An unconditional paternalistic policy of intervention violates the dignity, autonomy, and privacy of such clients for whom suicide may be a rational option, and it also discourages these clients from seeking counseling to work through their issues.

Within a safe and secure counseling environment, these clients should be free to philosophically explore their issues with the assistance of philosophical counselors, whose training and skills especially qualify them for this task. While the determination that a client does not suffer from a mental illness or defect is a psychological one, the rationality of a decision to commit suicide can be philosophically complex. The ability of philosophical counselors to assist clients in applying logical standards and philosophical theories and methods in confronting these complexities can be of significant value.

Presently, the legal liability that a philosophical counselor confronts in permitting the suicide of a client known to be suicidal is unclear. As *Nally* suggests, this may be due to the ambiguity surrounding whether philosophical counselors should be considered therapists. Nevertheless, in counseling clients suffering from irremediable, serious physical illness, who seek counseling *expressly* for purposes of exploring suicide, philosophical counselors have a professional duty to practice with "utmost respect for client welfare, integrity, dignity and autonomy."[36] This duty includes scrupulously

probing, exposing, and challenging clients' irrational ideation, and, mindful of clients' personal values, dissuading them against acting upon a decision based on unsound reasoning.

In discharging this duty, philosophical counselors' training and skill in applying logic is crucial. While this training can uniquely qualify philosophical counselors to assess the soundness of suicidal clients' reasoning, philosophical counselors must not practice outside the limits of their qualifications. Insofar as their training is deficient in effectively assessing client competence (such as in utilizing cognitive assessment tools and modalities), philosophical counselors have a professional duty to refer these clients for psychological evaluation, and, as appropriate, to periodically consult or seek the supervision of a competent mental health practitioner.

The idea of permitting suicide, rather than intervening to prevent it, is a new concept for the broad community of counseling professionals. Standards of practice as well as legal standing are still out to court. As these professional assignments and divisions of labor are fashioned, the potentially vital roles that philosophical counselors can serve in this novel area of practice should not be overlooked.

Endnotes

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[3] Ibid

[4] See Cohen, "Permitted Suicide: Model Rules for Mental Health Counseling."

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