

TERRI SCHIAVO A RIGHT TO LIFE DENIED OR A RIGHT TO DIE HONORED?

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There is a spectrum of positions on end of life issues, and on life issues generally. However, a crucial line of division exists between those who affirm, and those who deny, that the life of each human being possesses inherent and equal worth and dignity, irrespective not only of race, ethnicity, age, sex, etc., but also irrespective of stage of development, mental or physical infirmity, and condition of dependency.

People who deny this proposition frequently distinguish what they describe as “mere biological human life” from the life of a person. It is *personal* life, they say, that has value (even intrinsic value) and dignity; “mere biological life” does not. And personal life is the life of a being that possesses self-consciousness and, perhaps, developed capacities for characteristic human mental activity, such as conceptual thinking, deliberation, and choice.¹

So some people argue that there are human beings who are not yet persons—namely, those in the embryonic, fetal, and at least early infant stages of development—and other human beings who will never become, or are no longer, persons—the severely retarded, the seriously demented, those in permanent comas or persistent vegetative states.² For people who hold this view, the question is not when does the life of a human being begin or end, but when does a human being qualify as a person,

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1. See, e.g., PETER SINGER, *PRACTICAL ETHICS* (1993) (especially chapter 6); RONALD DWORKIN, *LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM* (1993); MICHAEL TOOLEY, *ABORTION AND INFANTICIDE* (1983); Michael Tooley, *Abortion and Infanticide*, *PHILOSOPHY AND PUBLIC AFFAIRS*, vol. 2, no. 1, (1972), at 37; Mary Ann Warren, *On the Moral and Legal Status of Abortion*, *THE MONIST*, Jan. 1973, at 43.

2. See *supra* note 1.

and therefore a creature with a serious right to life. Those human beings whom they regard as non-persons, human individuals possessing merely biological life, do not possess such a right, though it may, depending on a variety of possible factors, be wrong to kill them for some reason other than respect for the inherent dignity of persons—for example, without the consent of their parents or others who have a claim to them. Peter Singer crystallized this general point that not all human beings have a right to life in a recent Letter to the Editor to the *New York Times*. Replying to an Op/Ed by Mario Coumo, Singer wrote: “The crucial moral question is not when human life begins, but when human life reaches the point at which it merits protection.”³ Singer, of course, believes that some human beings do not merit protection, namely those in the embryonic, fetal, and infant stages of development,⁴ as well as those who have not developed or who have irretrievably lost the capacities Singer identifies with personhood. I hold the opposite view, namely that all human beings, precisely in virtue of their humanity, possess fundamental dignity and merit protection.

In contemporary discourse, the view held by Singer, Tooley, and others is often allied, though it needn't be, to a sweeping belief in the value of autonomy as a core right of persons. Centrally, the right of autonomy immunizes individual choice against interference by others, including the state, in matters having to do with how one leads one's own life, especially where one's actions do not directly impinge negatively upon the interests or rights of others. So, the thought goes, if a woman wishes to abort a fetus, or parents wish to terminate the life of a severely disabled newborn, or a person wishes to end his own life with the assistance of other willing persons, respect for autonomy demands that others, including public officials acting under color of

3. Peter Singer, Letter to the Editor, *Science, Religion and Stem Cells (5 Letters)*, THE NEW YORK TIMES, June 23, 2005, <http://www.nytimes.com/2005/06/23/opinion/123cuomo.html?n=Top%2fOpinion%2fEditorials%20and%20Op%2dEd%2fLetters> (last visited Feb. 10, 2006).

4. Recently, Singer was interviewed by World Magazine. The interviewer asked: “What about parents conceiving and giving birth to a child specifically to kill him, take his organs, and transplant them into their ill older children?” Singer replied: “It's difficult to warm to parents who can take such a detached view, [but] they're not doing something really wrong in itself.” The interviewer then asked: “Is there anything wrong with a society in which children are bred for spare parts on a massive scale?” Singer's reply: “No.” Marvin Olasky, *Blue State Philosopher*, WORLD MAGAZINE, November 27, 2004, available at <http://www.worldmag.com/articles/9987> (last visited Feb. 10, 2006).

law, refrain from interfering with these choices, and perhaps even take positive steps to facilitate them.⁵

Now, those who oppose abortion, infanticide, assisted suicide, euthanasia, etc., as I do, oppose them because we reject the idea that there are or can be pre-personal or post-personal human beings, or human non-persons of any description; and we do not accept the sweeping view of the value of autonomy. We defend a doctrine of inherent and equal dignity that affirms all living human beings as persons who merit protection; that excludes the direct killing of innocent human beings; and that demands respect for every individual's right to life. Most of us also believe that the law should honor the principle of the inherent and equal dignity of every member of the human family and not privilege the belief in autonomy over it. We view human life, even in developing or severely mentally disabled conditions, as inherently and unconditionally valuable, and though we regard individual autonomy as an important value, we understand it to be an instrumental and conditional one—one that is morally bounded by a range of ethical considerations, including but not limited to others' autonomy.⁶ Many of our opponents take precisely the opposite view: autonomy has intrinsic worth; so-called biological life is of instrumental or conditional value.⁷

I have elsewhere stated at length my reasons for believing that the life of every human being has inherent and equal worth, and for rejecting the proposition that some living human beings are not persons and therefore lack a right to life.⁸ As stated earlier, those who deny that all human beings are human persons do so based upon arguments revolving around the importance of immediately exercisable capacities for characteristically human mental functions. The core of my argument identifies the arbitrariness of treating only *immediately exercisable* capacities, as opposed to *basic natural* capacities, for characteristically human

5. See generally, DWORKIN, *supra* note 1.

6. See GERMAIN GRISEZ & JOSEPH BOYLE, *LIFE AND DEATH WITH LIBERTY AND JUSTICE: A CONTRIBUTION TO THE EUTHANASIA DEBATE* (1979); and PATRICK LEE, *ABORTION AND UNBORN HUMAN LIFE* (1996). See DAVID BRAINE, *THE HUMAN PERSON: ANIMAL AND SPIRIT* (1992) for discussion of dualism. See also ROBERT P. GEORGE, *MAKING MEN MORAL* (1993) on issues of political theory and autonomy; ROBERT P. GEORGE, *IN DEFENSE OF NATURAL LAW* (1999) [hereinafter GEORGE, *IN DEFENSE*] on issues of moral philosophy.

7. See *supra* note 1.

8. See GEORGE, *IN DEFENSE*, *supra* note 6; Robert P. George & Patrick Lee, *The Wrong of Abortion*, in *CONTEMPORARY DEBATES IN APPLIED ETHICS* 13-26 (Andrew I. Cohen & Christopher H. Wellman, eds., 2005); Robert P. George & Patrick Lee, *Acorns and Embryos*, *THE NEW ATLANTIS*, Fall 2004/Winter 2005, at 90.

mental functions as the ground of dignity and basic rights. I point out that human embryos, fetuses, and infants do possess, albeit in radical (= root) form, a capacity or potentiality for such mental functions. Human beings possess this radical capacity precisely in virtue of *the kind* of entity they are, and possess it by coming into being as that kind of entity—viz., a being with a rational nature. Human embryos and fetuses cannot of course *immediately* exercise these capacities. Still, they are related to these capacities differently than, say, a canine or feline embryo is. They are the kind of being—a natural kind, members of a biological species—which, if not prevented by extrinsic causes, in due course develops by active self-development to the point at which capacities initially possessed in root form become immediately exercisable. (Of course, the capacities in question become immediately exercisable only some months or years after the child's birth.) Each human being comes into existence possessing the internal resources and active disposition to develop the immediately exercisable capacity for higher mental functions. Only the adverse effects on them of other causes will prevent this development.

I have also stated, at book-length, my reasons for rejecting the doctrine of the priority of autonomy and the political principles following from it.⁹ In this work, I propose to show that theories of morality that treat autonomy as intrinsically valuable, or seek to derive a sweeping right to autonomy (or “privacy” or “moral independence”) from the value of equality or some other putatively fundamental normative principle, enmesh themselves in contradictions and conundrums that cannot be resolved without adjusting the theories to limit in significant ways the scope of autonomy. I will not in the limited space available here rehearse these arguments. What I will do is try to give some indication of how I think someone on my side of the debate on these matters ought to think about issues of the sort that came to the fore in the Terri Schiavo case.

The position was summed up a few years ago in a statement by the Ramsey Colloquium of the Institute on Religion and Public Life entitled, “Always to Care; Never to Kill: A Declaration on Euthanasia.”¹⁰ We are to maintain solidarity with those in disabled conditions, seeking to heal their afflictions when we can, and mak-

9. See GEORGE, MAKING MEN MORAL, *supra* note 6.

10. See Hadley Arkes et al., *Always to Care, Never to Kill: A Declaration on Euthanasia*, FIRST THINGS, Feb. 1992, at 45, available at <http://www.firstthings.com/ftissues/ft9202/articles/documentation.html> (last visited Feb. 10, 2006). An abbreviated version of the declaration appeared in the WALL STREET JOURNAL on November 27, 1991.

ing every effort to relieve their suffering and discomfort. At the same time, we should bring encouragement to anyone who is tempted to regard his life, currently or prospectively, as valueless or merely burdensome to himself or others, and discourage such a person from committing suicide or regarding his life as worthless. We should certainly not cooperate in suicidal choices or support the practice of assisted suicide or euthanasia.

Does this imply “vitalism,” that is, the view that human life is not only inherently valuable but that it is the supreme value that trumps all others? Does it mean that we must struggle to keep dying patients alive at all costs?

No.

The key distinction, however, is not between “killing” and “letting die,” though I have come to think that this distinction (properly understood) is not always morally meaningless. Nor is the distinction between killing by a positive act and killing by not acting when one could act to preserve life (which is sometimes run together with the distinction between “killing” and “letting die”). Nor, strictly speaking, is the crucial distinction between the use of “ordinary” as opposed to “extraordinary” means of life-support, at least where “ordinary” and “extraordinary” are defined in terms of the complexity or novelty of the technologies employed. Rather, the key is the distinction between, on the one hand, what traditionally has been called “direct killing,” where death (one’s own or someone else’s) is sought either as an end-in-itself or as a means to some other end; and, on the other hand, accepting death (or the shortening of life) as a foreseen side-effect of an action (or omission) whose object is something other than death—some good (or the avoidance of some evil) that cannot be achieved in the circumstances in ways that do not result in death or the shortening of life.¹¹ Of course, I should add that the norm against the direct killing of innocent human beings is not the only norm that can be relevant to end-of-life decisions. There are norms, such as obligations of fairness and equity, that apply even in cases of accepting death as a side-effect. To show that an act which causes death or shortens life is not an act of direct killing is not necessarily to show that it is a morally legitimate act.

11. See Patrick Lee, *Personhood, Dignity, Suicide, and Euthanasia*, THE NATIONAL CATHOLIC BIOETHICS QUARTERLY, Autumn 2001, at 329; Chris Tollefsen, *Euthanasia and the Culture of Life*, <http://www.princeton.edu/~prolife/articles/tollefsen.pdf> (last visited Feb. 10, 2006).

There are some classic examples of the distinction that I think is central. A soldier jumps on a grenade that has been rolled into the camp in a life sacrificing effort to save the lives of his comrades in arms. Because his own death, while foreseen and accepted, is outside the scope of his intention, no one regards this as a suicide or an act of direct self-killing. The soldier's objective is not his own death, but rather saving the lives of his comrades, by absorbing the blow of the grenade. Should he somehow miraculously survive the blow while muffling its force, he will have fully achieved his aim. His surviving would in no way frustrate his objectives. Perhaps, more obviously relevant to the issues here under discussion is the case of a patient suffering from a painful condition who takes palliative drugs of a type that he knows will result in his dying sooner than he would otherwise. Again, death, though foreseen and accepted, is not the object of the patient's act; it is beyond the scope of his intention—which is solely to relieve the pain of his disease—and, we may assume, his willingness to accept death is not incompatible with any obligation he may happen to have to others (though, if it *is* incompatible with any such obligation—such as an obligation to children or other family members—the moral equation obviously changes).

Now, there are lots of reasons people *in extremis*, or who anticipate being *in extremis*, may have for declining life support that do not implicate the person in willing his own death either as an end-in-itself or as a means to some other end. Particular forms of life support may be painful, burdensome, and expensive. When they are, people can certainly choose to forego them without willing their own deaths. So someone who thinks as I do, may support, as I in fact support, giving people broad latitude to decide whether to accept life support and whether to continue it once accepted. This is one of the places where respect for autonomy makes a valid claim in the ethical framework I have sketched. Of course, in giving people this latitude it is to be expected that some people will act on it for reasons that are not morally legitimate within that framework, but this is itself a foreseeable, but acceptable, bad side-effect of a good policy. The policy itself has as its aim something perfectly good and legitimate—respecting people's autonomy to choose among morally acceptable (even if tragic) but incompatible options bearing on their lives and futures. Though this freedom may be misused to choose morally wrongful options, it is not the intent of the policy to enable those choices. The intent is to allow choice among the many morally legitimate options.

But this does not mean that we should accept a right to assisted suicide. Nor should we conceive the right to decline life-support (or life-saving medical care generally) as a right to commit suicide or to receive assistance in committing suicide. Policies or practices that are implicitly premised on belief in a right to suicide or assisted suicide or euthanasia should be roundly rejected.

Terri Schiavo died of dehydration. Her death was not the result of brain damage or any other affliction. It was chosen as the precise object of a decision to deny her fluids. She was not "allowed to die," for she was not dying; she was not, as I heard Al Franken claim on television, "brain dead"; she was not even terminally ill. The choice to deny her fluids was a choice to cause her death. Those who supported that choice said it was right either because she wasn't really a person anymore, or that death was what she herself wanted, as she allegedly made clear in comments later recalled and placed into evidence by her husband.¹² Either way, the killing of Terri Schiavo cannot be justified under the moral understanding I defend and that has traditionally governed medical ethics, whatever erosions it has suffered in recent years. Under that understanding, Terri was a person with a right to life; she was neither a non-person ("mere biological life," a "vegetable") nor a person with a right to commit suicide. The obligation of others towards her was "always to care; never to kill."¹³

Does this mean that it is never morally acceptable to withhold fluids or food from a patient? Is it never right for a patient or individuals making medical decisions on behalf of a patient to decline food and fluids?

Some people on my side of the debate have argued that food and fluids must always be administered—that they are "hospitality" rather than life support, and are part of "ordinary" care rather than extraordinary means. I agree that food and fluids are in most cases (or, as Pope John Paul II put it in his allocution on the subject, "in principle")¹⁴ part of ordinary care, but

12. See, e.g., Arthur Caplan, *The Time Has Come to Let Terri Schiavo Die*, MSNBC, Mar. 18, 2005, <http://www.msnbc.msn.com/id/7231440/> (last visited Feb. 10, 2006).

13. See my interview with NRO, "Always to Care, Never to Kill," NATIONAL REVIEW ONLINE, Mar. 21, 2005, <http://www.nationalreview.com/interrogatory/george200503211140.asp> (last visited Feb. 10, 2006).

14. See the address Pope John Paul II gave on March 20, 2004 to the participants in the International Congress, "Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas," http://www.vatican.va/holy_father/john_paul_ii/speeches/2004/march/documents/hf_jp-ii_spe_20040320_congress-fiamc_en.html?GRAB

there can be cases, I believe, in which they can be legitimately not administered. That is because there can be cases in which the reason for not administering them is some goal or purpose other than the desire to bring about death. These are cases, comparatively rare to be sure, in which food and fluids are themselves medically contraindicated, because they cannot be administered without causing harm to the patient. Sometimes the problem will be in the administration of the food and fluids, and sometimes it will be a consequence of the food and fluids themselves. In either type of case, where the administration of food and fluid will cause or contribute to morbidity or even hasten death, plainly a decision to withhold them need not be a choice to kill.

Obviously, what I have in mind here was not part of the picture in the Schiavo case. The point of withholding food and fluids from Terri Schiavo was precisely to bring about her death. The problem was not that she could not tolerate the food and fluids or that the administration of them would further damage her health. On the contrary, food and water would sustain her in life—a life that some judged to be in itself burdensome, both to Terri herself and to others, and which she, they contend, would have wanted to end were she in a position to decide the question. From the perspective of those who supported removing her feeding tube, doing so was a means of ending her life; it was not a side effect of a choice whose object was something else. It was a choice to kill, a choice the moral logic of which is indistinguishable from a choice to have ended her life more quickly by, for example, administering a lethal dose in an unambiguous act of euthanasia.

Nothing in my analysis is changed by the recent release of Terri Schiavo's autopsy results. Though many have touted the autopsy as vindication for Michael Schiavo and those who supported his efforts to remove nutrition and hydration, I do not think the results merit such a conclusion. Questions such as whether Terri was in a PVS or not, whether she had the possibility of regaining consciousness or not, whether her brain was "profoundly atrophied" or not, were irrelevant to her status as a human person. What mattered was that Terri was alive, was not in the process of dying, and would continue to live unless someone chose to kill her, whether by dehydration or some more efficient means.