Frogs, Crabs, and the Culture of Death: Lessons from the Schiavo Case

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Legend, not science, states that crabs are easier to boil than frogs.

Frogs placed in a pot of hot water jump out to safety. In a cauldron of crabs, however, if one crab laboriously crawls up the pot wall from the hot water to the rim to escape, the other crabs snatch him back down so they all cook together.

Frogs are individualists who save their skins and know their minds. Crabs are egalitarian communitarians. What is good for one is good for all.

Most of us are either frogs or crabs. Frogs make specific, precise advance medical directives, appoint surrogate medical decision-makers, and create durable powers of attorney so that if they cannot decide on medical care, an absolutely trustworthy substitute will act as they would if they could. Crabs have faith in their health, partners, spouses, and invulnerability. Crabs love the state and trust its central control. Terri Schindler Schiavo transformed many complacent crabs into vigilant frogs.

Pretend for the moment that Terri at age 26 had written a precise instruction that stated if she ever were in a PVS, she wished no heroic life support and expressly forbade any water and food by tube. Pretend that Terri had a devoted, loving, sexually and spiritually faithful husband who provided MRIs and diagnostic tests to learn what minimal brain function she retained, and who lavished on her all rehabilitative therapies to maximize her possibilities of recovery.

Pretend that circuit court Judge Greer had no conflicts of interest and no vested interest in appointing as guardian over a wife's life and death a husband who waited seven years after the suspicious event that injured his wife's brain, and dallied until after he received a hefty medical malpractice award of more than $1 million, primarily for her rehabilitation, to suddenly remember his dear wife's explicit desire to die.

Pretend that court appeals reviewed not mere procedure of previous trials, but actual fact and new substance, *de novo* as Congress prescribed, not accepting factual determinations by just one judge named Greer. Pretend that the ACLU, the Hemlock Society, and euthanasia groups had no interest in promoting quick and easy dying of the ugly, the inconvenient, and the expensive.

Even if Terri had written precise instructions, even if Michael was radiantly truthful, and even if the Judge Greer was not corrupt, we still would be obliged to fight the philosophy of crabs. Crab world-view, crab means of analyzing reality, and crab ethics of action created the horror of Terri Schiavo's judicial murder.

Six Parts of Advance Medical Directives

Every good advance medical directive should provide six reliable directions:

1) **What you wish done** or not done to your body, what shall be provided or withheld: respirator, defibrillator, artificial hip, Do Not Resuscitate order.
2) **Under what circumstances**: automobile trauma, cancer metastasis, liver failure, myocardial infarction, "brain death," "permanent vegetative state."
3) **By whom decided**: spouse, oldest son, daughter-in-law, divorced spouse, group of three friends.
4) **On whose recommendation**: personal physician, cardiologist, hospital doctor, three consultants.
5) **How to resolve disputes** if two appointees agree and one refuses: daughter and son vs. spouse.
6) **How to encourage resolution and punish rogue acts:** who loses what money from your estate if refusing that your will be done.

Ideally, the person you appoint to be your surrogate decision-maker knows and honors your wishes and understands your philosophy.

Philosophy affects interpretation of advance medical directives. Reality consists of the seen, the unseen, and what we wish to see. The most ethical and ingenious among us will see only what we are prepared to see, think we see, and then assert that we see. We hear only what we are prepared to hear, think we hear, and then assert that we hear. Only with stern act of will can we sharpen our senses to see and hear the totally unexpected. Objective judgments of reality are derived from sense perceptions free of mystical wishes, hopes, and magic. Yet interpretation of objective data takes place in subjective context. Personal context in which we analyze objective data is created by our world-view (metaphysics), our means of perceiving reality (epistemology), and our customary methods of action (ethics).

For your advance medical directive, consider on whose recommendation a decision should be made to provide or withhold your treatment if, for instance, you have a head injury. Suppose the consulting neurologist is a member of End-of-Life-Choices (formerly the Hemlock Society) and a promoter of "death with dignity." He is more likely to see evidence that will lead to your fast death, and not see evidence suggesting mental capacity you could possibly regain.

That consulting physician may be scientifically trained and splendidly objective—except in his inability to hear a nearly inaudible sound that he judges an ambient sound figment. He prefers to not see that minuscule glimmer of light that he deems unlikely in your injury, but expensive in time and money to prove true or false. He is honest. But he selects what he reports and ranks importance of evidence not out of unethical influence or fraud, but by what he thinks is right.

A physician who believes in euthanasia considers unreasonable extension of the life of a brain-injured person with poor prognosis to be an unfair burden on the state's limited fiscal and intellectual resources. He believes he is mercifully killing you, whose hopeless life is not worth living. Simultaneously he is relieving your family of burden and yourself of a life he thinks you would willingly

abandon if you could. Whether or not he believes in an afterlife, he considers himself a compassionate liberator from pain.

In some states with large numbers of elderly retirees, one default method for hospitals treating people over age 65 is to withhold care. Everyone entering those hospitals is expected to sign a directive voluntarily confirming that. The default living will mandates foregoing extraordinary life support.

If you wish to live as long as there is time left to live, then you want surrogate decision-makers and consultants to follow individualist "frog" philosophy. Medical experts exist who are stunningly objective and free of personal philosophy. Those few I have met, however, are immoral, or amoral. Consider writing into your advance medical directive the requirement that your surrogate buy the services of three consultants from three different medical institutions, to avoid close colleagues' subtle deference, or antagonism, to one another. Your surrogate also must ascertain the philosophical quality of expert physicians with equal medical credentials.

A quick way to invite a medical consultant to reveal his crab or frog philosophy is to answer a few critical questions. "Did you side with the parents or husband of Terri Schiavo? And why?" Or, "Do you financially support the ACLU? The Hemlock Society? Death with Dignity Foundation?" The consultant's philosophy affects diagnosis, prognosis, and treatment.

Theoretically, diagnosis should be easy, direct, and objective. You have a myocardial infarction. You are in a PVS. You are in Minimally Conscious State (MCS). PVS has different legal implications from MCS. Diagnosis attempts objectivity in a subjective philosophic context. Terri Schiavo's state, for example, was far from certain.

Philosophy and the Persistent Vegetative State

PVS is "coma-lite." In 1972, Drs. Bryan Jennett and Fred Plum explained the distinctions among several terrible kinds of brain injuries resulting in losses of consciousness, cognition, and speech. PVS differed from coma in that the patient with PVS has open eyes and follows a comparatively normal asleep-awake cycle.

The term "vegetative" state is intentionally powerful and denigrating, relegating the person to a rung in the hierarchy of creation below that of an animal. The traditional Great Chain of Being, traceable back through the millennia to Aristotle and Plato, then the Hebrew and Christian Bibles, describes the order of the universe with God or Nature as the top link, with angels and spiritual beings next, then man and woman in the middle, with mind and spirit making the human being ascend to the spiritual, and the body's appetites, urges, and sexuality connecting mankind to the next link down, the animal world. Below the animal link is the vegetable world. The final link is the totally inanimate objects, minerals, and rocks.

Devastating loss of mental power permits a person to be classed as persistently (though not necessarily permanently) lower in cognition than a dog, a salamander, or a horse. PVS means complete unawareness of self and environment. "Crabs," observing Terri and certain that she would "never want to live like that," considered her revelation of pain during her monthly menstrual period, her interactions with people at a nurses' station, and her response to the voice and appearance of her mother, as no more volitional or cognitive than tropisms of a squash, eggplant, or cauliflower.

Other objective criteria for the PVS diagnosis also depend on the analyst's subjective interpretation: No evidence of sustained, reproducible, purposeful, or voluntary behavioral responses to visual, auditory, tactile, or noxious stimuli. No evidence of language comprehension, or expression.

Terri could not speak. Michael intentionally deprived her of sensory stimuli and rehabilitative therapy. Examining physicians dismissed as non-language Terri's vocalizations of "Ahh, aah" on different pitches, with different duration, different rhythms, with interspersed moans and groans. However, others believe such vocalizations to be primitive language, demonstrating cognition. Well-intentioned medical experts diagnosing with the philosophy that low quality of life—as they interpret it—is not worth living, will construe a smile as an intestinal gas bubble, and a volitional moan as a mindless squawk.

Words That Kill Life Unworthy of Life

Physicians, lawyers, insurance companies, HMOs, hospitals, and medical groups that promote "evidence-based medicine," "best practices," and single-payer universal health care have a vested interest in minimizing costs, reducing expensive care to those whose medical outcomes are unacceptable, and severely restricting care to patients whose poor "quality of life" makes treatment "futile" and expensive care "medically unnecessary." Phrases that seem innocent in plain English have technical meaning in medical law. "Medically necessary," for instance, does not mean whatever diagnostic test, treatment, or curative medicine and surgery is correct for a particular patient's disease or injury. "Medically necessary" in medical law means whatever the third-party payer will pay for. Word definitions connect to cost of treatments and decisions to initiate, continue, or stop them. In Holland, mercy killing is permitted by law and encouraged by government. Criteria for euthanasia include: the patient unequivocally must request dying, two physicians must agree, the prognosis must be hopeless, and the patient must be in intractable pain. Hopeless for what and to whom? Euthanasia reduces medical costs, decongests hospitals and clinics, and liberates medical personnel, medications, and surgery for those likely to get well and work again.

Holland's Groningen Protocol[1] permits physicians to kill children if their physical or mental problems are very "sad," "hopeless," and "painful." Although it will probably be used primarily for newborns with serious congenital anomalies, Groningen covers children up to age 12—the age that some in Belgium and Holland want to be the age of consent for surgery, for marriage, for voting, for death requests, and for homosexual relationships. While it is likely that a parent's wishes to let a child live or die naturally would be considered, experts familiar with the policy "note that the decision must be professional, so rests with doctors."[2] The will of intractable parents can be overridden.

National Socialist law in 1930s Germany distinguished among qualities of life and determined that useless eaters and lives unworthy of life, *lebensunwertes Leben*, must be eliminated for efficiency and for genetic good.

Who owns your body? Who shall decide what is done or not done to your body? Who shall determine whether your life is worth living?

As a medical lawyer I applaud the writing of advance directives, living wills, surrogate decision-maker appointments, and durable powers of attorney. Terri Schiavo had none of these. Her death demonstrates that ideas have consequences. Philosopher Georg Wilhelm Friedrich Hegel's idea that whatever

is efficient is right creates the consequences of medical Darwinism. Medical Darwinism consists of survival of the fittest, and extinction of the unfit.

Medical Darwinism

In 2001 I wrote that the equation "Psychiatric Darwinism = Survival of the Fittest + Extinction of the Unfit," when used to review mental health provisions of modern laws, places all of us who function with a disability, a disease, an imperfection, or advancing age, at risk of one day being Terri-fied.[3]

People with a chronic disease, mental disorder, or brain injury with poor prognosis, in many countries and in some state Medicaid programs, are given lower priority than patients with a time-limited condition and good prognosis. Conditions with low priority receive no money for treatment.

No money, no treatment. By law, doctors cannot treat. By law, hospitals cannot treat. Custodial care is costly and wasteful. It expends precious medical resources better applied to more hopeful medical conditions. If hopeless cases are sent home, families may be unable to care and cope. Hopelessly ill people at home distract caregivers from social productivity. Parents sacrificing time and spirit for a sick child, for example, must neglect or abandon care to their well children and expend parental effort for little gain for themselves and for the state.

Hegel's "whatever is efficient is right" leads inexorably to the unspeakable conclusion. But I will speak it. If we decide as a nation that it is efficient and right to prevent hopelessly ill people from selfishly using resources better applicable to patients who are curable and potentially productive Americans, we must conclude that it is logical, humane, and merciful to kill the incurable.

If a person's medical condition is incurable and unqualified for life, and wastes limited medical time, effort, and money, then that person must be unqualified for life. If treatment is medically unnecessary, then the person with the illness is unnecessary. People with no preservation-worthy quality of life might be treated if we have funds enough, world enough, and time enough. But we do not. Death is inevitable.

Germany in the 1930s rationalized exterminating children and adults with hereditary and chronic diseases. I do not say we should. I only say we could. Because we did.

Expendability of people with "eugenic" impairment was acceptable in American medical law. To prevent transmission of genes that pollute the American gene pool, the state of Virginia in 1927 sterilized Carrie Buck. Carrie was committed to the state Colony for Epileptics and the Feebleminded. "Three generations of imbeciles are enough," said Justice Oliver Wendell Holmes, because Carrie, an ostensibly retarded daughter of a putatively retarded mother, gave birth to a presumably retarded daughter.

In Oklahoma until 1942, a statute authorized sterilization of certain felons so that their tendency to crimes would not be inherited. Others with incurable conditions were deemed expendable but of use for science. Retarded children at Willowbrook Hospital on Staten Island, New York, were the subjects in experiments on hepatitis, and prison inmates were slated for psychosurgery experiments that Kaimowitz prevented in Michigan in the 1970s. The capacity of Americans to formulate and commit medical horrors has been demonstrated.

The "right to die" for the "hopeless" is the motor propelling medical emphases on "quality of life," "outcomes," and "futility." The Nancy Beth Cruzan case in the 1990s and the Karen Ann Quinlan case affirmed for the public an individual's right to refuse heroic life-extending mechanical treatments. Court testimony, case holdings, and public commentaries assert that death is necessary for lives that observers consider not worth living. The unfit are not simply invited to die; they have a "duty to die." Death engineers promote "sustainable medicine." Dr. Daniel Callahan in *False Hopes* advocates limited medical innovation, "natural limits" on life—living 75 years is long enough, and protection of the environment by the unfit voluntarily, or unwillingly, making room for the fit.

Medicare and Medicaid are not "sustainable medicine." Medicare in 2004 had a budget shortfall that used 9 percent of general tax revenue. By 2008, the Medicare budget would require escalating the 2.9 percent FICA tax to 19.8 percent, a 700 percent increase! Workers will not voluntarily spend nearly one-fifth of their income, before federal and state taxes, for anonymous sick elders.

Doctors are under threat of felony charges and prison if they provide care that government construes as medically unnecessary. My forthcoming book, *Who Owns Your Body? Doctors and Patients Behind Bars* provides the harrowing data. Citizens have limited rights to obtain medicine from private sources if Medicare prohibits treatment as "medically unnecessary," because the Balanced Budget Act, Section 4507, is interpreted as requiring that any physician who treats one or more Medicare patients privately must opt out of Medicare for two years. All people young and old were threatened with felony punishment in the toxic Clinton health plan legislation of 1993, if they used personal money to buy medical care that the government considered not medically necessary.

Few doors remain open for America's unfit. Acute, high-technology care is expensive. Custodial care is expensive. America's aged, chronically sick, and mentally incapacitated will never get well and never contribute to national advancement. They will never contribute to the economy or to cost containment—except by dying.

If finite American medical money and time must be invested only in medical success, then government must replace old-fashioned, outworn physicians and surgeons, who pledged allegiance to Hippocrates and Maimonides, with new doctors and medical ethicists who pledge allegiance to the global budget. Government promotes its own longevity, fiscal health, and privileges.

Patient "capitation" is a helpful "moral" wedge because patients are mere "heads" classified by diagnosis. Those with grim medical "outcomes" will have medically necessary treatment determined only by whatever third-party payers will pay for.

Third-party determinations of her "quality of life" propelled Terri Schiavo into a crematory jar. "Duty to die" was Terri's death engine. Thus medical Darwinism achieves cost-efficient survival of the fittest by extinguishing the unfit.

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