Virtue In Action

The Terri Schiavo Case Highlights Principles of Government and Morality of End of Life Issues
Increasingly, our government and society are faced with public policy issues that challenge us to address the fundamental questions of human life. Some issues, such as abortion and stem cell research, involve the question of when life begins. Other issues, such as assisted suicide and the withdrawal of life support focus on the question of when life ends. In this lesson, we will discuss the end of life issues in light of the Terri Schiavo case.

In 1990, Schiavo collapsed in her home from a chemical imbalance, temporarily stopping her heart and cutting off oxygen to her brain. Several doctors have argued that the brain-damaged woman was in a persistent vegetative state with no hope of recovery. Although Schiavo’s major organ systems – digestion, respiration and breathing – operated on their own, she could not speak or feed herself. There had been much debate about how conscious she was. Her family believed she responded to them and was minimally conscious, whereas, her husband and three of the five court-appointed doctors believed she was in a persistent vegetative state.

Schiavo’s husband, Michael, petitioned the Florida courts to have her feeding tube removed, arguing that his wife did not want to be kept alive in a persistent vegetative state. On Friday, March 18, by order of a Florida judge, the tube was removed. Thirteen days later, on March 31, Schiavo died.

We will discuss how the Schiavo case illustrates principles of government, such as the system of checks and balances, federalism and the role of government in life issues. In part two, we will examine the moral issues surrounding the end of life, and whether a guardian or patient should have the right to end a life.

**Separation of Powers and Checks and Balances**

Our nation’s founding fathers wished to protect freedom and liberty by not allowing any one branch of government to have too much authority. Thus, our Constitution distributes power among the three branches of government – the Executive, the Legislative and the Judicial. With this separation of powers, each branch has its own responsibilities and the power to amend or to check the actions of the other branches, thus limiting the ability of any one branch to become too powerful.

**The Role of Government in Life Issues**

Common sense tells us that when a person cannot speak for him or herself, there must be rules to protect that person. The Constitution maintains that powers not specifically designated to the federal government are left to the states. So it is primarily the role of the states to establish rules concerning family matters such as divorce, wills, and end of life issues such as when life support can be withdrawn.

Through several court rulings, the U.S. Supreme and state courts have established standards that state laws must abide by in determining when life-sustaining treatments can be removed. Specifically, the court ruled that a patient has the right to refuse life-sustaining treatment if the patient is in a persistent vegetative state or is certain to die, and that there must be “clear and convincing” evidence that the patient would not want to remain alive by artificial means.

**The Case of Terri Schiavo**

Since 1993, Terri’s parents, Bob and Mary Schindler, have fought to remove Michael Schiavo as Terri’s legal guardian, and to keep their daughter alive by means of the feeding tube. All three branches of state government have considered the case, and the resulting tug of war between the Florida legislature, governor, and state courts illustrates the principle of the separation of powers.

Three times a Florida judge ordered that the feeding tube be removed on the basis that Terri Schiavo was in a persistent vegetative state, that Schiavo’s husband was her legal guardian and that there was “clear and convincing” evidence that she would not want to live by artificial means. Terri’s parents and siblings disagreed with this ruling, and appealed arguing that Terri would...
want to remain alive, and arguing that Terri was not in a permanent vegetative state.

In 2003, Florida Gov. Jeb Bush and the state legislature wanted to prevent the removal of the feeding tube for patients like Terri and enacted “Terri’s Law,” which stated that a patient could not be denied food and water if they had not expressed this desire in writing, and the family disagreed on the patient’s wishes. One year later, the Florida Supreme Court ruled that the law was unconstitutional because it violated the state Constitution’s separation of powers. In its unanimous decision, the court wrote that “it is without question an invasion of the authority of the judicial branch for the legislature to pass a law that allows the executive branch to interfere with the final judicial determination in a case.” Following the Florida Supreme Court ruling, state court judge Greer again ordered on March 18, 2005 the removal of the feeding tube.

Federal Government’s Involvement in the Schiavo Case

Within Congress, members of both political parties moved to intervene. The U.S. Senate and House of Representatives passed a bill allowing the federal courts to review the Schiavo case to determine if her constitutional rights had been violated. President Bush signed the bill making it federal law. Many favoring the legislation pointed out that through the judicial order of removing the feeding tube, Terri would die. The legislators wanted to give Terri the same rights as a person on death row, who has the right to appeal to the federal judiciary after exhausting all state appeals.

Opponents of the bill argued that the federal government trampled on the power of the states, violating the principle of federalism. Others argued that the federal legislature was trying to take power away from the judiciary, thus violating the principles of separation of powers and checks and balances. On the other side, proponents argued that they were not violating the principle of separation of powers because the law left the power to decide the case with the judiciary, and simply allowed for a federal judicial review.

Terri’s parents again appealed to the federal appellate courts for a retrial of the case. In all instances the federal appellate courts refused to retry the case. In each instance the federal courts did not review the evidence in the case on whether Terri was in a persistent vegetative state and whether there was clear and convincing evidence of her intent. Rather they reviewed the procedures of the state courts to see if the procedures allowed for a satisfactory examination of the evidence, or ruled on whether the new federal law violated the principle of separation of powers. The U.S. Supreme Court also refused to hear the case.

The night before Schiavo died, the Schindlers filed another emergency bid with the federal appeals court, arguing that the court should have considered the entire state court record and not just the procedural history. The federal Appellate Court and U.S. Supreme Court again refused to hear the case. The appellate court pointed out that Congress does have the constitutional authority to grant the federal courts the authority to review the Schiavo case for violations of Terri Schiavo’s constitutional rights.

However, the appellate court pointed out that the federal law for Terri Schiavo also told the court how to exercise its judicial oversight, giving the court instructions to consider the evidence and claims of constitutional violations case by case (“de novo”). The court pointed out that “because these provisions constitute legislative dictation of how a federal court should exercise its judicial functions, the Act invades the province of the judiciary and violates the separation of powers principle.” Basically, the court ruled that the legislature can’t dictate to the federal judiciary the process for how the judiciary should review a case.

Part II: Moral Issues

In this section we will address some of the moral issues that arise when an injury has occurred, or an illness has progressed to a point where we may consider whether it is acceptable to end life-supporting treatments. In examining these moral issues we are basically asking in which situations it is right or wrong to end life-sustaining treatments. We will begin by examining two extreme scenarios.

Imagine a scenario where a friend is in a serious car accident. The doctors agree that there is no hope of recovery and the patient will soon die. The only way your friend can stay alive, for even a short period, is for the body’s major systems, such as respiration, to be assisted by machines such as a ventilator.

In this scenario, many would advocate that it is acceptable to turn off the ventilator and allow the patient to die. In this case, the life-sustaining assistance provided by the ventilator is an extraordinary level of support, in that the ventilator has taken the place of the body’s own organs and isn’t helping the body to heal.

A scenario on the other extreme would be if our friend is in an accident and the lungs are damaged; however, the
doctors agree that with the assistance of a ventilator for a period of time the patient’s lungs will recover and the patient will live without extraordinary assistance. In this case, many would advocate that no one has the right to turn off the ventilator.

**Is Death Certain, or Imminent?**

In the above two scenarios the important factor in determining whether the life-sustaining technology of a ventilator should be removed is the determination of whether death is certain. If death is certain, than most of us would likely advocate that life-sustaining treatments can be removed. However, if the treatments have a good chance of helping the body to heal, than most would likely advocate that the patient has the right to continue receiving the treatments.

A realistic third scenario would be the case where a patient is severely injured in an accident and life-sustaining machines can prevent death by operating for the bodies organs; however, to live the patient will need to remain on the machines for the rest of his or her life.

**Extraordinary Care vs. Ordinary Care**

This scenario adds a second factor to consider. Is it morally acceptable to remove life-sustaining treatment if it can prevent death? If the treatment is taking the place of some of the body’s major organ systems, the treatment doesn’t offer a cure, and without the life support the patient would die. In this scenario many medical ethicists and religious leaders who study the morality of issues refer to such permanent life-sustaining treatments as an “extraordinary” level of support.

So the same treatment, in this case a ventilator, may be considered extraordinary if it permanently replaces a necessary and major system of the body, or ordinary if it is needed for a time to help one of the body’s systems recover. Many medical ethicists and religious leaders believe that a patient should have the right to reject extraordinary treatment, but not ordinary treatment. Those promoting this view point out that as technology continues to advance, we will have the ability to artificially support the functioning of the human body far beyond the point where natural death would occur. If we don’t allow patients to reject this treatment, then patients will likely become unnatural extensions of many machines sustaining their existence.

Some may disagree with the above distinctions between ordinary and extraordinary support, and believe that even if a machine is necessary for the permanent functioning of the body, this is an acceptable extension of human life. Those who hold this view would believe that taking away such life support would be morally unacceptable.

**Terri Schiavo’s Case**

Given Terri Schiavo’s condition, the only thing she needed to continue living was food and water, which was inserted into her digestive system through a feeding tube. We can now begin to assess the morality of removing the feeding tube, using the principles outlined above.

1) Was death a certainty, or imminent? In Terri’s case, no. With food and water doctors agreed that she would continue to live.

2) Was the feeding tube extraordinary, or ordinary care? The feeding tube didn’t replace the functions of a major organ system. Terri’s digestive system was still operating; however, she couldn’t feed herself, so the tube represented a necessary and likely permanent assistance to the digestive system. Most medical ethicists view feeding tubes as ordinary care. Most religious leaders stated that the feeding tube was ordinary care and should not be removed.

Some disagreed with this view, stating that given the likely reality that the feeding tube would always be needed for Terri to receive food, it represented extraordinary care. Most groups representing the disabled strongly protested this view, pointing out that many of them are permanently dependent on the assistance of others to eat and perform other necessary functions. These groups point out that if we allow the removal of simple life-sustaining treatments such as feeding for those who are dependent, then it lessens the rights of the disabled and their perceived value in society.

3) Who should speak for the patient if the patient is unable to speak? Regardless of our views of the morality of the above considerations, should the patient have the right to decide? Those who argue “yes” emphasize that each person should have the right to determine his or her own fate, even if that means death by rejecting ordinary or extraordinary life-sustaining treatment. Others argue that life is of such
value that no one has the right to end a life that isn’t naturally ending, even their own.

Florida law holds that the spouse has the preference in establishing whether the patient would have wanted life-sustaining support removed. Schiavo’s husband was adamant that she would not want to live in a vegetative state. However, Schiavo’s parents, brother and sister strongly disagreed, stating that she would have wanted to continue living.

From a moral perspective we have to ask ourselves whether it is right that anyone can speak for the patient, and if yes should the spouse have more weight than the parents and siblings? If there is a disagreement within the family, and there is no written statement from the patient on life-sustaining treatment, is it better to error on the side of continuing or discontinuing treatment?

4) Quality of Life and Dependency
Often in situations where a person’s quality of life is severely deteriorated by disease or injury we hear people saying “I wouldn’t want to live that way; I would rather die.” This statement reflects many people’s emotions, and in some cases intellectual beliefs, that the quality of their activities and independence in life determines the value of their life. In many people’s minds, if they can’t perform the minimum activities of movement, speech etc., than life isn’t worth living. In Terri Schiavo’s case, some would argue her quality of life was severely deteriorated from the perspective of what she was unable to do, and the fact that she was dependent on others to feed her. Those who value life from the perspective of what we are able to do may thus conclude that it was right to withdraw the feeding tube.

Those who disagree with this view, including the world’s major religions, point out that the value of our lives is not limited by what we are able to do, or to accomplish. They advocate that each person has great value in the simple yet powerful fact that we exist as human beings. Some point out that it is dangerous as a society for us to begin placing lesser value on lives that are physically compromised and / or dependent upon the help of others. Religious leaders also point out that human life has value from their belief that we are created from God.

The ordeal of Terri Schiavo has highlighted issues of government and morality that may have before seemed theoretical, but we see are now very real and relevant to our lives. The Schiavo case challenges us to better understand and develop our own views on issues such as the separation of powers, federalism, the role of government in our lives, and importantly to address the moral questions of what defines life, and under what circumstances can life-sustaining treatment be removed. As technology progresses we will continue to be faced with the above issues in ways that we cannot now imagine.

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**Vocabulary**

- **Checks and balances** – A system whereby each branch of government can limit the powers of the other branches.
- **Federalism** – In the U.S., a system of government in which power is divided between a central federal authority and state government authorities.
- **Imminent** – About to occur; impending.
- **Legal Guardian** – A person (or institution) to whom legal title to property is entrusted to use for another’s benefit.
- **Morality** – Concern with the distinction between good and evil or right and wrong.
- **Persistent vegetative state (PVS)** – A condition of unresponsiveness to mental and physical stimuli and no sign of higher brain function, wherein the patient is kept alive through medical intervention.
- **Separation of powers** – The constitutional allocation of the legislative, executive, and judicial powers among the three branches of the government.
Lesson Goals

- To understand the principles of the separation of powers, checks and balances and federalism.
- To help students see how the above principles are relevant to our lives through an examination of them in the Schiavo case.
- To understand the moral issues concerning some of the end of life decisions, including: defining life, the parameters for withdrawing life-sustaining treatment, extraordinary versus ordinary care, who should speak for the patient, and the role of government in end of life decisions.
- To develop awareness that with advances in technology the issues of life will become increasingly a part of our public policy landscape.
- To inspire students to educate themselves on the technology of life-sustaining treatments, life issues and role of government in these issues.

This lesson is composed of two parts containing student text, discussion questions and extended learning activities.

PART I: Schiavo Case and the Principles of Government

Activity 1
Read Part I of the student text.

Activity 2: Discussion Question Options

A. What are the hurdles the state and federal courts have established for a patient to reject life-sustaining treatment? Do you agree with these?

B. Do you agree, or disagree with the Florida Supreme Court ruling that the Florida State legislature violated the principle of the separation of powers in further defining the circumstances for removing a feeding tube, which would result in a reversal of the lower court decision? Or is it the correct role of the legislature to further define these issues?

C. Do you think that in circumstances where a judicial decision for the removal of life support will result in death, there should be a right of appeal to the federal judiciary? Why or why not?

D. Do you think that in a judicial ruling where death is the result, a right to appeal should include a fresh review of the evidence and not just a review of the process of the state courts? If yes, would this basically take away the power of the state courts and violate federalism? If no, do we run too great a risk of a mistake being made at the state court level?

E. Do you agree with the appellate court that Congress in dictating to the federal courts the process for reviewing the Schiavo case, violated the principle of separation of powers? Or, was Congress acting as a proper check and balance of the judiciary in legislating that in cases of death all evidence should be reviewed in the appellate process?

PART II: Moral Issues

Activity 1
Read Part II of the student text.

Activity 2: Discussion Question Options

1. In the first accident scenario where death is certain, do you believe it is morally acceptable to withdraw extraordinary life support such as a ventilator?

2. In cases where life-sustaining treatment permanently takes the place of one of the bodies major organ systems, and without the life support the patient would die, do you believe that patients have the right to reject the treatment? Encourage students to use specific points referenced in the student text and their own arguments to support their beliefs.

3. In the case of Terri Schiavo, do you think the feeding tube should be viewed as ordinary or extraordinary care? Referencing the ideas from the text and your own ideas, how would you define these different levels of care?

4. Consider a scenario where an injured patient can’t speak for themselves, there is no written statement from the patient on life-sustaining treatments, and a decision needs to be made as to whether life-sustaining treatment can be started or withdrawn. Who should speak for the patient? What if various family members disagree? If the family can’t agree, should the law make an assumption either for or against treatment?

5. How do you define “quality of life?” Should the quality of life have an impact on the decision of whether to continue or discontinue life-sustaining treatments? Do you agree with the criticism of disabled groups that if we allow the removal of simple life-sustaining treatments such as feeding for those who are dependent, then it lessens the rights of the disabled and their perceived value in society?

6. Given all of the above factors we have discussed, do you think it is morally acceptable to remove Terri Schiavo’s feeding tube?
**Extended Learning Activities**

**A.** Lead a class discussion on what an advance directive is and the advantages and disadvantages of the different types. Read together the definitions below and then ask each student to write out whether they would want a living will and if so what theirs would say. For background see: (http://www.uslivingwillregistry.com/)

“An **advance directive** allows a person to make their health care choices known in advance of an incapacitating illness. It is a legal document in which you state how you want to be treated in the event you become very ill and there is no reasonable hope for your recovery. Although laws vary from state to state in America, there are basically two kinds of directives:

1. A **Living Will** is a legal document in which you state the kind of health care you want or don’t want under certain circumstances.
2. A **Health Care Proxy** (or durable health care power of attorney) is a legal document in which you name someone close to you to make decisions about your health care in the event you become incapacitated.”

**B.** Divide the class into teams, asking each team to prepare a class presentation on one of the moral topics related to the Schiavo case. The web sites below may help in learning more and preparing for the advocacy of a team’s views. Try to have both sides of each major issue presented.

In support of the right to live:
- http://www.terrisfight.org
- http://www.nrlc.org/ (National Right to Life)
- http://www.catholicmediacoalition.org/
- http://www.euthanasia.com/
- http://www.notdeadyet.org/

In support of the right to die:
- http://www.compassionindying.org/
- http://www.deathwithdignity.org/
- http://www.thehastingscenter.org/

On medical ethics:
- http://www.bioethics.umn.edu/
- http://jme.bmjournals.com/ (Journal of Medical Ethics)

**C.** To review the 11th Circuit Court decision denying a retrial of the Schiavo case see: http://news.findlaw.com/hdocs/docs/schiavo/33003ca11rhrng2.pdf