

Erring on the side of life: the case of Terri Schiavo

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ABSTRACT

In debates over life and death it is often said that one should err on the side of caution—that is, on the side of life. In the light of the recent case of Terri Schiavo, it is explained how the “err-on-the-side-of-life” argument proceeds, and an objection to it is offered.

Terri Schiavo (1963–2005) was a woman from Florida who spent the last 15 years of her life in a persistent vegetative state (PVS). On 11 February 2000, a Florida circuit court authorised the removal of Terri’s only means of nourishment, a gastric feeding tube.¹ The feeding tube was removed on 18 March 2005 and Terri died 13 days later.²

The last weeks of Terri’s life were marked by a number of judicial and legislative battles over the removal of her feeding tube. At the heart of these battles were disputes over her end-of-life wishes and her neurological diagnosis. Her husband, Michael, had legal guardianship of Terri and contended that she did not wish to be kept alive in her condition. However, her parents, Bob and Mary Schindler, disputed Michael’s contention that Terri did not want to be kept alive in a PVS. They also denied that she was in a PVS, claiming that she was in a state of “minimal consciousness”. Of course, if it turned out that Terri never wished to die, or that she was not in as hopeless a neurological condition as was believed, then Michael’s case for removing the feeding tube would be on shaky grounds. The Schindlers appealed the judicial decisions, resulting in the reinsertion of the tube on two different occasions. In the end, though, the court sided with Michael Schiavo and the feeding tube was removed for the third and last time.³

Not surprisingly, Schiavo’s case received much media coverage, both in the USA and internationally. Unfortunately, in matters of life and death, emotions run high and rational argument takes a back seat to rhetorical flourish. Among all the arguments in favour of reinserting Schiavo’s feeding tube, one stood out as the most promising. The basic idea is this: since there is doubt about Schiavo’s end-of-life intentions and neurological state, prudence demands that we be cautious and err on the side of life. What if Michael Schiavo was wrong about Terri’s wishes? What if the doctors were wrong about Terri’s neurological state? Would it not be terrible to discover after the fact—*after* Terri’s death—that Michael and the neurologists were wrong? Doesn’t caution recommend that we refrain from removing Terri’s feeding tube?

The cautious approach was good enough to be endorsed by none other than the US president. Shortly after the US House of Representatives passed a bill transferring jurisdiction of Schiavo’s

case to a US district court for review, George Bush told a crowd in Tucson, Arizona:

Democrats and Republicans in Congress came together last night to give Terri Schiavo’s parents another opportunity to save their daughter’s life. This is a complex case with serious issues but, in extraordinary circumstances like this, it is always wise to err on the side of life.⁴

This “err-on-the-side-of-life” principle is a particular application of the more general “err on the side of *caution*” principle of rational decision-making in the face of uncertainty—a principle widely countenanced by common sense. But why does this principle seem so appealing?

Imagine Hank, the eager big-game hunter who thinks he’s spotted his next trophy moving around in the bush. Hank raises his rifle, sights in on the centre of the bush and is about to fire when it occurs to him that since there is some doubt about who or what is in the bush (it could be his hunting partner, Bobby), perhaps Hank should err on the side of caution and refrain from firing his gun.

But why does prudence demand that Hank refrain from firing? Is it not because of the irreversibility of one of the acts? If Hank fires and Bobby is in the bush, then it is likely that Bobby will be killed. Since death is irreversible, if Hank fires and kills Bobby, Hank cannot reverse this mistake after the fact. But if Hank takes a cautious attitude, refrains from firing, and it turns out that it is, say, a deer in the bush instead of Bobby, then Hank may reverse his mistake and fire on his trophy. The moral of the story seems to be this: in the face of uncertainty (Hank is not certain who or what is in the bush), when something of such high value is at stake (Bobby’s life) and the consequence of one of the actions is irreversible (Bobby’s death), Hank should err on the side of life by assuming that Bobby is in the bush and refrain from firing.

Might the same kind of reasoning recommend that we refrain from removing Terri Schiavo’s feeding tube? It does seem that the Schiavo case is, in many ways, analogous to the case of Hank and Bobby. First, note the uncertainties in the Schiavo case: Schiavo’s neurological condition and her end-of-life wishes. Second, of the possible courses of action—removing the feeding tube and allowing Schiavo to die versus keeping the tube inserted and continuing her life—one of them is irreversible: removing the tube will result in her death. However, if we err on the side of life and keep the tube inserted, we can reverse our action later if we find solid evidence telling us that Schiavo did not want to be kept alive in her condition or that she was not in a PVS. It does seem that there is a strong prudential argument utilising the principle of erring on the side of life against removing Schiavo’s feeding tube.

Research ethics

My objection concerns the claim that the irreversibility of the act of removing the feeding tube is sufficient reason to keep it inserted. Those opposed to withdrawing Schiavo's feeding tube ask us to consider the available actions, their respective results, and whether or not there are any irreversibles associated with them (table 1).

But why is it so obvious that there are no irreversibles associated with keeping the tube inserted? Since we are operating in ignorance here—indeed, ignorance is being used as a premise in the argument in favour of keeping the feeding tube inserted—one of the things about which we are uncertain is Schiavo's end-of-life wishes. It follows, then, that it is possible that Schiavo really did not want to be kept alive in a PVS. So, assuming that she did not want this, if we keep the feeding tube inserted we have seriously wronged her by encroaching on her personal autonomy and right to self-determination. Personal autonomy and self-determination are, of course, widely valued, and when they are taken away one has been harmed. Furthermore, the harm that one has suffered, I submit, cannot be taken away (ie, cannot be reversed) simply through the regaining of autonomy and self-determination after the fact. Test your intuitions here. Imagine being unfairly convicted of a serious crime and being sentenced to many years in prison. Years later, when the exonerating DNA evidence is discovered and you are finally released from prison, you may feel as if it is too little too late. "I'll never get those years back," you may say. Understandably, you might look back on the years of lost autonomy and self-determination as a terrible episode that cannot be made right by a pardon many years after the fact.

It may be objected here that there is a crucial difference between the prisoner who is unfairly convicted and Schiavo—namely, that unfairly convicted prisoners are aware of their unfair conviction, subsequent jail time and post-encarceration brooding. Since Schiavo was possibly unaware of anything, these cases are disanalogous in crucial ways, ways that ruin the argument by analogy just suggested. How, it may be asked, can a person be harmed by events of which she could never be aware?¹

One way that people can be harmed is if they have a setback in some of their interests. Clearly, and most commonly, it is the person whose interests are thwarted by certain events who is therefore harmed, and that person will be frustrated and upset with the knowledge of that harm. This person clearly has a stake in those events not obtaining. But does it make sense to say that a person who is permanently unconscious has a stake in some event taking (or not taking) place? Consider, first, that we may acknowledge the violations of various interests of persons who, though generally conscious and aware, may nonetheless be unaware of particular violated interests that occur in secret. As Joel Feinberg observes,

If someone spreads a libelous description of me among a group whose good opinion I covet and cherish, altogether without my knowledge, I have been injured in virtue of the harm done my interest in a good reputation, even though I *never* learn what has happened. That is because I have an interest, so I believe, in having a good reputation as such, in addition to my interest in avoiding hurt feelings, embarrassment, and economic injury. And that interest can be seriously harmed without my ever learning of it.²

Feinberg clearly countenances the possibility of a type of harm where a person is unaware of some violation of a legitimate interest. And though it seems he does not think it relevant that the harmed person is generally conscious or aware, Feinberg

¹ I owe a debt of gratitude to an anonymous reviewer of this paper for helpful comments and suggestions on this point.

Table 1 Available actions and their consequences in deciding whether to remove a feeding tube

Action	Result	Irreversible?
Removal of tube	Death	Yes (Death is irreversible.)
Keeping tube inserted	Continued life	No (We can reverse this action later if we need to.)

describes other cases—cases that are even more analogous to Schiavo's—where the person harmed is dead and is therefore unaware of the violation of an interest. Feinberg asks,

How is the situation changed in any relevant way by the death of the person defamed? If knowledge is not a necessary condition of harm before one's death why should it be necessary afterward? Suppose that after my death, an enemy cleverly forges documents to "prove" very convincingly that I was a philanderer, an adulterer, and a plagiarist, and communicates this "information" to the general public that includes my widow, children, and former colleagues and friends. Can there be any doubt that I have been harmed by such libels? The "self-centered" interest that I had at my death in the continued high regard of my fellows, in this example, was not thwarted by my death itself, but by events that occurred afterward ... None of these events will embarrass or distress me, since dead men can have no feelings; but all of them can harm my interests by forcing the nonfulfillment of goals in which I had placed a great stake. (p87)³

Though Schiavo was in a PVS and was not dead, she was, I submit, capable of being harmed in exactly the same way as a dead person could be harmed, which is in virtue of having interests that could be violated—namely by events that occurred after she became permanently incapable of being aware of these harms, events that resulted in the nonfulfilment of goals that she had. Specifically, Schiavo had an interest in not being kept alive while in a PVS. So, if the Schindlers were successful in blocking the removal of Schiavo's feeding tube and then later removed it after discovering incontrovertible evidence that she did not want to be kept alive in her condition, it is simply false that they then would have righted a harm by reversing their earlier mistaken decision to keep the feeding tube inserted. There are irreversibles that cannot be made right. These are the harms that have already occurred, namely, Schiavo's being kept alive when she had the opposite interest.⁴

It seems that what is assumed by those who use the err-on-the-side-of-life principle in an argument for keeping Schiavo's feeding tube inserted is that death is the greatest possible harm and, hence, we must approach end-of-life issues with maximal caution. But notice that those who choose death over life already reject this assumption. Since it is likely that Schiavo thought that being alive in a PVS was a fate worse than death,⁵ if the Schindlers succeeded in keeping the feeding tube inserted,

² Furthermore, the greater the value we attach to a person's right to determine the way they shall die, the worse is the harm when that right is taken away. Obviously the Schindlers believe this, otherwise we would have no explanation for why they believed that Schiavo should be kept alive. They believed that Schiavo did not want to die and, hence, removal of the feeding tube meant that Schiavo's end-of-life wishes were not being respected.

³ Though Schiavo had no living will, a trial was held in January 2000 to establish her end-of-life wishes. Eighteen witnesses gave testimony concerning her desires regarding life-prolonging procedures, with the court finding that she was in a persistent vegetative state and that she had made declarations to the effect that she would not have wanted to endure in that unfortunate state—that is, she would not have wanted a feeding tube (*Schiavo v Schindler*).⁴ This decision was upheld by the Florida Second District Court of Appeal (*Schindler and Schindler v Schiavo*).⁵

Terri Schiavo would persist in exactly that condition she believed was worse than being dead. It is this state of existence that cannot be reversed simply by removing the feeding tube later. If living in a PVS is a greater harm than death itself, and if Schiavo is forced to live in that condition when she wished differently, then it is simply false that there are no irreversibles associated with keeping Schiavo's feeding tube inserted.

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