

# A Matter of Life and Death

**B**Y THE SUMMER of 1997, the United States will have undergone a moral seduction in regard to the legal killing of human beings. We have succumbed before, in our always justifiable wars, in the treacherous bargain with capital punishment, in the 1973 *Roe v. Wade* decision to dehumanize unborn children. But now the stakes are higher. The "slippery slope" of diminished human value is in deep descent.

Decisions by two circuit courts of appeal concerning physician-assisted suicide are being weighed by the highest deliberative body in our land.

From the West Coast, Judge Stephen Reinhardt of the Ninth Circuit Court of Appeals has deemed that a "dignified" death entails the right to have oneself killed, based upon the Constitution's 14th Amendment's "due process" clause. This passage has been held to protect personal liberty and privacy—as argued in previous decisions concerning abortion. Just as a person's liberty must not be curtailed in so private a matter as one's body and procreation, so also the choice to take one's life in the face of degradation or pain must be protected. Quoting the *Casey* abortion case, Reinhardt writes: "Matters involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment."

From the East Coast, Judge Roger Miner of the Second Circuit Court of Appeals has ruled in *Quill v. Vacco* that there is no difference between the refusal or withdrawal of medical treatment and intentional killing. Since this questionable equation is presumed to be the case, the judge deems that the 14th Amendment's equal protection guarantee requires that the right to suicide must be treated like the right to refuse treatment.

"What interest can the state possibly have in requiring the prolongation of a life that is all but ended? Surely the state's interest lessens as the potential for life diminishes.

And what business is it of the state to require the continuation of agony when the result is imminent and inevitable? What concern prompts the state to interfere with a mentally competent patient's 'right to define [his] own concept of existence, of meaning, of the universe, and of the mystery of human life'?" Miner's answer to his question (framed in the words of *Planned Parenthood v. Casey*) is this: "None."

It is likely that the Supreme Court will overturn these opinions—especially that of Miner—and leave it to the various states to determine acceptable practice.

This is why the underlying ethical issues must be examined by us all. The cultural discourse has set the parameters of our debate. And it is those constraints upon our moral judgement that we must challenge.

Just what is human dignity? Who gives it or takes it away? Is it a function of our personal state of mind or the attitudes of others? Is it lost when we are in pain or when we are helpless and diapered?

Are there any limits to personal liberty and autonomy? Obviously the Government and Constitution think so, otherwise we would not have any laws. But why are there constraints? And why are certain constraints allowed while others are not? Does each individual actually have a right to determine and define his or her own concept of the universe and meaning of life? Does a racist? A sexist? A child-abuser?

**I**S THE WITHDRAWAL or refusal of futile treatment equal to killing oneself or another? If it is, then no one who refuses or stops treatment should ever survive. Yet many do, and they do not kill themselves subsequently. The actions, therefore, cannot be equated.

Involved in each of the decisions are men and women who have endured great suffering. In the Second Circuit case, "Jane Doe" described her heart-rending situation. "I have a large cancerous tumor which is wrapped around the right carotid artery in my neck

and is collapsing my esophagus and invading my voice box. The tumor has significantly reduced my ability to swallow...yawn or cough.... In early July 1994 I had a feeding tube implanted and have suffered serious problems as a result.... I take a variety of medications to manage the pain [but] it is not possible for me to reduce my pain to an acceptable level of comfort and to retain an alert state." When her pain becomes unbearable, she wishes her physician to provide drugs to hasten death.

**P**ATIENTS in such dire straits have led Timothy Quill, M.D., not only to euthanize at least one patient, but to challenge the "unfair and discriminating" law that allows people to refuse treatment but not to commit suicide. Quill is a gentle and thoughtful man, quite different from the apparently harsh and impetuous Dr. Jack Kevorkian. But they share the conviction that a person can feel such pain in life that it is better to kill the sufferer.

Our relationship to suffering, in all its forms, and our exercise of freedom, in all its choices, are perhaps the most profound issues which we must confront, not only as a nation, but as individuals.

It may well be that our culture and our governance will further extend the claims of our autonomy while at the same time affirming that suffering is the greatest evil. These are the classic themes of the utilitarianism that seems now to anchor our public ethos. Be that as it may, it will be required of each of us—in our dealings with those we love and in our choices amid pain—to understand just what it is that gives value to us as well as to the liberty we so avidly cherish.

In the months ahead, while the courts of the land arbitrate the values of our political world, I invite the reader to ask whether there are values that are intrinsic to life, law and morality itself. If the answer is yes, then our refusal to acknowledge them could tempt us to reject everything we are.

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