Karen Ann Quinlan, Human Rights and Wrongful Killing

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Few cases have received publicity and stirred the interest of the general public more than that of Karen Ann Quinlan. The case is unusually complex. Yet several things seem clear: first, Joseph Quinlan asked that the respirator be removed and that his daughter be allowed to die; second, Karen was quoted as saying, on three different occasions, that she never wanted to be kept alive by extraordinary means; third, none of her doctors claimed that Karen was in any technical sense dead; fourth, because there was evidence that she was comatose with irreversible damage to at least one part of her brain, there was neither any immediacy in terms of relieving pain nor a way of having her directly express her own preferences; and finally Judge Muir (in the lower court decision) denied the plaintiff's request, indicating that he did not find grounds for the so-called right to die in the Constitution. He also maintained that "such authorization would be homicide," and that it would be a violation of the right to life, presumably Karen's constitutional right.

This decision was reversed by the Supreme Court of New Jersey. The Court essentially concluded that there is a right of privacy that might permit termination of treatment and that, even if the acceleration of Karen's death were to be regarded as homicide, it would not be unlawful or criminal homicide.

I wish to consider, not the legal question, but what is perhaps the most difficult of the moral ones. Suppose the act of removing Karen Quinlan from the respirator was an actual homicide, and at that, the killing of a person. Would it be a morally wrongful act in the sense of being an injury to Miss Quinlan?

The question is a fundamental one. For if it can be shown that the act of removing Karen from the respirator (hereafter referred to as "the act in question" or simply as "the act") is a wrongful one, then it is not clear just how anyone in essentially similar circumstances has a right to be so treated. An example should serve to illustrate this point. If it is morally wrong to shout "fire" in a crowded theatre that is not on fire, then we cannot argue with any force that one has an actual right to shout fire. On the other hand, if it can be shown that the Quinlan act is not a wrongful one, then whatever the Constitution may not directly say about the right to die, at least we have a way of bringing the latter question to a precise issue. One way of doing so is to appeal to the right of privacy and argue that both common law and the Constitution secure "to each individual the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others" and also secure "the more general right of the individual to be let alone."

Another perhaps more interesting way is to appeal to the 9th Amendment. This amendment tells us that the enumeration of certain rights in the Constitution "shall not be construed to deny or disparage others retained by the people." So that, even if the right to die is not listed as one of the rights in the Constitution, if it can be established in certain carefully specified situations that people have and retain the right to die how, when, and where they choose to, then we have established both the moral and Constitutional grounds for that right. Nor would it be necessary to show that

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the people possess the full right to die. All that would be necessary would be to establish that each individual has a certain negative right, the right not to be forced to live a completely meaningless life, if that state of affairs is irreparable and irreversible.

I shall not argue for the existence of these rights. Although I shall have something to say about the notion of having a meaningful life, I will be content to show that, even if the act in question were an actual homicide, it would not have been a morally wrongful one because it would not have been an injury to Miss Quinlan.

II

Concerning the question of possible killing, one can argue (as Joseph Quinlan has) that removing Karen from the respirator would not be an act of killing but merely an act which would allow her to die with some semblance of dignity. Or in somewhat different language, one can say that the act in question permits death to occur but does not cause death. The difficulty here is as follows: Is there not a difference, a significant conceptual difference, between allowing nature to take its course by doing nothing and, so to speak, expediting the course of nature? If I pass a drowning man and do nothing, it may perhaps be said that I merely allowed him to drown. But can we make exactly the same judgment when I pass a non-swimmer and remove his life preserver?

It is one thing not to place a patient on the machine and another to remove the machine. Not placing a person on a machine is roughly analogous to not throwing a drowning person a life preserver. But the removal of the patient from it seems to be sufficiently like that of removing the life preserver to warrant our saying that it is an act of killing.

Notice that I am not denying the general validity of the distinction between "allowing to die" and "killing." Nor am I denying that clear-cut cases of each exist. What I wish to suggest is that there is another class of acts, acts which expedite the course of nature, and that within this class some are rightfully called acts of killing and some are not. Few of us would say that giving another cigarette to a normal smoker is an act of killing, though it may indeed be expediting a certain course of nature. But almost no one would probably want to deny that turning off a heart pacer of someone who vitally needs one is expediting the course of nature and is an act of killing. What is unclear is how, in respect to killing *qua* killing, this case or the one of removing the life preserver differs significantly from that of the Quinlan case.

Another way of denying that the act in question is the wrongful killing of a person is to deny that Karen Quinlan is, in fact, a person. There are a variety of definitions of personhood, ranging from being a member of the biological species *homo sapiens* to being a person only if the organism is a self-actualized human being. I do not consider these extreme characterizations worthy of serious attention for three reasons. First, in the former, all human beings become persons while, given some standard interpretations of the latter, almost no human would be a person. Second, if the term 'person' is defined so that it is perfectly synonymous with 'human,' then it becomes a needless redundancy. And finally, to insist that an individual is a person only if he or she is a self-actualized human being seems to confuse personhood with being a self-fulfilled or excellent person.

One of the more helpful ways of remedying this situation is to follow a suggestion made by Eike-Henner Kluge. Professor Kluge maintains that "a person is an entity that is a rational being." He then adds that the concept of a rational being "is tied not to actual behavior, but to inherent and constitutive potential," and that "all and only these entities are rational beings whose neurological activity or relevant analogue thereof has a mathematically analyzable structure that is at least as complex as that of a human being, or whose brain or relevant analogue thereof has a structural and functional similarity to that of a human being, particularly with respect to those substructures that are the relevant analogues of the non-limbic cortex." This analysis has the merit of telling us that an examination of behavior in terms of mere body movement is not a sufficient criterion, that we have to determine whether or not certain physical correlates exist, and that when individuals permanently lack the relevant analogues of the non-limbic cortex, they are not persons. What the analysis, however, fails to tell us, aside presumably from the criterion of brain death or being born with no cerebral hemisphere at all, is what it means to lack the relevant analogues of the non-limbic cortex.

There is consensus that Karen is not brain dead. It is generally agreed that she is in "a chronic persistent vegetative state," that she is comatose with irreversible damage to at least one part of her brain, probably a lesion in the high brain stem. But some have taken this to imply that since an individual lacking the capability of conceptualizing a continuing self and having other mental states is not a person because he or she lacks the neurological analogue that makes those things possible, and since Miss Quinlan lacks that analogue, it follows that she is not a person. If this is so, then to the extent that we may be killing, we are not ending the life of a person.

I do not find this argument convincing. My hesitation begins with the use of a definition of 'person' that purports to resolve a moral issue without reference to acts of preference and decision. It increases when we consider the medical testimony and realize that there is an important difference between knowing that Karen no longer functions as a person and knowing that she

no longer is a person. The former may be granted; the latter, however, is dubious. The type of definition of 'person' we appear to be using is being made to do more than it is really capable of doing. Strictly speaking, it cannot tell us or help us find out whether Miss Quinlan is a person or not. Miss Quinlan is neither brain dead nor apparently lacking a cerebral hemisphere, as say an anencephalic child would. Further, tests that would confirm the extent of injury (pneumocephalogram or computerized tomography) were not performed so that inferences as to the extent of injury are largely based on other cases and the principle of induction. Finally, it should be observed that the principle of induction seems to be of little help in this case. So that even if one argues that the greater the number of cases in which the lack of relevant neurological analogues of this sort has been found associated with cases of Karen's sort, the more probable it is (if no cases of failure of association are known) that this correlation exists, we still would not get very far since all medical parties to the dispute admit that Karen's case has unique features and that these may indeed be relevant. The view to which I find myself driven, in the attempt to avoid these objections, is that there is a difference between knowing Karen no longer *functions* as a person and knowing that she no longer *is* a person, and since only the former appears to be true, I may assume she may still be a person.

III

It is not unusual when approaching the question of wrongful killing to begin by appealing to existing law. Undoubtedly, as Judge Muir noted in the Quinlan case, the intentional taking of another's life regardless of motives is likely to be regarded as sufficient ground for conviction of some form of homicide. But upon reflection, what should we make of this? Does it not suggest that the problem may well reside in an inadequate characterization of 'wrongful killing'? Does not the Quinlan case, as its very heart, suggest that 'wrongful killing' ought not be considered simply as "the intentional taking of another's life?"

Richard Brandt suggests the *prima facie* duty not to kill is perhaps derivative from two more basic duties: (1) not to cause injury and (2) to respect the rational wishes of others, and hence that the duty not to kill simply does not apply where killing is wanted or desired and is not an injury. Thus he writes that "there are two things that are decisive for the morality of terminating a person's life: whether so doing would be an *injury* and whether it conforms to what is known of his preferences. If I am right in all this," he concludes, "then it appears that killing a person is not something that is just prima facie wrong *in itself*; it is wrong roughly only if and because it is an *injury* of someone, or if and because it is contrary to the *known preferences* of someone."

Brandt's analysis in large part provides the grounds for explaining why most of us hold the discontinuance of certain medical procedures in cases like that of the Quinlans not to be wrongful killing. What is probably not as clear as one might like is what constitutes an injury and why the act in question is not or does not constitute an injury. The former question is, however, very difficult, and is differently understood by various thinkers.

In ordinary discourse the term 'injure' is used as a synonym for almost any kind of harmful, hurtful, detrimental act or act of impairment. This in part explains why many thinkers believe killing, or even death itself, is always an injury. They hold harm to be the violation of an individual's interests, and in turn view death always to be a harm. It has been suggested elsewhere that, according to this interpretation of what it means to have an interest, even predominantly helpful acts of killing are harmful in part. The reason being that, even in acts such as beneficent euthanasia, we violate an interest (presumably an extremely weak interest), namely, to remain alive only if one's life could be radically different.

Almost everyone views death as a definite and irreversible kind of impairment. So that if by 'injury' is only meant "impairment," then it is true that the act in question is an injury. But that only means that an act of ending life diminishes the quantity of life which, though true, appears to be tautological and trivial. If, on the other hand, by 'injury' is meant "harm in terms of infliction or the feeling of pain," then it is not true to say all death is an injury. We need not belabor the point that some people do not feel pain when they die or that in normal conditions in modern countries most patients need not suffer pain, especially unbearable pain, when they die.

We have seen that the word 'injury' has acquired, in the course of time, some associations which are apt to be misleading or needlessly problematic. We shall therefore use 'harm' to refer to any violation of interests and use 'injury' only to refer to a very specific kind of violation of interests and use 'injury' only to refer to a very specific kind of violation of interests. We shall say provisionally that we injure a man only when we deny or deprive him of some important or vital need he would prefer to have. In this sense, a man who removes a minor part of a toenail without permission while someone is asleep may or may not be harming him, but it is difficult to see how this could constitute injury. On the other hand, to remove the entire limb would normally constitute an injury unless it was gangrenous.

It will serve to make the point clearer if we first apply it to the heroic struggle of Charles Wertenbaker. His wife, Lael, in *Death of a Man* has written of their last 60 days together of his struggle with cancer, and their decision to end his life when he decided the time had come. In essence, Mr. Wertenbaker, upon learning

that he was terminally ill, decided to bear the test of pain and live as full a life as possible as long as it was a meaningful one. In the end he takes his own life in the company of, and assisted by, his wife. I shall not attempt to describe the beauty or the agony of their last moments together, of a wife saying "I love you please die."

We agreed provisionally that we injure a man only when we deny or deprive him of some important or vital needs he would prefer to have. So that our question comes down to the question of what did death deprive Charles Wertenbaker. If Lael's description is accurate, and we have no reason to believe it is not, what made life meaningful to her husband during his last 60 days was his ability to eat, drink, read, listen to music, write, and relate sensitively with his children and wife. However, at the time he took his life he could not do any of these things. He had no control over functions. He could not hear music or even drink tea. Moreover, there was no reasonable possibility that these conditions could be reversed or that he would recover. Now if this is true, and we can discount the fact that he still enjoyed seeing the face of his wife, then where is the injury Mr. Wertenbaker allegedly inflicted upon himself?

We are now in a position to understand why the argument for non-injury in the Quinlan case in a most significant respect is like the Wertenbaker case. For this purpose we will follow a common characterization of meaningful life. In judging a span of life as meaningful, many of us seem to mean first, that during the period in question the individual has some overall dominant goal or goals which gives direction to those parts of his total life pattern and circumstances that he thinks are important; second, that the individual believes there is some genuine possibility that he will attain these goals; third, that the having of the goal or goals is sufficient to thwart chronic depression or melancholy and in more optimistic situations adds a special zest to life. On this view, a span of life becomes devoid of meaning roughly when, or to the extent to which, an individual believes he cannot possess goals or when, if he can and does have goals, they are impossible of being achieved.

It would obviously take us far afield to examine the merits of this point of view, but it may be useful in order to avoid serious misunderstanding to stress several points. Advocates of this view are maintaining neither that everyone talks this way nor that everyone believes life is meaningful in this, or merely in this, sense. They realize that there are different visions of meaningfulness, that many people hold life to be intrinsically valuable, and that others would maintain that life is always meaningful because even the greatest suffering has a role in the fulfillment of God's purpose. Nor are they maintaining that, because a life is no longer worth living, it somehow follows that that life, in part or as a whole, does not have worth, even great worth. This confusion is often perpetrated by those who, because they believe voluntary dying or suicide would repudiate the meaningfulness and worth of their own lives, mistakenly transfer their values to others, and oddly enough then conclude that these persons (usually their critics) are guilty of such repudiations. Finally, and this closely relates to the last point, it is one thing for someone to have a teleological vision of the meaning of life which includes the conviction that suffering is sacred because it confers upon those whom it rends the most intimate resemblance to Christ, and perhaps because of this insists that, given his interests, the ending of his life would be an injury; but is is another to show that where there is a different vision and different major interests that the ending of such a life is, in all circumstances, an injury.

Returning to the cases before us, we may say the following. The judgment of Mr. Wertenbaker to end his life can be interpreted to be approximately synonymous with the judgment that his present mode of existence was almost totally devoid of meaning, was becoming increasingly worse, and that this process was irreparable and irreversible. The judgment of Mr. Quinlan to end, or allow, his daughter's life to end may be similarly interpreted. There are, however, two important differences. Because Mr. Wertenbaker was aware of the fact that it was highly probable that his life was going to change from that of having a meaningful existence to that of having a meaningless one, he explicitly requested to be allowed to take his own life if and when that occurred. Aside from courage, his major problem was that of having to draw a line and to draw it before it was too late for him to help himself. Unlike Mr. Wertenbaker, Miss Quinlan can neither directly state her preference nor take her own life. Yet her present mode of existence is not one in which goals can be met, and therefore, if her condition is irreparable and irreversible, as it seems to be, then to the extent she remains alive she is doomed to a completely meaningless life.

According to Paul Armstrong, the Quinlan's attorney, "Karen's mother, Julia Quinlan, her sister, Mary Ellen, and her friend and confidant, Lori Gaffney, testified that Karen has expressed to each of them that should fate find her in the tragic circumstances which bring her father before this Court, she would elect and request the discontinuance of the futile medical measures presently employed." On this basis and given certain legal precedents, Mr. Armstrong, I submit, correctly concludes that there is evidence "of sufficient probative weight to compel the conclusion that she would elect to remove the futile measures presently being administered to her. . . . " But what if, we may ask, there was no such evidence? What if Miss Quinlan was much younger and/or had never stated

such a preference? Would we then be willing to say that to remove her from the respirator is to injure her? I think not. Of course in doing so we are tacitly making an additional claim. The assumption or claim is that while a rational man might prefer a predominantly meaningless existence over death, he would not prefer to live a completely meaningless life. This, I believe, is not being advanced as an *a priori* truth. The claim appears to be an empirical one, namely, that as a matter of fact it is highly improbable that a fully informed man would choose to live a completely meaningless life in the sense in which that is here understood. If this claim is warranted and the above account correct, then not only is the act in question not wrongful to Miss Quinlan because it is not an injury to her, but it would seem to follow more generally that we do not injure human beings when we allow their lives to end or put them to death even if they cannot, or have failed to, state their preferences if they are living a completely meaningless life, if the state of affairs that warrants that judgment is irreparable and irreversible, and if there is no or insufficient evidence to indicate they would not accept the judgment that their lives were meaningless.

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