Concurring In Part - 
Dissenting In Part

The New Jersey Supreme Court On Claire Conroy.

On January 17, 1985, five justices of the New Jersey Supreme Court issued a long awaited decision in the case of Claire Conroy. One other justice filed a separate opinion "concurring in part and dissenting in part", and pleading for more openness than the majority opinion offered to what, in the judgment of the present writer, must be considered euthanasia at least of the "passive" type. One need not be open to the dissenting justice's orientation in order in part to "concur with and in part dissent" from the majority opinion which now becomes, at least for the present, an effective element of our jurisprudence.

The Case.

Claire Conroy was an 84 year old nursing home resident who suffered serious and irreversible physical and mental impairment, to the point that she could not speak or swallow sufficient amounts of nutrients or water to sustain herself. Her intellectual capacity was about as limited as it could be, but, her physician said, "she responds somehow". She was not in a vegetative or comatose state (p. 6 of the decision, hereafter Decision).

Nonetheless, her only surviving blood relative, a nephew, acting in his capacity as legitimate proxy, sought district court permission for the removal of the nasogastric tube which was supplying her food and fluids. The district court granted the permission, but, on appeal of a court-appointed guardian ad litem, the permission was withdrawn. Shortly after the nephew then appealed the case to the state supreme court, Claire Conroy died. That court agreed, nonetheless, to hear the case so as to establish legal guidelines for similar cases in the future.

One incident in the case history will be of particular concern to Catholics. At the district court level, where originally permission to remove the nasogastric tube was granted, a Catholic moralist testified that "acceptable Church teaching" would justify removing support from a life whose "value" was "outweighted" by its "burdens" (Decisions, p. 10). He concluded also that the "removal of the tube would be ethical and moral, even though the ensuing period of her death would be painful". (ibid., emphasis added)

The New Jersey Supreme Court Decision.

In effect, the court did not judge whether or not the nasogastric tube could have been withdrawn from Claire Conroy, but, that the evidence was not clear one way or the other in light of three norms which the supreme court set forth in its majority opinion:

- The "subjective" standard: In an earlier, competent period, did the patient express clear and permanent misgivings about artificial life-support? The mind of the patient, the supreme court insisted, overrides all other considerations.

- The "limited-objective" standard: If the patient in his competent days expressed only vague or ambiguous misgivings about artificial life-support, is his present physical and mental condition nevertheless deplorable enough that it may do away with any uncertainties we may have about applying the "subjective" norm? Some "limited", but "objective" and severe disabilities of the patient may combine with some past mere hints that "subjectively" he might reject artificial life-support, the court seems to say, to justify our removing such life-support.

- The "pure-objective" standard: If, as a matter of fact, the
patient in the past never could or never did express, even vaguely, his "subjective" mind regarding artificial life-support, is his present physical and mental condition "objectively", that is, in reality, so bad that we may totally substitute our own discernment for his or hers and remove such life-support? There are indeed such cases, says the court.

We Can Concur.

There are strong points in the decision. Among others, the court emphasizes the importance of not substituting anyone else’s decision for the patient’s already clearly expressed one. Nor is a patient to be categorized legally as suicidal simply because he or she refuses some artificial intervention.

Legislatures are admonished of their responsibility to establish criteria for handling life-support cases. The courts can offer no more than stop-gap and piecemeal measures.

The court recognizes the state’s interest in seeing that homicide and suicide are not allowed to erode respect for life and the individual, even though this interest does not rule out at times the withdrawing or withholding of artificial life-support.

We Must Dissent.

Other components of the decision inevitably, it seems, will cause real problems and further erode the respect for and perhaps the right to life as the law should uphold it. While allegedly aschewing a “quality of life” approach (p. 50) and equating it, seemingly, with an estimate of the patient’s “value to society”, as a matter of fact, the decision de facto appears to capitulate entirely to the “quality of life” criterion as it is generally understood. For the issue is, according to the court, not whether the prolonging-life procedure will itself add to the burden already present in the patient’s life. The issue in their eyes is rather that the life itself is so burdensome to the patient that it does not deserve to be prolonged:

the net burdens of his prolonged life (the pain and suffering of his life with the treatment, less the amount and duration of pain that the patient would likely experience if the treatment were withdrawn) markedly outweigh any physical pleasure, emotional enjoyment, or intellectual satisfaction that the patient may still be able to derive from life. (Decision, p. 48, emphasis added)

It’s almost a matter of simple subtraction. For even if the patient were in little pain, e.g., because of effective use of painkillers, one would still stop life-support if the patient were not able to experience “physical pleasure, emotional enjoyment, or intellectual satisfaction”.

The decision also in effect abandons imminent death as a criterion for withdrawing life-support (p. 13), and seems to center its judgment around one point: the physical pain the patient is already experiencing prior to any new procedure. The one dissenting justice picks up on these weak points and willingly presses their logic to conclusions only euthanasia advocates can be happy with.3

A Helpful Decision?

We have not attempted to set forth guidelines for decision-making with respect to life-sustaining treatment in a variety of other situations that are not currently before us (Decision, p. 82).

Despite an obviously earnest attempt to face the intricacies and impact of the Claire Conroy case, it does not appear that the New Jersey justices have succeeded for the most part. One has good reason to fear that, contrary to their intentions, they have indeed set forth guidelines for a variety of other life and death situations. The decision reflects the confusion widespread in our society and found even among Catholics.

The Reverend Edward J. Bayer, S.T.D.  
Director of Continuing Education

References

2. Ibid., Handler, J., concurring in part and dissenting in part, p. 7-8.
3. Ibid.

4455 Woodson Road
St. Louis, Missouri 63134

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