

# Downside UP

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## **Gag Me with a Spoon: Terri Schiavo and the Nadir of Public Morality**

Not on a bet a few weeks ago would I have believed that the month after writing a clarion call for a progressive agenda, I would be writing about the Terri Schiavo case. Whether her feeding tube should be removed and she be allowed to die is the personal business of her family. Sure, Florida Governor Jeb Bush, whether out of religious fanaticism or pure politics, or both, had been interfering in the case ever since we arrived in Florida almost four years ago. The Florida legislature had even passed a couple of bills designed to allow the government – and the governor -- to intervene. But the Florida courts had reviewed the facts and the law many times and come out with the same definitive answer: there was no legal basis for preventing her husband from having her feeding tube removed and allowing her, after 15 years in a “persistent vegetative state,” to die.

There are moral reasons, there are constitutional reasons, there are medical reasons, there are legal reasons why Congress should never have intervened in this case. There are even political reasons. But apparently there were not enough of any of these reasons to keep the political bottom feeders of today’s Washington from pandering to the evangelical right. Frankly, I am surprised that the Republicans did it. I am appalled that so many Democrats joined in.

If there was any single most important point I was trying to make last month about what Democrats, as progressives, must not do, it was try to outflank the New Republicans on the right. Democrats got creamed big time in the South and other anti-progressive areas in 2004. They are not, short of a horrendous economic collapse, going to outdo the Republicans and take enough votes to win those areas in the near future. Political adviser Donna Brazile is wrong now as she has always been wrong.

If progressives, which right now means mostly Democrats, are going to move towards the center at all, they have to do so on some carefully considered issues where they can stake out sound and high-minded policies, especially on the economy and social issues such as Social Security. They might even be able to do it on abortion if the emphasis is on reducing unwanted pregnancies – citing the Europeans who have liberal abortion laws but far lower rates of abortion.

But no, by the presence of many and the absence of even more, Democrats had to contribute to the most outrageous piece of legislation yet passed by the most outrageously anti-woman, anti-minority, anti-poor, anti-freedom, anti-privacy Congress we have seen in decades. (1) I am disgusted. If this is a beacon lighting

our future, I am going to have an even more difficult in the next four years than I thought. It is a nadir of public morality.

**An Outline of the Facts:**

Fifteen years ago, Terri Schiavo suffered a heart attack (2) which deprived her brain of oxygen and put her in what innumerable doctors have found to be a "persistent vegetative state." This means that her brain is essentially dead, unable to perform normal functions directing motion, speech, and other cognitive activities. What we have seen on TV are essentially reflexive functions caused by random electric impulses.

Terri's husband, Michael, won a million dollar medical malpractice law suit which financed several years of treatment in the hope that her diagnosis was somehow wrong and she might recover. She did not recover, and her activity remains what it was from the beginning. Michael Schiavo decided to "pull the plug" – remove the feeding tube that was keeping her alive – and let her die.

Terri's parents, however, took Michael and the case to court, beginning a long legal journey through the Florida courts with various detours to the Florida Governor's office and legislature. Her feeding tube was removed twice and then reinserted. Under Florida guarantees of privacy and the right of the spouse to decide in cases where the person has not directed otherwise, lower state courts and the Florida Supreme Court have, again and again, ruled that Michael could decide to remove Terri's feeding tube and that that was reasonable even if she were to die.

Along the way, almost all the money won in the malpractice suit has been eaten up in paying for Terri's care and defending Michael's rights in interminable law suits first by her parents and, more recently, by Florida Governor Jeb Bush. The Governor appointed a guardian to assure Terri's rights. Terri's parents have said that they would have taken Michael to court even if she had signed a living will saying she wanted to be allowed to die.

Finally, Congress intervened with its own law placing the case under the jurisdiction of the federal courts. Physicians in Congress, including Senate Majority Leader Bill Frist, spoke piously of their seeing taped clips of Terri Schiavo and concluding that in their "professional opinion" she was able to think and respond intelligently to stimuli. Therefore, the federal courts needed to order her feeding tube reinserted for a third time while they reviewed a decade of decisions by Florida's courts.

Pulled by the evangelical right, Democrats as well as Republicans converted the case from a family moral dilemma to a part of the so-called "pro-life" agenda. Republicans thought it was a way to reinforce their "pro-life" standing with evangelicals, and Democrats (foolishly) thought it would be a way of peeling off "pro-life" votes from Republicans to Democrats.

**Michael Schiavo: the Good Guy Here**

First Terri's parents, and since then, local politicians, the governor, Fox News, and most recently, pandering Congressional leaders, have either said, or implied, that Michael Schiavo is some kind of unfeeling, grasping monster only out for the malpractice money and wanting to marry a woman he is now living with. They love to refer to his "common law wife" as if to convey the enormity of his immorality. They love to talk about removing her feeding tube, and the court decision to allow it, as "causing her death." They talk as if the courts' actions are intervening to kill her

when the feeding tube itself is the intervention, intended to keep her breathing, digesting, and moving her bowels, but nothing else.

The reality is that Michael has done what seems to me any loving husband should have done. Think if you were in his shoes. Think of the emotional duress that all this has put him through over the past 15 years. If Michael were thinking only of himself, he would, long ago, have divorced Terri, let her parents take over, and washed his hands of the whole business. He would have gotten on with his life and married the woman he is living with. The malpractice money is only for Terri's care and if he has or could benefit in some way, it cannot possibly compare to the 15 years he has spent trying to allow her to die. It is just not credible to think that he kept her alive only in order to get the money from the law suit. What is amazing is that he tried to bring her back for so long before he decided to remove the feeding tube.

Michael stayed with her long after it was clear his wife's brain was long gone and would never recover. The money allowed her to have far better care than she would have had otherwise. She has had years of physical therapy. These are not the acts of a greedy, grasping, insensitive man. They are the acts of a man who deeply loved his wife and did not want to let her go without a fight.

### **The Constitutional Issues: States Rights Hypocrisy**

As I read it, the Constitution does not specifically prohibit the federal government from defining the jurisdiction of federal courts to allow them to consider a state case such as this. It does allow Congress to define the jurisdiction of the courts, adding to and taking from their jurisdiction. But one of the most important themes running through the Constitution and its creation is the idea of protecting the states from an abuse of federal power. The 10<sup>th</sup> Amendment conveys this philosophy most clearly: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Perhaps more importantly in this case is the fact that the ringleading Republican Party has constituted itself as the quintessential "states rights" party. As the heir of the "Dixiecrat" Southern Democrats, it has taken to itself the philosophy – and the intent – behind 80 years of opposition to civil rights for African Americans. At the heart of this effort has always been keeping the federal government from intervening in the states, even for rights guaranteed by the federal government and the Constitution.

From the days of Ronald Reagan, the Republican Party has supposedly also been the party to "keep the federal government off the backs of the American people."

We already know that this is no more than an ideology of political convenience. We have watched as Attorney General John Ashcroft tried to overturn the "right to die" law passed twice by the people of Oregon. In the face of two centuries of assumption that education was the province of state and local government, we watched the Bush Government impose on them the largest educational program in history (the so-called "No Child Left Behind" program). We have watched a Republican Congress attempt to usurp state laws governing law suits. We have watched it try to usurp strong state environmental laws whenever those conflicted with the party's corporate agenda.

All of which only goes to highlight Democratic hypocrisy parallel to Republican. Democrats look a lot like the states rights party when it is Republicans trying to impose weaker federal environmental laws and stronger educational laws. The struggle is mostly over issues, not constitutional philosophy. But there remains, nonetheless, a significant Constitutional bias towards protecting states rights and prerogatives. It is why the United States, relative to other countries has, in fact, a rather weak central authority. And, in the United States, there is no institution better representing state autonomy than state courts.

The fact is that the Florida courts have carefully and thoughtfully reviewed the Schiavo case ad nauseum. The facts and legal rights have been reviewed again and again according to Florida law. And as federal judges have now also recognized since Congress passed its own Schiavo law, even with jurisdiction, the federal courts can see no basis for overturning the work of the Florida courts.

### **Political Agendas Gone Nuts on Both Sides**

I don't have much difficulty believing that some politicians really believe that it is morally wrong to allow anyone to die when they could be kept alive, no matter how vegetative their physical condition. Jeb Bush is known to be a very conservative Catholic, even though, in the Schiavo case, his position may be further out than official Catholic policy.

There may even be some political sense in Republicans pandering to their evangelical constituency. (3) Under the assumption that getting out the evangelical vote was crucial to their 2004 victory, the Party is in the mode of rewarding and encouraging loyalty with anti-abortion judges and pro-religious social programs. But the Schiavo case took on a kind of hysterical momentum going way beyond any rational political calculation. I admit that the polls are confusing with respect to what evangelicals think but it would seem that even among evangelicals, over 50% think she should be allowed to die and among the population as a whole, 70% disagree with Congress's intervention.

Perhaps the frenetic Republican response is explained by such things as House Majority Leader Tom DeLay's desire to deflect attention from the accusations of corruption whirling around him. Or perhaps it is about Senate Majority Leader Bill Frist's presidential ambitions. Apparently, the evangelical Republicans (poor things) are also feeling that Bush has been paying too much attention to corporate issues like tax cuts, tort (lawsuit) reform, and Social Security.

If Republican enthusiasm for taking up the Schiavo case seems excessive, support from so many Democrats seems just nuts. What could they possibly be thinking? I have long criticized top Democratic political consultant Donna Brazile for her promotion of a Southern agenda for the Democratic Party. I keep thinking that someone will wake up and get rid of her but she keeps turning up and obviously has supporters. (4) I repeat what I have said many times: in the short term and barring some horrendous economic crisis, Democrats are not going to take the South. Just as surely, they are not going to turn evangelicals – which is another reason why one wonders about the Republican need to pander to them. If Democrats are going to turn votes their way, they are going to have to focus on swing states and press economic and other mainstream issues such as Social Security.

**Morality: the 2000 Election, Abortion, and the Invasion of Iraq**

When I saw Senate Majority Leader Bill Frist describe Congress's Schiavo bill as "'a unique bill' that 'should not serve as a precedent for future legislation,'" I was struck by the fact that this was the same language the United States Supreme Court used in justifying its intervention in the 2000 presidential election. (Charles Babington and Mike Allen, "Congress moves to put case in federal courts," The St. Augustine Record, March 21, 2005, p. 1A) Both are cases in which constitutional tradition – if not in fact constitutional mandate – required that the federal government stay out of state affairs and states rights ideologues intervened for a specific political end.

"Just this once" is the rationale of people doing something wrong, who know it, and who are trying to justify it. In both of these cases, we have states rights advocates claiming to believe in a "strict construction of the Constitution" but violating all their states rights and strict constructionist beliefs to achieve a narrow political objective.

It was listening to Frist and other Congressional spokespeople talk about the Schiavo case as a so-called "pro-life" issue that galvanized in my mind a new perspective on abortion. The parallel created by Congressional leaders between abortion and the "right to die" caused me to see more clearly what is wrong with both positions. I have always felt challenged by how to articulate a pro-choice position as a "pro-life" position. While strongly pro-choice for reasons of sexual equality, concern for the potential mother, my definition of life, and concern for the victim of rape and incest, I admit that an embryo/fetus is a living thing and potentially a living person. It should not be treated cavalierly.

What came to mind is the work on moral development by developmental psychologists Jean Piaget and Lawrence Kohlberg. Kohlberg distinguishes six stages of moral development. These run from behavior based on expectation of reward and fear of punishment to respect for law and order (what he calls "conventional morality") to principled morality, social contract, and universal ethical principles. Kohlberg postulates that most people do not get past the "law and order" stage (stage three to four) emphasizing authority, conformity, and maintenance of social order. Mature morality at stages five and six requires complex thinking, empathy, and acceptance of the equality and worth of all human beings. The golden rule becomes central but really means there are no rules: you have to figure out what you would have others do unto you and that is not as clear as something like the Ten Commandments (although that too is much interpreted). (5)

I am, inevitably, simplifying Kohlberg, but I have long been troubled by what I have seen as simplistic moralism and mindless slogans in the evangelicals' treatment of what I see as far more complex issues. It looks to me like the difference between poor Mr. Flip-Flop and George Bush. The inadequacy of the evangelicals' silence on the invasion of Iraq and the stark rigidity of their – and the Catholic Church's – stand on abortion become more apparent in light of the Republicans' stand on the Schiavo case. Their leaders claim the Schiavo case is a simple matter of protecting life. They ignore all the science and agonizing reflection which led up to the decision to remove her feeding tube. They seem incapable of serious, empathetic thinking about the meaning or quality of her life. They call life sacred but treat it mechanically, as no more than a heart pumping or a breath taken. There is no consideration of whether anyone would really want to live as Terri has lived for the past 15 years – **even if there were a prospect of recovery**. As if the Republican position were not outrageous enough, it now turns out that 16 years ago, when a

persistent vegetative state had been declared but there was no living will, Tom DeLay himself pulled the plug on his father. (latimes.com, March 27, 2005)

Whatever they think privately and whatever the degree to which their actions are motivated by politics, the Republican position on abortion seems also morally simplistic. There is no consideration for the victim of rape or incest whose agony is to be compounded by having to endure a sometimes life-threatening childbirth. Neither the Republican platform nor Catholic doctrine takes into consideration the health of the mother. There is no thought of what life would mean for a baby born into an abusive household or with a crippling disease. It is a kind of moral dwarfism well symbolized by a regime which, after passing huge tax cuts for the rich, proposes to deal with the budget deficit by cutting health care and other services for the poor. (6)

As regards Iraq, again, I never get any sense from George Bush that he has thought for a second about whether the Iraq invasion would have been worth it if his own children had died. At least the Pope spoke out against the invasion. Far from deep and public reflection with the American people on the more than 100,000 Iraqis, mostly women and children, who have died to be "liberated," there is only silence. In the current American regime, there is no place for Kohlberg's complex thinking, acceptance of the equality and worth of all human beings, or empathy. I am sickened and angry about it all.

### **How About Real Leadership on Real Moral Issues!**

What we need from progressives, Republicans as well as Democrats, is real moral leadership. Why couldn't Democrats – and lots of Republicans – have stood up for a higher order of morality that carefully considers the complexity of an issue in both its social and personal dimensions. The evangelicals don't monopolize morality here. The Republicans sure don't. They don't even monopolize the religious perspective – though you would think so from the media's coverage and the silence of too many churches and synagogues.

In fact, evangelical morality is an almost empty vessel and no more so than in the case of Terri Schiavo. Instead of pandering to the worst elements in our society, why couldn't Democrats have stood up for the quality of life and the complexity of moral choices? Most Americans would have supported them. Democrats might have actually done the right thing and won votes for doing it.

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My brother-in-law died yesterday. I loved him very much. I imagine I was much closer to him than many brothers-in-law are. He was a good man and a great guy. But I also prayed that day, and for each of the three days before, that he would let go, that he would release himself into the gentle, loving arms of his God, whatever that might have meant to him. Three weeks ago, he was still working. Seven days ago, he was still strong. Five days ago, he was still fighting the good fight he had been fighting for the past six years against the deadly evil of cancer growing in his body.

To almost the last day, he was mentally clear and strong. With his wife and two oldest children, he made the decision to stop fighting, to let go. There was no prospect of recovery. His kidneys had stopped working. The most that could have

been done would have been to keep having dialysis, force down a little nourishment, and maybe extend his life by a few days or a week.

He chose himself to stop the dialysis and take no more food. But if he could not have made that decision himself, I have no doubt that his wife and family would have made it for him. With courage and love. For his sake. And it would have been, without question, the right decision, the morally correct decision.

God bless you, Tony. I will miss your comments on Downside Up. I will miss you.

1. In the House, 156 Republicans voted for it, 5 against it, and 71 did not vote; 47 Democrats voted in favor, 53 against and 102 did not vote. The lone independent did not vote. In the Senate, new Democratic Minority Leader Harry Reid worked with Majority Leader Bill Frist so the bill could be approved by a voice vote with only three Senators actually present. One was John Warner of Virginia, the only Republican to vote against it. (usatoday.com, March 20, 2005) In total, there were 174 out of 435 House members gone for Easter break.
2. Actually two heart attacks.
3. Note that evangelicals have become the heart of the ideological right and Catholics far more mainstream, even, as on abortion and birth control, the official position of the hierarchy is with the evangelicals.
4. I recently found out, from a photo, that she is African American. Is it because no one in the Democratic party dares fire an African American when they probably have few African American advisers? Ugh!
5. Jean Piaget, The Moral Judgment of the Child. New York, Free Press (1997). I have found lots of books and articles about Kohlberg and his ideas but not his actual publications. Carol Gilligan critiqued Kohlberg in In a Different Voice (1982) for his use of only male subjects and a corresponding prejudice in favor of rule-making morality over contextual and relational morality.
6. It is becoming more and more clear from their "abstinence only" birth control position and their lies about the effectiveness of condoms that the Bush Government and its evangelical allies have adopted the Catholic Church position on birth control even as an overwhelming majority of Catholics reject that position. There is indeed reason to think that the New Republicans oppose the entire body of court decisions, since the 1960's, establishing privacy rights.

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**Ronald Woodbury** is the publisher, editor, and general flunkey for all of Downside Up. While publication benefits from the editorial advice of one of his daughters and occasional other pre-publication readers, they will, for their own privacy and sanity, remain anonymous. The web spinner's name is also best left anonymous.

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