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Good Cases Make Bad Law

by Jacob G. Hornberger

The issue in the Terri Schiavo case is not whether the Florida district court originally entered a correct judgment or not. The issue is whether this is a nation in which the American people are going to continue permitting their Washington politicians and bureaucrats to continue trampling on the Constitution and the rule of law, even while these people go abroad and hypocritically preach the importance of these principles to authoritarian regimes around the world.

When the Constitution called into existence the federal government, the goal was to keep the government as weak and divided as possible so that it could never constitute a large threat against the lives, liberties, and properties of the people. That was why power was divided into three separate branches, as compared to concentrating all the power in the hands of the president ... why the powers of the federal government were expressly limited to those enumerated in the Constitution ... why the Framers kept the states in existence and authorized the states to retain almost full and complete power to manage affairs within their respective jurisdictions — what is known as the principle of “separation of powers.”

The fact is that our ancestors did not trust the federal government. They didn't trust it one iota. They perceived, correctly, that the federal government was the biggest threat to people's freedom and well-being. That is in fact why they enacted the Bill of Rights soon after the Constitution was approved — to protect the people from the federal government. Note, for example, which branch of government is expressly named and restricted in the First Amendment — Congress!

How does all this apply to the Terri Schiavo case? One of the purposes of a judicial branch of government, both at the federal and state level, is to provide a forum by which citizens can peacefully resolve their disputes. In order to adjudicate a case under our system of government, it has long been established that the federal courts have jurisdiction over only two types of cases: those involving federal issues and those involving citizens of different states in which the amount in controversy exceeds a set amount of money. All other cases have to be brought in state court.

That's why the Schiavo case originated not in federal court but rather in a state district court, in this case in Florida because that is where all the interested parties resided and where the matter at issue was taking place.

The rule of law

Thus, since the Schiavo case did not involve a federal or constitutional issue and did not involve citizens of different states, if one of the litigants had filed his suit in federal court rather than state court, the federal judge would have dismissed the case for lack of jurisdiction, no matter how much he felt that one side or the other deserved to prevail.

This is an example of the “rule of law” — where a judge follows the law rather than deciding on his own to let the case proceed out of sympathy for one of the parties. In fact, it's a commitment to the rule of law that motivated the U.S. district judge in the (new) Schiavo case to [deny injunctive relief](#) and the federal court of appeals to [affirm that judgment](#), effectively rejecting Congress's unconstitutional actions and despite any sympathies these federal judges might have for Terri Schiavo and her parents. That's how our system of government is supposed to work. When we pervert the process in an attempt to achieve a just result in a particular case, we inevitably end up with long-term bad results. That's why it has been said that “good cases make bad law.”

The facts and law of the case

In the Florida proceeding, Michael Schiavo requested the judge to permit him to withdraw the water and feeding tube that has been keeping his wife Terri alive for many years. Terri's parents opposed the action, requesting the court to prevent Michael from withdrawing the tube and thereby letting their daughter die.

The case turned on Terri's intent. Did she intend for this to happen or did she not? Under our judicial system, that is an issue of fact to be determined by a judge or jury. There was also a legal issue for the judge: Should oral statements (as compared to a written “living will”) be permitted to be used in court as evidence of such intent? The judge ruled, as a matter of law, that Florida law permitted such oral testimony and that ruling was ultimately upheld on appeal.

The purpose of a trial is to determine which side should prevail in the litigation. As part of that process, either the judge or a jury has to hear evidence in order to determine the facts on which a judgment can be based. In this case, the judge served as both the trier of fact and as the judge, which is the standard procedure in non-jury cases.

Many people have formed very strong positions on how the trial judge should have ruled at the trial. Some might believe that Terri never made those oral statements. Others believe that oral statements are not competent evidence of intent and that only written “living wills” constitute competent evidence. Others believe that the doctrines of Terri's Catholic faith should

prevail over her own intent. Others believe that her husband's testimony is entitled to little weight because he has moved in with another woman and has had children with her. Others believe that his testimony is entitled to little weight because he stands to inherit some \$1,000,000 that a court awarded Terri for her injuries. Heck, for argument's sake, let's just assume that this is most suspicious, corrupt, morally reprehensible judgment in history or that laws that permits oral "living wills" should be repealed.

There's just one problem with all that. We are not the trier of fact or the judge whose job is to interpret the laws, not change or repeal them. Under our system of government, the judge (or the jury) determines the facts of a case. He listens to the evidence, watches the demeanor of the witnesses, weighs the evidence, and renders his verdict. He then enters a judgment based on those findings of fact and on the law. And the losing side gets to appeal to a higher court, making all the legal claims and contentions to appellate judges as to why the trial court's judgment should be reversed.

In the Schiavo case, the judge found, as a fact, that Terri Schiavo had orally declared what would be the equivalent of a "living will." He found, as a matter of law, that this was sufficient to enforce her will. He entered judgment on that basis. The parents appealed the case and the appellate courts ruled against them, affirming the trial court's judgment. This case will undoubtedly go down as one of the most litigated cases in Florida history.

When all the litigation was finally over, the judgment in favor of Michael was left standing. Again, we might all disagree with the judge's verdict and the final judgment. We might all consider it a horrible miscarriage of justice. We might be horrified that this woman is being permitted to die contrary to the principles of her Catholic faith. We might believe that this was really never her intent.

But the fact remains that that is our system of government. Such a system doesn't always guarantee the "right" or the "just" or the "moral" result. But we have faith that our judicial system, by and large, does work, which is why we keep it in existence and continue to rely on it rather than abolish it and just let Congress or the president have the omnipotent power to do "the right thing."

Running roughshod over the Constitution

Enter Congress. In the obvious hope of making political hay out of this tragedy, the members of Congress, in a big, well-publicized act, enacted a law that has got to be the biggest attack on the Constitution and our system of constitutional government since President Franklin's Roosevelt's infamous "[court-packing scheme](#)" almost 70 years ago. You'll recall that faced with a Supreme Court that was declaring much of his New Deal socialist programs unconstitutional, Roosevelt devised a scheme whereby Congress would permit him to pack the Court with additional justices who would do his bidding, thereby enabling him to secure judicial rulings in

his favor. Despite Roosevelt's enormous popularity, the American people, to their everlasting credit, rose up in arms against FDR's disdainful attempt to tamper with the Constitution and its judicial system and forced FDR to back down in disgrace and withdraw his plan.

It is impossible to overstate the significance of what Congress has done in the Schiavo case. It enacted a law giving Terri Schiavo's parents the exclusive right to file suit in federal court on a type of case that has always been a state-court matter. In other words, in addition to the two types of cases that historically have been permitted to be brought in federal court (i.e., federal question and diversity of citizenship), they used the Schiavo case to permit a third type of jurisdiction — a brand new one involving people on feeding tubes — but, even more significant, only permitting one person in the country to benefit from this brand new grant of jurisdiction — Terri Schiavo, leaving all other persons similarly situated out in the cold.

Now, think about that: If Congress is permitted to get away with this, imagine what this now means as a political matter. Imagine what contributors to congressional candidates are going to get in the future in return for their contributions — not simply “access” to congressmen but also special, one-person jurisdictional access to the federal courts with cases that historically have belonged only in the state courts.

Even worse, the Schiavo law actually purports to cancel the original Florida state judgment and all the appellate decisions affirming that judgment, enabling the losers in that litigation to start all over again with a brand new case in federal court. Not only does such extraordinary action violate the long-established constitutional principle barring the legislative branch of government from interfering with final judgments issued by the judicial branch, imagine, again, what that means from a political standpoint. Whenever a person loses a big case in state court, all he has to do is make some generous campaign contributions to congressmen and, in return, he now gets his judgment canceled and he gets to start all over again in federal court.

Thus, what these people — that is, the members of Congress — have done in the purported attempt to save a person's life is trample all over the Constitution, ignoring a state court judicial proceeding, including a final judgment in the case and appellate confirmations, violated a long-established legal principle against special legislation, and ignored the separation of powers principle that stretches back more than 200 years to the original Constitution.

Pro-life?

This raw exercise of power is comparable to that being exercised by the Pentagon and the CIA, with their intentional and knowing denial of the principles and protections of the Constitution and the Bill of Rights to Americans and others who have been seized, tortured, sexually abused, and murdered, all with the silent and cowardly acquiescence of the so-called pro-life members of Congress. Or even the president's waging of war against Iraq without the

constitutionally required congressional declaration of war, again with the silent and cowardly acquiescence of Congress. Do you see now what happens when people meekly permit their government officials to begin violating the Constitution? The path toward the tyranny of omnipotent government quickly becomes a slippery slope.

Is that what we've actually come to in this nation? A nation of meek lambs who permit these power-hungry wolves to once again scoff at and scorn the supreme law of the land — the law that our ancestors had the wisdom, foresight, and courage to impose on our government servants? A people who meekly permit such servants to trash our form of government under a purported “pro-life” mindset, a mindset that has sat silent and comatose during the entire time that an estimated 100,000 innocent Iraqi people have had their lives snuffed out by an unconstitutional war that lacked the constitutionally required congressional declaration of war?

In fact, forgive me for digressing, but how in the world can these congressional people honestly consider themselves to be “pro-life” when their position has been that their killing of hundreds of thousands of Iraqi children with [sanctions](#) during the 1990s was “[worth it](#)” when they were trying to oust Saddam Hussein from power? Well, excuse me, but doesn't that mean then that these people are “anti-life,” albeit “pro-regime change,” with respect to human beings in Iraq?

Indeed, how can they honestly consider themselves to be “pro-life” given their cavalier attitude toward the killing of tens of thousands of innocent Iraqis —, innocent in the sense that not one of those dead innocent Iraqis had anything to do with the 9/11 attacks and whose government had not attacked the United States or even threatened to do so? And don't forget that the Pentagon doesn't even count those dead people because, well, they're just Iraqis, an “anti-life” policy that has generated nary a peep of protest from the “pro-life” members of Congress. We're also told that killing those tens of thousands of innocent Iraqi people and sacrificing 1,500 U.S. soldiers during the war of aggression was “worth it” because those deaths purchased a national election to Iraq. Well, excuse me, but doesn't that mean then that these people “anti-life,” albeit “pro-democracy,” with respect to human beings in Iraq?

A moral question: Can a person be “pro-life” and “anti-life” at the same time? Or does God permit a person to be “pro-life” or “anti-life” at the same time, depending on the nationality of the human being in question?

Omnipotent government or freedom?

The American people had better decide soon whether they are going to continue letting these power-hungry people in Washington to continue running roughshod over the Constitution, the supreme law of the land that we have imposed on them. Because these people are clearly out of control, and unless reined in by the people, will continue moving our nation down the road to national bankruptcy, omnipotent government, moral and political debauchery, and, of course,

tyranny. For if they have now have the power to nullify state court judgments and constitutional provisions simply through the passage of a congressional law, the Constitution, along with all the protections it provides us from tyranny, will for all practical purposes cease to exist.

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This article was originally published in March 2005.