The Schiavo case: Bush and Congress trample on science and the Constitution

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The case of Terri Schiavo seems likely to return to the US capital within days, either in the form of an appeal to the Supreme Court or a further effort by the congressional Republican leadership and the Bush administration to impose an outright legal ban on disconnecting the severely brain-damaged woman from life support.

The unprecedented federal intervention in the case did not produce the immediate outcome desired by the right-wing Christian fundamentalists who have spearheaded the "Save Terri" campaign. Federal District Judge James Whittemore denied the plea by lawyers for Robert and Mary Schindler, Schiavo's parents, for an emergency order to restore her feeding tube.

In a decision issued early Tuesday, Whittemore ruled in favor of Schiavo's husband Michael. He has sought the termination of life support for his wife, who has had no brain function for 15 years. Florida state courts have repeatedly ruled that Michael Schiavo had the right, as her legal guardian, to make that decision, and that Terri Schiavo herself would have agreed, based on her statements to her husband and to two other witnesses before the heart attack that plunged her into a permanent vegetative state.

The Schindlers' attorneys immediately filed an appeal with the 11th Circuit Court of Appeals in Atlanta. Whatever the decision of that court, the losing side is sure to file a further appeal to the US Supreme Court.

In their brief filed in federal court Monday, the attorneys for the Schindlers made three basic arguments: that Terri Schiavo had been denied "a fair and impartial trial" by Pinellas County Circuit Court Judge George Greer; that she was denied due process of law because Greer did not "appoint an independent attorney" to represent her, allowing her husband Michael to act as her guardian; and that Schiavo's right to religious freedom was denied because withdrawal of the feeding tube is forbidden by the Roman Catholic Church, in which Schiavo was raised.

All three arguments are without legal foundation. Terri Schiavo's is the most intensively litigated "right-to-die" case in US history, with proceedings in 18 courts over the last seven years. Every judicial decision has upheld the position of Michael Schiavo. As for an impartial advocate, Terri Schiavo had several independent guardians appointed in the course of these myriad court suits and hearings, all of whom came to the same conclusion as her husband: that she was irreversibly brain-damaged and would not have wanted to continue such an existence.

The third argument, religious freedom, is bad law and ludicrous theology. Citing the authority of the Pope in Rome is a legal novelty, especially for political allies of an administration that rejects international law and openly defies the authority of such tribunals as the International Criminal Court, on the grounds that US institutions must give no heed to foreigners.

Schiavo was not particularly devout in her Catholicism—like many, she maintained a nominal affiliation but did not go to church regularly. As for the claim that withdrawing the feeding tube would implicate her in a mortal sin and "jeopardize her immortal soul," this is advanced purely for the sake of provoking hysteria among the most credulous and conservative Catholics. Even the hidebound Roman Church does not regard a person in a vegetative state as responsible for what is done to her.

There is mounting evidence that, far from responding to an upsurge of popular support for Terri Schiavo's "right to life," the Bush administration and congressional Republicans have embarked on a course that is widely opposed, both by the public at large and even by significant sections of the ruling elite.

Opinion polls—one conducted for ABC News and the other for CNN and *USA Today*—both showed widespread support for the position taken by Michael Schiavo, in the teeth of a vicious slander campaign by the Christian fundamentalist groups and sections of the media. The ABC News poll concluded: "Americans broadly and strongly disapprove of federal intervention in the Terri Schiavo case, with sizable majorities saying Congress is overstepping its bounds for political gain."

Those polled in the ABC News survey supported the removal of the feeding tube by 63 to 28 percent, while 70 percent said it was wrong for Congress to intervene and 67 percent said Congress was taking action largely for political reasons (i.e., to pander to the fundamentalist right).

Contradicting the claims of Republicans—and many Democrats, who sought to avoid any public stance on the issue—those supporting Michael Schiavo feel more strongly about the matter than those opposing him. "The intensity of public sentiment is . . . on the side of Schiavo's husband," the ABC News poll found.

The CNN/*USA Today* poll found similar sentiments: a 56-31 majority supporting the removal of Terri Schiavo's feeding tube, including majorities among Republicans and even among regular church-goers. A majority said they would have made the same decision as Michael Schiavo if a child or a spouse was in Terri's condition.

The editorial reaction by major daily newspapers was almost uniformly negative, with the *Washington Post*, the *New York Times*, *USA Today*, the *San Francisco Chronicle* and dozens of other dailies condemning the congressional intervention as politically motivated and anti-constitutional. The *Los Angeles Times* described the congressional vote as a "Midnight Coup," declaring: "Congress is breaking new ground, trying to overturn a judicial decision by altering the Constitution's federalist scheme. This is the family law equivalent of the constitutionally banned 'bill of attainder,' legislation that seeks to convict someone of a crime."

Even the *New York Post*, the right-wing organ of billionaire Rupert Murdoch that fervently supports the war in Iraq and Bush's policies generally, issued a highly critical commentary, declaring, "the idea of Congress convening a weekend session to push through a potentially precedent-setting law for one single individual, with little regard to the long-term consequences, is profoundly troubling. Political opportunism? No question about it."

The brazen political motivation of the congressional Republicans was enunciated by House Majority Leader Tom DeLay, in remarks Monday to the Family Research Council, a Christian fundamentalist group. "One

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thing that God has brought to us is Terri Schiavo, to help elevate the visibility of what is going on in America," he said. "This is exactly the issue that is going on in America, of attacks against the conservative movement, against me and against many others." There was, he said, a "whole syndicate" engaged in "a huge nationwide concerted effort to destroy everything we believe in."

DeLay's remarks reveal more than his own precarious political position, following press reports of illegal junkets and influence-peddling on behalf of Indian gambling interests. They confirm the paranoia of the extreme right, which senses its own isolation and unpopularity despite controlling all of the levers of power in official Washington.

Bush's own position is equally revealing. Even in the corporate-controlled media there have been commentaries excoriating the cynicism of his decision to fly back to Washington from a vacation at his Crawford ranch to sign the Schiavo bill. It is the first time Bush has ever interrupted such a holiday. He notoriously refused to do so in August 2001, a month before the September 11 attacks, when he received a long memorandum from the CIA warning of imminent Al Qaeda terrorist attacks inside the United States.

One of the most striking characteristics of the right-wing campaign over Terri Schiavo is its open rejection of science and its embrace of emotional hysteria based on gross misrepresentations of the basic facts and evidence.

Among medical experts, there is virtually no disagreement that Terri Schiavo has suffered irreversible brain damage. A persistent vegetative state is a far more severe condition than a coma, where the brain is asleep and unable to awake normally, but not necessarily damaged beyond recovery.

According to press reports of the medical literature, there is only a single case of partial recovery from a persistent vegetative state out of the hundreds of thousands of such tragedies over the past three decades. The individual in question, a Minneapolis policeman shot while on duty in 1979, recovered partially after 20 months, returning to consciousness but unable to speak or move, and swallowing only with difficulty. He died five years later without any significant improvement.

What defines a persistent vegetative state is that the cerebral cortex, the seat of human personality, has been massively damaged, usually from the cutoff of oxygen. The complex cell structures that control thought, sensation, memory and emotion are destroyed, even liquefied.

Nonetheless, a spokesman for the US Conference of Catholic Bishops described Schiavo as merely "a woman with cognitive disabilities."

Electrical monitoring of Schiavo's brain has revealed no activity in the cerebral cortex. The blinks and other movements of her eyes, the occasional smiles, the sleep-wake pattern are all typical of a vegetative condition, manifesting reflex reactions, not consciousness.

The Christian fundamentalists have sought to undercut the irrefutable scientific and medical evidence by circulating a videotape selectively edited to make it appear that Terri Schiavo is awake, aware and responsive to visitors. The brief video is spliced together from many hours of tape which, taken as a whole, demonstrate that Mrs. Schiavo has no cognitive functions and is unresponsive.

A consequence of her condition is that Terri Schiavo will experience no pain, nor any sensation of thirst or hunger, as a result of the removal of her feeding tube. This reality has not prevented demagogues like DeLay and Senate Majority Leader Bill Frist from bemoaning the alleged "parching and starving" that Terri Schiavo is currently undergoing.

Frist, in particular, has played the most despicable role, using his standing as a medical doctor—he was a prominent heart surgeon before his election to the Senate—to give a pseudo-scientific cover to medically illiterate opinions. Thus he said in the course of the weekend debate over the Senate bill, "Remember, Terri is alive, Terri is not in a coma." Actually, people in a coma are alive—as is Terri Schiavo, in a purely biological sense. The issue is whether anything remains of the human personality in the absence of any brain function.

The sentiment among Frist's medical peers was demonstrated by the California Medical Association, which was meeting in convention Monday in Anaheim. The group gave a near-unanimous voice vote to approve a resolution condemning the congressional intervention in the Schiavo case, and doctors said they would bring the issue before their national organization, the American Medical Association, at its convention in June.

The essence of the position adopted by the Bush administration and Congress is a break with longstanding constitutional norms, and the assertion of a form of political rule based not on legal principles—even of a conservative or right-wing character—but on arbitrary will and power.

At the court hearing Monday, Judge Whittemore asked the lawyers for the Schindlers to cite any legal precedents for the action they were asking him to take. They could not cite any—nor are there any.

One of the most fundamental principles of the Anglo-American constitutional tradition is summed up in the phrase: "government of laws, not of men." This means that government policy must be based on rules that are broadly applicable to all, not tailored to specific circumstances or individuals. Yet the law passed by Congress Monday is exactly that: a bill to grant the two parents of Terri Schiavo a legal privilege available to no other American citizens.

Important legal precedents were set in two "right-to-die" cases decided by the US courts over the past quarter century. In 1976, the New Jersey courts ruled that the parents of a brain-damaged woman, Karen Ann Quinlan, had the right to remove her from a respirator. She died nine years later, never regaining consciousness. In 1990, the Supreme Court ruled in the case of Nancy Cruzan that a person in a persistent vegetative state had the constitutional right to die by being removed from a feeding tube. As recently as 1997, the Cruzan precedent was reaffirmed in an opinion written by arch-conservative Chief Justice William Rehnquist.

The Christian right has hurled buckets of slander against Michael Schiavo, but their so-called "right-to-life" position would apply equally if Terri Schiavo had left an explicit living will, forbidding life-support in her current condition, or if Ms. Schiavo were sufficiently conscious to articulate a desire to die with dignity, rather than continue in her dysfunctional state. The fundamentalists have made the same arguments against the state of Oregon's "right-to-die" provisions, which were put into effect after approval by a state-wide referendum vote.

At its root, the "right-to-life" position is a demand that the government enforce a specific religious belief, shared by only a fraction of the population, on the entire American people. House Majority Leader DeLay spelled this out in a commentary Tuesday in *USA Today*. Rejecting the traditional formulation of the US constitutional structure, he wrote: "Finally, when we say we are a nation of laws, not of men, sometimes we forget that the law doesn't exist for its own sake. Behind the law—and I would argue, above it—is the universal law of right and wrong. Our values must define our laws, not the other way around."

DeLay's position echoes that articulated by Supreme Court Justice Antonin Scalia earlier this month, during oral arguments before the high court over two cases involving the display of the Ten Commandments at public buildings in Kentucky and Texas, which has been challenged as a breach of the constitutionally mandated separation of church and state.

Scalia declared that a government display of religious artifacts was perfectly appropriate. The stone tablets of the Ten Commandments, he said, were a "symbol of the fact that government comes—derives its authority from God. And that is, it seems to me, an appropriate symbol to be on State grounds."

He continued, "It is a profound religious message, but it's a profound religious message believed in by the vast majority of the American people, just as belief in monotheism is shared by a vast majority of the American people. And our traditions show that there is nothing wrong

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with the government reflecting that. I mean, we're a tolerant society religiously, but just as the majority has to be tolerant of minority views in matters of religion, it seems to me the minority has to be tolerant of the majority's ability to express its belief that government comes from God, which is what this is about."

Those who led the American Revolution and wrote the Declaration of Independence and the US Constitution had risen up in revolt precisely against rulers supposedly deriving their authority from God. They declared that governments derive their legitimacy, not from religious sanction, but from the consent of the governed, expressed through popular votes. Scalia, DeLay and Bush would repudiate more than 200 years of US constitutional and democratic tradition, in favor of a theocratic dictatorship of the most backward and reactionary Christian fundamentalist elements.

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