Dred Scott and Terri Schiavo
The Long and Tortured Death of the 14th Amendment
At the Hands of the Federal Judiciary

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At the Nuremberg War Crimes trials in Germany at the end of World War II, observers were struck by the seeming inability of the Nazis to think, particularly to be able to think from anyone else's perspective. The accused seemed trapped in the straightjacket of Nazi cliches and Hitlerian slogans. For them there was no other reality . . . no other system of values. There was no second or third way of viewing things. Anything un–Nazi was as foreign and alien to their brains as an ancient language that they had never before seen or heard.

It was not so much that they disagreed with ordinary views of right and wrong or good and evil. It was more that they could not even imagine them or comprehend them. Something made it impossible for them to relate. The Nazi mindset was a cultic mindset. It could not see outside itself. There was no alternative way of thinking, no competing view of reality which ought to be considered as valid. Basic values of right and wrong – self-evident to the rest of the world – were so foreign and strange that it seemed nearly impossible for such thoughts even to register in the Nazi mind.

Materialism and utilitarianism, two pillars of the Nazi worldview, were not only an eminently reasonable outlook to them, it was the only outlook, and their only gauge for evaluating right and wrong. Since there is no right and wrong in utilitarianism, the Nazis were able to delude themselves into thinking they were creating a national socialist paradise when indeed they were creating a hell on earth with unspeakably monstrous barbarity and cruelty. They started by executing the disabled and infirm in buildings euphemistically named "mercy houses," i.e., hospices. It all went downhill from there. Some 40 million or more people died because these moral cripples, philosophically paralyzed from the neck up, decided to remake the world in their own grandiose image and require everyone else to worship that image. And they seemed incapable of recognizing the enormity of the crimes they had committed. You see, they were just ordinary folk, who in the end behaved like savages.

But this inability to think from another's perspective, to put oneself in another's shoes, is not merely a Nazi phenomenon. My own great grandparents were slaveholders in Virginia. In 1864, a full year after the Emancipation Proclamation, they were still breeding and selling little black babies to slave traders from the deep south. And they still slept well at night. They saw nothing wrong with forcibly causing male and female slaves to cohabit like breeding stock just so they could produce babies that would be sold as soon as they were weaned from their mothers.

The plantation ledger tells us that the distraught slave mothers would hang themselves from the oak tree behind the kitchen house two or three days after the babies were sold. Two or three days of heart rending anguish was all it took for hopeless despair to turn to suicide. It was my family that did this. They were my own flesh and blood. How inhuman to cause such incredible grief, despair, humiliation, and hopelessness in another human being. You would think that if it happened once, my ancestors would have gotten the message. But it happened over and over again without making any difference. And my great

grandparents were good Methodists who went to church every Sunday, yet saw nothing wrong with whipping the skin off the blood dripping backs of black men and women to force them to work for free while treating them as soul–less cattle.

You can be sure that their Methodist pastor was silent in the face of such outrages since his paycheck came from an offering plate filled with blood money of slave holding church members. Such is the way of moral compromise, and the final death of a conscience atrophied by choosing money over morals. My own family, my own flesh and blood, bought and sold human beings for less money than Tina Bennis's old car.[1]

Which takes us to the crisis of today, where a parallel phenomenon is happening. Moral blindness apparently has overtaken a huge sector of the American public. I am speaking of the Schiavo murder and those who defend it, rationalize it, support it through earnest sounding explanations, and otherwise concur with it. People seem to have wholesale forgotten that we put people on trial as war criminals at Nuremberg for the very sorts of actions taken and required by the Florida state courts and acquiesced in by the U.S. federal courts, including the Supreme Court. Does the name "Freisler" mean anything to anyone on the federal bench involved in the Schiavo matter? Apparently not. More likely they are familiar with the name Zarqawi, who evidently is qualified by temperament and experience to be a Florida probate judge. Now that the Pinellas County Sheriffs Office has a little experience in these matters (putting innocent people to death), maybe someone should give them their first Einsatzgruppen award. My dad, a decorated WWII hero, did not fight a war over there for this to happen over here. The Brownshirts of Pinellas County have dishonored all of American law enforcement by acting like the Waffen SS instead of Americans at Yorktown, and by enforcing on Terri Schiavo what was done to Nat Turner when he was caught.

Many of the Nazis at Nuremberg seemed sincerely shocked and offended and took it as an unfair and uncivil personal insult to be told that they were responsible and accountable for acts of unspeakable horror that they themselves deemed merciful. Similarly, many will view it as extremist and malevolent for me to point out that Terri Schiavo was murdered by the machinery of state, and that those pulling the levers are responsible and accountable. From the lowest sheriff's deputy to the highest judge in court, the Nuremberg defense does not apply. You cannot say I was just following orders. You are responsible, each of you, personally and individually. She was killed, plain and simple, and you killed her.

My detractors will try to sugarcoat what happened with euphemisms. They will call me the evil one for simply calling attention to the truth. Damn the euphemisms. You don't change reality by simply pasting a label on it. She was murdered, and murdered at the hands of the state, and with the complicity of philosophically brain dead federal judges who, though fully alert, seemed less cognizant of reality than she was. When you look at the sad condition of these state and federal judges, and the deputies of Pinellas County, you cannot imagine anyone wanting to live in that condition, half their souls completely gone, their consciences flatline, their humanity only barely alive, their moral sense functioning at the most minimal level as though in some persistent vegetative limbo. Truly lives not worth living. But even the most bitter sarcasm cannot paint a picture vile enough to portray the evil of what those demons have done.

Which brings us to the nub of the issue. When Terri Schiavo died, so died the 14th Amendment. Her death by execution was long and torturous, aided and abetted by black robed federal Freislers at all levels of the American judiciary. This is the same judiciary that has been starving the meaning out of the

14th Amendment for so long that finally pulling the feeding tube comes as no great surprise. Now the 14th Amendment is dead – like Terri Schiavo – at the hands of the federal judiciary. And everyone should know how and why.

We start with Dred Scott. The 14th Amendment is about Dred Scott, or at least it is about the Supreme Court opinion of 1856–57 that bears his name.[2] Mr. Scott was a black man, born a slave in Southampton County, Virginia, about 80 miles from the Atlantic coast. He was taken by his owner, Peter Blow, to Huntsville, Alabama in 1819 and later to St. Louis, Missouri. One year after the Nat Turner rebellion in Southampton County, Virginia (1831), Peter Blow died and Dred Scott was sold to an army doctor named Emerson. And thus begins our story.

Missouri had come into the Union through the Missouri Compromise of 1820. Missouri was a slave state next to Illinois a free state. Illinois came from the Northwest Territory, given by Virginia to the United States in the Northwest Compact of 1784-85. The compact was the basis of the Northwest Ordinance of 1787, which decreed that the five or so states carved from the territory would be free states.

Part of the purpose of the Northwest Ordinance was to help end slavery, because when fully implemented, free states would outnumber slave states. When the ordinance was re-ratified by Congress in 1789, it became part of the original mechanism for bringing about the end of slavery in America. In 1790 there were seven free states and six slave states. Five or six free states from the Northwest Territory would make the ratio 12 or 13 free states to 6 slave states, thus providing the political balance and momentum to end slavery. (Ohio, Indiana, Michigan, Illinois, parts of Wisconsin, and Minnesota were formed from the territory as free states.)

However, in 1803 President Thomas Jefferson purchased the Louisiana Territory from France, from which we obtained parts of 15 states. This gave slaveholders the opportunity to create more slave states so that slavery did not have to end. The Missouri Compromise of 1820 upheld slavery and its expansion into the new territory, and destroyed the political equation from the Northwest Ordinance that was supposed to speed the end of slavery in America. The Missouri Compromise helped ensure a 50/50 balance between free states and slave states so that slavery could not be outlawed by constitutional amendment.

So when the Founders failed to end slavery in their own generation, they did not foresee the events that would extend it and make matters worse. That is where Dred Scott comes in. The failure of the Founders to make the American Revolution complete in their own lifetimes eventually focused on the fortunes of this one man. How could that be? Most of us do not appreciate the fact, since it is taught virtually nowhere, that even though the Founders did not end slavery outright, they had put the constitutional machinery in place to end it, given a little time.

Time and circumstance fell to Dred Scott. Conditions became right for the constitutional machinery to work through him, and if through him, then ultimately to the whole country. Dred Scott was the test case to see whether the courts would let that machinery work as originally designed, making Dred Scott free, or whether the courts would dismantle that machinery and force him to remain a slave. As in the Schiavo matter, the courts materially failed and materially got it wrong. They do that a lot.

The Founders had erected the states and the nation on two types of rights, inalienable rights and

citizenship rights. Only citizens have citizenship rights, which are a lesser kind of rights than inalienable rights. Citizenship rights are also called privileges and immunities, their name from the English common law. Inalienable rights are those you have just by being a person, a living human being. They are inalienable because you cannot "alienate" them, meaning you cannot sell them, lose them, loan them, trade them, or give them away, and the government cannot take them from you. They are permanent and unchanging, annexed or built in to your very humanity. Because they are permanent and absolute, you cannot lose them or give them away. However, you can forfeit them through criminal wrongdoing. The only lawful way to lose your inalienable rights is to do some act of criminal or civil wrongdoing that amounts to a forfeiture.

Inalienable rights are proclaimed in the Declaration of Independence – the birth certificate of America – and in the Bills of Rights of the various states. These are rights such as life and liberty that are annexed to and made part of every individual person. That is why they are also called personhood rights or rights of persons. Apart from some act of wrongdoing, the only way to lose your inalienable rights is to change into some other kind of creature than God made you to be. That means these rights are as permanent and absolute as human nature itself. If you are a human being you have inalienable rights. You only have to be a living member of the species homo sapiens.

Thomas Jefferson said that the purpose of government is to secure your inalienable rights. That is why governments are instituted among men. It is the principal aim and primary duty of every state to protect those inalienable rights which are part and parcel of the definition of what it means to be human and to be a person. This is the organic law of America, prescribed from the beginning by the Declaration of Independence.

Sadly, when the states formed "a more perfect Union" in 1787-89 through the U.S. Constitution, the Founders failed to gain a national consensus to end slavery immediately. They failed to obtain from the states a grant of power for the federal government to secure inalienable rights for persons of African descent and people of color. Protection of inalienable rights was left totally and completely to the states. Southern slave states said that inalienable rights only applied to whites and not to blacks. Without a direct grant of authority, the federal government could do nothing about slavery in the slave states. Federal hands were tied where existing states were concerned. The federal government could only secure the inalienable rights of persons in federal territories which were not yet states because Congress had legislative authority over territories.

The result was that the southern states kept slavery, and refused to vest any power in the federal government to end slavery in the states. There was no federal power to secure inalienable rights or citizenship rights to slaves in southern states. And the protection of inalienable rights of persons and the protection of the privileges and immunities of citizens (civil rights) was left entirely to the states, at least where black Americans were concerned.

Back to Dred Scott. In 1834 his master, the Union army doctor named Emerson, took him to the Union army post at Rock Island, Illinois, for a period of two years. Since Illinois was a free state, you could take slaves through Illinois (a transit provision) but not keep them there long enough to become residents. Any slave brought into the state and settling there as a resident was made free by force of law. Since Dred Scott did not simply pass through Illinois over the course of two weeks, but instead resided there for two years, Dred Scott was supposed to be free by force of Illinois law.

Next, Emerson took Dred Scott to Fort Snelling in the Wisconsin territory for two years. The Missouri Compromise law of 1820 said that slaves taken into this area and residing in it were free by force of federal law. Then in April 1836, the same month that Dred Scott arrived there, the law forming the Wisconsin Territory by name said that slaves taken to military posts in the territory were free. Dred Scott was also free under separate but related legislation. Now Dred Scott was free four ways but still being held as a slave.

While at Fort Snelling, Dred Scott was allowed to marry. By law, if a slave was permitted to marry, he and his wife were made free. This meant that Dred Scott was free five ways and still being held as a slave. His wife was free but still held as a slave. His daughter Eliza was born free in free territory, north of the Missouri Compromise line, and still held as a slave.

Finally, Dred Scott and his family were taken back to Missouri and sold to Sandford. But even Missouri law said that a slave freed by any other state's law or by federal law was free by Missouri law. Dred Scott had been free at least five or six ways for a dozen years, but was still being held as a slave, as was his wife and two children. So in 1846 he found an attorney in St. Louis who would sue for his freedom in Missouri state court. It looked to be an open and shut case. The machinery of freedom put in place by the Founders had now matured with time and looked as if it would set Dred Scott free and many others with him. But it was not until 1850 that he won his first and only victory in the Missouri lower courts. Then in 1852 his victory was overturned by a higher court. In 1854 Missouri's highest court also ruled against him. By the time his case went to the U.S. Supreme Court, he had been free five ways for twenty years, but still held as a slave, along with his wife and children.

What does all this mean? At the risk of oversimplification it simply it means this. (1) Dred Scott was free at least five ways for upwards of two decades. (2) Not only was he free, he was a state citizen. [In technical terms he was a citizen of Illinois, and if not of Illinois, then technically a citizen of Missouri.] (3) Not only was he a state citizen, he was also a federal citizen by way of the privileges and immunities clause of the federal constitution, Article IV, Section 2. [State citizens were also federal citizens by the privileges and immunities clause of the U.S. Constitution.]

Whether as a freed slave or as a state citizen or both, Dred Scott was by all rights a free man. There was no legitimate way for the Missouri courts or the federal courts to make him remain a slave. He was free under a number of federal laws, he was free by the laws of two different states, he was arguably a state citizen either of Illinois or Missouri, and was arguably a federal citizen of the United States. Viewed even in the stingiest light he was entitled to be a free man, meaning that at the very least he was also entitled to all the personhood rights mentioned in the Declaration of Independence. Beyond that, his status as a freeman *qua* citizen meant that he was entitled by the principles of state and federal privileges and immunities not be a slave.

So Dred Scott went into Court looking like a slave, but legally entitled to be a free man by Illinois state law, by numerous federal territorial laws, and by Missouri's own state law. Decades of Supreme Court rulings from all the other slave states like Missouri were on his side. Thirty years of Missouri high court opinions were on his side. Even international law principles were on his side (which was an important thing to slave states like Missouri in those days). But in the end, the Missouri courts were committed to doing the wrong thing. At the last minute they changed all the rules just to keep him a slave.

They refused to acknowledge that he was freed by state law, federal law, or general principles of law. They refused to acknowledge his state or federal citizenship. They said he had no personhood rights or citizenship rights. They said he had no inalienable rights because he was black. He had no citizenship rights because he was a slave. He was an article of property like a table or a chair. For being black he had no rights that any white man was bound to respect. With undisguised obstinance and arrogance, the judges of Missouri's highest court – representing one lone state – decided to stop the machinery of freedom put in place by the American Founders in the Constitution for the whole American nation.

Dred Scott's lawyer appealed to the United States Supreme Court. In March 1857, in an opinion that was as long as the Federalist Papers and in direct opposition to them, the United States Supreme Court rewrote the history of the Founding of America, up ended the rights model of the Founders, turned on their heads numerous provisions of the U.S. Constitution, changed the definition of state and federal citizenship, and sided with the state courts of Missouri in their effort to dismantle the machinery of freedom put in the U.S. Constitution by the American Founders . . . all to keep Dred Scott a slave.

But the U.S. Supreme Court in its arrogance made a strategic mistake along the way where keeping slavery was concerned. They declared the Missouri Compromise unconstitutional. They had to do this in order to invalidate the federal laws that made Dred Scott free. Although the Missouri Compromise had been modified by the Kansas-Nebraska Act of 1854 allowing slave states to be formed north of the Missouri Compromise line, the practice for decades had been for a slave state to come into the Union for every free state that did so. By overturning the Missouri Compromise, the rationale was gone for ensuring that the number of slave states remain equal with the number of free states.

The Dred Scott opinion together with the Kansas Nebraska Act meant that the next president could bring in all free states and no slave states if he chose. California had recently been admitted as a free state, so there were already 16 free states and only 15 slave states. Minnesota was admitted in 1858 making the count 17 to 15. Four slave states were border states who would vote to end slavery if the Constitution were amended, making the effective count 21 to 11. Even before the Civil War began, free states outnumbered slave states by two, and effectively by ten.

Meanwhile, the remaining territory west of the Rocky Mountains formerly part of the Spanish Empire became the possession of United States. Oregon having been obtained by treaty from the British was admitted as a free state in 1859. So almost overnight, the territory of the U.S. increased by another third and was being carved into new states. While the Supreme Court was taking steps to preserve the institution of slavery by repudiating Congress's ability to govern the territories (using language implying that all states were slave states and all territories slave territories), a new political dynamic was at play. If all this new territory formed as free states with no slave states, there would be enough free states to amend the constitution and end slavery by the stroke of a pen.

Observers believed that as many as 17 new states could be carved from the territory. With slave state / free state parity out of the way, these might all join the Union as free states. Since it takes three-fourths of the states to amend the Constitution, and there were effectively only 11 slave states, there needed to be 33 free states to end slavery by constitutional amendment. There were already 21 states in 1858 who would vote for the amendment. Only 12 new free states were needed to have the votes to end slavery. No one doubted that there would be 12 new states by the year 1900, only 40 years away.

This all meant that if a pro-freedom anti-slavery president such as Abraham Lincoln came to office, he could keep the momentum going by admitting only free states, and not admitting slave states. If Congress kept voting to admit free states, slavery could be ended in a matter of four or five decades. These numbers were well understood throughout the slave holding south.

This is why the system of slavery was in jeopardy. The Kansas Nebraska Act and the Dred Scott case ended the practice of maintaining a 50/50 parity between free and slave states. New states would doubtless come into the Union, and only 44 states were needed for the 3/4 vote to amend the constitution to end slavery. (Arizona was number 48 in 1912.) In 1860, presidential candidate Abraham Lincoln insisted that the constitution requires the federal government to insure "a republican form of government" – i.e., government by the consent of the governed – in every American state. Slaves were being governed without their consent, violating the principle of republicanism written into the federal constitution. So if elected, he would use all his influence to make sure that only free states were formed from the territories, so that eventually even black Americans would enjoy self-government.

Within two weeks of Lincoln winning the electoral college in December 1860, South Carolina announced that it was leaving the Union. The reason for seceding, South Carolina said, was "an increasing hostility on the part of the non-slaveholding States to the institution of slavery" and the "current of anti-slavery feeling" in free states such that the "non-slaveholding states" had violated the slaveholding rights of South Carolina. Because South Carolina's ability to maintain the system of slavery was in jeopardy, "South Carolina is released from her obligation" to remain faithful to the United States Constitution.[3]

It is uncontested that the leaders of South Carolina's slaveholding ruling class had this analysis clearly in mind. They even wrote it into their declaration of secession. They had to leave the Union immediately, they said, or otherwise face the near term demise of slavery through federal constitutional amendment.

> This sectional combination for the submersion of the Constitution, has been aided in some of the States by elevating to citizenship, persons [i.e., Negroes] who, by the supreme law of the land, are incapable of becoming citizens; and their votes have been used to inaugurate a new policy, hostile to the South, and destructive of its beliefs and safety.[4]

So the handwriting was on the wall, so to speak, where the system of slavery was concerned. In as little as four decades slavery would cease to exist and Americans of African descent would be equal by law with whites. The slaveholding ruling class of South Carolina countered saying that those who wanted equality for blacks were religious extremists, complaining that "they have denounced as sinful the institution of slavery."[5] They chafed that a president had been elected "whose opinions and purposes are hostile to slavery."[6] They were outraged that he had won the presidency with campaign speeches aimed at persuading the country "that slavery is in the course of ultimate extinction."[7] Republicans were known to believe that blacks should be politically equal to whites with all citizenship rights and privileges, and that blacks were equal in terms of their humanity and should enjoy all God-given inalienable rights. This was totally unacceptable to South Carolina and a peril beyond repair: "all hope of remedy is rendered vain, by the fact that public opinion at the North has invested a great political error with the sanction of more erroneous religious belief."[8]

The next state to secede was Mississippi, three weeks after South Carolina on January 9, 1861. (Florida seceded January 10.) The second sentence of Mississippi's declaration of secession reads:

> Our position is thoroughly identified with the institution of slavery – the greatest material interest of the world. Its labor supplies the product which constitutes by far the largest and most important portions of commerce of the earth. These products are peculiar to the climate verging on the tropical regions, and by an imperious law of nature, none but the black race can bear exposure to the tropical sun. These products have become necessities of the world, and a blow at slavery is a blow at commerce and civilization. That blow has been long aimed at the institution, and was at the point of reaching its consummation. There was no choice left us but submission to the mandates of abolition, or a dissolution of the Union, whose principles had been subverted to work out our ruin.[9]

Mississippi's declaration makes it crystal clear why the state seceded. Slavery would soon be ended by force of law throughout the entire United States. Blacks would have equal right to whites both politically and in terms of their humanity. The only way to avoid complying with the demise of slavery would be to leave the Union immediately and go it alone.

These statements are typical of what was being said when the American Civil War began in 1861 when the slave states seceded. The Declaration of Independence had declared all men equal and that they are endowed with God-given inalienable rights which the states are duty bound to protect. The purpose of the states is to secure these rights of persons. But slave states refused to protect them in persons of African descent. Blacks had no protection in the southern states like Missouri, Mississippi or Florida for their God-given inalienable rights. And in slave states blacks had no citizenship rights either. Like Terri Schiavo they were left rightless and abandoned by state government. There was some machinery in the U.S. Constitution in 1860 to help the situation, but it had been shattered in pieces by the Dred Scott opinion. To free all the slaves and to end slavery with federal power would require a constitutional amendment.

Georgia seceded on January 29, 1861 for the same reason, namely, because the slaveholding ruling class of Georgia feared that slavery was about to come to an end.

> The people of Georgia having dissolved their political connection with the Government of the United States of America, present to their confederates and the world the causes which have led to the separation. For the last ten years we have had numerous and serious causes of complaint against our non-slave-holding confederate States with reference to the subject of African slavery. . . . A brief history of the rise, progress, and policy of anti-slavery and the political organization into whose hands the administration of the Federal Government has been committed will fully justify the pronounced verdict of the people of Georgia. The party of Lincoln, called the Republican party, under its present name and organization, is of recent origin. It is admitted to be an anti-slavery party . While it attracts to itself by its creed the scattered advocates of exploded political heresies, of condemned theories in political economy, the advocates of commercial restrictions, of protection, of special privileges, of waste and corruption in the administration of Government, anti-slavery is its mission and its purpose. By anti-slavery it

is made a power in the state. . . .[10]

The Georgia declaration makes plain that whatever other complaints Georgia had against the north, they all took a back seat to the issue of slavery and the soon coming end of slavery as an institution. Seven weeks later, on March 21, 1861, the new vice president of the confederacy gave a speech in Savannah, Georgia, explaining the reasons for secession. He said that Thomas Jefferson and the Founders had been wrong in the Declaration of Independence. All men were not created equal. All men do not have inalienable rights. Governments are not instituted to protect the rights of all persons. Government is not about the consent of the governed. Instead, state government is instituted to protect the white privileged class who control the state. America was not about individual inalienable rights which the states are duty bound to protect. Rather, it is the states themselves that have rights, not the people.

The purpose of his speech was to show the central difference between the principles upon which the United States had been founded, and the principles upon which secession and the new Confederacy were founded. The central difference was that the United States had been founded on the equality of the races, and on the belief that slavery would disappear. The Confederate States had been founded on the inequality of the races, meaning that slavery would be permanent and last until the end of time.

Here is the gist of the confederate argument. Thomas Jefferson was wrong to say that all men are created equal and that they are endowed by the Creator with inalienable rights. All men are not created equal. Persons of African descent are not equal to whites and can never be equal. They do not have inalienable rights. Only whites have rights. The key difference between the United States Constitution and the southern confederacy is that the United States was built on the God-ordained equality of all persons, regardless of race. The Confederate States were allied on the premise of white superiority, and the God-ordained inequality of blacks with whites.

> The new [Confederate] Constitution has put to rest forever all the agitating questions relating to our peculiar institution – African slavery as it exists among us – the proper status of the negro in our form of civilization. This was the immediate cause of the late rupture [i.e., southern secession] and present revolution. Jefferson, in his forecast, had anticipated this, as the "rock upon which the old Union would split." . . . The prevailing ideas entertained by him and most of the leading statesmen at the time of the formation of the old Constitution were, that the enslavement of the African was in violation of the laws of nature; that it was wrong in principle, socially, morally, and politically. It was an evil they knew not well how to deal with; but the general opinion of the men of that day was that, somehow or other, in the order of Providence, the institution would be evanescent and pass away. This idea, though not incorporated in the Constitution, was the prevailing idea at the time. . . . Those ideas, however, were fundamentally wrong. They rested upon the assumption of the equality of races. This was an error. . . .
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> Our new Government is founded upon exactly the opposite ideas; its foundations are laid, its cornerstone rests, upon the great truth that the negro is not equal to the white man; that slavery, subordination to the superior race, is his natural and moral condition. This, our new Government, is the first, in the history of the world, based upon this great physical, philosophical, and moral truth. . . . This stone which was rejected by the first builders [i.e., Thomas Jefferson and the Founders] "is become the chief stone of the corner" in our

new edifice. . . .[11]

So the war came. The South lost. The slaves were freed. And Lincoln was killed. Somebody had to clean up the mess. But the new president, Andrew Johnson, was a racist himself and sympathized with the slave holders of the South. He did not care whether blacks had rights or not, or whether they had legal protection or not. He admitted that the 13th Amendment freed the slaves. But he did not agree that it gave them any rights as persons or citizens. He sided with the southerners for a "bare minimum" reading of the 13th Amendment. Even though the slaves were freed and slavery was illegal, there was still no federal protection for their rights as persons or rights as Americans.

Then there was the further problem of the U.S. Supreme Court and the Dred Scott decision. Even though the war was over and the slaves were free, the Dred Scott opinion was still on the books and not overruled. The southerners insisted that it was still good case law. The Dred Scott opinion proved that even in light of the 13th Amendment, blacks had no personhood rights, no state or federal citizenship, no state law protections in any southern state, and no federal recourse for mistreatment by those states. They were free in name only, but had no substantive rights to claim or enjoy.

The North had won the war but not the Court. The new supreme court judges were of the same mind set as the pre-war judges and were not at all eager to reverse Dred Scott. So a constitutional amendment had to be written to overrule the Dred Scott case, and to create for the first time in history a federal power to protect the individual inalienable rights of persons and to protect the individual citizenship rights of citizens. This had not been done before. To understand the 14th Amendment, then, we have to look specifically at the Dred Scott opinion to see what it was that the 14th Amendment overturned.

The Dred Scott opinion had a series of rulings on specific constitutional questions. The first was about the protection of inalienable rights, also known as personhood rights or rights of persons. If Americans of African descent were full persons in the ontological sense, the states would be barred from depriving them of inalienable rights. The Supreme Court ruled that they were not full persons.

> [Africans have always been considered] as a subordinate [*405] and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges. . . .
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> They had for more than a century before [1776] been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, . . .[12]

So where the Declaration of Independence is concerned, Jefferson's words about inalienable rights of persons were held not to apply to persons of African descent. The Supreme Court said:[13]

> The general words above quoted [i.e., "that all men are created equal; that they are endowed by the Creator with certain unalienable rights. . ."] would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute, that the enslaved African race were not intended to be included, . . .

According to the Supreme Court, there were no inalienable rights of personhood in blacks that the states are duty bound to honor and protect. Americans of African descent have no inalienable rights because they are not full persons. There is no such rights protection for them.

Second, the Supreme Court said that Dred Scott as a black man could not be a federal citizen. He therefore had no federal civil rights (no federal citizenship rights, i.e., no privileges and immunities) and could not look to the federal government for relief from any mistreatment at the hands of slave states like Missouri or Florida. For him as a black man to be regarded as a federal citizen was incompatible with the institution of slavery. Federal citizens, protected by Article IV, Section 2, could travel inside a slave state and the slave state would have to treat them equally with its own white citizens. They could "enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; . . ."[14] As citizens of northern states, and therefore federal citizens as well, Article IV, Section 2 would give black Americans "the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went." And "all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, . . ."[15]

In short, if slave states had to treat all northern blacks as equal with its own white citizens, the system of slavery would collapse because it would eventually become impossible in a busy and bustling society to tell whether a black man was a local slave or a free citizen visiting from the north. Furthermore, Article IV, Section 2, would eliminate racial disparities in society since the state would have to treat black citizens equally in every respect with white citizens. The racial basis for class discrimination in northern and southern society would begin to evaporate since such distinctions would be impermissible under the privileges and immunities clause. To bona fide racists such as those who dominated the U.S. Supreme Court, such consequences were unthinkable.

Here is how bad it gets. Slavery was so fundamentally incompatible with the Constitution's privileges and immunities clause that to the southern pro-slavery eye the U.S. Constitution itself became the enemy. The slave states awoke to this realization only after they had ratified the Constitution, and thus it was too late. That is why secessionists such as the confederate vice president eventually came to the conclusion that joining the Union in the first place had been a fatal mistake.

This also meant that state citizenship for blacks had to be invalidated somehow. States rights theorists had said that all states were truly equal in their ability to set slavery policy, citizenship policy, and freedom policy. But if northern states could make a black man a real citizen in a northern state, the federal constitution would make him automatically a federal citizen as well, with federal rights and privileges. So the Supreme Court in Dred Scott said that such citizenship was only pretend citizenship and not real. Therefore being a black citizen of a state was only make believe, and thus Dred Scott was not a federal

citizen.

Third, the Dred Scott court said that Missouri did not have to recognize Dred Scott's rights under Illinois state law. Missouri did not have to allow him to be free. Since Dred Scott was black, he had no human rights that Missouri was obligated to honor. And Missouri law, not Illinois law, would determine whether a free black man could be reduced to being a slave. Since a black man had no rights that any white was bound to respect, freed blacks could be kidnapped from anywhere and taken to slave territory or slave states and held and worked as slaves without any recourse to law or justice.

In writing the Dred Scott opinion in 1856-57, the Supreme Court recognized two important things. First, if given full play, the Founders' view of personhood as the core principle behind inalienable rights would overthrow slavery and erode the practice of racial discrimination, since every state is obligated to protect the inalienable rights of all persons, even blacks. Second, the original meaning of the privileges and immunities clause, if consistently applied, would also overthrow slavery. In time it would lead to a gradual dismantling of racially discriminatory practices in society. Neither of these alternatives were acceptable to racist members of the Supreme Court such as Roger Taney, the slaveholding Chief Justice who wrote the majority opinion in Dred Scott.

The Dred Scott controversy confronted Justice Taney with a fundamental truth: by the terms of America's founding documents, America was not a color, but a creed. America was not about race, but about a set of core beliefs concerning the importance and sanctity of each individual. The meaning of America was based on each person's inalienable right to life, liberty, property, and self-government. The question was whether Taney would have the courage to uphold those principles, or sacrifice them in the hope of saving the Union by preserving slavery. Unfortunately, Taney lacked both the character and the courage to uphold the principle. He chose instead to revise and misrepresent the history of America and the meaning of the Constitution. Justifying the bigotry and racism of the perpetrators of slavery was more important to Taney than allowing the black man to be treated simply as a man. So much for judicial duty.

Thus, when the Supreme Court handed down the Dred Scott opinion, the meaning of America was turned upside down and inside out. Citizenship rights became the only important rights. Inalienable rights (i.e., personhood rights) ceased to be a legal category with any meaning in Supreme Court case law. (That is still true today in 2005.) All the basic postulates of justice and fairness which had been associated with inalienable rights vanished. For example, gone was the meaning of the equal protection of law. From the time of Englishmen such as William Blackstone and earlier, and Americans such as Madison and Jefferson, equal protection of the law had been explained in the context of inalienable rights. That all changed with the Dred Scott opinion. It was as if the entire common law heritage on which the Founders had built had dissolved. Taken together with the Court's invalidation of the Missouri Compromise, and its reversal of the established meaning of the "territory and other property clause" (Article IV, Section 3, Clause 2), and other such errors, the Taney Court in Dred Scott essentially created an entirely new race-based Constitution under the guise of judicial interpretation.

The errors did not end there. The Dred Scott court trashed the principles of due process of law. Since the concept of due process rested historically on a correct appreciation and application of inalienable personhood rights, once the Taney Court disposed of inalienable rights altogether, it also cast aside the original meaning of due process. It should be self-evident that not every process is due process. Any process that allows a person to be stripped of important personhood rights, or even of citizenship

privileges and immunities, without first proving that the person is a wrongdoer who deserves to lose the right, is not the process due. That is just simple Blackstone 101.[16] In Dred Scott the rightness or wrongness of Scott's conduct in society was never an issue. He was stripped of all rights while a completely innocent man. He was not made a slave because he deserved to be enslaved for committing some crime. He was made a slave because a dominant and powerful social class had decided to deny some human beings of their humanness and strip them of their Creator–endowed inalienable rights. This sounds just like the Terri Schiavo matter, doesn't it?

Furthermore, Scott had numerous opportunities to be heard – first at the state trial court level, then by the state supreme court, and finally by the United States Supreme Court. In other words, he was afforded all the technical niceties of "procedural due process" (i.e., notice and a right to be heard) which is all that modern conservative jurists demand in their minimalist view of things. But Dred Scott was not afforded "due process of law" in the constitutional and common law sense. He lost his most precious rights without ever doing a single wrong thing.

The procedures resulting in the Dred Scott opinion were as hollow a show of justice as the trials of Christ before Pilate and the Sanhedrin. It meant that in the view of the U.S. Supreme Court, so long as minimal "procedures" were followed, it is immaterial and irrelevant whether or not the principles of justice and substantive rights were honored. After the Dred Scott opinion, which essentially birthed the modern conservative definition of "procedural due process," due process is no longer about one's substantive rights but about shuffling papers. For conservative legal scholars who have been misled to become procedural due process minimalists, the word "due" in the term "due process" has become irrelevant because any process is now the process due. All that is required is notice and a right to be heard.

We can test that definition with a single example. Jesus of Nazareth was arrested and given an opportunity to speak, but nearly everyone acknowledges the miscarriage of justice in his situation, where an innocent man was put to death because it suited the policy of state. There was notice and a right to be heard, but it was a complete setup, a kangaroo court, with a predetermined result. Yet in modern federal court terms, Jesus of Nazareth received due process. That should tell us something of just how far the federal courts have sunk – including conservative jurists and law scholars – such that now any process is due process, and the federal courts have thereby made themselves accomplices in the illegal execution by starvation and torture of a disabled female.

After Dred Scott, and the redefinition of due process, justice could be completely corrupted and still be called due process. The degrading effect of the system of slavery – America's journey to the dark side – was complete in 1857. "Any process" was now "due process." The link between principles and procedures was effectively severed. This error still blights the thinking of the Supreme Court in 2005 as evidenced by the Schiavo matter. The corrupting influence of the Dred Scott opinion – the dead hand of Dred Scott – is still with us.

This reality should be particularly outrageous in light of the fact that the 14th Amendment was written specifically to overrule Dred Scott. Every clause of the 14th Amendment directly overturns some holding of the Dred Scott case. For example, where the Dred Scott majority said that a person had to be born free and white to be a citizen, and even the dissent said that a black person had to be born free to be a citizen, the 14th Amendment says you don't have to be born free, you only have to be born here, or else naturalized through a law of Congress.

Second, the Dred Scott court said the blacks could not be federal citizens, and any state citizenship for blacks was pretend citizenship. Slave states had no duty to allow blacks to be state citizens. It was entirely a state matter. The 14th Amendment said that blacks born here are U.S. citizens and that by force of federal constitutional law they are also citizens of the state where they reside. Both kinds of citizenship pertain to blacks, and are federally enforceable.

Third, the Dred Scott court stripped Americans of African descent of any possibility of having meaningful federal or state civil rights. Let's start with federal civil rights. Black Americans, the Court said, have no federal citizenship rights (federal civil rights, i.e., federal privileges and immunities). Before 1857, one very important federal civil right – a privilege and immunity of federal citizenship – was to be accorded equivalent state civil rights when traveling through a state other than your own home state. So there was a "federal civil right" to be accorded "equal state civil rights" in certain circumstances. That was the original meaning of Article IV, Section 2. That was the clause of the constitution that struck fear into the hearts of slave owners. After 1857 that principle only applied to whites.

This was the lynchpin in the original constitution that could destroy all of slavery. Since freed blacks could become state citizens of northern states, they would thereby also become federal citizens of the United States. As federal citizens, they had a federal right under Article IV, Section 2 to travel and do business in any state, and while there carry with them a federally protected right to be treated by state law as a temporary state citizen. They had a federal right to state civil rights while passing through. They were federally entitled to enjoy the state's civil rights that it afforded to its own citizens. The Dred Scott court clearly perceived the threat to the institution of slavery from Article IV, Section 2. That is the chief reason why they could not allow Dred Scott to be considered a federal citizen. Being a federal citizen would entitle him to equal state civil rights while passing through a slave state like Missouri.

Because the Dred Scott court had demolished the original meaning of the Article IV, Section 2 privileges and immunities clause in this and other ways, the 14th Amendment overruled Dred Scott with a new privileges and immunities clause. The new privileges and immunities clause was designed to accomplish two things. First, the 14th Amendment privileges and immunities clause reinstated the original meaning of Article IV, Section 2, and made it apply to black Americans and not only to whites. Any federal citizen who is a citizen of some state, while away from his home state and present in another state, has a federal privilege and immunity – a federal citizenship right – to receive equal state civil rights with the host state's own citizens.

Second, the 14th Amendment went one step further. Since some black Americans would not be traveling outside their own state but would remain in their home state where Article IV, Section 2 did not apply, they were entitled under the new privileges and immunities clause of the 14th Amendment to equal state civil rights with white citizens of their home state. This was brand new. Through the 14th Amendment, freed slaves and all black Americans were to have a federal guarantee of equal state citizenship rights while residing in their own home state. This was a totally new federal privilege and immunity of federal citizenship, and was to apply not only to black citizens but to all citizens. The 14th Amendment privileges and immunities clause accomplished two things, where the original Article IV, Section 2 privileges and immunities clause accomplished one thing.

Next, the Dred Scott court had denied the protection of inalienable rights to Americans of African

descent saying that they "had no rights which the white man was bound to respect." Since there had been no federal constitutional power to force states to do their duty to protect inalienable rights, for decades the federal government had its hands tied in the face of such injustice. The inalienable rights of life, liberty, pursuit of happiness, etc., could be denied by states like Mississippi and Florida (as in the Schiavo case) and there was nothing the federal government could do about it. If a state materially failed in its duty to protect a person's inalienable rights, there was no federal fall back position. There was no federal claim available in a federal court. There was no second tier federal recourse if a black person or any person had their inalienable rights trampled by a state.

The Dred Scott court had made the most of this flaw in the original constitution. That flaw had been part of the miscalibration of justice in America that had inflamed the public debate leading up to the Civil War. The 14th Amendment aimed to fix the flaw. It did so by adding personhood rights (inalienable rights) language to the federal constitution for the first time. It overruled Dred Scott by saying that "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws." This was carefully crafted language responding directly to the holdings of the Dred Scott opinion about inalienable, personhood rights which were denied to Dred Scott and other slaves. The phraseology was aimed directly at restoring the original definition of the relationship of inalienable rights to due process and equal protection as it had been explained in the era of the Founders by such persons as Thomas Jefferson. By placing this language in the 14th Amendment, the principles of inalienable rights applied not only at the state level but at the federal level as well.

This particular clause of the 14th Amendment is extremely crucial and deserves further comment. When the Civil War began, there was no federal power to require the states to live up to their duty to protect inalienable rights. If a state materially failed in its duty to protect a person's inalienable rights, there was practically nothing the federal government could do. If the state legislature, or the state courts, or the state governor would not protect one's inalienable rights to life, liberty, property, and so forth, there was no federal claim available as a back up. The Dred Scott opinion clearly stated that these rights only applied to white people, but even then there was no federal power to correct the situation if a state deprived whites of their inalienable rights.

When the Civil War ended and blacks were being massacred by mob violence and state action there was no federal power to protect them. So the personhood rights clauses were made part of the 14th Amendment. These clauses created a federal right to federal protection of inalienable rights if a state materially failed to protect them under its own system of laws and justice. These personhood rights clauses were also aimed at restoring the original meaning of due process, namely, (1) that your rights cannot be taken from you unless you are accused of wrongdoing, (2) the wrongdoing has been proved in a court of law, and (3) the procedures must such that your substantive rights are truly protected, it must not be a kangaroo court with make believe protections for your rights. It cannot be time marking, paper shuffling, empty proceduralism. By definition, then, the due process clause only applies where there can be such a process in the first place. Unless a person has been charged criminally with wrongdoing, or civilly with culpable negligence or tort, the due process clause does not even come into play because no such process is permitted, period. Where depriving life is concerned, there is no civil power to execute. A death sentence from a civil court violates the 14th Amendment and the inalienable right to life period.

That is why the Florida situation with Terri Schiavo is so overwhelmingly beyond the pale. She

was executed under a bogus definition of due process where no such process was even supposed to be possible at all. She was executed by a civil court, not a criminal court, in direct repudiation of the inalienable rights model and due process model of the American Founders, and in direct violation of the original purpose and meaning of the 14th Amendment. She had committed no crime worthy of death at the hands of a criminal court after a due process hearing with proof beyond a reasonable doubt. And she was charged with no civil malfeasance or tort in civil court, but was ordered executed where there was no state power to do so under our American system. And the federal courts who are tasked with not allowing such an outrage to happen not only allowed it but sanctioned it.

The 14th Amendment requires due process of law, and due process by definition asks whether or not there has been a wrongful act that works a forfeiture of one's rights. Where the 14th Amendment says "nor shall any state deprive any person of life . . . without due process of law," it is not requiring merely that there be procedural notice and a right to be heard, it is mandating that the substantive right to life cannot be taken by the state unless the state first demonstrates that a substantive wrongful act occurred amounting to a forfeiture of the substantive right to life. Anything less is not due process in the constitutional sense. We are talking elementary justice here, basic Americanism 101. Show me who Terri Schiavo killed and I will show you the substantive act of forfeiture that allowed the state to take her life by due process of law. Otherwise the process is not due process. That minimum requirement of proving the forfeiture must be met for there to be due process. The forfeiture question was never once asked by either the state courts or the federal courts. It was all a matter of paper shuffling proceduralism where the measure of justice was as arbitrary as the size of the judges' shoes. Unless the minimum requirement was met of proving that she committed some act of forfeiture, the state murdered her, and the federal courts were accomplices in direct violation of the 14th Amendment.

How do we know that this is the meaning of the 14th Amendment? How do idiots learn anything? It should not be so much a matter of research as basic decency, but it is clear we cannot depend on that where judges are concerned. So we must point out that to a very large extent, the American Civil War was fundamentally about the Declaration of Independence. One side said that the principles of the Declaration of Independence did not apply and that they were not written into the federal constitution. The other side said they did apply even though imperfectly related to the federal constitution. We fought a war over the question. And the Civil War and the 14th Amendment provided the opportunity to make a fundamental change and end the debate. So the 14th Amendment was written specifically to place the principles of the Declaration into the text of the Constitution so that there would be no further debate.

The Speaker of the House of Representatives responsible for moving the 14th Amendment through Congress said this:

> I stand by every word and letter of it; it's going to be the gem of the Constitution, when it is placed there, as it will be, by this American people. I will tell you why I love it. It is because it is the Declaration of Independence placed immutably and forever in our Constitution. What does the Declaration of Independence say? . . . . It says that all men are created equal . . . [quoting] . . . That's the paramount object of government, to secure the right of all men to their equality before the law. So said our fathers at the beginning of the Revolution. So say their sons today in this Constitutional Amendment, the noblest clause that will be in our Constitution. It declares that every person – every man, every woman, every child, born under our flag, or naturalized under our laws, shall have a

> birthright in this land of ours. High or low, rich or humble, learned or unlearned, distinguished or obscure, white or black, born in a palatial residence or born in the humblest cabin in the land, this great Government says, "the aegis of protection is thrown over you; you can look up to this flag and your country, and say they are yours."[17]

Another chief figure in the ratification of the 14th Amendment was Senator Poland of Vermont, who later because the Chief Justice of that state's supreme court. Of the Amendment he said:

> The great social and political change in the southern States wrought by the amendment of the Constitution abolishing slavery . . . render it eminently proper and necessary that Congress should be invested with the power to enforce this provision throughout the country and compel its observance. . . . Now that . . . the whole people of the nation stand upon the basis of freedom, it seems to me that there can be no valid or reasonable objection to the . . . proposed amendment: . . . It is the very spirit and inspiration of our system of government, the absolute foundation upon which it was established. It is essentially declared in the Declaration of Independence and in all the provisions of the Constitution. Notwithstanding this we know that State laws exist, and some of them of very recent enactment, in direct violation of these principles. Congress had already shown its desire and intention to uproot and destroy all such partial State legislation in the passage of what is called the civil rights bill. The power of Congress to do this has been doubted and denied by persons entitled to high consideration. It certainly seems desirable that no doubt should be left existing as to the power of Congress to enforce principles lying at the very foundation of all republican government if they be denied or violated by the States, . . .[18]

To end the dispute, the 14th Amendment put the principles of the Declaration of Independence into the text of the Constitution. The practical effect of the 14th Amendment as envisioned by its authors is simple. First, when a person is a citizen, both state and federal, he or she is entitled to equal federal civil rights on an even ground with all other federal citizens, and is entitled to equal state civil rights while visiting or passing through states other than one's own home state, and by force of federal law is entitled to equal state civil rights with other state citizens in one's own home state. By force of the 14th Amendment, no state has the authority to abridge any citizen's state or federal civil rights.

Second, even if one is not a citizen, every person in America is entitled to protection of one's inalienable personhood rights referenced in the Declaration of Independence. Every person is entitled to life, liberty, property – the full panoply of inalienable rights in the American sense, and it is the duty of every state to protect those rights with respect to every person. No state can take away those rights unless a person is a proven wrongdoer whose wrongful acts have been accurately, reasonably, and fairly demonstrated in a court of law. Inalienable rights can be lost only through acts of wrongdoing constituting a forfeiture. The principal and primary place where those rights are to be secured and protected is in the states, by state constitutions, laws, and legal processes. But where a state materially fails in its duty to secure a person's inalienable rights, there is now a duty and a power in the federal government through the 14th Amendment to interpose against the misconduct of the states and to throw a wall of federal protection around a person whose inalienable rights are in jeopardy. That was the original meaning of the 14th Amendment, but it is one which has escaped the historical and legal memory of the federal courts of our land.

How did the breakdown occur? How could the original meaning of the 14th Amendment become so foreign and unfamiliar to federal judges such that they would be complicit in the execution of a helpless female? It is important to remember that the federal courts were never sympathetic to the original meaning of the 14th Amendment. The post-Civil War federal judges for the most part shared the same kinds of biases and racially-charged political inclinations as their predecessors on the Dred Scott court. So when the 14th Amendment came before the Supreme Court in 1872 in the Slaughterhouse Cases, they were still leaning toward a "Dred Scott" judicial mindset. When asked whether the 14th Amendment privileges and immunities clause requires each state to grant equal civil rights to citizens within each state, the answer was no. Only five years had passed since the Amendment, but the Court still got it wrong. Congressmen and Senators who had drafted the Amendment were left dumbfounded by the opinion of the Court. After 1872, despite many attempts by Congress to pass civil rights legislation protecting blacks in southern states, the Supreme Court consistently refused to acknowledge Congress's power to protect equal state civil rights for all American citizens. The Supreme Court effectively blue-penciled the 14th Amendment privileges and immunities clause out of the constitution. Protecting the state civil rights of black Americans was made a state issue only, and none of the federal government's business.

The Slaughterhouse Cases was the first step by the U.S. Supreme Court to begin overruling the 14th Amendment which had overruled Dred Scott. In other words Slaughterhouse marked a subtle and insidious beginning, a stealthy way of bringing back the Dred Scott opinion in a different disguise so that it would again exert its influence over race relations in America. But to do so the Court had to mangle the meaning of privileges and immunities, and the goal of political equality embedded in the 14th Amendment. The Supreme Court's Slaughterhouse opinion began the dark night of citizenship inequalities for blacks in post Civil War America that did not see daylight until 1964.

Three years later in the Cruikshank case of 1875-76, the U.S. Supreme Court ruled that the 14th Amendment offered no federal protection for inalienable rights of personhood. If southern blacks were being set upon by mob violence and murder, they had to look to the state government alone for protection. They could not look to Congress. The Court said,

> The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these " unalienable rights with which they were endowed by their Creator." Sovereignty, for this purpose, rests alone with the States.

Everyone knew, of course, that these private criminal conspiracies against blacks were taking place with a wink and a nod from state governments themselves. Elements of state government were often intertwined with or directly complicit in these private forces and mobs. The Cruikshank opinion, disguised as constitutional jurisprudence, was little more than a lynch mob enabling act. With it the U.S. Supreme Court removed the principles of inalienable rights from the personhood rights clauses of the 14th Amendment, and stripped Congress of even more of its 14th Amendment power to protect American citizens from state wrongdoing. In subsequent cases, the meaning of the personhood rights / inalienable rights clause was consistently reduced to the phrase due process, a term which itself was repeatedly reduced in scope and practically gutted of meaning. Despite the original meaning of the 14th Amendment, it is nigh impossible these days to find any lawyer or judge who understands that the 14th Amendment deals directly with a federal power regarding substantive inalienable rights where states materially fail in

their duty to protect them. Because of Cruikshank in 1875-76, they assume without questioning that sovereignty for protecting inalienable rights is a state matter only, not federal.

In 1883 the U.S. Supreme Court in the Civil Rights Cases slapped down more civil rights legislation from Congress under the 14th Amendment. This case with its dark, fell spirit laid the foundation for the Plessy Ferguson "separate but equal" opinion thirteen years later. The 1883 Civil Rights Cases went to great lengths to explain why the citizenship rights clauses and the personhood rights clauses of the 14th Amendment did not mean what the words seemed to say or what the history of the Amendment seemed to indicate. The opinion is the direct precursor of the result reached in the Terri Schiavo matter. The 1883 opinion said that Congress's power to legislate under the 14th Amendment could be corrective and responsive only. It could not be proactive so as to affirmatively protect one's civil rights or inalienable rights viewed substantively. In short, even if substantive rights are protected by the 14th Amendment, that does not mean that Congress has the legislative power to protect them substantively. Congress can only protect them in a corrective and reactive way, and then only by general legislation aimed at correcting procedural errors in the processes and machinery of a state. It cannot deal directly with individual grievances or claims of substantive right.

Stated another way, in 1883 the U.S. Supreme Court tried to remove from Congress a power vested in Congress by the Constitution itself. The 1883 opinion is typical of those where the Court allows Congress to respond to general grievances in the states with corrective and responsive legislation aimed at the state itself. But if Congress tries to direct the courts to examine a substantive right to life and whether it is being violated by the machinery of law in a particular state, Congress has no power to interfere according to such opinions. This totally misguided and wrongheaded result in 1883 is what caused us to have to wait until 1964 to get a Civil Rights Bill nearly a century too late. And even then the judicial rationale supporting it did not directly overrule the 1883 opinion.

That is why the federal courts in 2005 refused Congress's mandate to inquire into Terri Schiavo's substantive right to life and the means by which it was being deprived. The modern federal courts and U.S. Supreme Court are still half-stuck in 1883! And since the federal courts refuse to address the substantive right itself (the right to life) as an original federal issue, while at the same time reducing the definition of due process to vapid and hollow proceduralism (since any process is due process regardless of how novel, minimal, or outrageous), the U.S. Supreme Court has succeeded in wiping inalienable rights completely out of the Constitution while daring Congress to try to put it back in! The federal courts will not let Congress address the substantive right through substantive legislation, and refuse to address it themselves when they are the last bastion against wrongful deprivation. So we have the completely incomprehensible result where the federal courts have transformed a constitutional amendment originally aimed at protecting Americans from the abusive applications of states' rights, into a mandate for silence and inaction lest the Congress or the federal courts abridge states' rights. It is a supreme irony that, at least in part, what Robert E. Lee failed to achieve on the battlefield, the federal courts have supplied through judicial construction undermining the 14th Amendment.

Where are the rights of the person in all this? Vanished. It is as if the Supreme Court was using the 14th Amendment as a prop for a magician's disappearing act. All that is left is a scarf with the emptied words "due process" scribbled on it. Ask a judge whether the 14th Amendment protects substantive inalienable rights and you will get a blank stare or a condescending "no." You would think that this inability to think on the part of lawyers and judges means that they were a product of a religious cult

rather than a law school. Maybe the two are synonymous. Maybe law thinking has become so artificially contrived, so formalistic, obscurantist, and sophist, that it is now more a form of self-deception and structured ignorance than a guide to understanding, at least where these matters are concerned.

How is it that top intellectuals among the legal elite, both liberals and conservatives, could find it outrageous for the federal courts to be asked to perform an original inquiry into the possible state violation of a substantive right, the right to life, guaranteed by the 14th Amendment? The answer is simple, both conservatives and liberals go to the same law schools, read the same case precedents, and follow the same monkey see, monkey do approach to *stare decisis*, where past failures by courts get fixed in stone or harden like concrete. The Supreme Court of 2005 acts as if it can go no further than a wrongheaded precedent mistakenly laid down in 1872 in Slaughterhouse.

This is what is so galling about the way federal courts do what they do. They have no problem at all changing the meaning of the constitution to fit their own biases and prejudices as happened in 1872, 1875, 1883, 1896, and countless times since. But even when the whole world knows the court is wrong, as it was wrong in 1896 with separate but equal, we still may have to wait six decades before anyone in the system is willing to speak up and acknowledge the error, as in 1954 with Brown v Board. Even then, young Rehnquist with all his excellent training wrote that separate but equal should not be overturned, although it was egregiously violative of the original meaning of the 14th Amendment. He never regarded it so. That was then and this is now. And his most recent contribution is a book telling why federal judges cannot be impeached (even though the Constitution says they can be).

So let us cut to the chase. The federal court system is broken, the way law is taught in law schools is broken, and the way we select federal judges is broken. Show me a single law school anywhere in America that explains the 14th Amendment the way I have explained it above. Show me a single federal judicial opinion explaining what I have explained above. If there is one anywhere you will be hard pressed to find it. Even the Schiavo matter has devolved into sputterings over “activist judges” “states’rights” and “Congress and the President overstepping their bounds” because the real history of the 14th Amendment never enters the discussion.

Our popular understanding of justice and jurisprudence has broken down into a war between slogans and cliches. We can’t tell the difference between an activist judge, and one who simply wants to apply the original meaning of the Constitution. Conservatives mistakenly think that conservative judges will be the answer to the problem of liberal judges when conservative judges do all the same things liberal judges do. Hence the Schiavo tragedy. The present generation of courts and law schools have turned legal thinking into straight jacketed cultic thinking. It was not always this way. It was the lawyers at Nuremberg who were able to think and ask questions of the Nazis who greeted the questions with surprise, personal offense, and incomprehensilibity. It was the lawyers who understood basic right and wrong, good and bad, and did not let the tendentious rationalizing of a sick Nazi mind seduce them into thinking wrong was right or evil was good and that maybe the final solution was okay after all. Where are these lawyers when we need them?

An American state has just executed a disabled, helpless American citizen by starvation and dehydration through a highly suspect, highly unusual, extraordinary civil process in direct violation of the Florida Bill of Rights, the 14th Amendment, and the lessons learned from past atrocities, both our own and those of other nations. But where were the judges, and in particular, the federal judges in all this?

They treated Jefferson's principles in the Declaration of Independence as if they were self-evident lies rather than self-evident truths.

Federal appeals judge Birch said that he as a federal judge was bound not by the 14th Amendment, as explained above, but by the "Rooker-Feldman" doctrine.[19] And what pray tell is that? Well it is a federal court rule to federal courts saying that federal courts lack the jurisdiction to review the final judgments of state courts. Oh, really? Then why have a 14th Amendment at all? The very purpose of the 14th Amendment is to have a way for a citizen to have an extra level of protection via the federal government and the federal courts if the final action of a state, even a final state court ruling on the merits, violates someone's personhood rights without due process of law. Being murdered by a probate judge is not due process! Being executed by a civil court has never been due process? How thick can a judge's skull be?

In fact, Judge Birch's fifteen page opinion never even mentions the 14th Amendment. Instead he reads the whole constitution as if the 14th Amendment had never been added. He then rebukes Congress for some presumed violation of the separation of powers which did not take place even in the remotest sense. And, lastly, he goes off on an overwrought hand wringing tangent with insistent but misplaced mutterings about lack of jurisdiction. It is not that Judge Birch flunked constitutional law in law school. He is probably just parroting the kind of legal thinking for which he was trained in some law school accredited by the ABA. To Judge Birch, three generations of imbeciles is enough where the Terri Schiavo's of the world are concerned. He is infected with the same Holmesian materialistic/utilitarianism that breeds like fungus in every law school where O.W. Holmes is esteemed. At least in Buck v. Bell in 1927, Carrie Buck got to live. Ms. Schiavo should be so lucky. But to Judge Birch's own mind, he should not have to waste his precious time fretting over something as insignificant as a dying woman's 14th Amendment right to life. Substantive rights are not his business, after all.

The irony here is, and it is a profoundly pathetic irony, Judge Birch is fully aware of some arcane judicial procedural invention called the Rooker-Feldman doctrine that ordinary people have never heard of, but seems totally oblivious, untutored, and ignorant of the basic text of the constitution which he swore an oath to uphold and protect. The 14th Amendment must not exist in his copy of the constitution. One can be a federal appeals judge in this country and still be constitutionally illiterate. Indeed, it seems to be a standard requirement these days.

Even if the attorneys for the dying woman were totally incompetent and made all the wrong arguments as he seems to think, has Judge Birch never heard of judicial notice? Apparently. Like the chancery courts and judges of Lord Coke's day, Judge Birch and his peers have so lost themselves in their own labyrinth of procedures that they cannot find the light switch of basic justice and truth.

So it has come to this. The procedures established by the federal judges themselves at their own whim are now deemed by them of greater magnitude and importance than the inalienable rights of persons that the 14th Amendment was ratified to protect! This is judicial arrogance in its worst form, because it is a blinding arrogance that takes the whole sight from the eyes and causes the blind to follow the blind right over the cliff. This is Dred Scott all over again. A twelve year old is better suited to be a federal judge that Mr. Birch. He should be one of the first to be impeached.

The last half of Judge Birch's opinion was dedicated to showing why the Court did not have

jurisdiction and that Congress's law violated the separation of powers. Earth to Judge Birch, get a clue, Congress was trying to create jurisdiction for you because they probably knew you could not think this through on your own. He spent half his time explaining that he did not have jurisdiction, the other half making a bogus and intellectually bankrupt argument about a violation of separation of powers, when jurisdiction was the very thing that had been conferred on him by Congress under their 14th Amendment legislative power. But this is way too deep for a mind like that of Judge Birch. It is too big to fit in his little toy judge intellect box.

His entire explanation (pages 8 and 9) of why Congress had supposedly violated the separation of powers by granting the court the authority to conduct a de novo review fails to grasp that it was not an invasion of the province of the court, but was an exercise of Congress's 14th Amendment powers that Judge Birch never mentions. Reading Judge Birch's opinion is irritatingly reminiscent of listening to the defendants at Nuremberg. Their mouths were moving and they were saying words, but they seemed not to have the ability to think like ordinary human beings, or at least not able to think from anyone else's frame of reference. Since when are federal judges supposed to be pull string, windup dolls?

And there is more here than just an accidental similarity to Dred Scott. Judge Birch can claim the prize of distinguishing himself as the new Roger Taney. Judge Birch mirrored the Taney approach to jurisdiction that was demolished as intellectual sophistry by Justice McLean, who dissented in the Dred Scott case. To make it simple for non-lawyers, we start with McLeans's conclusion: "If the jurisdiction be ruled against him [i.e., Dred Scott], on the ground that he is a slave, it is decisive of his fate."[20] Likewise, if Birch rules jurisdiction against Terri Schiavo, as he did, because she has no substantive rights left after a final state court decision on the merits, it is decisive of her fate!

What does all this mean? There are some technical rules about pleading when you file your papers so that you have to show why the court has jurisdiction to hear the case. The slave owners in the Dred Scott pleadings tried to get the court to refuse to take jurisdiction by subtly sneaking the result they wanted (that he was a rightless slave) into their court filing. This would allow them to decide the case for themselves rather than it being decided by the judge. They would win by controlling the definitions ahead of time. He would have no right to go to court to claim he wasn't a slave because the court would refuse to take jurisdiction since the pleading said he was. He would lose by definition and the court would refuse jurisdiction.

Justice McLean, 148 years ago, rejected the view of jurisdiction taken by Judge Birch who apparently never learned the lessons of Dred Scott. That is why he has just repeated them, making himself the new Roger Taney. To quote Justice McLean:

> But it is said, if the court, on looking at the record, shall clearly perceive that the Circuit Court had no jurisdiction, it is a ground for the dismissal of the case. This may be characterized as rather a sharp practice, and one which seldom, if ever, occurs. No case was cited in the argument as authority, and not a single case precisely in point is recollected in our reports. The pleadings do not show a want of jurisdiction. This want of jurisdiction can only be ascertained by a judgment on the demurrer to the special plea. No such case, it is believed, can be cited. . . .
>
> The pleader has not the boldness to allege that the plaintiff is a slave, as that would

> assume against him the matter in controversy, and embrace the entire merits of the case in a plea to the jurisdiction. But beyond the facts set out in the plea, the court, to sustain it, must assume the plaintiff to be a slave, which is decisive on the merits. This is a short and an effectual mode of deciding the cause; but I am yet to learn that it is sanctioned by any known rule of pleading. . . .
>
> No injustice can result to the master, from an exercise of jurisdiction in this cause. . . . it only enables the plaintiff to assert his claims to freedom before this tribunal. If the jurisdiction be ruled against him, on the ground that he is a slave, it is decisive of his fate.[21]

Where Terri Schiavo was concerned, all that Congress tried to do was to let a disabled female, who was being starved to death under Court order such that her own flesh and blood kin could not put a drop of water to her lips, assert a claim to the right to life before a federal tribunal. But Judge Birch ruled the jurisdiction against her. And as Justice McLean explained 148 years ago, when you do that, it is decisive of her fate. That is why it cannot and must not be done that way. It was wrong where Dred Scott was concerned, and it is wrong today where Terri Schiavo is concerned. There should be no place for a Dred Scott case / Roger Taney kind of judge on the federal bench. Judge Birch has no more business being a federal appeals judge than being a brain surgeon. He is qualified to be neither. He has demonstrated himself to be wholly unfit for the office.

At Nuremberg, the defendants were not in the least outraged that so many innocent people died in so many horrific ways. They were outraged that anyone should think they were somehow evil by causing the deaths or standing idly by and doing nothing when they had they authority to intervene. Judge Birch is not outraged that an innocent woman was murdered by the state of Florida in a manner that would shock the conscience of Simon Legree. He is outraged rather that Congress would waste his time by trying to get him involved in whether or not to save her life. That's scary. He's not just Jake the Plumber, he's a federal appeals judge. What does he have to say to all this? Congress cannot give federal courts the power to protect innocent life from state malfeasance. And even if they did, as they did here, " we are bound by the Rooker-Feldman doctrine not to exercise any other jurisdictional bases to override a state final judgment." Oh, throw up.

You know, if someone in Germany would have had better scruples and more backbone than the Judge Birch's of the world, maybe, just maybe, events would not have gotten so far out of hand that my dad had to have a gun put in his hand to go kill Nazis for an entire year. No one asked him what he thought about the jurisdictional issues at stake. But Germany was full of temporizing, rationalizing know nothings like Judge Birch. That is why it all went to hell in the mid 1930s. To see it beginning here in America in the Schiavo matter is so completely disgusting and revolting as to make me want to puke.

Will Congress do something? Do they even know what to do? There are many lawyers among them, but are all trained in the same law schools with the same legal theories as the sitting judges. How will they know what to do when they have been fed the same official line? How do we think outside this awful box? When Congress calls the experts in for testimony it is all more of the same. The first legal expert says the earth is flat, then the second, then the third, and so on. If everyone agrees the world is flat how will we ever get to truth? How do we extricate ourselves from the tarpits of know nothing experts? Must we first reap what we have sown? Slavery was not ended until the slave owners made so many wrong choices that they ended up destroying themselves. They did not do it willingly.

My great grandparents reaped what they had sown when General Stoneman's cavalry burned everything they owned to the ground. Maybe selling babies was not such a good idea after all. I hope that somehow this nation returns to its senses and recovers from our waltzing flirtation with Phanmullerism before this gets much, much worse. As it is, it is evident that we have a federal judiciary that has morally and intellectually died to the lessons of the past, and I mean the very recent past. We will pay a price if we do not reform ourselves by ourselves, willingly, and from the inside. May we not reap what we have just sown.

End Notes

1. Bennis v. Michigan, 517 U.S. 1163 (1996).

2. Dred Scott v. John F. A. Sandford, 60 U.S. 393, 19 How. 393, 15 L.Ed. 691, December Term, 1856.

3. *Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union* [Copied by Justin Sanders from J.A. May & J.R. Faunt, *South Carolina Secedes* (U. of S. Car. Pr, 1960), pp 76-81.], found on the Internet at: http://www.access.digex.net/~bdboyle/sc.dec.txt; accessed on May 3, 1998. See also, The Avalon Project at Yale Law School, http://www.yale.edu/lawweb/avalon/csa/scarsec.htm.

4. Ibid.

5. Ibid.

6. Ibid.

7. Ibid.

8. Ibid.

9. *A Declaration of the Immediate Causes which Induce and Justify the Secession of the State of Mississippi from the Federal Union.* [Copied by Justin Sanders from the microfilm collection of the University of Tennessee], found on the Internet at: http://www.access.digex.net/~bdboyle/sc.dec.txt; accessed on May 3, 1998. See also, The Avalon Project at Yale Law School, http://www.yale.edu/lawweb/avalon/csa/missec.htm

10. Georiga, document, Ibid.

11. Alexander Hamilton Stephens, March 21, 1861, quoted in, Henry Steele Commager, *Fifty Basic Civil War Documents* (Malabar, FL: Kreiger, 1982), 15-17.

12. Dred Scott v. Sandford, Ibid, 405-407.

13. Ibid, 410.

14. Dred Scott v. Sandford, Ibid., 417.

15. Ibid.

16. "Those rights, then, which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable. On the contrary, no human legislature has power to abridge or destroy them, unless the owner shall himself commit some act that amounts to a forfeiture." *Blackstone, Commentaries on the Laws of England, Vol. 1, Introduction, Section II, "Of the Nature of Laws in General," 54. See also, Book One, Chapter One, Of the Absolute Rights of Individuals, 177 et seq*.

17. Cited in, Charles Fairman, "Does The Fourteenth Amendment Incorporate the Bill of Rights: The Original Understanding," 2 Stanford Law Review 5, 153 (Dec. 1949).

18. Ibid., 141.

19. [Federal Court Order Denying Rehearing, at http://news.findlaw.com/hdocs/docs/schiavo/33005ca11rhrng2.pdf.]

20. Dred Scott, Ibid., 532.

21. Ibid., 531-32.

Addendum:

There will be those who assume that the author subscribes to the modern notion of substantive due process in my critique of procedural due process. That is not the case. Substantive due process is a term meaning that the judges themselves can define new rights and policies according to their own whim whether or not those rights are already in the constitution and laws. So if a particular result in a case doesn't suit their taste, they can rule the way they want to based on their own preferred policies (i.e., legislating from the bench) saying that any other result would violate due process, meaning in reality that it violates their own preferred view of what the policy should be if the legislature knew better. That is entirely different from the judges being bound to examine substantive rights prescribed by the constitution and laws instead of relying on their own whims. What I have explained, taken directly from Blackstone and the founding era, is a universe apart from substantive due process in the modern sense. It is neither procedural due process or substantive due process as generally defined, but original due process as explained in Blackstone's commentaries and embraced by the Founders. To assume that procedural due process and substantive due process are the only options is to fall into the logical fallacy of false alternatives – sometimes called the black and white fallacy – which assumes there are only two alternatives when there might be a third or fourth way.

It is a common myth that the Dred Scott majority created the idea of substantive due process. This is an error. Justice Roger Taney used the term "due process" only twice in his entire opinion, and never with respect to Dred Scott. Taney explained that the slaveowner could not lose his property rights by a law that automatically freed a slave by his crossing the Missouri Compromise line into free territory or across the border into a free state. For the law to automatically confiscate his property (by freeing his slave) would be tantamount to forcing the slaveowner to lose his property without due process of law.

Some will assume that the formation of slave states like Kentucky, Mississippi, and others east of the Louisiana Purchase undercuts what I have explained about the effect of the Northwest Ordinance. An

example will suffice. Kentucky was originally the "Kentucky District" of Virginia and could have remained part of Virginia. Kentucky was allowed to become a separate state by compact with Virginia. There was no requirement originally that the undeveloped lands of the seaboard states stretching toward the Mississippi River be developed as separate states. This was done, in part at least, to increase the number of slave states and offset the impact of the Northwest Ordinance.

The original thirteen states were Massachusetts, Rhode Island, Connecticut, New Hampshire, New York, Delaware, New Jersey, Pennsylvania, Virginia, Maryland, North Carolina, South Carolina, and Georgia. Florida was still a foreign country and belonged to Spain. France claimed ownership of the area known later as the Louisiana Purchase.

Vermont was admitted as a free state in 1791. Four slave states were formed from the western lands of middle and southern states. The Kentucky was admitted as a separate state in 1792. Tennessee was admitted in 1796, carved from lands west of North Carolina. Mississippi and Alabama were admitted in 1817 and 1819 respectively from lands west of South Carolina and Georgia. Without Florida and the Louisiana Purchase, the maximum number of slave states would have been ten. Even if only four states had been carved from the Northwest Territories (Ohio, Michigan, Indiana, and Illinois), the number of free states eventually would have been twelve. New Jersey (with its free state Act in 1804) would have been number thirteen. Were it not for the Louisiana Purchase making possible the westward expansion of slavery, free states would permanently have outvoted slave states in the United States Senate. This is a matter of simple math and is uncontroversial.

Some readers will assume that the Supreme Court did not "void" or "invalidate" the Missouri Compromise since the Missouri Compromise line had already been eliminated by the Kansas Nebraska Act of 1854. The Supreme Court did in fact declare the Missouri Compromise void with respect to Dred Scott. The issue was the effect the law had prior to 1854. Chief Justice Taney's own words from the Dred Scott case suffice:

> The act of Congress upon which the plaintiff relies declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the territory ceded by France, under the name of Louisiana, which lies north of thirtysix degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is whether Congress was authorized to pass this law under any of the powers granted to it by the Constitution; for if the authority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and incapable of conferring freedom upon anyone who is held as a slave under the have of anyone of the States. . . .
>
> Upon these considerations, it is the opinion of the court that the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned is not warranted by the Constitution, and is therefore void, and that neither Dred Scott himself nor any of his family were made free by being carried into this territory, even if they had been carried there by the owner with the intention of becoming a permanent resident.

See: http://supct.law.cornell.edu/supct/html/historics/USSC_CR_0060_0393_ZO.html

This language demonstrates another similarity between Dred Scott and the Terri Schiavo debacle. In Dred Scott the federal courts kept him a slave by stripping Congress of its power to protect the rights of Americans in federal territories. The Court decided against fundamental rights rather than for fundamental rights and against the Constitution. The Court protected the abusers rather than the abused. With Terri Schiavo, the federal courts stripped Congress of its power under the 14th Amendment to protect the rights of Americans in states. In both instances the Courts exercised the opposite of their judicial duty and power, making themselves an adversary of rights rather than a safeguard.

Even though inalienable rights lies at the core of the meaning of America, many people find the concept difficult. James Madison, the Father of the Constitution, explained the meaning of inalienable rights in his "Memorial and Remonstrance" of June 1785. There he explained that our duties to God are rights toward other men: "what is here a right towards men, is a duty towards the creator." This was language that he and George Mason had earlier written into Section 16 of the Virginia Constitution in June of 1776 explaining that our "duty which we owe to our Creator" is the basis of our equality and inalienable rights. They also wrote that these inalienable rights were "the basis and foundation of government." (Section 1, Virginia Constitution, June 12 1776.)

There is a simple way to understand inalienable rights following Madison and Mason. Our inalienable duties to God are inalienable rights toward men. When any person tries to take our inalienable rights from us, that person sets himself up as God, in the place of God, and commits the ultimate act of idolatry. Realizing that the Founders explained inalienable rights this way is very helpful. It shows us the extent and limits of inalienable rights and how they are defined. Our rights are as broad as our duties to God, and they are as limited as our God-given duties to other men. So, for example, where it is said that "greater love has no man than this that he lay down his life for a friend," it does not contradict the fact that we have an inalienable right to life if we die defending someone else's right to life. Inalienable rights and inalienable duties are not in contradiction to each other, if we take Madison, Mason, and Jefferson seriously.

This essay was penned in less than two days on Friday night April 1 and Saturday April 2 immediately upon the death of Terri Schiavo. Haste resulted in several errors that marred the initial rough draft. Most of those have been corrected here. I have decided not to temper the initial sense of outrage apparent in the writing, although some will find my choice of words at various points to be intemperate, offensive, or unprofessional. This is neither the time nor the circumstance to go about business as usual where maudlin and affected courtesy are concerned. If there are those who think that expressions of heartfelt dismay are somehow despicable and over the top, and that this murder should be discussed in the casually detached monotone of Jonathan Swift's "Modest Proposal" (as if what we are dealing with here is much the same as who among us gets coffee or tea), I do not apologize. Values are upside down when an expression of moral outrage over a murder is seen as more offensive than the murder itself. Things are truly out of orbit when people are offended by moral outcry and not at all offended by a murder, and this no ordinary murder, but one fiendish and grotesque in every respect.

To respond point by point to the legion of objections that will come to what I have written is not feasible in a short essay. When I taught this material at the law school level in the late 1980s and into the 1990s it occupied four separate law courses. I wrote or edited the textbook / casebook materials for each one. One casebook was over 550 pages, the rest were nearly that size or somewhat shorter. Be assured, therefore, that there is plenty of data regarding the matters of which I speak. This is an essay, not a book.

To those who detect the voice of truth in what I have written, but are new to this kind of discussion, do not be intimidated by the plausible and impressive sounding attacks on this paper which have already started and will continue in the cyber world. You will be well served to read Justice McLean's dissent in Dred Scott and Justice Harlan's dissents in the Civil Rights Cases of 1883 and Plessy versus Ferguson in 1896. Those are only a starting point. Also read Book One, Chapter One of Blackstone's "On the Absolute Rights of Individuals." That is the chapter that launched the careers of both Thomas Jefferson and Abraham Lincoln. Where original American rights jurisprudence is concerned a helpful case is Kamper versus Hawkins in 1793 from the Virginia General Court.

There are many more sources such as these which will let you see that what I have presented here is sound. From these you will gain your own confidence and gain the ability to recognize the flaws contained in the objections leveled at this essay. Keep in mind that conservatives are just as likely to stumble over these things as liberals. If we jump to conclusions in a liberal way or a conservative way, we are still jumping to conclusions. That is why the problem still exists and has not been fixed. (Indeed it is usually conservatives rather than liberals who still defend the Dred Scott court and Roger Taney.) Where these matters are concerned liberalism and conservatism are just two parallel ruts, side by side on the trail, left by the wheels of the same wagon. It's time to pave the road. This is not about choosing political sides but is about the core principles of the Constitution that belong to all of us. This essay is a shorthand guide to some of those principles.

Because of the judicially supervised murder of Terri Schiavo, the basic definition of America is in play. This is deadly serious, literally not figuratively. The restoration and reformation of the judiciary is at stake. It can be accomplished and must be accomplished, otherwise her murder will be only a beginning, not an end.