

Conference Board of the Mathematical Sciences (CBMS) Forum, Reston, VA, Oct. 3, 2011:
“CONSTITUTIONAL PEOPLE AND LIBERATING LITERACY, THE CASE FOR QUALITY PUBLIC
SCHOOL EDUCATION AS A CONSTITUTIONAL RIGHT.”

GYROSCOPE:

Google “Gyroscope” to access the Hila Science Video on YouTube and learn about a spinning gyroscope: its “angular momentum,” its ability to maintain a particular orientation in space, its resistance to any attempt to alter its orientation, its function to provide stability and navigational information for airplanes and space craft.

http://www.youtube.com/watch?v=cquvA_lpEsA

WHISKEY:

In the 1960s whiskey is sold by the pint laying flat on a round tray in every juke joint in the colored side of a Mississippi town. Its August 1961 and I’m relaxing in a juke joint in Southwest Mississippi, Pike County, McComb City, a railroad city thrown up in the decades after the Civil War.

PROHIBITION:

In 1919 at the close of World War One, Amendment 18 prohibited “the manufacture, sale, or transportation of intoxicating liquors within ... the importation thereof into ... or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes.” (Laurence H. Tribe, *The Invisible Constitution*, p. 255)

REPEAL IT:

In 1933, Amendment 21 repealed Amendment 18 and prohibited “The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof.” (ibid, p.257)

A MISTAKE:

By 1961, I was a twenty-six years old field secretary for Snick, the Student Nonviolent Coordinating Committee, having spent the last twelve years schooling: three at Stuyvesant H.S. in NYC, four at Hamilton College in upstate NY, two in graduate school at Harvard, and then three at Horace Mann School in Riverdale NY teaching Middle School Math. No way all that schooling could have prepared me for the mistake I was about to make.

GEORGE AND HIS JUKE JOINT:

Whiskey was not only sold in pints laid flat on a round tray, it was sold in violation of Mississippi laws prohibiting its sale. George ran a laid back Juke Joint, one in which Snick field secretaries could relax from knocking on colored peoples doors imploring them to register to vote. I was about to make a move from McComb and set up voter registration at E. W. Steptoe’s farm in Amite, in the county West of Pike. George had a car, so I asked if he

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would taxi me out there. My mistake. Two weeks later when I came back to McComb the
Juke Joint was shuttered and George had packed up his family and shipped off to L.A.

THE HIGH SHERIFF:

According to the unwritten and invisible rules of Mississippi’s prohibition, George could
serve his whisky pints face down on a round tray or run a taxi service that served all
customers; one or the other. The High Sheriff called the shots. Mississippi was a
government of men, not laws. We had crossed an invisible line. George had to go.

GYROSCOPIC CONSTRUCTION:

Laurence H. Tribe’s treatise on “The Invisible Constitution” presents the idea that “just as a
spinning gyroscope ... is governed by vectors of force that give it stability and enable it to
resist gravitational pulls that would otherwise knock it off its axis of spin, so the
Constitution embodies vector forces both centripetal (pulling toward the center) and
centrifugal (pulling outward) that ensure a measure of stability.”(ibid, p. 207)

THE DORMANT COMMERCE CLAUSE: A CENTRIPETAL FORCE.

The 18th Amendment was part of the centripetal force gathering power to the Federal
government to prohibit states from erecting “trade barriers against products or services
from other states.” An invisible constitutional force, constructed over the course of roughly
a century, its intention was to counter balance “the centrifugal force of such laws, and of the
countermeasures they would likely invite from states whose businesses were adversely
affected.” The Judicial branch surmised over time that such measures induced by States,
“might be more than Congress ... could be counted on to handle.” Over time, from this
recognition, something that came to be known as the “dormant commerce clause,”
emerged: A centripetal force to keep interstate commerce from flying all over the map.
(ibid, p. 61-63)

WINE:

After the repeal of the 18th amendment “state laws regulating the sale of wine from out-of-
state wineries to in-state customers” put the status of the “dormant commerce clause” on
the Constitutional Docket. In 2005 a closely divided court in *Granholm v Heald*, with Justice
Kennedy writing for the majority, held that “the Twenty-first Amendment does not
supersede other provisions of the Constitution and, in particular, does not displace the rule
that States may not give a discriminatory preference to their own producers.” (ibid, p.61-
63)

A DORMANT EDUCATION CLAUSE (?)

Quite the contrary. There has been no century long Judicial effort to establish a “dormant
education clause” to counter balance the extreme centrifugal force of the nation’s public

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school education vectors, NAEP test scores for the states fly all over the map. But NAEP scores are not nearly so germane as the clear preference given to “in-state” students at State Universities, a preference that goes hand in glove with the barrier to out-of-state students. Should there be a centripetal force to counter balance this domineering centrifugal force? If so, what form would it take? Who should talk about issues like this?

NOT SO FAST WITH GRANHOLM:

Chief Justice Rehnquist joined Justices Stevens, O’Conner and Thomas in dissent from the opinion in Granholm, arguing that the “rule” cited by the majority was not a “provision” of the Constitution but merely part of the “unwritten” Constitution that could surely be erased by an explicit “Amendment that the Nation ratified.” (ibid, p.63)

NOT SO QUICK WITH EITHER POINT OF VIEW:

Tribe wants us to take the long view: “that the opinion and the dissent “represents but two facets of something broader than either: the essentially universal recognition that, even though nothing in the Constitution’s text says so, all of its text and structure must be understood with an eye to its unfolding history.” (ibid, p. 64)

GYROSCOPIC CONSTRUCTION FROM A HISTORICAL POINT OF VIEW.

The historical perspective invites two additional principles for what Tribe calls his “gyroscopic ensemble” of the “Invisible Constitution.”

One such principle, whose rationale is the necessity of adaptation to new circumstances and improved understandings, rides a vector whose “axis points in the direction of the future.

The other principle, a stability-inducing respect for precedent and stare decisis, the inclination to stand by rulings once deliberately made, rides a vector whose axis points in the direction of the past.” (ibid, p. 208)

EDITORIAL:

George and the High Sheriff, wine producers and wine sellers, whatever we are and hope to become, our best bet lies in understanding ourselves as a fully constitutional people, in liberating ourselves to engage the invisible as well the visible constitution, in taking its preamble as our instrument for organizing and earning our insurgencies.

TRIBE’S SIX MATHEMATICAL/SCIENTIFIC CONSTITUTIONAL CONSTRUCTIONS.

The “Gyroscopic” joins five other Constructions: The Geometric, the Geodesic, the Global, the Geological and the Gravitational. (ibid, p. 155) Tribe offers these six invisible constitutional constructions to “push us to look more deeply into our shared and separate

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histories and values, making us confront what we might otherwise not notice or might even positively avoid.” He implores us to explore them to “discover matters beyond (the) horizons (of the visible constitution) that we must take into account in deciding who we are to become, or avoid becoming. (ibid, p.8)

ABRAHAM LINCOLN:

“If we could first know where we are, and whither we are tending, we could then better judge what to do, and how to do it.

In my opinion, (slavery agitation) will not cease, until a crisis shall have been reached, and passed.

A house divided against itself cannot stand.

I believe this government cannot endure, permanently half slave and half free.

I do not expect the Union to be dissolved -- I do not expect the house to fall -- but I do expect it will cease to be divided.

It will become all one thing or all the other.”

<http://showcase.netins.net/web/creative/lincoln/speeches/house.htm>

GEOLOGIC CONSTRUCTION:

Geologic constitutional sentences these, delivered on June 16, 1858, two years before the Civil War, to one thousand delegates in Springfield, Illinois at the Republican State convention. Delegates thought them injudicious to say the least; sentences that dug that deep would surely defeat their Senate nominee, and so they did. (Lincoln speech, introductory comments)

Then five years later at Gettysburg, digging deeper still, Lincoln excavated yet another invisible geologic constitutional construction, the idea that “government of the people, by the people, for the people, shall not perish from the earth” let alone, we might add, from Constitutional America.

<http://showcase.netins.net/web/creative/lincoln/speeches/gettysburg.htm>

PROPERTY:

In the 1830s, three decades before Lincoln’s, Andrew Jackson, the original people’s president, undertook his own geologic dig. A constitutional dig to excavate Cherokees, Choctaws and their African slaves from lands East of the Mississippi, to lands West of the Mississippi.

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There is feasible a line of thought along which the two Presidential digs target the same invisible core constitutional value: The idea that propertied white men provide the real centripetal force to hold the Union together. Jackson, on this line of thought, removed an internal threat to the entire constitutional enterprise with an innocuous "prophylactic" Geodesic skin, something called an "Indian Territory" under which Cherokees and Choctaws would at least survive, whether or not they thrived.

There is, however, another feasible line of thought about Jackson's geologic dig. The Cherokee, Choctaw excavation, suggests a gyroscope: an invisible orientation of the Constitution, spinning during the age of Jackson, towards civilizations that elevate private property rights to the status of natural law, a centripetal force for a property obsessed nation. White settlers wanted other people's land.

<http://www.pbs.org/wgbh/ala/part4/4p2959.html>

"THE TRAIL OF TEARS"

In the early years of the 20th century, after Lincoln incubated "government of, by, and for the people," after the last band of Choctaws marched along Jackson's constitutional vector into Indian Territory, all three of America's races, whites, blacks and Indians wrestling with "where we are, and whither we are tending," struggling to "better judge what to do, and how to do it" unexpectedly, had in mind the same invisible geologic constitutional dig: a separate state dominated by their own race." Three separate "We The People" for the land that was to become "Oklahoma." (Scott L. Malcomson, "One Drop Of Blood")

What took hold of them? Lincoln's invisible geologic constitutional construction of self-government? Perhaps. If so, it was rendered illusory just by the overwhelming "asymmetrical" relationships among these three peoples.

THE SET OF "WE THE PEOPLE."

Along one line of thought, the Constitution outlines how "We The People" should structure government to "secure the Blessings of Liberty"; a dissertation, so to speak, on the intention of the set, "We The People." But notice how silent both the visible and the invisible constitution are about the extension, the actual membership, of that set. After Gettysburg, "We The People," a finite fuzzy set, was about to get some new digs oriented to "new circumstances and improved understandings."

DRED SCOTT AND STARE DECISIS.

In 1957, the idea of constitutional property that could get up and run away manifested in Dred Scott. The inclination to stand by rulings once deliberately made, brought the nation face to face with the "central dilemma of, "stare decisis": the danger of "cementing in place ... interpretations of the Constitution that one believes, on balance and however humbly, to be mistaken. (Tribe, op. cit., p.208)

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Michael Sandel, in his book “Liberalism and the Limits of Justice” reminds us that In 1858 it was Douglas, not Lincoln, who trumpeted “of, by and for the people” in their famous debate over popular sovereignty versus slavery. That debate provides “the most famous case in American history for bracketing a controversial moral question for the sake of political agreement.” (Sandel, p. 199).

DOUGLAS:

To throw the force of the Federal Government into the issue, “either in favor of the free or the slave states would violate the fundamental principles of the Constitution and run the risk of civil war. The only hope of holding the country together ... was to agree to disagree, to bracket the moral controversy over slavery and respect “the right of each state and each territory to decide these questions for themselves.” (ibid, p.199)

LINCOLN:

Any man can advocate political neutrality who does not see anything wrong in slavery, but no man can logically say it who does see a wrong in it. ... He contends that whatever community wants slaves has a right to have them. So they have it if it is not a wrong. But if it is a wrong, he cannot say people have a right to do wrong. (ibid, p. 199)

THE WAR OF DEATH:

When death followed for 625,000 of the nation’s sons and daughters, the “House Divided” did not fall, but neither did it become all one thing or all the other. Notably, it had not ceased to be divided when, sadly for some, gladly for others, Abe Lincoln fell. After his fall, the nation recalibrated his “government of, by and for the people”. The geologic principle underneath Douglas’s “popular sovereignty,” the orientation (constitutional and gyroscopic) to the central importance of propertied white men, a core constitutional value from the 1787 convention to Jacksonian democracy of the 1830s, was no respecter of 625,000 dead.

MISSISSIPPI:

“In 1841, a twenty year old, Charles (Brown) Percy, abandoned an Alabama plantation worth a quarter of a million dollars and headed deep into the lush wilderness of the Yazoo-Mississippi Delta.” President Jackson had cleared the Delta of Choctaws and Charles’s grandfather, Charles “Don Carlos” Percy had passed through the Bahamas long enough to gather slaves and a land grant from the Spanish government, sailed to New Orleans and settled in 1776 in Spanish territory South of Natchez. One of his sons, Thomas George, attended Princeton (1806) “where he became a close friend of John Walker, one of Alabama’s first two Senators. Thomas George was positioned to acquire prime Mississippi land the Federal government was wrestling from Cherokees and Choctaws. His son Charles loaded furniture, equipment, supplies, mules, overseers, and slaves onto barges and flatboats, traveled down the Tennessee to the Ohio, ... , down the Ohio to the Mississippi,

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then proceeded two hundred more miles (where) he and his entourage unloaded near what would become the city of Greenville ... (they) cut their way fifteen miles through a jungle of vines and cane twenty feet high to Deer Creek and some of the finest land in all the Delta. His three brothers made the trip, including William Alexander Percy, just three years old.

In 1850, ten years later, Charles, just 30 years old, died, but young Alexander thrived, went to Princeton has had their father, and took a law degree from the University of Virginia while Douglas debated Lincoln.

William Alexander had opposed secession but immediately after Mississippi seceded he raised a regiment of Confederate volunteers (and) became its Colonel. In 1865, twenty-eight years old, he came home to desolation, but "this Percy understood power and had few illusions." His first priority was to rebuild the levees, next he focused on the railroads ... and the impeachment of Governor Ames.

(John M. Barry, *The Rising Tide: The Great Mississippi Flood of 1927 and how it changed America*, "The Percys. Nicholas Lemann, *Redemption: The Last Battle of the Civil War*.)

<http://achiver.rootsweb.ancestry.com/th/read/Obituaries/2009-06/1244086491>

ADELBERT AMES:

Adelbert Ames, a Union general in the Civil War, son of a sea captain from Rockland Maine, graduated from West point in 1861, and received the Medal of Honor for his heroism at Bull Run, was William Alexander's political target.

When Mississippi refused to ratify the 14th Amendment in 1868, Congress appointed Ames to be its provisional Governor. With the civil war still raging in the state, Ames, with military oversight, organized a general election in 1869 and the legislature convened in the beginning of 1870. The black vote sent Grant to the White House in 1868 and 1872. But in 1873, white leaguers from Louisiana spread to Mississippi to undermine its 1874 and 1875 elections. Ames later wrote that the 1875 election "trampled the State government literally underfoot by armed resistance and wholesale riot and murder, with the end, as followed, of open defiance of the constitutional amendments, the wholesale disfranchisement of the colored man, and his denial of all political rights practically, and quite as practically of his civil rights." (Leman, op. cit., p.207)

<http://bioguide.congress.gov/scripts/biodisplay.pl?index=a000172>

William Alexander Percy, the respectable face of white terror, got himself elected to the 1875 legislature to serve one term as speaker of the House and prepare the "trumped-up articles of impeachment which forced Ames ... to leave the state." (Barry, op. cit., p.104)

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EIGHTY-EIGHT YEARS LATER:

In the early darkness of a winter evening in February 1963, Jimmy Travis slipped behind the wheel and Randolph Blackwell crowded me beside him in a Snick Chevy in front of the Voter Registration Office in Greenwood Mississippi to take off for Greenville on U.S. 82 straight across the Delta. Jimmy zigzagged out of town to escape an unmarked car, but as we headed west on 82 it trailed us and swept past near the turn off for Valley State University, firing automatic weapons pitting the Chevy with bullets. Jimmy cried out and slumped; I reached over to grab the wheel and fumbled for the brakes as we glided off 82 into the ditch, our windows blown out, a bullet caught in Jimmy’s neck.

After Jimmy caught that bullet in his neck, Snick regrouped to converge on Greenwood and black sharecroppers lined up at the Court House to demand their right to vote. Snick field secretaries were arrested, and Burke Marshall, the Assistant Attorney General for Civil Rights under Robert F. Kennedy, removed our cases to the Federal District Court in Greenville and sent John Doar to be our lawyer. From the witness stand I looked out at a courtroom packed with black sharecroppers from Greenwood, hushed along its walls, packed onto its benches, and attended to the question put by Federal District Judge Clayton: “Why are you taking illiterates down to register to vote?”

(John Doar, “The work of the Civil Rights Division in enforcing Voting Rights under the Civil Rights Acts of 1957 and 1960, Florida Law Review, 25, no. 1)

SNCC picking in the high cotton of Sharecropper Education, had stumbled on the geologic principle underneath Douglas’s “popular sovereignty”, the core constitutional value from the 1787 convention to Jacksonian democracy of the 1830s, to the 1875 violent overthrow of the Mississippi State legislature, an orientation (constitutional and gyroscopic) to the central importance of propertied white men.

In 1964, during SNCC’s “Freedom Summer,” sadly for some, gladly for others, Mickey Schwerner, Andrew Goodman and James Chaney fell. A century of constitutional war was itching for closure, the “House Divided” had still not yet become “all one thing or all the other” but SNCC fell to pieces trying to stop the Gyroscope maintaining the nation’s Jim Crow orientation from spinning.

OKLAHOMA.

“The Heartland of America, an invisible Geodesic constitutional construction has always been by definition Christian, white and blameless,” too innocent to harbor terror, let alone evil.

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So when on April 13, 1995, one hundred and sixty eight heartland people of “every age and race” were blasted to oblivion in the Oklahoma City bombing, Scott L. Malcomson took it to heart, went to have a look and wrote this:

“Many of us cast the Oklahoma City bombing as a story in which innocent, childlike white American Christians were victims, a story of Terror in the Heartland ... The shrine at (the site of the bombing) was a spontaneous expression of this idea - not a media spin or a planned commemoration, just America talking to itself. ... Although many of the dead were not white, the pictures of the victims, at the time of my visit all portrayed white people.” Was that true? Does America, when its not paying attention to itself, just talk like that, straight up? (Malcomson, op. cit.)

CONSTITUTIONAL OUTSIDERS.

“Outsiders,” that’s who Mickey, Andrew and James are, really. SNCC has no business calling on students from other states to convene in Mississippi for a summer project pretending to work for “We The People.” Who do they think they are, really? I mean let’s get real here.

TRIBAL INSIDER.

Insider? Elias Boudinot? Actually an insider traitor; he had to die, tribal law, plain and simple, “seven blows of a hatchet to the head.” Why? Selling tribal land is treason. Elias, like a “proper Negro,” made himself into a “proper Cherokee.” He had confused himself into thinking he was a member of the set of “We The People” and could take the Cherokee case to the Constitution and seek status as a “foreign nation.” Chief Justice John Marshall assured them they were not “foreign” but “domestic,” more precisely a “domestic dependent nation” and therefore could not sue, had no standing, were not members of that distinguished set. The Cherokee Nation had its own rules about life and death in a house divided and so in 1838, sadly for some, gladly for others, Elias Boudinot fell to tribal hatchets in that Indian Territory whose “name was cobbled from two Choctaw words for red and people, Oklahoma.”(ibid)

PRESIDENT GRANT.

On December 7th, 1875, President Ulysses S. Grant argued for a Constitutional Amendment to establish public schools for the freed slaves in his Seventh Annual Message to the United States Congress:

As the primary step, therefore, to our advancement in all that has marked our progress in the past century. I suggest for your earnest consideration and most earnestly recommend it, that a Constitutional Amendment be submitted to the legislatures of the several states for ratification, making it the duty of each of the several states to establish and forever maintain free public schools adequate to the education of all the children in the rudimentary branches within their respective limits, irrespective of sex, color, birthplace, or religions; and prohibiting the granting of any school funds or

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school taxes, or any part thereof, either by legislative, municipal, or other authority,
for the benefit or in aid, directly or indirectly, of any religious sect or denomination, or
in aid or for the benefit of any other object of any nature or kind whatever.

(President Grant’s Seventh Annual Message to Congress in December 1875)

<http://candst.tripod.com/granmess.htm>

Tribe remarks that, “In the end, it is the struggle itself - not any of the interim destinations
to which it might lead - that the constitutional quest is all about.” The quest to find the
right balance between the centrifugal and centripetal forces impacting public school
education has assumed a new urgency and national importance in the information age. An
age which has catapulted mathematicians and mathematics teachers smack in the middle
of the problem of nation’s cast structure:

SLAVERY’S SUBSTITUTE.

As James Bryan Conant, President of Harvard from 1933 to 1953, wrote in his little book,
“The Slums and the Suburbs:”

The people of the United States through their duly elected representatives in
Congress acquiesced for generations in the establishment of a tight caste system as a
substitute for Negro slavery ... As we now recognize so plainly, but so belatedly, a
caste system finds its clearest manifestation in an educational system.

(Conant, pp. 43)

THE NATION’S PROBLEM:

Snick’s insistence that illiterate Mississippi Sharecroppers demand voting rights helped
push Burke Marshall, John Doar and the Civil Rights Division of the Justice Department to
file statewide suits against Mississippi and Louisiana, leading to the enforcement
provisions of the 1965 voting rights act. (Doar, op. cit.)

So why did the Nation need to remove oversight of registration to vote from Mississippi
and Louisiana to the Feds? It was, and remains, a question of national redemption.

In Mississippi, in 1875, the Nation bore witness to a “shot gun wedding”:

Democrats winked:

Democrats overthrew the Mississippi legislature using terror, violence and murder, all in
the name of democracy.

Republicans blinked:

President Grant yielded to the request of the Republican delegation from Ohio and refused
to send troops to Mississippi less Rutherford Hayes be defeated in his 1875 bid for
governor. (Lemann, op.cit.)

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SHARECROPPER SCHOOLS FOR THE POOR:

What, exactly, did all that have to do with Sharecropper Education? William Alexander Percy wrote the impeachment articles against Adelbert Ames to make sure that monies set aside for the education of the Freed Slaves were used to build a railroad infrastructure to establish sharecropping in the Delta. (Note: The Policy is noted in Lemann, the perpetrator in Barry)

The Nation regulates, below its radar system, a two-tiered education policy: It runs sharecropper schools for the poor and winks at rescuing some of them by lottery. Twenty-first century Sharecropper Education for the poor reaches for no higher horizon than the stations of work it assigns them.

OUR PROBLEM:

While the Nation “Winks,” we “Blink”.

Can we have, for the first time in our history, a national conversation about what Grant was after over a century and a quarter ago: a Constitutional Amendment for a Quality Public School Education?