

Scalia Teaches First of Bachmann's Constitutional Mythology Workshops

Yesterday, Supreme Court Justice Antonin Scalia traveled to the Capitol to teach a class about the Constitution to members of Congress, led by controversial Tea Party caucus chairwoman Michele Bachmann. Justice Scalia's participation in Bachmann's Constitution school has prompted a heated debate about the proper relationship between Supreme Court justices and political leaders. But the real debate that should be raging is not about judicial ethics, but about the dubious vision of the Constitution that Scalia and leaders of the Tea Party will be discussing.

As Jonathan Turley pointed out in the [Washington Post](#) this weekend, while Supreme Court Justices across the ideological spectrum have taken on increasingly prominent public roles, Scalia has become a true "celebrity justice." But Scalia's pugnacious celebrity is in service of a distorted and bizarre reinterpretation of the Constitution championed by the Tea Party movement.

Although the Tea Party seeks to wrap the Constitutional founding in religious doctrine and intention, this view conveniently ignores the Establishment Clause, the clause forbidding religious tests for public office, and the fact that neither the Bible nor God is mentioned in the Constitution's text. Meanwhile, the [Tea Party's Constitution](#) offers very few of the hard-won protections ensuring equal rights and liberties for all Americans, and all but eliminates the power of government to protect and empower its citizens in interstate commerce. Tea Party candidates across America in 2010 also called for repeal of the 16th Amendment (making federal income taxation possible), the 17th Amendment (providing for direct popular election of U.S. Senators), and parts of the 14th Amendment.

Bachmann's Constitution classes are not so much an introduction to the founding documents, but to a new interpretation of the Constitution that mirrors the Tea Party's radical political agenda.

Scalia, a star proponent of selective originalism, in many ways is the perfect professor to teach this school of constitutional philosophy. Scalia's originalist philosophy is perhaps best summarized by his [attitude toward](#) the 14th Amendment's equal protection clause. He has asserted that the equal protection clause, originally meant to ensure black Americans the full rights of citizenship, was never meant to ensure equal rights for women or gay people. Yet, in one of the most famous decisions in which he joined the majority, he departed completely from the original intent of the

amendment, using it as a justification for halting the 2000 recount in Florida and handing the presidency to George W. Bush.

And Scalia, along with his colleague Clarence Thomas, has signaled his willingness to consider handing the Tea Party its ultimate constitutional revisionist victory: the overturning of the health care reform law. Earlier this month, the two justices filed an unusual dissent to the dismissal of a case that challenged the scope of the Commerce Clause--a parallel to the argument made by those challenging the constitutionality of health care reform. If they do ultimately contribute to an overthrow of the health care reform law, the justices will be adding to [the record](#) of a court that has radically departed from precedent in order to place the rights of corporate entities over those of individual citizens--all in the name of an ill-defined idea of the founders' intentions.

The justice's company on the faculty of Bachmann's school is also revealing. [David Barton](#), the revisionist pseudo-historian and Religious Right stalwart whom Bachmann has tapped to lead another one of her classes, is one of the most influential proponents of this newly revised American history and constitutional scholarship. Barton is a driving force in the growing trend of [denying](#) that the founders intended to separate church and state, and claiming--despite overwhelming evidence to the contrary--that the founders meant the United States to be a purely Christian nation. Barton has showcased his creative interpretation of the Constitution by [claiming](#), among other things, that it's unconstitutional for Congress to meet on a Sunday.

But perhaps the most dangerous part of this new zeal for selective constitutional originalism is that it is based on an entirely fictional white-washing of American history. When the House GOP organized a Constitution reading earlier this month, it [left out](#) the parts included by the founders that had later been eliminated by hard-won amendments--most notably the compromise that allowed slave holding states to count slaves as 3/5 of a person. Bachmann herself recently showcased her absurd re-imagining of American history when she [told](#) a conservative gathering that early America was color-blind and that the founding fathers (many of them slave-holders) were in fact "tirelessly" dedicated to ending slavery.

It is this sort of denial of history that lies behind the Tea Party's fictionalized Constitution movement. It would have been a pretty miraculous thing if the United States, as Bachmann imagines, sprung up out of the ground as the happy-go-lucky land of opportunity. But to believe that, and to deny the struggles that underlie American history, is ultimately a great insult to a Constitution that has provided the blueprint for two centuries of growth and strength.

Scalia and Thomas are not just getting mixed up in a political movement. They're getting mixed up in a political movement that centers on a skewed interpretation of the Constitution and a dangerously simple view of American history. Whatever the ethical implications of Supreme Court justices becoming political celebrities, there is reason to worry when justices become celebrities for such a cause.

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