

## **Progressives vs. “Progressive Originalism” - Hit & Run : Reason Magazine**

It certainly could. More importantly, it should—at least if we care about following the text and history of the Constitution. Sadly, Ho’s results-oriented approach has some very powerful allies on the bench, including “faint-hearted” originalist Justice Antonin Scalia. As I explain in “Conservatives v. Libertarians,” Scalia has long rejected the idea that the 14th Amendment protects economic rights. Speaking at a Cato Institute conference on this very topic in 1984, for example, Scalia told the audience, “in my view the position the Supreme Court has arrived at is good, or at least the suggestion that it change its position is even worse.” That view reappeared during oral arguments in the McDonald case, where Scalia openly mocked Alan Gura for seeking to revive the Privileges or Immunities Clause. “What you argue is the darling of the profession, for sure,” Scalia quipped.

To put all of that in a different, more depressing way, consider this: Justice Antonin Scalia and the NAACP Legal Defense Fund—two very powerful forces in American law—are in perfect agreement that we should ignore the Privileges or Immunities Clause entirely lest the courts end up protecting economic liberty.

On balance, I believe that Scalia does less harm than good - although this judgment hinges in large part on his faint-hearted support of the Second Amendment as protecting an individual right (while at the same time leaving a hole in his decision large enough to drive a truck full of liberal gun-grabbing laws through), but my favorite Justice, one of the best of all time, in my opinion, remains Clarence Thomas. His appointment was the only truly great decision George H.W. Bush ever made.

-Bill Quick