

Why do we even bother with this anymore?

The New York Times breathlessly reports that the University of Virginia’s Caleb Nelson, a well-respected originalist scholar, has concluded that the “unitary executive theory,” long promoted by conservatives, is, well, bunk.

“A bombshell!,” enthuses Will Baude of the University of Chicago, himself a well-respected originalist scholar – a description that the Times puts in its headline.

That would be – ***no.***

Just for the non-cognoscenti, the “unitary executive theory” postulates that because Article II vests the “executive power” in the President of the United States, this strictly circumscribes what Congress can do in limiting the President’s power to hire and fire executive branch officials. At its most extreme, it can destroy professional civil service protections – which of course is precisely what the Conservative Legal Movement has wanted for a long time.

In an upcoming Supreme Court case, *Trump v Slaughter,* the “justices” will consider whether the President can dismiss members of the Federal Trade Commission even though the governing statute only allows dismissal “for cause.” The unitary executive theory says that the statute doesn’t matter, because restricting the President’s removal power means that the executive power is no longer vested in the President.

For a conservative originalist scholar to say that in fact the unitary executive theory is bunk, then, might appear to indeed be a “bombshell” – *if we insist that the Supreme Court has any coherent theory of jurisprudence other than favoring the political interests of the Republican Party.*

But of course it doesn’t, and if anyone should understand this, it is Baude himself, who wrote a painstaking, scholarly originalist paper on why the Fourteenth Amendment’s Insurrection Clause forbids Donald Trump from serving as President – only to see it swatted away by the Supremes because, well, their only theory of jurisprudence is to favor the political interests of the Republican Party in general and the MAGA Movement in particular.

Adam Liptak, the Times’ Supreme Court correspondent, acknowledges as much, when he says that “[t]here is little question that the court will side with the president,” and notes that the Court’s MAGA majority is committed to the theory.

There is literally no story here. The Supreme Court doesn’t care about precedent, or history, or legal theory, or anything except helping Donald Trump and the Republicans. Everyone knows this. Baude knows this. Liptak knows this.

Then why bother with the article in the first place? Why put it on Page One?

When thinking about this garbage, I cannot help but think about Peter Tuchin’s famous theory of “elite overproduction,” which notes that some societies tend to produce more potential elites than can actually serve in elite positions. Tuchin’s theory notes that this will cause social instability, as resentful potential elites who fail to achieve elite positions will generate grievances and seek political avenues to satisfy those grievances.

This isn’t that bad. But when the Supreme Court not only fails to have any coherent legal theory other than the destruction of democracy – and then goes out of its way to interfere with the normal workings of the legal system, as it does through dozens of pro-MAGA orders on the Shadow Docket – it makes a whole bunch of formerly elite occupations obsolete. There is literally nothing for elite legal scholars and journalists to do. Liptak is forced to create a fake story because how many times can he write the same piece about the Supreme Court is dedicated to destroying democracy? Legal scholars have to write the same article over and over again about the Supreme Court is intellectually dishonest. But while it is important to document the destruction of institutions, *after* a while it loses its value: we know

this already!



Francis Bacon: Too Many Scholars

Hundreds of years ago, philosopher Francis Bacon warned of the threat of sedition if “more are bred scholars, than preferment can take off.” AI is already causing problems in this direction. The Supreme Court and the MAGA movement are doing their best to supercharge it. Get ready for the consequences.