

The New York Times

Opinionator

AUGUST 2, 2012, 9:00 PM

Fifty Shades of Scalia

By **TIMOTHY EGAN**

He grumps and harrumphs, he charms, fidgets and scolds, but mostly, Supreme Court Justice Antonin Scalia just endures - the fools, that is. He's on a book tour now, promoting product, though he occasionally has to remind some intellectually inferior interlocutor that he's untouchable: *we have lifetime tenure, Piers*.

It's been fascinating to watch Fifty Shades of Scalia, without the insulation of black robe or white marble. The permutations are cosmetic. The 18th-century man is intact. If only he could face Jon Stewart; the comedian, at least, would not let Scalia get away with the kind of drivel he's been serving in defense of the court decision that handed American democracy off to the highest bidder.

Asked by Piers Morgan on CNN about the Citizens United case - the 5-4 ruling that eliminated the last restraints on the very rich to dominate public discourse in the way they know best, by buying it - Scalia was unrepentant, as you might expect.

"I think Thomas Jefferson would have said, the more speech, the better," said Scalia. "That's what the First Amendment is all about, so long as people know where the speech is coming from."

Yes, of course: let's imagine Jefferson, sitting in a hotel room in Steubenville, Ohio, this August of 2012, sipping a Virginia claret while trying to find some evidence of the clash of ideas in the great arena of free speech that is his flatscreen.

What he sees, and endures, is not more speech - that would involve a diversity of thoughts and voices, a point and a counterpoint, an evidence-based conclusion every now and then. Who wouldn't welcome that?

Instead, what Jefferson hears is the *same* speech, from a tiny minority that can buy the biggest megaphone, compacted into 30 seconds by people who could sell sunglasses to a raccoon. And the sainted founder certainly would not know "where the speech is coming from," thanks to a modern hybrid of legal corruption, refined by the industrious Karl Rove, that shields big-money donors from public disclosure.

The proof is in the numbers. Secretive donor money in federal elections went from 1 percent in 2006 to 44 percent in 2010, after the Supreme Court lifted restrictions, according to the ever vigilant Center for Responsive Politics. Subsequent decisions, by a lower court and the Supremes in a Montana case, have further freed deep-pocketed influence buyers to crowd out all others.

That, Justice Scalia, is what Citizens United gave us - less speech, the few dominating the many with a very narrow message.

To put it another way: so far this year a mere 26 billionaires have given \$61 million to "super PACS" (and these are the ones whose names have come out, through disclosure or journalistic ferreting). Those 26 billionaires have a net worth, according to the C.R.P., equal to 42 percent of all American households, about 50 million people. How could it possibly be good for a functioning democracy if a bit more than two dozen people have a voice equal or greater than 50 million?

In the new post-Citizens world, money equals speech, as Scalia himself says with a benign smile. It follows that there is more speech only for those who can buy into the game.

You can see this imbalance at work in the person of Sheldon Adelson, the orange-haired, creepy-voiced casino magnate who has promised to contribute up to \$100 million to super PACS to knock out President Obama. If you wonder why Mitt Romney was reduced to a pandering stooge in Israel a few days ago, you can blame the traveling companion who held the candidate's leash - Adelson.

Adelson brings to mind the John Huston character in the movie "Chinatown." When Jake Gittes asked the old bastard, Noah Cross, how much he was worth, he said he had no idea.

Gittes: "Why are you doing it? How much better can you eat? What can you buy that you can't already afford?"

Cross: "The future, Mr. Gittes! The future."

The past is also instructive. I wish someone had asked Scalia about the Montana case, where the court this year struck down nearly a century of laws designed to give average people a voice in politics. My grandmother grew up in Butte, Montana, the toughest mining town on earth, once owned entirely by the copper kings. The richest of those robber barons, William A. Clark, actually purchased his Senate seat (in the days when legislators rather than voters chose their senators) with monogrammed envelopes stuffed with cash.

Clark owned nearly everyone of substance in Montana, including newspapermen. By Scalia's construct, this freedom by one man to own and control speech amounts to more speech! And Thomas Jefferson would love it.

A replay of this awful past is where we're headed with the forces unleashed by Scalia and company. *The future, Mr. Gittes!* Fewer than 200 people in a nation of 313 million comprise 80 percent of all super PAC donations, according to the Harvard Law professor Lawrence Lessig.

This, he said in recent testimony in Congress, is "corruption in a sense that our framers would certainly have recognized."

Scalia loves to imagine himself as the founders' heir. He's an "originalist," he says over and over, keeper of the Constitution's sacred text and all its intentions. But if that were so, he'd be showing 50 shades of shame right now.

Copyright 2012 The New York Times Company | [Privacy Policy](#) | NYTimes.com 620 Eighth Avenue New York, NY 10018