



Written by [Selwyn Duke](#) on July 5, 2018

## Harvard Prof Wants to Pack SCOTUS With Leftists, Says “Socialism Will Win!”

The Left has been apoplectic over President Trump’s opportunity to fill the Supreme Court seat of retiring justice Anthony Kennedy. Filmmaker Michael Moore even [proposed](#) surrounding the US Capitol to prevent it. But now a Harvard professor has his own idea: The next time Democrats seize Congress, they should increase the number of justices to enable a liberal president to pack the SCOTUS with leftists. And he apparently thinks this is a move that will help socialism “to win.”



As Harvard Law School lecturer Ian Samuel put it on Twitter June 27: “Pack the courts as soon as we get the chance. ‘Pack the courts’ should be a phrase on par with ‘abolish ICE.’”

The next day he elaborated: “If the Democratic Party wins the 2020 election, it will have won the most votes in 7 out of the 8 previous national elections. Adding six members to create a fifteen-member Court, which would still have 5 GOP-appointed members, is actually incredibly generous to the Republicans.”

Note that this is entirely lawful. The Constitution doesn’t dictate a set number of SCOTUS justices; the figure is set statutorily by Congress.

Samuel then appeared on Fox News to defend his idea, a segment he ended with the rally cry “Socialism will win!” As *Fox News Insider* [reported](#) yesterday:

Appearing on “Tucker Carlson Tonight” Tuesday, Samuel said that the Supreme Court shouldn’t be partisan and subject to “ideological swings.”

He said, though, that his issue with the Supreme Court is that 14 of the last 18 justices have been appointed by Republican presidents.

“The balance on the Supreme Court is way out-of-whack with what people have voted for,” Samuel said, adding that in order to restore the court’s balance, it should be expanded in order to add more liberals.

The centrist Kennedy’s retirement will give Trump the opportunity to move the court solidly to the right, and a vacancy on the court could become a key issue in the midterm elections.

Carlson responded to Samuel by saying that polling data has shown that recent decisions by the Supreme Court have fallen within the center line of public opinion.

“Actually, there isn’t a problem other than [that] Democrats don’t get to do their will with the courts to the extent you wish they could,” he said.

Sadly, the above reflects an old observation made by philosopher G.K. Chesterton: “The business of Progressives is to go on making mistakes. The business of Conservatives is to prevent mistakes from



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being corrected.” Note that even Fox talks of “centrist” Kennedy and how Trump can move the court “solidly right.” This language reinforces a dangerous misconception.

Speaking of the significance of whether a justice is “liberal,” “conservative,” or “centrist” makes as much sense as emphasizing whether a baseball umpire is liberal, conservative, or centrist. As I [explained](#) June 28, “In neither case does the individual’s legitimate role involve imposing his own biases, but to apply the rules. These are found in baseball’s rulebook in the umpire’s case — in the Constitution in the judge’s.” To expand on this analogy, as I [wrote](#) last year:

Judges can in fact be likened to baseball umpires, while the players are the people, the game’s ruling body is the legislature, and the rule book is the Constitution.

Now, if a rule is thought inadequate, it’s the ruling body’s role to change it. Of course, the players, the umpires, or anyone else may lobby passionately in that regard. What, however, if an umpire considered the rule book living and said, “With the great pitchers in these times, three strikes are insufficient; I’m giving the batter four strikes”?

He’d be fired. And would it help his cause if he added an intellectual veneer to his cheating, saying, “You don’t understand! I’m not a radical like those originalists! I’m moderate — a pragmatist”?

No, he’s a bad umpire — and he’d be history.

Likewise, forget about conservative, liberal, and centrist judges; forget about “pragmatists,” “constructionists,” and “textualists.” Such terms are the fruits of pseudo-intellectualism and legal legerdemain and muddy the waters. There are only two kinds of judges.

Good judges and bad judges.

Today we have far too many of the latter, acting as an oligarchy and appointed and abetted by people who welcome this role as long as the court does their bidding. This power — to act as a super-legislature — is why SCOTUS appointments now inspire such hand-wringing and hellacious rhetoric. But there’s a simple solution to this, one that would render arguments about packing the court, and any successful efforts at doing so, irrelevant.

Reject the courts’ “role” as ultimate arbiter of law’s validity.

This is entirely lawful. Understand that judicial supremacy — the notion that the SCOTUS has the final say on law’s meaning and that its opinions must constrain all three governmental branches — is *not granted to the courts by the Constitution*. Rather, the courts *declared this power for themselves*, notably in the *Marbury v. Madison* decision (1803).

As for the Left, the fundamental problem it has isn’t with Trump’s SCOTUS picks — it’s that it hates the Constitution itself. Ask yourself, why would leftists object to justices who merely do their jobs and adhere to our national rule book (and liberals do thus object, despite their claims to the contrary)?

It’s because the Constitution is a *conservative document*.

First, by assigning most powers to the states, the Constitution mandates a degree of subsidiarity, the principle stating that tasks in civilization should be performed by the smallest possible entity that can do so. This contravenes the leftist aim to centralize power.

Even more fundamentally, however, the Constitution’s provisions — only alterable via the difficult Amendment Process — ensure a status quo. This, [as I’ve explained in the past](#), aligns with conservatism’s only consistent definition: a *desire to maintain the status quo*. So it’s unsurprising that



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the document would be despised by adherents of modern liberalism, whose only consistent definition is a desire to *change the status quo*.

Of course, the Constitution serves its status-quo-maintenance role only if we actually abide by it. Thus do leftists have a lust affair with bad judges who'll spin it like a whirling dervish with vertigo.

The Left certainly does hate President Trump, and it may even hate good justices. But what most Americans don't realize, and what leftists themselves won't yet admit, is that they hate the Constitution itself.

Image of Ian Samuel (right) with Tucker Carlson: [Screenshot from Fox News Insider](#)



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