On the first day of law school, my constitutional law professor gave the class a homework assignment: go home tonight and read the Constitution.

That didn’t take long. Nor that night did the Constitution seem especially complicated, at least compared with the old English cases we were assigned to read in other first-year courses like torts and contracts. Even students who, like me, didn’t know a tort from a contract had been exposed in college and earlier to some formal learning about the Constitution.

My own first exposure came in a high school class known as Problems of Democracy — on reflection, a rather daring name for mid-century cold-war America, with the implicit suggestion that democracy might have problems, might not be perfect. Search the Internet for a course by that name, and you will find that it was a popular part of the country’s civics curriculum into the 1980’s — in the days when there was a civics curriculum. (By the time my daughter was in high school, civics was still required, but it went under the less redolent name of National, State and Local Government — what did they mean, anyway, by listing “national” in front of state and local?)

Did Problems of Democracy also mean to imply that the Constitution itself might not be perfect in every way? If so, that particular message didn’t come through in my public school classroom. If there were problems, Chief Justice Earl Warren was undoubtedly fixing them.

These memories are, of course, evoked by the public Constitution-reading exercise that the new Republican majority in the House of Representatives led last week on the House floor. It was a sanitized version that the representatives read, skipping that embarrassing business about slaves counting as only three-fifths of a person. The explanation was that this portion of the text of Article I, Section 2 no longer counted, having been repudiated by the post-Civil War amendments.

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The Constitution-reading performance has come in for a fair amount of ribbing, on this and other grounds. My own beef is not that the members of Congress chose not to acknowledge inconvenient parts of the document as written, but that their show of reverence for the written text obscured much of what really matters in our constitutional culture.

Call it the unwritten Constitution, as many do; the “Invisible Constitution,” the title of a recent book by Laurence H. Tribe; or the “sedimentary” Constitution of a 1998 article by Barry Friedman and Scott B. Smith, who used a geologic image to convey the notion that today’s Constitution is the product of accumulated layers of historical meaning.

You don’t have to believe in a “living Constitution,” the object of Justice Antonin Scalia’s scorn (“Go back to the good old dead Constitution,” he told NPR in 2008), to recognize that, however labeled, the Constitution is a participant in a continual dialogue between past and present. A reading of the text that ignores that fact is as simplistic and sterile an exercise as my long-ago homework assignment, minus the professor’s ironic goal of forcing the students to see just how little they understood. Of course, we spent the ensuing semester — and, for many, the intervening years — trying to fathom the mysteries of what had seemed so straightforward on that first night.

There is nothing inherently liberal, progressive or even ideological one way or another about acknowledging that the Constitution we have today is the multilayered product of original understanding mediated over time by perceived need. Nor is Justice Scalia himself, his protestations aside, immune from this reality. One of his opinions from the Supreme Court’s last term is my favorite recent example of how even this most original of all originalists sometimes bends toward the practical in his constitutional interpretation.

Last term’s case, Maryland v. Shatzer, concerned the interrogation of a prison inmate who, more than two years earlier, had received his Miranda warnings and declined to answer questions without a lawyer present. When new information about the man’s crime came to light, a detective went back to the prisoner to try again to question him. The detective administered a new set of Miranda warnings. This time, the prisoner waived his rights and submitted to a polygraph examination, which he failed.

A 1981 decision, Edwards v. Arizona, held that once a suspect has been advised of his rights and has refused to talk, the police may not reinitiate questioning unless the suspect either has a lawyer or comes forward spontaneously. In that case, the second interrogation followed the first by one day — too soon, the court concluded then, to remove the coercive impact of a renewed interrogation. In the new case, all nine justices agreed that the Edwards precedent was not controlling when the break in questioning had lasted for more than two years.
But if two years was obviously long enough for the police to wait, what would be the shortest period of time that would permit a new effort at questioning? “It seems to us that period is 14 days,” Justice Scalia said for the court.

Fourteen days? Where did that come from as a constitutional principle? Fourteen days, Justice Scalia explained, provide “plenty of time for the suspect to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody.” That sounds an awful lot like constitutional policy, not constitutional interpretation.

As a formal matter, a defender of this opinion might point out that in his analysis, Justice Scalia disclaimed reliance on the Constitution itself. The Miranda warnings and the Edwards v. Arizona rule constitute “a set of prophylactic measures,” Justice Scalia wrote, a kind of judge-built fence around the Fifth Amendment itself, intended to reinforce the amendment’s protection against compelled self-incrimination.

Fair enough, but still those 14 days had to come from somewhere, and one would look in vain for them anywhere in the Fifth Amendment’s text. The answer has to be that they came from the collective judgment of the justices who thought 14 days represented a common-sense break point. Justice Clarence Thomas was not persuaded. Why not “zero, 10, or 100 days,” he asked, speaking for himself in a concurring opinion. Indeed. At least the trimesters of pregnancy that the Supreme Court discussed in Roe v. Wade, so harshly criticized by Justices Scalia and Thomas and their allies, are grounded in medical practice and reproductive biology.

Last month, before the new Congress opened for business, Representative Darrell Issa, a California Republican and the soon-to-be chairman of the House Oversight and Government Reform Committee, wrote to 150 companies and trade associations asking them to let him know about any federal regulations that they would like to see removed. Perhaps Mr. Issa was emboldened to send such a letter by the business-friendly vibrations emanating from the Supreme Court these days. It was just last January, in the Citizens United case, that the court granted corporations a robust First Amendment right, as citizens, to spend money in support of or against candidates in federal elections.

House Republicans could read the Constitution every day between now and July 4 without finding a word about corporate citizenship. Funny, but it just doesn’t seem to be there. Call it a problem of democracy.