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Honoring Justice Antonin Scalia

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February 13, 2016

Michael M. Uhlmann was a friend of Justice Scalia's for nearly half-a-century and served with him as an Assistant Attorney General during the Ford administration.

The shadow cast by great men often looms larger in death than in life. Such will almost certainly be the case with Justice Antonin Scalia, even though few men in our time, and even fewer justices at any time, have exerted greater influence while they lived. Paradoxically, Scalia's influence did not arise solely, or perhaps even primarily, from his majority opinions. He happened to serve on the Court when most of his colleagues were enamored of "the living Constitution" and had little use for Justice Scalia's devotion to constitutional text and tradition. He often found himself in the minority.

For that reason, Justice Scalia decided early on to play a longer game, one that sought to (and did in fact) create an audience beyond that of his colleagues and their academic and media allies. If judicial influence is to be measured solely by who can muster five votes on any given occasion, the prize surely must go to Scalia's colleague, Anthony Kennedy, who prides himself on being the swing vote and has frequently used that position to join four consistently liberal colleagues. Take any one of those liberals away, however, and Kennedy's "swing" jurisprudence, like his influence, vanishes without a trace like a wisp of smoke. There's just not much there there.

Scalia asserted influence of an entirely different kind, and more often in dissent than when writing for the majority. Indeed, it can be argued that he will go down as the greatest dissenter in the history of the Court. But whether in the majority or in dissent, Scalia's brilliance and cogency shone through on every page. A powerfully eloquent man, he was unrivalled in his ability to drive a good argument from beginning to end in compelling fashion, and he could skewer a bad one at 50 paces with bulls-eye accuracy. His pungency sometimes ruffled his colleagues, but his powerful logic and rhetoric redefined constitutional debate in ways that are likely to ensure enduring effect. Such influence is altogether different from that achieved by ephemeral mathematical majorities, and far more powerful than that exercised by anyone else on the Court in his time.

Antonin Scalia was a man in full—husband and father of nine, teacher, public servant, faithful disciple of his Creator—and the most genial of men at that. He was a warm and generous friend, who charmed enemies and friends alike

with endlessly energetic ebullience and a natural gift for laughter that made him impossible to ignore or dislike. We cannot know what the future will hold, but if a constitutional jurisprudence worthy of the name survives these parlous times, the collected opinions of Justice Scalia will be seen as a major cause of its recovery. There are many mansions in the house of originalism, to be sure, but we owe Antonin Scalia an enormous debt of gratitude that there is such a house at all.

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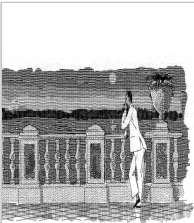
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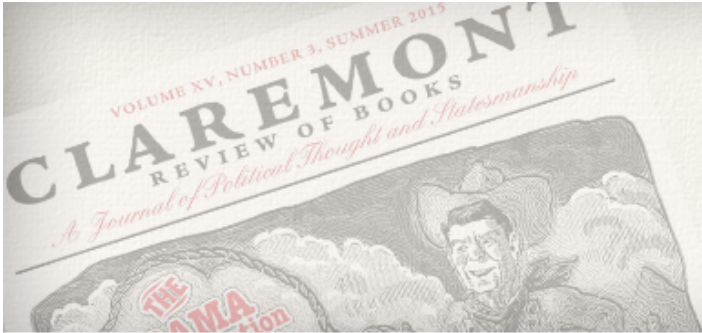


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