



American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia

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The first full-scale biography of the Supreme Court's most provocative—and influential—justice

If the U.S. Supreme Court teaches us anything, it is that almost everything is open to interpretation. Almost. But what's inarguable is that, while the Court has witnessed a succession of larger-than-life jurists in its two-hundred-year-plus history, it has never seen the likes of Supreme Court Justice Antonin Scalia.

Combative yet captivating, infuriating yet charming, the outspoken jurist remains a source of curiosity to observers across the political spectrum and on both sides of the ideological divide. And after nearly a quarter century on the bench, Scalia may be at the apex of his power. Agree with him or not, Scalia is "the justice who has had the most important impact over the years on how we think and talk about the law," as the Harvard law dean Elena Kagan, now U.S. Solicitor General, once put it.

Scalia electrifies audiences: to hear him speak is to remember him; to read his writing is to find his phrases permanently affixed in one's mind. But for all his public grandstanding, Scalia has managed to elude biographers—until now. In *American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia*, the veteran Washington journalist Joan Biskupic presents for the first time a detailed portrait of this complicated figure and provides a comprehensive narrative that will engage Scalia's adherents and critics alike. Drawing on her long tenure covering the Court, and on unprecedented access to the justice, Biskupic delves into the circumstances of his rise and the formation of his rigorous approach to the bench. Beginning with the influence of Scalia's childhood in a first-generation Italian American home, *American Original* takes us through his formative years, his role in the Nixon-Ford administrations, and his trajectory through the Reagan revolution. Biskupic's careful reporting culminates with the tumult of the contemporary Supreme Court—where it was and where it's going, with Scalia helping to lead the charge.

Even as Democrats control the current executive and legislative branches, the judicial branch remains rooted in conservatism. President Obama will likely appoint several new justices to the Court—but it could be years before those appointees change the tenor of the law. With his keen mind, authoritarian bent, and contentious rhetorical style, Scalia is a distinct and persuasive presence, and his tenure is far from over. This new book shows us the man in power: his world, his journey, and the far-reaching consequences of the transformed legal landscape.

American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia Details

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Justice Antonin Scalia Joan Biskupic**

From Reader Review American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia for online ebook

Brandon says

Even though I disagree with him on several issues, I've always like Antonin Scalia. He was a brilliant writer with the kind of razor-sharp pen and sarcastic, acerbic wit that makes his opinions interesting. And I think the Supreme Court should be a place of passionate legal debate, not a bench of nine people who simply rubber-stamp my preferences.

So after Scalia passed away, I wanted to read a biography that gave me a better idea of the man. The main alternative to this book seemed like it had an ax to grind.

To be sure, there's some good stuff in Joan Biskupic's book. But there's also at least one major omission. And Biskupic's correct instinct to be willing to assess and criticize Scalia crosses over into the quarrelsome, seeming at times to differ with Scalia for the sake of differing. In fact, at (thankfully brief but too frequent) times the book reads more like a debate between Biskupic and Scalia than a biography of the justice.

As for the omission: Biskupic goes through many of the landmark and even not-so-landmark cases that Scalia was involved in. But there is one case that Scalia cited almost whenever he defended his originalist theory from charges that it was simply a cover for his conservative views: Scalia found that the First Amendment does protect the right to burn the American flag in protest. This is a central plank in Scalia's case for originalism -- and it's mentioned three times in passing, with one of those coming in reference to the author of the opinion, who was not Scalia. (That's per the index, but it jives with my memory of the book.)

Now, that case might not fit with Biskupic's critical take on Scalia's jurisprudence, but because he was so quick to point to it, any biographer of Scalia who is as interested in being fair as Biskupic says she is has to deal with it. Was Scalia less involved in the flag-burning case than others? Did he not weigh in with his fellow justices as much? That in itself would be telling. But the flag-burning case remains out of reach, Scalia's role in it mentioned but never explained.

Biskupic also reaches at times in her criticism of Scalia, questioning the consistency of a justice who wanted judges to defer to the political branches on issues like abortion and gay rights but not on gun control or affirmative action. I don't agree with Scalia on all those cases, even from a legal standpoint, but the answer is simple: He believed that the Constitution specifically guarantees gun rights and bans racial discrimination, putting those areas beyond the reach of the political branches. But he doesn't believe that a right to abortion or gay rights are protected by the Constitution. You can disagree with him on any or all of those points without implying that he's a hypocrite.

But even when Scalia votes with some or all of the court's liberals on trial by jury and the right to confront witnesses, Biskupic seems dissatisfied. "Critics said the changes wrought by the Crawford line of cases made prosecutions in domestic violence and child abuse more difficult. But for Scalia, who focused on the right to confrontation as it was adopted in 1791, such contemporary consequences were not relevant." Scalia should have upheld what he saw as the Bill of Rights only when there wasn't a sympathetic figure on the other side, it seems.

And when Scalia's own words won't do him in, Biskupic simply decides to read his mind. "Yet Scalia seemed to find it easier to identify with the administration's interests," she writes in a chapter dealing with

Bush-era terrorism cases. "He could readily put himself in the shoes of those fighting terrorism rather than those foreigners in orange jumpsuits held behind razor wire without charges." Her evidence for that kind of incendiary charge, the kind of thing she mildly criticizes Scalia for in other places, is incredibly thin. Painting Scalia as less open to ruling for non-Americans swept up in the post-9/11 dragnet is one thing; suggesting that he was callously indifference toward them as human beings is another.

There could have been more to this book, though, if Biskupic had stuck to what she did in the best parts of it, when she reached beyond the goings-on in the courtroom and into Scalia's life as a public figure. Chapters like "Quack, Quack," which focuses on the duck-hunting imbroglio involving Dick Cheney, and "The Center Chair," which deals in part with speculation that George W. Bush might make Scalia chief justice, as far more interesting than chapters that focus almost entirely on legal arguments.

On balance, it's a solid biography of Scalia. It's one his critics will like much more than his fans, and probably a bit more than those looking for a fair take. But Biskupic's reporting and research combined with Scalia's cooperation ensures that it will be one of the more authoritative books on the late and influential justice.

Holly Morrow says

I don't know much about the Supreme Court (basically only what the redheaded Court-analyst lady on MacNeil/Lehrer says) but Justice Scalia has long been on my list of "If you could have five people to dinner..." on style points alone. Hes brilliant, combative, funny, and thoroughly and sincerely committed to his philosophy. Turns out I disagree on at least half of that philosophy, but I can respect an honest proponent of most viewpoints making an articulate and reasoned case for their side. Actually, my ideal would be to have Scalias of the left and the right fighting it out over issues of public policy -- a true competition of ideas -- rather than the rogues gallery of closet case hypocrites and partisan boobs who currently populate our public universe and their lame attempts to lob talking points at one another.

If anything, I am probably a little TOO swayed by smarts and eloquence, and can find myself ignoring actual substantive disagreements (I can hear several of you guffawing knowingly right now) because I'm dazzled by intellectual candlepower. So this book was good for me. Its a biography of Scalia, and the author ended up getting many hours of time with Scalia after she wrote him with some information about his family's origins in Italy...she used that as bait to get an interview and that turned into several more. It would have been a much less interesting read if it weren't for tidbits of reflection and recollection by Scalia himself sprinkled in. The author traces Scalia's early family history, through his education and early days in government and private practice as he became a significant figure in conservative circles, and on through his tenure on the Supreme Court. The Supreme Court section is focused on several themes involving Scalia (and the Court)'s take on questions of race, religion, executive power, sexuality, abortion, etc;. Scalia's position is that his private moral sense, partisan affiliation, and religion (hes a devout Catholic, and used to drive his family an hour on Sundays to hear Mass in Latin) do not affect his jurisprudence -- that his rulings are guided only by a strict "originalist" reading of the Constitution, and the view that issues not directly addressed by the Constitution are not the purview of the Court and should be resolved through democratic processes and legislation rather than the dreaded "judicial activism." The author makes a pretty compelling case that Scalia is not in practice consistent on that, and that his rulings are indeed guided by his politically conservative viewpoint as much as by his originalist legal philosophy. But the book is by no means a hatchet job -- the author clearly has a good deal of respect and affection for Scalia and gives an at least fair hearing to Scalia's perspective. It is to me the perfect balance of respectful exposition of Scalia's views, and critical dissection

of his record. But the real reason to read the book is Scalia himself -- he explodes off the page with his intensity, especially in his dissenting opinions, which he often writes with such dripping disdain and in a state of such high dudgeon that he ends up alienating his fellow justices, whose rulings he doesn't refrain from criticizing in scathing terms. Bottom line, this is a very good book and for me accomplished three objectives: (a) taught me about some of the more important Supreme Court rulings of the last two decades, (b) taught me a little about how the Supreme Court works, and (c) helped me separate out Scalia's razzle-dazzle (which I like) and his actual views (which I mostly don't like). But he still has a seat at my dinner.

Kate says

I have to begin this review by pointing out that I'm not a Scalia fan. I picked up this book in an attempt to understand a judicial philosophy that I find anathema to my own views. That said, this book accomplished everything I had hoped it would for me. First, I must note that the author is extremely balanced and fair (whew, that seems like a loaded phrase these days!) in her depiction of Scalia. The author reveals nothing about her personal views of politics or constitutional interpretation and merely allows Scalia's own views and personality to take center stage, which I found to be a really impressive feat. Learning about Scalia's childhood, his religious upbringing, and the centrality of his father in his life made his viewpoints make a lot more sense to me. After finishing the book I feel like I have a better grasp of originalism, and could argue with originalists more forcefully and effectively as a result. Scalia's philosophy definitely did not win me over, but I have more respect for where he comes from now.

Kressel Housman says

The History Book Club undoubtedly chose this book so that we could all learn about the jurisprudence and legacy of the recently deceased Justice Scalia. It's a mark of my own ignorance, but all I really knew about him was that he was reputed to be the most conservative Supreme Court Justice to serve in my lifetime. Other than *Bush v. Gore* and *Citizens United*, I really didn't know the details of how that conservatism made itself felt in his decisions and their impact on the world. So I was quite pleased with this month's choice.

The title "American Original" sums up Justice Scalia's legal philosophy. He was an "originalist," which means he believed that if the original framers of the Constitution didn't spell something out, it wasn't the place of the Supreme Court to read it in. When a case on the legality of a partial birth abortion came to the Court, for example, Scalia argued that the Constitution includes no right to an abortion, so both that law and the *Roe v. Wade* ruling were unconstitutional. The majority of his fellow justices, including Sandra Day O'Connor, who was appointed by Reagan for her anti-abortion stance, outvoted him. He applied originalism consistently to many other cases, including right to die cases, and right to marriage. Most shocking to me, however, was when he argued that it was unconstitutional for a child testifying against an accused molester to give testimony behind a one-way mirror or via television screen. The Constitution guarantees the accused the right to face their accusers. If a child witness is an exception to this rule, Scalia argued, then it's the job of the legislature to draw that into law, not the court. The elastic clause, in his view, seems only to refer to legislators.

I've got a paralegal certificate, so I have some experience reading legal reasoning, but I must say, I find it difficult and sometimes boring. If I had been reading this book for a class or for work, I might have worked harder on the tougher sections, but as it was, I was happy for the personal details sandwiched between the

legal rulings. They made the book much more accessible.

All in all, this is a thorough and well-researched book. Though the author does not seem to favor Scalia's originalism, her approach to it was fair and balanced, not polemical. If you want to learn about Justice Scalia, I recommend the book, and I'll pay the author the highest compliment I can: I've added her other book on Justice O'Connor to my to-read list.

Jeff Raymond says

I don't know what Biskupic's ideology is, but I get the feeling that she's not a Scalia fan, which taints this book somewhat. It's not like I want to read hagiographies, but I don't really care to interpret incredulous reactions about the subject of the book in a biography, either. Not terrible, but could have been a lot better.

Dan says

A very disappointing book. I give the book two stars instead of one only because it is well-written, but it is so loaded with left-wing bias and ignorance of basic legal history that is painful to read at times. For example, the author regularly refers to "abortion rights" and "gay rights" in the Constitution even though one can read the Constitution cover-to-cover and not find even the slightest reference to them, whereas she deliberately avoids using the phrase "gun rights" even though she devotes an entire chapter to the Heller decision and the Constitution very clearly spells out the individual right to keep and bear arms--so much so that a liberal professor in the early '90s wrote a law review article entitled, "The Embarrassing Second Amendment." Biskupic dishonestly claims that the much earlier Miller decision held that only members of a state militia have the right to keep and bear arms when, in fact, the Miller court suggested that the defendant could have been allowed to keep his sawed-off shotgun if he could have shown that it had a potential military use (he could not afford a lawyer to make that case)--irrespective of whether he himself was actually serving in a militia. Finally (for this review at least), the author not once shows that she understands the legal debate between negative rights (rights that one holds against those who would force you NOT to do something--these are the rights the Constitution protects) and positive rights ("rights" that require somebody do something FOR you). Biskupic actually has the nerve to attack Scalia as generally OPPOSING individual rights because he does not want to read into the Constitution these newly in vogue "positive rights," even though he is one of the court's premier defenders of the Constitution's negative rights--many of which must be trampled upon in order to provide people with their so-called "positive rights." Four or five stars for Scalia, but pass on the biography until one is written with some legal competence and a sense of balance.

Jason Wilcox says

The material on Justice Scalia's early life is interesting. As with most books dealing with contemporary events or figures, the closer to the present day we get, the more Joan Biskupic gets wrapped up in her own biases. It's obvious she is not a fan of Scalia's jurisprudence, and the book turns into a bunch of "gotchas" by the time she starts writing about the mid-90s onward.

In short, first 130-150 pages are worth reading. The rest is 'eh.'

Eric_W says

Justice Scalia is one of those people I'd love to have over for dinner (even though I don't quite have his love of opera,) but I don't buy his premise that he's an originalist, i.e. one who argues that the law is to be interpreted in light of the intent of the framers. I mean really, then we'd be back implementing the 3/5ths rule, and I don't buy the idea that the framers all thought monolithically. He despises the idea of a "living Constitution," yet refuses to answer questions that seem to go to the heart of contradictions in his decisions like 1995 *United States v Lopez* that overturned a federal law regulating guns near schools "because it trampled on state authority," but ten years later voted to "uphold a federal drug law that voided a California policy allowing marijuana use for medical purposes." So where was his reverence for state law in 2005 *Gonzales v Raich*?

"I do not think," Scalia wrote in *Nixon v Missouri Municipal League*, "that the avoidance of unhappy consequences is an adequate basis for interpreting a text." Well, perhaps not, but Scalia's arrogance would prohibit any other interpretation of that text but his own. He seems to be quite happy savaging his colleagues (Sandra Day O'Connor was a favorite target - he considered one of her opinions to be "devoid of content.") Biskupic suggests that Scalia's influence on the court could have been even greater had he tried to be a little more diplomatic and attempted to build consensus. He seems to be quite happy railing at cultural change, "...the court is designing a constitution for a country I do not recognize." And perhaps therein lies the rub. He doesn't want the world to change, he doesn't like gays, probably hates the ordination of woman, still goes to a Catholic church where the mass is said in Latin, loves his guns Clarence Thomas said "he loves killing unarmed animals", and the man as head of the household. Conceived in Florence, but born in Trenton -- which he hated -- he now admits to becoming more and more crotchety to the point where he might wish a return to the days of Medician flogging and ear notching as forms of punishment.

In the meantime, times have changed, and some on the court have recognized that. Brennan and others recognized that the United States of today is very different than that of 1789 and if the country is to survive and prosper perhaps some interpretative differences will emerge. Scalia insists that he separates his personal theology and morality from his judicial role, yet he has been quoted as saying that he learned at Georgetown, a Jesuit university, that you must never "separate your religious life from your intellectual life. They're not separate." And just a little before he was nominated to the Supreme Court by Reagan he said "his judicial philosophy was "inevitably affected by moral and theological perceptions." Sounds like Sotomayor's famous speech.

The fact remains that through force of will (and perhaps more than a little sarcasm) he has been, to quote Elena Kagan in 2007, "the justice who has had the most important impact over the years on how we think and talk about law." Certainly the term originalist and original meaning are now the prevailing term in any legal discussion. Originalists take the position that the words in the Constitution mean today what they meant in 1789 and must be interpreted in that light. This assumes that the world of today is the same as the world of 1789 and assumes, to quote Justice Brennan, that the greatness of the Constitution lies precisely in "the adaptability of its great principles to cope with current problems and current needs." The early originalists focused on the framers "intent," but that had to be revised as it became clear that determining intent of the large number of writers of the Constitution proved impossible so the focus then shifted to textual originalism. His argument that in a democracy, the legislature makes the laws and judges interpret it, and that if judges use moral positions in their interpretation they have become lawmakers rather than interpreters, i.e. tying decisions to text prevents judicial despotism (surely he must see the irony of this view with *Bush v Gore*,

surely) does find sympathy with me. But then so does Brennan's view that judges are there to make sure that the system is "fair."

Scalia's background working for the executive branch under Ford which required him to testify Congress on many occasions, left him with a palpable disdain for the legislative process and legislators in particular. He was quoted once as saying he could take them all on with one hand tied behind his back. In fact, one of his legacies will be less attention being paid to the legislative history of a bill, i.e. what the legislators said during debates (somewhat ironic for a textualist.) If he has any particular bias it would certainly be a sympathy for the executive branch. With five Catholics and no Protestants now sitting on the bench and his strong adherence to conservative Catholicism, one suspects that might influence him as well. One of his less attractive features is his total arrogance in denying any kind of influence.

My suspicion is that Scalia wants a return to the inequality of the old days where the folks in power, the rich, all knew they were superior, that they were better and the courts validated that superiority. The rules become an unbendable way to enforce the distinctions. A preserver of distinctions and inequality.

Sorry for all the references to Brennan but I just finished *The Last Liberal: Justice William J. Brennan, Jr. and the Decisions That Transformed America* and am reading *Justice Brennan: The Great Conciliator*. I have a short attention span.

minor editing 11/8/11

Teri says

When I first started reading *American Original*, I hadn't really realized that it was written prior to Scalia's death. I had expected a biography of the man, which it is in part. What Biskupic really focuses on is Scalia's theory of Originalism; that is, interpreting the law the way the constitution was written. Each chapter focuses on a different topic and the cases about them such as civil, human, and women's rights, the Bush v. Gore election, religion, and cases where the justices should recuse themselves from certain cases. Biskupic's aim is to show that Scalia played the originalism card when it suited him. For the most part, he did follow his own theory. What did come across in the book is that Scalia was a likable person, whether or not you agreed with his politics and rulings. That is evident in the way he spoke and captivated his audience, and his strong friendships with people on both sides of the political coin. Although he stayed far to the right on his politics, he had a strong bond and friendship with Ruth Bader Ginsberg, his almost polar opposite on the bench.

Where the book was interesting and I learned a lot about Scalia, it didn't wow me. I did like how each chapter focused on the cases around noted topics, but I didn't feel the author was driving a particular point, other than "this is Scalia, he's an originalist, and this is how he ruled, and oh, by the way, he was a "character". I am curious, now, about his later years, just prior to and including his death. All in all, if you are interested in Scalia and his decisions in cases, it's worth reading. It is well written but it is not a page turner.

Mark Jakubik says

Some interesting, heretofore unknown (at least to me) biographical detail about Justice Scalia, it is very

apparent that Biskupic neither sympathizes with, nor understands particularly well, Justice Scalia's jurisprudential philosophy or its origins. The former is forgivable, but not the latter.

Josh says

Scalia is an incredibly smart man who really believes in what he's doing, and for that you must admire him. However, I think some of his decisions are impossible to reconcile with his originalist viewpoint. This book does a thorough job of documenting this, but never without staying fair. I just bought Justice Breyer's book on the living Constitution, it should be a perfect counterpoint to this book.

On another note, this book made me realize just how much I forgot about con law after graduating from law school.

Jeff Kelleher says

Not much life story.

If this first-ever biography of the colorful and prickly Associate Justice were a New Yorker profile, it would merit four stars; if an Atlantic Monthly feature, three. It is an accessible and compact survey of Scalia's public writings and pronouncements, and of public commentary on them. But as biography, it is disappointing.

Biskupic devotes only 21 pages to the first 38 years of her subject's life--the very period the reader is most curious about. How can this be called biography? Compare the first volume of Robert Caro's life of Lyndon Johnson-- 800 deeply illuminating pages on Johnson's first 33 years.

The book offers few glimpses of the influences that shaped Scalia's thought and temperament. Who were the teachers, priests, and professors who taught him? What courses did he take, books did he read, bull sessions did he attend, course papers and letters did he write? He did years of ROTC in school but never served in the military; why not? He spent his junior year at Switzerland's University of Fribourg in what Biskupic calls "a yearlong academic and sightseeing feast." That feastful year gets 43 words.

What was his work during his six years at the law firm of Jones, Day? Hardly a word on this. His four years as a professor at the University of Virginia get only glancing coverage.

The book is drawn almost entirely from published sources. The author did interview the Justice himself several times, and a scattering of family and acquaintances, but collectively these interviews add only the faintest coloration to the public record. Most of Scalia's friends, classmates, and colleagues are still alive, and so loquacious a man certainly has left a lot of private writings and utterances scattered about. But Biskupic did not bother to do the hard digging necessary to uncover them. She worked libraries, not the streets.

Biskupic surmises, casually and obviously, that his view of *Roe v. Wade* might have been shaped by his Catholic faith; and that his view of the District of Columbia's gun ban might have been influenced by his lifelong hunting hobby. Hardly profound.

Two speculations are particularly tantalizing. First, Scalia's literalist "originalism" in constitutional interpretation has a parallel in the literalist catechism of the Catholic Church. Second, as a law student he was taken with Herbert Wechsler's doctrine of "neutral principles" of constitutional law--the notion that judges should decide by applying transcendent principles that are detached from the outcome in a particular case. Both of these beg for elaboration, but Biskupic simply tosses them into a paragraph or two and moves on.

If you want a refresher on recent constitutional struggles, as expressed in Scalia's opinions, speeches, and writings, this is a useful book. If you are looking for illuminating biography, you will find, on finishing it, that you have learned almost nothing that was not already extant.

Scott says

This was actually harder to read than I had anticipated. The book focused more on his rulings, and it is really hard to see him as something other than an intolerant buffoon with a knack for hyperbole and exaggeration. He characterizes himself as an "originalist" (one who interprets the Constitution as it was originally written), but his rulings seem to indicate that he is inconsistent in applying that philosophy. When the "originalist" criteria doesn't seem to fit, he invokes his moral compass (which is largely dictated by catholicism). His rulings are very predictable, his writings are extreme, and his public persona is often childish. I absolutely acknowledge his influence in many decisions, and I can only hope that his retirement is imminent.

George Anders says

Lucid and well-researched

Joan Biskupic's many years of covering the Supreme Court for The Washington Post and USA Today pay off in this very engaging biography. She includes just enough detail about Justice Scalia's upbringing and family to round out the picture -- but she focuses astutely on his remarkable legal record as America's most influential conservative jurist. She understands the cases; she understands the bigger legal picture, and she understands the personalities.

Some of her commentary skews left, but her interjections prevent the book from seeming too fawning. She does a brilliant job of conveying Scalia's hold on America without succumbing to all of his charms.

Rick says

Informative. Interesting. Written by someone not sympathetic to Scalia's views and understanding of the law and the Constitution. She looks like she's trying to be even-handed, but her bias nevertheless shows through at numerous points, often times simply in her choice of words. Regardless, I have learned a good deal about the man and a number of the cases in which he participated. At times Biskupic's narrative becomes tiringly tedious to this non-legal reader as she belabors one legal case after another. But then she eventually moves on to other cases of more interest to me. The book is biographical only in a limited sense. It is much more about the law. A more biographical work would have been a bit more interesting to this non-legal reader, but it was still worth the time and effort. Many times, however, I wished I could also have read another analysis

along side hers that appraised the issues from the other side of the ideological spectrum.
