


April 2010

Book Review. Joan Biskupic, *An American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia*

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Recommended Citation

Tuomala, Jeffrey C., "Book Review. Joan Biskupic, *An American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia*" (2010). *Faculty Publications and Presentations*. 30.
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Book Review

An American Original

Review by JEFFREY C. TUOMALA¹

U.S. SUPREME COURT JUSTICE ANTONIN SCALIA is not just an "American Original," he is a great American and America's most celebrated originalist. Author Joan Biskupic, a journalist with a law degree, traces Justice Scalia's road to greatness from his origins as a second-generation Italian-American, through his academic career, and on through his years of government service before and after his ascension to a seat on the Court.

She underscores his role in founding the Federalist Society. She portrays him in colorful terms and through engaging anecdotes as the leading intellect and most influential spokesman for the school of constitutional jurisprudence that has come to be known as *originalism*.

Most of the book is devoted to Scalia's tenure on the Supreme Court. Biskupic provides understandable summaries of numerous Supreme Court decisions with a behind-the-scenes look into Scalia's interaction with his colleagues and with the press. For these reasons alone, the book is probably worth reading, but they mark it as neither a great biography nor a weighty work of jurisprudence.

There are several reasons for reading the biography of a great man, especially such a man as Scalia, whose life is marked by both thought and action. Chief among these reasons is the hope of identifying a defining influence, moment, or idea that gives direction to the

person's life, and which provides the reader with critical insight into his mind and heart.

Early in the book, Biskupic claims to have identified the defining influence, moment, and idea in Scalia's life. She describes the influences that gave Scalia the reputation as a young man of "religious devotion" who led an "exemplary Catholic life." Biskupic focuses on his family background and experiences as a student at leading Catholic schools—Xavier High School in New York City and Georgetown University. Scalia claims that one particular event at the culmination of his studies at Georgetown "made an impression on him and focused his religious commitment."

Scalia, who as a history major stood first in his class, had to sit for an oral examination before graduating from Georgetown. As Scalia relives the event, he remembers that his examination answers were "knocking them out of the ballpark." Then came the final question: "If you look back over all the history that you've studied here . . . if you had to pick one event that you thought was the most significant, what would it be?" Scalia thought to himself, "There's no wrong answer to this . . . I don't remember what I answered, maybe the Battle of Waterloo, maybe the Battle of the Solomon Islands."

Following Scalia's answer, the examiner "shook his head sadly and said, 'No, Mr. Scalia. The Incarnation, Mr. Scalia.'" Scalia remembers, "It was the last lesson I learned at Georgetown: not to separate your

religious life from your intellectual life. They're not separate." Biskupic claims that "[t]his revelation would indeed define the justice's life and his place among American leaders in the law."

Although the book intermittently returns to the theme of Justice Scalia's religious faith, it disappointingly fails to relate his faith in any significant way to his intellectual life as a leader in American constitutional law. Biskupic points out that in virtually every place Scalia and his family lived they took pains to locate and attend traditional Catholic services, preferably with the Mass in Latin. "Maybe you couldn't understand the sermon, but who cares," he says. It is the traditions, architecture, music, and incense "that deliver up a sense

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of piety, reverence for the person attending Mass." Apparently for Scalia, at least in church services, an intellectual engagement with the Word preached and taught is relatively unimportant while the emotional experience is paramount.

There are indications, however, that Scalia does take seriously the intellectual traditions of the Catholic Church. He purportedly believes that the Catholic Church is the one true church, and he is committed to its magisterial traditions. This sense of

devotion does not keep him from criticizing post-Vatican II changes in the Catholic Church, confronting “some smart-ass young Jesuit” who teaches that the story of Christ’s birth is a myth, or declaring that the Pope’s teaching against the death penalty in *Evangelium Vitae* is not binding on Catholics.

The one place in which Biskupic does make a concerted effort to relate Scalia’s religious life to his intellectual life is in chapter 9, “Passions of His Mind,” which focuses on abortion cases. She makes what seems to be a half-hearted attempt, mostly through the voices of Scalia’s critics, to show that Scalia’s opinions about the abortion cases are driven by his Catholic faith.

For example, Biskupic notes that Professor Geoffrey Stone, Scalia’s former colleague at the University of Chicago, raised the specter that the five Catholic justices all voted to uphold the ban on partial birth abortion in *Gonzales v. Carhart*,² while the two Protestant justices and two Jewish justices voted to strike down the ban. Stone alleged that the Catholic justices had “failed to respect the fundamental difference between religious beliefs and morality.”

Scalia reacted very strongly to Stone’s suggestion that the Catholicism of the majority explained the outcome, calling it a “damned lie” and vowing not to appear at the University of Chicago as long as Stone was still on the faculty. Scalia insists that his views on *Roe v. Wade*³ have nothing to do with his religious and moral beliefs and states: “I have religious views on the subject. But they have nothing whatsoever to do with my job.”

It is rather astonishing that a professing Catholic or Christian Supreme Court Justice, a person whom the Apostle Paul calls “a minister of God,”⁴ would claim that

his religious views have nothing to do with his jurisprudence or whether a whole class of people have a right to life and protection of law. It is especially surprising that he would react so strongly to Stone’s criticism. After all, isn’t it true that the same God who created the heavens and the earth, whose incarnation is the central event in history, in whom are found “all the treasures of wisdom and knowledge,”⁵ and who has revealed his law, will judge Supreme Court justices by that same law at the end of history? It appears that Scalia’s *originalism* is simply another form of *positivism*.

Throughout the book, Biskupic characterizes Justice Scalia using such descriptors as smart, confident, colorful, comic, exuding energy and passion, combative with a no-compromising style, and relishing debate. Assuming that Scalia would affirm that Catholicism is the defining influence in his life and that his oral examination at Georgetown was a defining moment, his conscious effort to distance his faith from his job brings another descriptor to mind—a *tragic figure*. ■

NOTES:

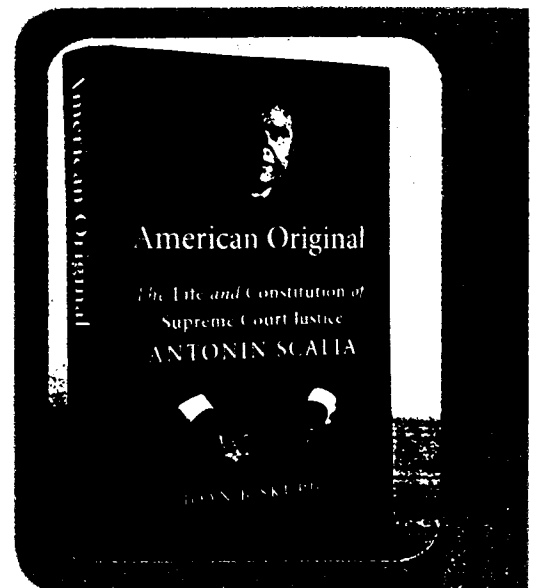
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² 550 U.S. 124 (2007).

³ 410 U.S. 113 (1973).

⁴ *Romans* 13:4.

⁵ *Colossians* 2:3.



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

Joan Biskupic.
[Sarah Crichton Books, 2009]