**Response to attacks upon the legacy of Antonin Scalia.**

“*There is one crown I bear away with me... One thing without stain, unspotted from the world, in spite of doom mine own! And that is... my white plume.*” [Edmond Rostand](http://www.goodreads.com/author/show/670859.Edmond_Rostand), [Cyrano de Bergerac](http://www.goodreads.com/work/quotes/2327623)



Antonin Scalia's visit to Chicago (Union League Club) in 2013.  If Michaelangelo were alive today, he very well could have said:  "Somewhere in this piece of granite is an Antonin Scalia."

Antonin Gregory Scalia, the son of Italian immigrants died on February 13, 2016. He became the first of his ethnic group to become a Supreme Court Justice.

A brief primer for the uninitiated:

***The Supreme Court has historically been divided along the fault lines of conservatives and liberals. Justice Scalia adhered to the conservative judicial philosophy of “originalism,” which holds that the Constitution should be interpreted in terms of its original meaning. This was in direct conflict with the more commonly held liberal view that the Constitution is a "living document," allowing courts to take into account (more accurately, to be influenced by) the views of contemporary society in their interpretation of the Constitution. In Justice Scalia's view, the Constitution was not supposed to facilitate change but to impede change in order to preserve citizens' basic fundamental rights and responsibilities. More accurately stated: “…to impose on our fellow citizens only the restrictions that are there in the Constitution, not invent new ones, not to invent the right because it’s a good idea.*”**  ***Justice Scalia abhorred "judicial activism" and believed the place for implementing change was in the legislature, where the will of the people is represented.***

***Original intent:***Scalia’s dedication to the law and his contributions in defense of the supreme law of the land were applauded by those versed in the struggle to defend and preserve the intent of the Constitution and, in doing so, the “dream” for ourselves and our posterity. They, his admirers, ranged from Supreme Court Justices and their presidents to law students and interns whose minds he had impacted. For the sake of brevity, I chose the following from my childhood readings to convey the overwhelming consensus of their remarks. Appropriate to Scalia’s Mediterranean roots, it is a quote from Pallas Athena taken from a book titled: “Of Gods and Men.”

***"From the souls of clay I turn away, and they are blessed but not by me. They fatten at ease like sheep in the pasture and eat what they did not sow like oxen in the stall. They grow and spread like the gourd along the ground, but like the gourd they give no shade to the traveler. When they are ripe death gathers them and they go down unloved into Hell and their name vanishes out of the land.***

***"But to the souls of fire I give more fire, and to those who are manful I give a might more than man. These are the heroes, the sons of the immortals who are blessed, but not like the souls of clay, for I drive them forth by strange paths that they may fight the titans and the monsters and the enemies of Gods and men. Tell me now Perseus, which of these two sorts would you rather be."***

Antonin Scalia’s legacy, like the giants and Gods before him, will echo through eternity.

Detractors also had their say. Like the assassins who lay in wait in the safety of a dark alley, they struck. Those with whom I am familiar include an editor, a law school professor, a social science teacher, plus a cartel of “affirmative action” students and interns.\* In the final segment of this paper, I share with you their derogatory allegations along with my response to each.

\*The full text of these detractors can be found on the internet: “Scalia critics/detractors.”

**It is the dash between the numbers 1936-2016 where Scalia’s legacy lies.**

Born during the Great Depression, Antonin Scalia was forged in the "mean streets" of his immigrant neighborhood. His manhood was tested in PS 132. During his secondary school years, his intellectual brilliance was honed by the Jesuits. His post-secondary experiences displayed that same intellectual fire which eventually vaulted him into a professorship (University of Virginia and University of Chicago Law Schools). In 1986, he was nominated and confirmed as a Supreme Court Justice, replacing retiring Chief Justice Burger. His achievements, prior to and during his tenure as Supreme Court Justice, are well documented and well publicized.

**Scalia’s legacy includes: his lectures, which were designed to correct the thought process of our pseudo-intellectuals intent on contaminating the minds of their law school students and their interns…his scolding and sometimes shaming of colleagues (including those on the supreme court) who, in succumbing to the political agenda of the day, had forsaken their oath to defend the constitution against “all” enemies…his fiery and detailed re-education of colleagues (both educators and justices), peers, students, and interns who had succumbed to promoting the Constitution, the supreme law of the land, as a “living document” designed to serve and favor the loudest voices in the room…and his standing firm to a collage of special interests that threatened (often unknowingly) to undermine the freedoms provided for in our Constitution. Aside: One can visualize Antonin Scalia lovingly and jokingly chastising a law intern, a writer, or a colleague: “If you were a doctor, you would be sued, for malpractice.”**  
Scalia’s nine children and twenty something grandchildren attest to his faith in the future of our species.  A man for all seasons, Antonin Scalia was the modern day equivalent of that combination of Greek oracles and legal developments spanning over a thousand years of jurisprudence, from the 12 Tables (c. 449 BC), to the Corpus Juris Civilis (AD 529) ordered by the Eastern *Roman* Emperor Justinian I.

**This giant of an intellect defended the constitutional principles against the assaults of those who argued that, in the name of "social progress," they deserved more than what the Constitution provided.  In some cases, their arguments were nothing more than carefully crafted pleadings for dispensation from the supreme law of the land. Scalia was adept at exposing those pleadings as nothing more than attempts to seek favorable treatment under the guise of political correctness or social progress. With surgical skills, he stripped away the trappings of their legal arguments to expose the threat to the remaining 300 million (300,000,000) citizens and generations of Americans to come by having established precedents that would undermine the protections provided for by the Constitution.  In short, Scalia unmasked, layer by layer, the “living document” compromise, as applied by some liberals, as nothing more than a death sentence for our liberties. If Silesius, 16th century philosopher, was correct when he declared that we possess a might more than mortals made merely of clay, then surely, Antonin Scalia, would be offered as exhibit “A.”**

As promised, following are the detractors who laid in wait in the safety of a dark alley to strike. They include an editor, a law school professors, a social science teacher, plus the cartel of affirmative action students and interns that reach back to the decade of the 70s. Their derogatory allegations include my responses.   
\*The full text of these detractors can be found on the internet: “Scalia critics & detractors.”

The editor:   
Immediately upon the news of Scalia’s death, The Onion ran the following headline: ***Justice Scalia Dead Following A Thirty Year Battle with Social Progress.***

Response: The Onion, a segment of the media specializing in satire, is asking us to accept their contention that Scalia--whose roots go back to the renaissance (and even further to a people who nurtured and preserved all that we now know as western civilization)--somehow had mutated into something other than the progress, social and otherwise, inspired by the gene pool of the Caesars and the Michaelangelos. As a rebuttal, following is a sampling of Scalia’s position concerning the rightful place of the Supreme Court in the troika that was created by our Constitution to form the more perfect union:

*Scalia’s dissent from the last term in Obergefell v. Hodges, which cut down state laws proscribing same-sex marriage, illustrates this. The “States are free to adopt whatever laws they like, even those that offend the esteemed Justices’ ‘reasoned judgment,’” he explained. It did not matter to him whether states sanctioned same-sex marriage. “It is of overwhelming importance, however, who it is that rules me,” he wrote. “Today’s decree says that my Ruler ... is a majority of the nine lawyers on the Supreme Court. [And it] robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves.”*

Continue to part two.

**Response to attacks upon the legacy of Antonin Scalia.**

**Part two**

**AFFIRMATIVE ACTION STUDENTS & INTERNS:**It is both unfathomable and ironic that this cartel of law students, who participated in the affirmative action experiment initiated during the Great Society’s seminal era of the 1970s, was critical of Scalia because they, Afro-American students, generally received lower grades from Scalia than white students. For the uninitiated, affirmative action means you get points on your admissions test because your ethnicity or race denied you the educational opportunities afforded students of other ethnic groups. This apparently tight knit group of affirmative action beneficiaries attempted to make the case that Scalia was a racist and a bigot because they, as a group, were at the lower end of his grading curve.

**Response:   
In response, I chose to borrow from Herman Wouk’s Caine Mutiny: “It is not my contention that the son of Italian immigrants, who attended public school in an immigrant infested neighborhood during the depression years, could possibly have evolved into a bigot. Therefore, the fault for the generally lower grades assigned to the “affirmative action” students by this 2nd generation Italian-American, who overcame prejudices endured by his ethnic group--*as confirmed by a 1970s federal study in which Italian-Americans, as measured by enrollment in college, were at the bottom rung of the educational ladder of all European ethnic groups*--must lie elsewhere.”**

I leave it to you, the reader, to determine why students who fell short of the academics required to get into law school, would, on average, upon winning admissions via affirmative action, receive lower grades than their law school counterparts (white and otherwise) who had attended elite college prep schools. Further, the policy of the U of C Law School, where Scalia taught, requires that all tests are graded blindly; i.e., with no knowledge of the name of the student whose test is being graded.

**Aside: Further challenging the integrity of their accusations, every liberal in the Senate confirmed Scalia’s appointment. Scalia was approved by a vote of 98-0. Is it possible that this cartel of former Scalia law students and interns are oblivious of the confirmation process for Supreme Court Justices, as described in the Constitution? Is it possible that they were coerced to participate in an orchestrated Al Sharpton type race card play, regardless of the obvious absurdity of their claims? Thus, making the case for a more liberal Supreme Court Justice**.

What is more alarming is that, by definition, we must conclude that the other law school professors had assigned these particular affirmative action students grades that were equal to, or higher than, their white counterparts. If so, those law school professors may have taken it upon themselves to alter their school’s grading policy by minimizing or ignoring test scores? They had, de facto, and in violation of school policy, unilaterally imposed a “no child left behind” policy for their law school students. In doing so, they had discarded the rules in order to embrace the “great society” mantra of the day. Like the jurists of the Third Reich who, decades before them, stood trial in Nuremberg, Germany, those law school professors had fallen sway to the same “social progress” mantras that swept over Germany in 1933. It is likely that Scalia’s law school professors, who had suspended rules for the expediency of the times, also subscribed to the theory that the Constitution is a “living document” that could be swayed at the whim of the day’s politically correct mantra.

**Equally ludicrous is their assertion that Scalia’s racist actions and decisions were designed to build his conservative resume in preparation for his approval and ultimate appointment to the Supreme Court.  Robert Bork was denied a place on the Supreme Court by Senators chanting: "if there's no room for blacks at the inn...then there's no room for Robert Bork on the Supreme Court."  Antonin Scalia, contrary to the inference being made by these students who came out of the woodwork after Scalia's death, can read. Yet they are suggesting that Scalia prepped himself for a Supreme Court appointment by intentionally giving black students lower grades than white students. Only Al Sharpton, our quintessential welfare pimp, could pull that off.**

THE LAW SCHOOL PROFESSOR:   
Another former Scalia intern and current law professor who, in spewing his venom on Scalia, elaborated in detail about the psychological harm Scalia’s legal opinions (both majority opinions and dissenting opinions) had on one of his fellow interns, with whom he apparently had more than a passing social relationship. Included in his tirade was the gay rights issue,\* which embraced the right of adoption and how Scalia’s opinions had affected his friend. The intern, whose plight this law school professor used in framing a script that easily modeled Victor Hugo’s classic novel, apparently had opted for a sexual transition and she is now a transgender parent with two children. Citing Scalia’s legal opinions as the cause for the depressions and other mental problems of his transgender friend, this law school professor inferred (more like strongly suggested, but in a manner that could insulate him from slander) that Scalia used his intelligence and verbal gifts as “instruments of cruelty and persecution.” Incredibly, he attempted to promote his transgender companion as a modern day Jean Valjean with Scalia as her relentless persecutor.

\*Dissecting the Gay Rights Issue. World Trade Council Newsletter, June 2014

Response:   
**Scalia, the quintessential “originalist,” was noted for his unwavering position that the constitution does not sway to accommodate the times. The Constitution does not give way for the comfort of an individual or any group; neither does it bend to right a perceived injustice. Once bent or violated, a precedence is set by altering the “original meaning” of the Constitution…thus beginning the process of eroding those freedoms for ourselves and, more importantly, future generations. “*Day by day, case by case, the Supreme Court is busy designing a Constitution for a country I do not recognize*.” The following quote from Sir Thomas More further concurs with Scalia’s position on the supreme law of the land: “*I would not arrest the Devil himself if he had not broken any law.”***

THE SOCIALSCIENCE TEACHER:This social science instructor suggested his students, and students in general, who come from conservative suburban homes reject conservatism (which would include Scalia’s conservatism as a Supreme Court justice) as being “narrow and uncompromising.”

**Response:   
Scalia viewed the Constitution, the supreme law of the land, as an unwavering document that was immune to trends (social and otherwise). The Constitution is immune to special needs (especially “wants” that come before the Supreme Court disguised as “needs”) and it cannot and should not compromise in response to human emotion or moral persuasion.**

In response to those students whose minds had been marinated to reject conservatism as being “narrow and uncompromising,” I offer, in defense of Scalia and conservatism, the following potion to flush out the KOOL-AID of their liberal mentors and to reboot their intellectual synapses.

1. Included in that potion would be a reading of Maurice Ogden’s poem, “The Hangman.” Scalia’s conservative position regarding the law runs parallel to Maurice Ogden’s final refrain: “***First the Negro, then the Jew. I did no more than you let me do.”*** There are parallels between Maurice Ogden’s message in “The Hangman” and the staunch conservatism of Justice Scalia. Neither would sacrifice the “common good” for the “expediency of the moment.” Like Maurice Ogden, Scalia would argue that compromise should never include the bartering away of the rights of other individual’s—especially the rights of generations to come by establishing dangerous precedents that can and will be used to erode the protection of our constitution. Regardless of how the circumstances surrounding a situation may tug at our humanness to make an exception for a particular case, the supreme court of the land is pledged to restrain those temptations for the preservation of those freedoms.
2. **Add to the potion Robert Bolt’s famous play, “A Man for All Seasons.” While the dialogue between Sir Thomas More and his jurist son-in-law, William Roper, may be sufficient, your students would surely benefit from seeing or reading other portions of the play. In that dialogue, More’s son-in-law and justice, William Roper, wants a bad man arrested, even though the man has broken no laws. Scalia, like More, famously had no patience for jurists – the William Ropers of his world – who would disregard the law for the purpose of achieving some preferred end. The lead assignment for your students: Does More’s position- “*I would not arrest the Devil himself if he had not broken any law”-* a Scalia type conservatism, serve the common good? Or is the common good best served by arresting the Devil, despite his not having broken any laws. The movie version, with the brilliant Paul Scofield playing the role of Sir Thomas More, may work just as well as the reading of the play.**
3. Fast forward several centuries and we have a more memorable incident where the actions of jurists, in response to what was deemed social progress, wrongfully condemned masses of innocent people to death chambers--not as warriors, but as innocent victims of social progress.  A serious study of the Auschwitz phenomenon and the testimonies at the Nuremberg trial will support the contention that social progress and political correctness that became the mantra of that era marinated the minds of the justices (and hence the people) to support, both passively and actively, the needs of the times. In reviewing the 1947 trial of German Judges held in Nuremberg, Germany, we have the defendants, which included the chief justice of the Third Reich, Ernst Janning (Schlegelberger), rationalizing their participation in and support of the social progress inherent in the evolving political correctness of the times, in 1933 Germany. In the movie version of that trial, “Judgement at Nuremberg,” Ernst Janning takes the stand to testify. That courtroom testimony can be viewed on the internet as a movie trailer. It is titled “And above all, there was fear…” It contains the following opening line: “***You must understand the times. There was a fever that came over the land…***”\*  
   \* <https://www.youtube.com/watch?v=WthmtGeHpgc>  
     
   Of equal or greater impact is the dialogue between Ernst Janning, played by Burt Lancaster, and Judge Haywood (Jackson), played by Spencer Tracy. That interchange and the movie itself concludes with:   
    Ernst Janning: **You “must” believe! You must believe! *I never knew that it would come to this***.   
    Judge Haywood: ***You knew. When you sentenced the first innocent man…you knew it would come to this***.
4. **The final assignment for your students would be, after a thorough review and debate of the parallels between and among Maurice Ogden’s The Hangman. Robert Bolt’s, A Man for All Seasons, and Judgement at Nuremberg, to determine if Scalia’s conservative stance on the Constitution is “narrow and uncompromising” as they, your students, may have been conditioned to believe. Or, as Pallas Athena suggested to Perseus, is Scalia’s conservatism a fire that preserves the “original meaning” (and therefore the proper intent) of the founding fathers who, to form a more perfect union, established and defined the role of the Justices in the checks and balances of our three branches of government?**  
   If your students still conclude that conservatism is “narrow and uncompromising,” because it retards and denies social progress, then all is lost.   
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