



1819 NEWS

Allen Mendenhall: Nino, the Federalist Society Falstaff

[Allen Mendenhall](#) | 07.20.26



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Justice Antonin Scalia, dead now more than a decade, was a rare sage whose personality outran even his considerable jurisprudential achievement. James Rosen’s new volume, “[Scalia: The Supreme Court Years, 1986–2001](#)

(<https://www.amazon.com/Scalia-Supreme-Court-Years-1986/dp/1510786910>),” gives us the man in full: loud, learned, combative, and, I submit, essentially good.

Heavyset and hilarious, Nino – his nickname – was Falstaff without the vices, shorn of Fat Jack’s cowardice and moral slipperiness, possessed instead of moral clarity and philosophical grounding. He stands among the great girthed intellects: Chesterton, Churchill, Samuel Johnson, Hume. Their views need not align to form a family resemblance: appetite for argument, brilliant personality, and the conviction that ideas matter.

Rosen begins with the paradox that afflicts every hero's biography: that Scalia's rise seems, in retrospect, foreordained. "An aura of inevitability attended Scalia's rise," Rosen writes, and one believes him even while suspecting that inevitability is what we call the past once it has already happened.

The particulars, at least, are stirring stuff: "From his modest upbringing in Trenton and Queens, the only son of an Italian immigrant father and a first-generation Italian mother, both teachers and devout Catholics, Scalia propelled himself to the pinnacle of the law: the embodiment of the American Dream." The father supplied the son's governing maxim early: "Brains are like muscles: You can rent them by the hour. The only thing that's not for sale is character." Now that's the sort of sentence a person carries, as Scalia plainly did.

What emerges from Rosen's account of the early career years, unglamorous as they were in the White House Office of Telecommunications Policy, is the forging of a mind already possessed of "innate genius, deep piety, absolute fearlessness, a boundless capacity for hard work, affability, dazzling literary gifts." It was at the Office of Legal Counsel where his jurisprudence took shape, offering "reverence for The Federalist Papers and separation of powers, revulsion at the use of legislative history, rather than close examination of text, to find the original meaning of the Constitution or a statute." One notes also, with some affection, that "there had always been an element of ... *excitability* ... to Scalia's personality, manifest in swiftness to anger," a fact his colleagues would come to know rather better than they wished.

Evangelism for originalism, and it was nothing less, continued unabated once the black robes were donned. A man with "a wife and nine kids" who nonetheless kept up "a punishing schedule of personal appearances" was not merely ambitious; he believed, with the fervor of a circuit-riding preacher, that "no audience was too small, no institution too obscure, to receive the gospel." The gospel, in this case, held that the Bill of Rights was merely "empty words,

meaningless promises” absent the architecture beneath it – the separation of powers, the bicameral legislature, federalism itself – for even the Soviet Union, he pointed out, could boast a fine parchment of promised freedoms.

His directness and principledness did not make him beloved among his brethren. Those hoping the new justice might prove “a conservative Bill Brennan,” a coalition-builder, discovered a solo virtuoso, a Great Dissenter in the line of Holmes and Brandeis and Harlan instead. “Dissents are more fun to write,” Scalia explained, with characteristic bluntness. “You say what you want and if somebody doesn’t want to join it, who cares?”

Justice Blackmun despised him, marking clerks’ Federalist Society affiliations as though cataloging infections; Justice O’Connor found herself, seed by seed, exposed by “Jesuitical rigor and deft literary ability” as a jurist of “intellectual muddle” dressed in “unmemorable” prose. Scalia’s target was never the woman but her method. The Living Constitution, in his telling, required “mad flight from text and tradition” precisely so its practitioners might go on “inventing new rights, making policy, solving problems” – the fun stuff, as he put it, of the “Imperial Judiciary.”

Yet the private man was gentler than the public combatant. His friendship with Justice Thomas endured despite real philosophical daylight: Thomas, the natural-law man, reading the Declaration into the canon; Scalia starting and mostly ending with the Constitution itself. And his friendship with Justice Ginsburg, opera-mad and ideologically antipodal, remains among the loveliest incongruities in the modern Court’s history, their two families vacationing together as though jurisprudence were a matter simply left at the office.

What strikes the reader most, perhaps, is how little the pinnacle of American law altered the man who reached it. “Legion are the tales of childhood friends, former classmates, colleagues, and their kids visiting the justice in chambers, attending oral arguments, posing for photographs, enjoying dinner with him

and Maureen,” Rosen writes, and the cataloging is almost wistful, as though the biographer himself marveled at it. “The friendships he made in each phase of life, from Xavier to the Court, he retained, in most cases, forever.”

The Grand Jurist held, in the end, a simple if demanding creed: “At all points Antonin Scalia demonstrated loyalty—and expected it in return.” Few men of his eminence could say the same, and fewer still would have wanted to. My own friend Judge Andrew Napolitano, late of Fox News and now of Newsmax, enjoyed a similar warmth with Scalia, the two colorful Italians reportedly coming to blows – verbal only – over the correct composition of pizza.

The most fascinating historical footnote, here, is that John Boehner’s office once floated Scalia as Bob Dole’s VP running mate, a road not taken, mercifully, for the republic’s sake and the Court’s.

Rosen has given us not hagiography but portraiture. When Scalia died, the seat he filled seemed, briefly, unfillable, and reading Rosen we understand why. Some men occupy an office; others, by sheer force of character, become indistinguishable from it. Scalia was the latter sort. And American law, whatever one makes of his conclusions, is the more serious, more literate, and more honest for his having passed through it.

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