

and reassembled when called to order by the Presiding Officer (Mr. PORTMAN).

EXECUTIVE CALENDAR

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, are we still in recess?

The PRESIDING OFFICER. The Senate is now postcloture on the nomination.

The Senator may proceed.

REMEMBERING JUSTICE ANTONIN SCALIA

Mr. HATCH. Mr. President, I rise to honor the memory of one of our Nation's greatest champions of limited government under the Constitution, Justice Antonin Scalia. Justice Scalia set the standard for the kind of judge upon which liberty depends. He was a dear friend, and I will miss him greatly.

The purpose of government, according to the Declaration of Independence and the Constitution, is to secure inalienable rights and the blessings of liberty. Liberty exists by design and, as Andrew Jackson put it, by eternal vigilance. America's Founders were clear that liberty requires separated and limited government powers, including a particular role for unelected judges. Judges who seek to determine what the law is promote liberty; judges who say what they think the law should be undermine it.

Put simply, judges must interpret and apply the law impartially; that is, by setting aside their own opinions, preferences, or prejudices. Interpreting and applying the law impartially particularly leaves the American people and their elected representatives in charge of the law. When they interpret written law impartially, they discern what the original public meaning of the law is. When judges apply the law impartially, they pay no regard to the identity of the parties or the political effects of their decision. Judges can neither make nor change the law they use to decide cases. That is the kind of judge liberty requires. That is the kind of judge Antonin Scalia was.

When President Ronald Reagan first appointed Antonin Scalia to the U.S. Court of Appeals for the DC Circuit in 1982, the future Justice said to those of us on the Judiciary Committee that if confirmed the time for him to opine on the wisdom of laws would be "bygone days." When he again came before the committee a few years later as a Supreme Court nominee, he repeated that setting aside personal views is "one of the primary qualifications for a judge." He described a "good judge" as one who starts from the law itself and not "where I would like to come out in [a] particular case."

Justice Scalia's brilliance and wit were certainly impressive, but they were powerfully connected to this deeply considered and deliberately framed judicial philosophy rooted in the principles of the Constitution. He stuck

doggedly to this ideal of the good judge whose role in our system of government is limited to properly interpreting the law and impartially applying it to decide cases. His approach requires self-restraint by judges. Judges, he often said, must take the law as they find it and apply it even when they do not like the results. In his own words, "If you're going to be a good and faithful judge, you have to resign yourself to the fact that you're not always going to like the conclusions you reach."

Liberty requires such judicial self-restraint, whether it is en vogue or not. As President Reagan put it when he witnessed the oath of office administered to Justice Scalia in September 1986, America's Founders intended that the judiciary be independent and strong but also confined within the boundaries of a written Constitution and laws.

No one believed that principle more deeply and insisted on implementing it more consistently than our Justice Scalia. His approach to the law was often called textualism or, in the constitutional context, originalism—an approach which is nothing more than determining the original public meaning of the legal text. It leaves the lawmaking to the lawmakers and the people they represent, rather than to the judge.

The Senate unanimously confirmed Justice Scalia's nomination on September 17, 1986, the 199th anniversary of the Constitution's ratification. That was very appropriate because his approach gives the Constitution its real due, treating it as more than empty words on a page but as words that already have meaning and substance. Justice Scalia knew that the Constitution cannot limit government's power if government actors—including judges—define the Constitution.

Justice Scalia rejected judicial activism—what he called power-judging—that treats the law as shape-shifting. For activists, the laws and the Constitution have no fixed meaning but can rather be contorted and manipulated to fit the judge's own policy preference. Such an approach puts the unelected judge, not the American people in their elected representatives, in the position of supreme lawmaker.

Thomas Jefferson warned that if judges controlled the Constitution's meaning, it would be "a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please." That is exactly what activist judges do, treating the law like clay that they can mold in their own image.

Rather than reinterpreting the law in his own image, the good judge conforms his decisions to the fixed meaning of the law. By insisting that even judges must be the servants rather than the masters of the law, Justice Scalia was simply following the lead of America's Founders and empowering the American people.

Justice Scalia's approach to judging not only requires self-restraint by judges, but it also demands rigor and accountability by legislators. The good judge takes seriously the language the legislators enact, so the people can hold accountable the legislators they elect.

The famed Senator and Supreme Court advocate Daniel Webster once said that "there are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters." Those who object to Justice Scalia's approach embrace the notion that judges, rather than the people, should be the masters of the law.

Justice Scalia's impact has been enormous. A liberal legal commentator may have put it best in his review of Justice Scalia's book, "A Matter of Interpretation," with these words:

We are all originalists now. That is to say, most judges and legal scholars who want to remain within the boundaries of respectable constitutional discourse agree that the original meaning of the Constitution and its amendment has some degree of pertinence to the question of what the Constitution means today.

Justice Scalia brought the boundaries of respectable constitutional discourse more in line with the principles of liberty than they had been in a generation. For that, our liberty is more secure, and we should be deeply grateful.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMEMBERING JUSTICE ANTONIN SCALIA AND FILLING THE SUPREME COURT VACANCY

Mr. CORNYN. Mr. President, this past Saturday I was honored to attend the funeral mass for Justice Scalia. I couldn't help but recall back when President Reagan nominated him for the Supreme Court of the United States. At that time Judge Scalia said that "[his] only [agenda] was to be a good judge."

Today, 30 years later, it is clear that Justice Scalia, who until his death served longer than any of the current members of the Supreme Court of the United States, was more than a good judge. In fact, he was a great judge. He was a giant of American jurisprudence.

As I got to know him even better during the course of the more recent years, thanks to a mutual acquaintance, I can tell you he was also a good man. My first encounter with Justice Scalia was back in 1991 when I won an election to be on the Texas Supreme Court and the court invited Justice Scalia to come to Austin, TX, and administer the oath of office. At that time I already admired his intellect

and commitment to the Constitution and the rule of law, and believe me, he was an inspiration to young judges like me who were inspired to do the same. He has been an inspiration to so many judges, lawyers, and law students for decades.

I admired and respected Justice Scalia. Like many Texans, I was proud of the fact that he also seemed to love Texas, believe it or not, even though he was a Virginian. He remarked once that if he didn't live in Virginia, he would "probably want to be a Texan."

I wish to spend a couple of minutes remembering this great man and the contributions he made to our Nation. Beyond his incredible resume, Justice Scalia was a devoted husband to Maureen for more than 50 years. He was a dedicated father to 9 children and a grandfather to more than 30 grandchildren. As I said earlier, he was not only a family man, which I am sure he would have considered his most important job, he was a role model for a generation of lawyers, judges, legal scholars, and those who loved the Constitution.

One of the interesting things about Justice Scalia—and perhaps he could teach all of us a little something these days—was that he was quick to build relationships with people who had different views from his own and fostered an environment of collegiality and friendship on the Court.

As we learned earlier, Justice Scalia had relationships with people with whom he couldn't have disagreed more on key issues that the Court confronted—people like Justice Ginsburg, for example. We all know he was a gifted writer and possessed an infectious wit, but Justice Scalia's most important legacy is his life's work and his call for a return to our constitutional first principles.

Justice Scalia strongly believed that words mattered, and I think that is one of the reasons why he quickly became one of the most memorable writers on the Court and one of the best in the Court's entire history. He believed the words written in the Constitution mattered because that was the only thing the States voted on when they ratified the Constitution. Those were the words with which the American people chose to govern themselves. For decades he tried to give those words force and fought against an attempt to say that we really don't have a written Constitution; we have a living Constitution that should be reinterpreted based on the times when, indeed, the text had not changed one bit.

His originalist interpretation of the Constitution meant that he viewed the Court as a place to vindicate the law and what it meant, not express the preferences of five Justices. Justice Scalia was one of the most fervent advocates for the rule of law and a written Constitution. On many instances, he made the important point that if the Supreme Court was viewed merely as a group of nine individuals making

value judgments on how our country ought to be governed under our Constitution, then the people may well feel that their values were equally as valid as those of the "high nine" on the Potomac given life tenure and a seat on the Supreme Court. It was his strict adherence to the text of the Constitution, and not evolving value judgments over time, that gave protection to our democracy.

Justice Scalia was strongly committed to the separation of powers. This is so fundamental to the Constitution that, until the first Congress, James Madison didn't even think that we needed a Bill of Rights because he felt that the separation of powers and the division of responsibilities would be protection enough because they viewed the concentration of powers, the opposite of separation of powers, as a threat to our very liberty. I think he said that the very definition of tyranny was the concentration of powers. So he saw the separation of powers as nothing less than the most important guarantor of our liberty and the most important shield against tyranny.

In one dissent Justice Scalia wrote "without a secure structure of separated powers, our Bill of Rights would be worthless." I guess you would have to say he is a Madisonian and not a Federalist by temperament and view. This recognition of the importance of separation of powers could not be any more important at this point in our history because scarcely a month goes by when this administration has chosen to undermine this basic constitutional precept by exerting itself and claiming authorities which the Constitution does not give the President.

Justice Scalia understood what was at stake. He believed that every blow to the separation of powers would harm our Republic and liberty itself.

As Justice Scalia wrote in a case in which the Court unanimously struck down the President's violations of the constitutional doctrine of separation of powers, he said: "We should therefore take every opportunity to affirm the primacy of the Constitution's enduring principles over the politics of the moment." He continued, warning against "aggrandizing the Presidency beyond its constitutional bounds." That is what Justice Scalia did time and again, and that is what he reminded all of us about—the importance of doctrines of separation of powers, adherence to the text of the Constitution, and not making it up as you are going along or expressing value judgments that can't be related to the actual text and original understanding of the Constitution.

The question arises: When the President makes a nomination to fill the vacancy left by Justice Scalia's death, what is the constitutional responsibility of the U.S. Senate? It is true that under our Constitution, the President of the United States has a unique role and the authority to make a nomination to fill this vacancy, but it is also true that the Senate has an essen-

tial and unique role to play as well. The founding generation regarded the Senate's role in the appointment process as "a critical protection against 'despotism.'" Nothing less. That means that the U.S. Senate has a unique and separate role to play, and certainly a coequal role with that of the President, in the process of filling vacancies on the Court. We are not, and the Constitution never intended us to be, a rubber stamp for the President of the United States.

I know that President Obama would love to nominate somebody in the waning months of his last term of office as he is heading out the door and perhaps fill this vacancy, which in the case of Justice Scalia was filled for 30 years, far extending President Obama's term of office. That is not what the U.S. Senate is about. We are a coequal branch of government, and we have an independent and separate responsibility from that of the President. He can nominate anybody he wants, but it is up to the Senate, in its collective wisdom, on whether or not to grant advice and consent. When we say that, we mean that if the Senate did not play its unique role, liberty itself would be weakened and despotism strengthened.

As I said before, the American people can and should have a voice in the selection of the next Supreme Court Justice. In the waning days of this Presidential election year after voters have already cast their ballots in primaries for Republican and Democratic candidates—even as I speak, there is a caucus convening today in Nevada—I believe giving the American people a choice in who selects the next Justice of the Supreme Court is very important. I think it elevates what is at stake in this next election this November, and that means simply that this vacancy should not be filled at this time by this President.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. LANKFORD). The Senator from California.

FILLING THE SUPREME COURT VACANCY

Mrs. BOXER. Mr. President, I came to the floor because I am stunned. I just learned that the Republicans have announced to the country they will not even call a hearing, if and when President Obama does his job and nominates a replacement for Justice Scalia.

We send our heartfelt sympathy to his family.

I don't know where the Republicans have come up with this notion that this is the right thing to do. If you look at the strict constitutionalists, you know they are reading the Constitution, unless they are phonies. This is what the Constitution says, the President shall "nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court." Where in this does it say: except in election years. As a matter of fact, we have acted 14 times in election years.