



This Is What Antonin Scalia Taught Me

Walter Olson

February 16, 2016

My own anecdote about Justice Scalia is that he once hired me for my dream job because I wouldn't stop arguing with him. At the time he was editor-in-chief of the magazine *Regulation*, working remotely from his main job at the University of Chicago where he taught law (as did Barack Obama, years later), and flying in to Washington to spend time at its offices every few weeks.

The late Anne Brunsdale, who handled the magazine's day-to-day editing, had recommended me as her deputy, but Nino quickly sized me up at the interview (as he told her afterward) as not a forceful enough personality to stand up to the oft-aggressive lawyers and economists who wrote for the magazine and who sometimes had to be given a firm editorial no. He changed his mind after I volunteered that I had read a number of his recent writings and wanted to challenge some of the ideas in them.

What was intended to last a few minutes went on for much longer than an hour as I battled for my barely-out-of-college libertarian views, which he countered in a pleasant enough fashion but clearly saw as naive. You win, Anne, he said afterward: anyone who enjoys arguing that much will fit in here.

That's a pretty typical Scalia anecdote on several levels. The generosity with his time and attention, which lasted through all our later interactions. (He left the magazine as well as his teaching job a year and a half later to accept an appointment as judge on the federal appeals court in Washington.) The conviction that if you're in the business of ideas, you're in the business of controversy, and should try not to take the cut and thrust of disagreement personally. (In his early years as a justice, at least, he was known for seeking to make sure that his clerks each term included one who disagreed with his worldview.) The preference for the passionate over the wishy-washy and for taking oneself lightly but principles seriously.

Like so many others, I was much the better for our connection, and not just because it was my first big break in Washington. Working with Scalia, Brunsdale, and their colleagues taught me

everything I know (I exaggerate, but only slightly) and set me off on a new path from which I have never looked back as a writer mostly about law rather than economics.

And while I doubt I convinced him of much, he convinced me of countless things. When I began the job I tended to take what I soon learned to recognize as a “result-oriented” view of law, which meant a typical conversation might go:

WO: This is an awful case! I can’t believe the court allowed this to happen.

AS: Shouldn’t the court enforce the law as written, even if the bad guys win?

WO: It should find some way not to.

AS: Okay, that’s your position. And next time when the bad guys are the ones asking the court not to enforce the law as written, you’ll be fine if the court finds some way to do that too?

I learned to appreciate the burn, because it forced me to confront the weakness and sentiment in my own thinking. And in later years, while I would sometimes flinch at finding Justice Scalia disagreeing with things I held dear, it was his dissents (and they were usually dissents) that I would read first. Not only were they more entertainingly written — cutting through the majority opinion’s argle-bargle and exposing its jiggery-pokery — but they would strip the case to its core faster.

That’s why the Scalia appreciations that ring truest to me are those from his ideological adversaries, like Chicago law colleague Cass Sunstein, Mark Joseph Stern at Slate, and of course above all his “best buddy”: Justice Ruth Bader “I love him but sometimes I’d like to strangle him” Ginsburg, who has regularly and graciously described her fondness for him, and not just as a fellow opera fan.

The conviviality and boundless humor, while welcome, were only part of it; her own opinion would emerge “ever so much better because of his stinging dissent” and the need to counter its arguments. She has recalled that on the 1996 case requiring the Virginia Military Institute to admit women — something of a capstone of her own career as an advocate of women’s equality, and a case in which he was the sole dissenter — he displayed professional courtesy by sending her the draft of his dissent as early as possible, which gave her the longest time in which to respond to it.

Of course — Scalia being Scalia, who never gave up willingly on a good argument — there’s one other possibility. He may have imagined there was still time for him to convince her.

Walter Olson is a senior fellow at the Cato Institute’s Center for Constitutional Studies.