



Gorsuch is a jurisprudential rock star

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Neil Gorsuch is a singularly fascinating pick for the current Supreme Court. That may be a strange thing to say about a federal judge who graduated from Harvard Law School, like all the other justices. (Except those who went to Yale, and Elena Kagan, who was solicitor general—the government's top lawyer at the Court, commonly called "the Tenth Justice"—rather than a judge.)

I'm not even talking about the diversity that the Coloradan would bring to the high court, as the only Protestant on a bench of Catholics and Jews, the only "genuine Westerner" -- to quote the late Justice Antonin Scalia, who didn't count California -- and the only holder of a doctorate (in legal philosophy, from Oxford).

Judge Gorsuch is such an interesting choice because he's an intellectual who writes like a novelist and a "conservative" judge who defies expectations of what conservatives are like.

Perhaps most remarkably, this jurisprudential rock star with a healthy skepticism for federal power has been nominated by Donald Trump. Both temperamentally and in approach to government, the genteel Gorsuch couldn't be more different from Trump. And yet any Republican president would be fêted for making this choice, one that should appeal to social conservatives, libertarians, establishmentarians, and even the populists who simply want "the best judges."

Look at a now-viral speech Gorsuch gave at Case Western Reserve University last year, in honor of the man whom he hopes to succeed. "I was taking a breather in the middle of a ski run with little on my mind but the next mogul field when my phone rang with the news (of Scalia's death)," he said, describing how he completed the run in tears.

"Sometimes people are described as lions of their profession and I have difficulty understanding what that's supposed to mean. Not so with Scalia. He really was a lion of the law: docile in private life but a ferocious fighter when at work, with a roar that could echo for miles."

Fundamentally, Gorsuch is like Scalia in the ways that made Scalia leonine, but unlike him by the measures that prevented even the great Nino from having the impact he could have. There are

no rough edges here, no acerbic flourishes. And yet the commitment to enforcing the text of a law (not divining its purpose) is clear, the devotion to a Constitution whose structure alone protects our liberty is complete.

"Whenever a constitutional issue came up in our cases," wrote one of his former clerks in a recent article, "he sent one of (us) on a deep dive through the historical sources." "We need to get this right," he said, and right meant "as originally understood."

Moreover, Gorsuch has mounted a campaign against judicial over-deference to executive agencies. As he wrote just this past August in a concurrence to his own majority opinion (which shows that he respects precedent is still willing to engage):

"There's an elephant in the room with us today. We have studiously attempted to work our way around it and even left it unremarked. But the fact is Chevron and Brand X (cases establishing broad deference doctrines) permit executive bureaucracies to swallow huge amounts of core judicial and legislative power and concentrate federal power in a way that seems more than a little difficult to square with the Constitution of the framers' design. Maybe the time has come to face the behemoth."

I can't do the debate justice here, but suffice it to say that in this pen-and-phone era, it's refreshing to see a judicial officer recognize the lack of accountability in a system driven by bureaucrats rather than legislators. It's not something one would expect from a "judicial restraint" conservative, and differentiates Gorsuch from Scalia.

There'll be time enough in coming weeks to study Judge Gorsuch's work in various areas of law, but I'd be remiss in concluding this overview without making one important note about the announcement ceremony. The judge mentioned two figures who had occupied the seat he now aims to fill: Justice Scalia, of course, but also Justice Robert Jackson.

Jackson was one of the best writers the court has ever seen, also served as attorney general and Nuremberg prosecutor, and was the last justice appointed who did not graduate from law school. He's famous especially for two opinions: (1) the 1952 Steel Seizures case, in which the court rejected President Truman's attempt to nationalize the steel industry (where Jackson's concurrence became the legal standard for evaluating executive actions); and (2) Korematsu v. United States (1944), in which the court allowed the wartime internment of Japanese Americans (where Jackson dissented).

It's no coincidence that the silver-haired nominee name-checked Jackson, and that should hearten those dismayed by a politics gone off the rails. When push comes to shove, the elegant Judge Gorsuch will preserve our republic.

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