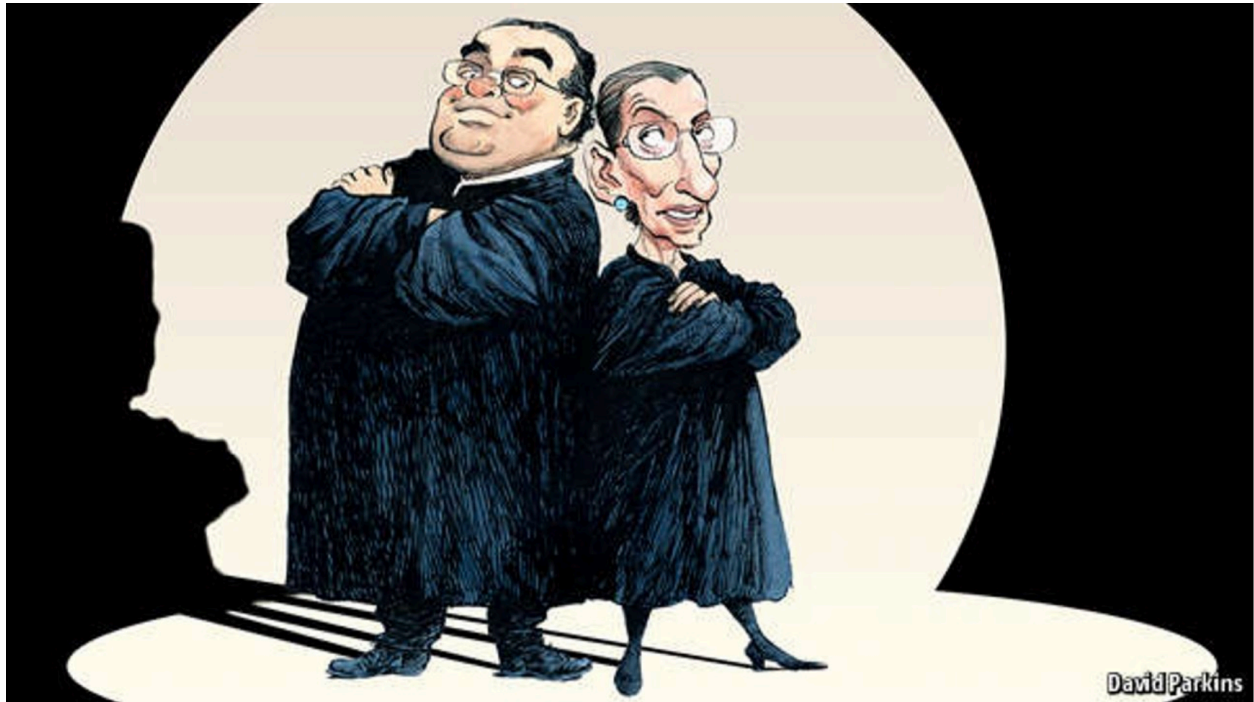


# THE ECONOMIST



## Lexington Justices on the stage

Why Americans are increasingly fascinated by their highest court

[United States Feb 26th 2015 edition](#)

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NEAR the start of “The Originalist”, a new play about Justice Antonin Scalia of the Supreme Court, the judge is shown boasting that he could beat any liberal at poker, not least President Barack Obama. In card games as in life, left-wingers “lack ruthlessness when the stakes are high”, the actor playing Mr Scalia explains to Cat, a left-leaning young woman he has just hired for the nerve-racking post of his law clerk (a prestigious job reserved for clever high-flyers).

There is a lot of bombast in the play, which opens in Washington on March 6th. The fictional Mr Scalia—in real life the outspoken, caustic 78-year-old leader of the court’s conservative wing—prowls round his chambers, fists balled like a prizefighter, sparring with Cat about his views on gay marriage (bad), abortion (worse) and the death penalty (a fitting punishment for wickedness). In each case he is a swaggering, doubt-free

spokesman for “originalism”. According to that doctrine, the constitution keeps the meaning it had when it was first adopted. Originalists hate it when modern judges treat its text as a “living” document, guaranteeing a panoply of rights that changes with the times.

In final rehearsals at Arena Stage, a large drama centre specialising in new works, Edward Gero, the actor playing Mr Scalia, is to be seen flatly telling his law clerk that Americans will “never” seriously restrict gun ownership, not least because of their deep distrust of the federal government and its own arsenals of weaponry. Moments earlier Cat (played by Kerry Warren) has told him of a family connection to a shooting massacre that left her a passionate believer in gun control. Her boss is unyielding. The constitution clearly guarantees a right to bear arms, he growls, and “passion is no match for the text.”

In short, there is much to provoke theatregoers in a capital city where Democratic voters (and federal bureaucrats) greatly outnumber fire-breathing conservatives. Yet in the Washington of 2015, staging a play about Mr Scalia makes perfect sense. Indeed, “The Originalist” will be followed this July by the premiere of “Scalia/Ginsburg”, a comic opera about the conservative judge and his deep-if-improbable friendship with Justice Ruth Bader Ginsburg, the 81-year-old leader of the court’s liberal wing. The two justices, both opera buffs, praised extracts from the work after they were performed in a recital at the court. Drawing freely on the plots of “Don Giovanni”, “The Magic Flute” and other classics, the opera shows them imprisoned by a talking statue and forced to work together on three tests to gain their freedom.

There are several reasons why it makes sense to put a judge like Mr Scalia on stage. For one thing, the Supreme Court often finds itself pondering knotty problems which other countries ask parliaments to resolve. In just the next few months the court’s nine justices could issue rulings that preserve or dismantle a big plank of the Obamacare health law and make gay marriage legal in all 50 states.

For another thing, in the space of a generation or two, originalism has moved from the fringes of legal scholarship to being a mainstream conservative belief. Pugnacious, eloquent Mr Scalia can take much of the credit for that. He does not win all his fights—indeed, when the court finds that the constitution protects the right of gays to marry, as seems likely, it will be a clear defeat for originalists. But even when he loses, Mr Scalia’s blistering written dissents are headline news. In 2013 he accused his fellow justices of plotting a “black-robed supremacy” when they struck down a law passed by Congress in the 1990s that attempted to grant primacy to heterosexual marriage. In other dissents he has accused his unelected colleagues of “tsarist arrogance” and “preposterous” reasoning. Derrick Wang, the composer of “Scalia/Ginsburg”, was studying Scalia opinions at law school when he decided that the stormy, raging words before him deserved to be an operatic aria. John Strand, the Washington-based author of “The Originalist”, declares Mr Scalia a natural showman. Both justices have sizeable student followings on college

campuses and in law schools; the best known Ginsburg fan blog is called “Notorious RBG”, in a play on the name of the late rapper, “The Notorious BIG”.

## The odd couple

But something else explains the flurry of interest in them, and it is linked to disgust with contemporary politics. Too often, folk on right and left refuse to concede that some problems are hard, so that reasonable people disagree about how to solve them. Partisans even refuse to admit that they are partisans, with biases and preferences born of character, upbringing and experience. Instead, politicians pose as objective seekers after truth, the better to portray their opponents as fools, knaves or dupes (or all three), whose facts cannot be trusted and whose motives are suspect.

The Supreme Court may have clear conservative and liberal camps. Its justices attack one another in ferocious written opinions. But even such polar opposites as Justices Scalia and Ginsburg do not think that the other is stupid. Instead they acknowledge that they simply see the world differently. “What’s not to like—except her views on the law?” Mr Scalia asked at a recent joint appearance.

In real life Mr Scalia has hired several liberal law clerks over the years. Researching “The Originalist”, Mr Strand interviewed ex-clerks who disagreed with almost every judgment made by the conservative justice, yet called him witty, erudite and affable. “One liberal clerk said, he’s the best boss he will ever have,” says Mr Strand. His play presents the old justice as a gruff but ultimately kindly mentor. It does not show Cat converting Mr Scalia: it is a work of fiction, not an outright fantasy. But it does show two clever people listening to each other, even as they argue. In today’s Washington, too often filled with dialogues of the deaf, that makes it a timely, almost revolutionary work.

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