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LIBERTY VS. TYRANNY: A CONSTANT STRUGGLE†

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The creation of the American Republic with its written Constitution and guarantees of personal freedom—a Constitution enacted by those who gave up their power to the central government instead of accepting a Constitution thrust upon them—is the single greatest political achievement in the history of the world. When we were colonists and subjects to a British king and parliament located 3,000 miles away, the king and parliament sought ingenious ways to raise money from us, so they would impose tax after tax after tax.¹ This is tyranny—taxation without representation. The tax that was the last straw was the Stamp Act.² In the Stamp Act, the parliament decreed, not for those in Great Britain but only for the colonists in the New World in the Americas, that every piece of paper in their personal possession—every book, document, bank draft, deed, mortgage, lease, and pamphlet to be nailed to a tree—had to have the king’s stamp on it.³ If you think going to the post office is terrible today, imagine being forced to go to a foreign post office operated by the king’s people in Virginia in order to buy one of the king’s stamps!

How did the king know if every piece of paper in your home had his stamp on it? Parliament enacted an abomination known as the

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¹ AMERICAN ERAS: THE REVOLUTIONARY ERA, 1754–1783, at 202 (Robert J. Allison ed., 1998) (suggesting that taxation of the colonies was one of several measures “consistent with the mercantile theory that trade bound the empire together and that the revenue from this trade financed the empire’s government and defense”).

² *Id.*

³ Stamp Act, 1765, 5 Geo. 3, c. 12, § 1 (Eng.).

Townshend Revenue Act, a statute that authorized British soldiers to write their own search warrants, show up at your front door, and hand you a piece of paper by which they had authorized themselves to enter your home.⁴ And of course, while they look for stamps they might help themselves to rum, on which you could not prove you paid taxes, or to furniture, which you could not prove had been made domestically. They might also help themselves to whatever was in your barn and to a couple of your bedrooms until they decided it was time for them to leave.

Enough was enough. We fought a revolution, we won the revolution, and we wrote a Constitution. In that Constitution we had states that ceded a little bit of their sovereign power to a central government. Think about this: when our cousins in Europe received liberty they did so by threatening a begrudging king or potentate or prince who reluctantly gave them some freedom. That was power—the king granting liberty.

In creating the American Republic, we turned that notion upside down. It was not power granting liberty, but the opposite: liberty granting power. We recognized—as Thomas Jefferson did when he wrote in the Declaration of Independence the words “all men are created equal” and “endowed by their Creator with certain unalienable Rights”⁵—that our rights are natural. When Jefferson wrote those words, he wedded the soul of the American Republic to the natural law. We believed then, and I would like to think we still believe today, that our rights come from our humanity; as we are created in God’s image and likeness and as He is perfectly free, we too are perfectly free. Our rights—to think as we wish, to say what we think, to publish what we say, to worship or not to worship, to self-defense, to privacy after the right to life (the greatest right that exists), the right to be left alone, the right not to incriminate ourselves, to use and enjoy our property as we see fit (not as the government tells us to)—these are natural rights that come from our humanity. They do not come from the government, but are gifts from God.⁶

This argument has not always been accepted by the people who write the laws. Indeed, in 1787, when they wrote the Constitution in Philadelphia, James Madison, with support from Jefferson, carried the ball for the natural law argument.⁷ Their arguments were met with

⁴ Townshend Revenue Act, 1767, 7 Geo. 3, c. 46, § 10 (Eng.). Writs of assistance were originally prescribed in the fourteenth year of King Charles II’s reign and were reauthorized in the Townshend Revenue Act. *Id.*

⁵ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

⁶ *Id.* paras. 2–29 (delineating sundry unalienable, natural rights violated by the tyranny of King George III).

⁷ See Declaration of Rights para. 1 (1776), in 1 LETTERS AND OTHER WRITINGS OF JAMES MADISON 21, 21 (Philadelphia, J.B. Lippincott & Co. 1865) (demonstrating Madison’s support for natural law); see also Letter from Thomas Jefferson to Dr. John Manners (June

great resistance by the big government crowd, which existed even then, in the personalities of John Adams⁸ and Alexander Hamilton.⁹ Hamilton claimed that rights come from the government and those rights cannot exist without a government protecting them.¹⁰

They argued back and forth and eventually agreed on a Constitution in which the thirteen colonies would give away discrete, specific, delineated powers written down in the Constitution—powers delegated from the states to the federal government. The original draft of the Constitution, however, did not contain the Bill of Rights, and some, including Hamilton, argued that it was unnecessary.¹¹ Jefferson, however, was distrustful of power and demanded that certain individual rights, like the freedom of the press, be included in the Constitution.¹² Eventually, the Constitution was adopted, and four years later the Bill of Rights was added.¹³

The Bill of Rights contains guarantees of liberty. These are not aspirations; these are guarantees that speech, religion, and privacy will not suffer interference by the government. But almost from the moment the ink was dry on the document, Congress began wearing away at these guarantees of liberty by enacting the Alien and Sedition Acts, which made it a crime to disparage the government with the intent of harming it, specifically by attacking Congress or the President.¹⁴ Who is missing?

12, 1817), in 12 THE WORKS OF THOMAS JEFFERSON 65, 66 (Paul Leicester Ford ed., 1905) (illustrating Jefferson's support for natural law).

⁸ See Letter from John Adams to Benjamin Rush (Aug. 28, 1811), in 9 THE WORKS OF JOHN ADAMS, SECOND PRESIDENT OF THE UNITED STATES 635, 638 (Charles Francis Adams ed., Books for Libraries Press 1969) (1850) (advocating for a national bank); Michael J. Gerhardt, *The Constitutional Significance of Forgotten Pres[i]dents*, 54 CLEV. ST. L. REV. 467, 470 (2006) (describing Adams as having a "nationalist vision of a strong federal government").

⁹ THE FEDERALIST NO. 1 (Alexander Hamilton).

¹⁰ See *id.*

¹¹ THE FEDERALIST NO. 84 (Alexander Hamilton).

¹² Letter from Thomas Jefferson to James Madison (Dec. 20, 1787), in THOMAS JEFFERSON: WRITINGS 914, 915–16 (Merrill D. Peterson ed., 1984).

¹³ AMERICAN ERAS: DEVELOPMENT OF A NATION, 1783–1815, at 204, 208 (Robert J. Allison ed., 1997). The Constitution was approved, not ratified, on September 17, 1787. *Id.* at 204. Two years later, in September 1789, the First Congress drafted twelve Amendments, ten of which became our Bill of Rights when the states ratified them on December 15, 1791. *Id.* at 208.

¹⁴ Sedition Act, ch. 74, § 2, 1 Stat. 596, 596 (1798). The Sedition Act is commonly grouped with the Alien Act, which allowed the President to deport aliens deemed dangerous to the government. Alien Act, ch. 58, § 1, 1 Stat. 570, 570–71 (1798). Though the Sedition Act made it unlawful for citizens to oppose "measures of the *government*," or to "intimidate" members of the "*government*" from performing their duties, Sedition Act § 1, 1 Stat. at 596 (emphasis added), only the President and members of Congress were singled for additional protection. *Id.* § 2.

The Vice President.¹⁵ The Vice President was Thomas Jefferson. Not only did Jefferson not care if they attacked him, he did not want to have anything to do with the federal government prosecuting people for speech. But it did. For example, the administration of John Adams prosecuted a Vermont congressman named Matthew Lyon because he criticized the President for swallowing up the public welfare “in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice.”¹⁶ Congressman Lyon was sentenced to four months in prison, during which time he was even re-elected to Congress.¹⁷

Jefferson then, of course, becomes President. The Alien and Sedition Acts had a sunset clause, so they expired.¹⁸ Jefferson threatened to veto the laws if they were re-enacted, but because the Anti-Federalists who were supportive of small government controlled the Congress, the Alien and Sedition Acts never got to Jefferson’s desk.¹⁹ It was a sordid period in American history in which the same generation that said Congress shall make no law abridging the freedom of speech wrote a law abridging the freedom of speech, and then prosecuted people under that law.

We do not again see serious punishment for speech or the exercise of fundamental liberties until the time of the Civil War. In this horrible period of our history, the President of the United States of America, his Justice Department, and his military prosecuted people for speech. I am not talking about people who took up arms against the government. I am talking about journalists and politicians in the North who disagreed with the President’s war effort and were therefore dragged before military commissions and prosecuted, instead of being prosecuted in federal court. Congressman Clement Vallandigham of Ohio, for example, was tried by a military commission in his home state.²⁰ The Civil War was not fought in Ohio, and the federal courts were open and operating, but the government still ordered that he be prosecuted in a military commission in Ohio because he disagreed with the President’s war effort.²¹ It was not until after Lincoln was dead that the Supreme Court would rule in *Ex parte Milligan* that U.S. military commissions do not have the power to try non-military individuals unless the revolt in the streets is so great that the courts cannot sit.²² Yet another generation of

¹⁵ See Sedition Act § 2, 1 Stat. at 596.

¹⁶ Lyon’s Case, 15 F. Cas. 1183, 1183 (C.C.D. Vt. 1798) (No. 8,646).

¹⁷ *Id.* at 1185, 1189–90.

¹⁸ Sedition Act § 4, 1 Stat. at 597; Alien Act § 6, 1 Stat. at 572.

¹⁹ See SAUL CORNELL, *THE OTHER FOUNDERS: ANTI-FEDERALISM AND THE DISSENTING TRADITION IN AMERICA, 1788–1828*, at 274–75 (1999).

²⁰ *Ex parte Vallandigham*, 68 U.S. (1 Wall.) 243, 244 (1863).

²¹ *Id.*

²² *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 123, 127 (1866).

Americans in government leadership positions did not understand the idea that Congress shall make no law abridging the freedom of speech.

Then comes World War I and Congress enacts the Espionage Act.²³ The Espionage Act makes it a crime to speak against the government's war effort with the purpose and intention of deterring people from going to war.²⁴ If, for example, you stood outside a recruitment office or a draft board and said to young men, "Do not go in there," you could be prosecuted under the Espionage Act. Ask Mr. Abrams—who wrote pamphlets against the war effort and encouraged people not to work in munitions plants or volunteer for service during World War I²⁵—if the federal prosecutors who went after him respected the First Amendment. Mr. Abrams's leaflets were in Yiddish and English, which he distributed by throwing from the window of a building in the middle of New York City that housed the employer of one of the defendants.²⁶ Mr. Abrams was sentenced to decades in prison for violating the Espionage Act because Congress made speech that it hated or feared a crime²⁷ and because the Supreme Court relied upon the previously unheard-of doctrine it created in an earlier case—that if there is a "clear and present danger" created by the speech, then the speech may be prosecuted.²⁸

The Espionage Act is still on the books. If you will recall when the *New York Times*, of which I am not a champion or defender, exposed President Bush's warrantless wire-tapping, the then-Attorney General of the United States, Alberto Gonzales, threatened to prosecute the newspaper under the Espionage Act because its revelation of the truth would harm the war effort.²⁹ Gonzales was right—that was the law. It is a horrific, horrendous, clearly unconstitutional law, but still the law of the land.

In World War II, we witnessed the spectacle of Franklin Delano Roosevelt ("FDR") incarcerating approximately 120,000 Japanese-Americans in the far west³⁰—not because of any proof of guilt, not even

²³ Espionage Act, ch. 30, tit. I, 40 Stat. 217 (1917) (codified as amended at 18 U.S.C. §§ 792–98 (2006)).

²⁴ *Id.* §§ 2–3, 40 Stat. at 218–19.

²⁵ *Abrams v. United States*, 250 U.S. 616, 617–18, 621, 624 (1919).

²⁶ *Id.* at 617–18.

²⁷ *See id.* at 629 (Holmes, J., dissenting).

²⁸ *See id.* at 618–19 (citing *Schenck v. United States*, 249 U.S. 47, 52 (1919)).

²⁹ *See Examining DOJ's Investigation of Journalists who Publish Classified Information: Lessons from the Jack Anderson Case: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 3 (2006) (statement of Matthew W. Friedrich, Chief of Staff and Principal Deputy Assistant Att'y Gen., Criminal Division, Department of Justice); *Developments in the Law—The Law of Media*, 120 HARV. L. REV. 990, 1007 (2007).

³⁰ 131 CONG. REC. S10, 267 (daily ed. May 2, 1985) (statement of Sen. Matsunaga).

because of any allegation against them, but just because of their ethnicity and the fear that they would break the law.³¹ And again, in *Korematsu v. United States*, a cowed Supreme Court went along with it.³² Justice Frank Murphy, who was FDR's closest friend on the Court at the time, wrote a stinging dissent³³—one which would cause FDR never to speak to Murphy again. Nevertheless, the Court upheld the incarceration of people based on race in this horrendous case.³⁴

What is it about wartime that makes the government want to seek and acquire more power? In wartime, people are afraid, and when people are afraid, they look for the following satanic bargain: give me your freedom, and I will keep you safe. And do not worry when you do not have to be kept safe anymore; I will give you your freedom back. Yet we all know that liberty lost does not come back. We all know that when we sacrifice liberty for safety, we usually end up with neither. If the President of the United States of America says that his first job is to keep us safe, he is wrong! His first job is to keep us *free*. If he keeps us safe but not free, he is not doing his job. That is the lesson of the Declaration of Independence and the Bill of Rights.

What is it about members of Congress who take an oath to uphold the Constitution, but look the other way when they encounter constitutional impediments to their agendas? I once interviewed Congressman Jim Clyburn, the number three ranking Democrat in the House. I said to him, “[Congressman Clyburn], where in the Constitution is the federal government charged with maintaining peoples’ health?”³⁵ And he said to me, “[Judge], there’s nothing in the Constitution that says the federal government has got anything to do with most of the stuff we do.”³⁶ Then he said, “[Your Honor], how about showing me where in the Constitution it prohibits the federal government from [managing health care]?”³⁷

This reveals an incredible ignorance of the concept of the federal government. Congress is not a general legislature. It does not exist in order to right every wrong. It exists only to pursue federal issues, not

³¹ *Korematsu v. United States*, 323 U.S. 214, 226 (1944) (Roberts, J., dissenting) (“On the contrary, it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States.”).

³² *Id.* at 223–24.

³³ *See id.* at 233 (Murphy, J., dissenting).

³⁴ *Id.* at 223–24.

³⁵ YouTube, Judge Napolitano v[s.] James Clyburn: Debating [the] Constitutionality of Federal Health Care, <http://www.youtube.com/watch?v=00Xcqp46A64> (last visited Apr. 19, 2010) (at beginning of the interview).

³⁶ *Id.* (at seven seconds into the interview).

³⁷ *Id.* (at fifty-six seconds into the interview).

national issues, which were specifically delegated to it by the states when they gave away some of their sovereignty. Ronald Reagan reminded us in his First Inaugural Address that the states created the federal government—the federal government did not create the states.³⁸ The states gave a little bit of their power to the federal government, confined and limited that power to certain areas, and set forth what the federal government was permitted to do.

I have argued that power given by the states can be taken back by the states.³⁹ If a legislature has enacted a resolution giving some of its power away, it can also enact a resolution taking some of that power back. Tell that to Congressman Clyburn, who does not care what the Constitution says.

Finally, we deal with the judiciary. Who would have thought that black-robed judges would save the Constitution? The whole purpose of an independent judiciary is not to go along with majority opinion, but to resist it. The judicial branch is the anti-democratic branch of the government. Were this not so, no one would be around to prevent a majority from taking your freedom or property by majority vote. On what principle would the judiciary rely for the authority to stop the majority? It would rely on the natural law—one principle of which is that you own your body and the property that your hands and intellect lawfully acquire and produce.⁴⁰ And you do not own these things subject to the government; you own them outright.

Hamilton argued that unless men were angels, we could not give them unlimited power, no matter who they are or what they promise.⁴¹ We have a government that thinks it can write any law, tax any event, seize any property, and regulate any behavior, whether authorized by the Constitution or not. It is the charge of those of you in this room who will take the same oath that Congressman Franks and I took, and of the others here who are licensed to practice law, to uphold the Constitution—not the constitution we think should exist, but the Constitution as it is.

³⁸ Ronald Reagan, First Inaugural Address (Jan. 20, 1981), *in* INAUGURAL ADDRESSES OF THE PRESIDENTS OF THE UNITED STATES 331, 333 (U.S. Gov't Printing Office, Bicentennial ed. 1989). President Reagan stated, in pertinent part,

It is my intention to curb the size and influence of the Federal establishment and to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the States or to the people. All of us need to be reminded that the Federal Government did not create the States; the States created the Federal Government.

Id.

³⁹ ANDREW P. NAPOLITANO, *THE CONSTITUTION IN EXILE* 240–41 (2006).

⁴⁰ *See* JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT* 123–24 (Thomas P. Peardon ed., Macmillan Publ'g Co. 1952) (1690).

⁴¹ *THE FEDERALIST* NO. 51 (Alexander Hamilton).

Jefferson's immortal statement that we "are endowed by [our] Creator with certain unalienable Rights"⁴² was not just a political remark. It was incorporated by reference into the supreme law of our land.⁴³ Our rights are natural. The government cannot take them away with a command from the President or an unconstitutional act like the Patriot Act, which lets federal agents write their own search warrants.⁴⁴ Did we not fight a revolution to keep British soldiers from writing their own search warrants?

Some of my colleagues are very upset that the Secretary of Homeland Security came out with a report saying we have to worry about people who hold pro-life and pro-gun views, veterans recently returning from overseas wars, people who are disgruntled about the state of the economy, and people who think the federal government is too powerful.⁴⁵ And I said, "Well, she knows that I'm pro-life; she knows that I'm pro-gun; she knows that I don't like to pay taxes; she knows that I think that the government is too big, too fat, and regulates too much." But how does she know that about the average person? She knows because she has dispatched her agents to write search warrants to capture the keystrokes on laptops, hear the conversations on telephones, and look at medical and legal records. And if she does not use that information to prosecute you, you will never even know that she has it. Well, how did she get that power? Nobody else had that power. It is in the PATRIOT ACT.⁴⁶ You may have trusted George Bush with that kind of power, but now you have a government that disagrees with you on guns, the right to life, and paying taxes, and that government has the same power.

In that same vein, a question that some may be asking now is: Should we be concerned about the recent talks of Congress possibly reinstating the Fairness Doctrine?⁴⁷ I would not be surprised at all if the

⁴² THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

⁴³ See U.S. CONST. art. VII (attributing the beginning of the United States to the time at which the Declaration of Independence was signed).

⁴⁴ See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001*, Pub. L. No. 107-56, tit. II, § 215, 115 Stat. 272, 287 (codified as amended at 50 U.S.C. §§ 1861-63 (2006)). Though not called a "search warrant," the method of collecting records under section 215 of the Patriot Act is essentially the same thing. See *id.*

⁴⁵ OFFICE OF INTELLIGENCE & ANALYSIS, U.S. DEP'T OF HOMELAND SEC., *RIGHTWING EXTREMISM: CURRENT ECONOMIC AND POLITICAL CLIMATE FUELING RESURGENCE IN RADICALIZATION AND RECRUITMENT* 2-5, 7 (2009).

⁴⁶ USA PATRIOT ACT §§ 201, 214-15, 115 Stat. at 278, 286-88 (codified at 18 U.S.C. § 2516 (2006); 50 U.S.C. §§ 1842-43, 1861-63 (2006)).

⁴⁷ See *Fairness and Accountability in Broadcasting Act*, H.R. 501, 109th Cong. § 2 (2005); *Media Ownership Reform Act of 2005*, H.R. 3302, 109th Cong. § 3 (2005). The Fairness Doctrine was a rule promulgated by the Federal Communications Commission

present administration, and its huge majorities in the Congress, attempted to reinstate the Fairness Doctrine, which basically would destroy talk radio and would require that for every Bill O'Reilly there be one Geraldo Rivera⁴⁸—or even worse that they be together in the same studio on the same show. I believe in having a sense of humor, but this is a serious issue about which to be concerned. The flip side is that I really do not believe that the Supreme Court, as presently constituted, would uphold the type of infringement on speech that would come about from the Fairness Doctrine. The Fairness Doctrine was once upheld⁴⁹ but it was by a different Supreme Court in a different era with a different attitude about First Amendment rights. Fortunately, given the current Court's jurisprudence, I do not think that such an imposition on free speech could survive today.⁵⁰

Power once given cannot be taken back. And government is not logic; it is fear and force. John Adams said we would not have a government if we did not have fear.⁵¹ George Washington said the whole basis of government is its power to force people to obedience.⁵² So which is greater: The individual created in the image and likeness of God with an immortal soul that can glorify Him through eternity, or an artificial creation based on fear and force? The answer is an obvious one. You must possess the courage and the will to make sure that others understand this as well, because in every age, as Jefferson predicted,

("FCC") in 1949, pursuant to its congressionally-mandated authority. See Communications Act of 1934, Pub. L. 73-416, ch. 652, 48 Stat. 1064 (codified as amended in scattered sections of 47 U.S.C.); Editorializing by Broad. Licensees, 13 F.C.C. 1246, 1257-58 (1949). The rule stated that a broadcaster must give adequate coverage to public issues, and that coverage must be fair in that it accurately reflects the opposing views. *Id.* A corollary to this rule, applying specifically to the endorsement of political candidates, was enacted in 1967 and still remains on the books to this day. See 47 C.F.R. §§ 73.1910, 73.1940, 73.1941 (2009). Although its constitutionality was upheld in later case law, *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 375 (1969), the FCC discarded the rule in 1987. *Complaint of Syracuse Peace Council Against Television Station WTVH*, 2 F.C.C.R. 5043, 5052, 5057 (1987), *aff'd*, *Syracuse Peace Council v. FCC*, 867 F.2d 654, 669 (D.C. Cir. 1989).

⁴⁸ See *supra* note 47.

⁴⁹ *Red Lion*, 395 U.S. at 375.

⁵⁰ See, e.g., *Citizens United v. Fed. Election Comm'n*, No. 08-205, slip op. at 55-57 (Jan. 21, 2010) (striking down a statute that limited political speech).

⁵¹ Adams's words were as follows: "Fear is the foundation of most governments; but it is so sordid and brutal a passion, and renders men in whose breasts it predominates so stupid and miserable, that Americans will not be likely to approve of any political institution which is founded on it." JOHN ADAMS, *Thoughts on Government*, in 4 THE WORKS OF JOHN ADAMS, SECOND PRESIDENT OF THE UNITED STATES 189, 194 (Charles Francis Adams ed., Books for Libraries Press 1969) (1850).

⁵² George Washington, Farewell Address, in 1 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS: 1789-1897, at 213, 217 (James D. Richardson comp., Washington, D.C., Gov't Printing Office 1896).

government gets stronger and individual liberty gets weaker.⁵³ You must guard against that in everything you do and in every act that you take, especially after you take that solemn oath to uphold the Constitution.

I would suggest using the government's greatest weapon against it: I would suggest using fear against the government. During Antonin Scalia's confirmation hearings for the U.S. Supreme Court, when he was asked if he thought that statements of members of Congress on the floor of the House and in Committee Reports should be examined by justices when attempting to interpret statutes, he said no.⁵⁴ When asked why not, he said these statements are unreliable and may not accurately represent the will of Congress as a whole;⁵⁵ indeed, there is only one reason that members of Congress vote for anything: to get re-elected. There is, however, one thing that members of Congress do fear: the loss of their power to violate the Constitution. To conclude, let us remember the age-old refrain—when the people fear their government, there is tyranny, but when the government fears the people, there is liberty.

⁵³ Letter from Thomas Jefferson to Colonel Carrington (May 27, 1788), in 1 HENRY STEPHENS RANDALL, *THE LIFE OF THOMAS JEFFERSON* 488–89 (Philadelphia, J.B. Lippincott & Co. 1865).

⁵⁴ *Nomination of Judge Antonin Scalia, to be Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 99th Cong. 67 (1986) (statement of Antonin Scalia, J.).

⁵⁵ *See id.*