

## “THE MOST IMPORTANT LIBERTY”

---

Antonin Scalia

*Supreme Court justice Antonin Scalia, who died on February 13 at the age of seventy-nine, was a legal and intellectual giant whose principled, philosophically rigorous jurisprudence stood athwart the dominant prejudices of our time. To appreciate his “originalist” constitutional interpretation, there is no substitute for Justice Scalia’s own words. In his opinions—especially his dissents—he eloquently, often mercilessly exposed the emptiness of “living Constitution” claims and the Constitution-means-whatever-we-say-it-means rationalizations of other justices.*

*Consider these powerful words from his dissent in Obergefell v. Hodges (2015), in which five of his colleagues discovered a “fundamental right” to same-sex marriage.*

Today’s decree says that my Ruler, and the Ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court. The opinion in these cases is the furthest extension in fact—and the furthest extension one can even imagine—of the Court’s claimed power to create “liberties” that the Constitution and its Amendments neglect to mention. This practice of constitutional revision by an unelected committee of nine, always accompanied (as it is today) by extravagant praise of liberty, robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves....

Hubris is sometimes defined as o’erweening pride; and pride, we know, goeth before a fall. The Judiciary is the “least dangerous” of the federal branches because it has “neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm” and the States, “even for the efficacy of its judgments.” With each decision of ours that takes from the People a question properly left to them—with each decision that is unabashedly based not on law, but on the “reasoned judgment” of a bare majority of this Court—we move one step closer to being reminded of our impotence. †