BOOK NOTE

THE OTHER SIDE OF THE COIN: IMPLICATIONS FOR POLICY FORMATION IN THE LAW OF JUDICIAL INTERPRETATION. A REVIEW OF *A Matter of Interpretation: Federal Courts and the Law* by Antonin Scalia, Princeton University Press, 1997. 159 pp. $19.95.

INTRODUCTION

Alexander Hamilton wrote in *The Federalist* No. 78 that the courts may not "substitute their own pleasure to the constitutional intentions of the legislature . . . The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body."[1] Determining what methods a judge must use to discern those "intentions," to exercise only "judgment," and to avoid exercising "will," is the task United States Supreme Court Associate Justice Antonin Scalia accepts in *A Matter of Interpretation: Federal Courts and the Law*.[2]

Justice Scalia defends textualism as the only form of interpretation that should govern judicial interpretation of statutes and the Constitution. The book begins with an essay by Justice Scalia establishing the framework of his interpretive model and arguing that his model is mandated to achieve institutional legitimacy in a constitutional system of separated powers and for the protection of democracy. Comments to this essay follow from four distinguished scholars: Gordon S. Wood, Professor of American History at Brown University; Laurence H. Tribe, Professor of Constitutional Law at Harvard Law School; Mary Ann Glendon, Professor of Law at Harvard University; and Ronald Dworkin, Professor of Law at New York University and Professor of Jurisprudence at Oxford University. Each provides comments to all or part of Justice Scalia's argument. Each comment is addressed in the final pages by a response from Justice Scalia.

Part I of this Book Note presents an overview of Justice Scalia's argument, the arguments embodied in the comments, and discusses Justice Scalia's responses to these arguments. Though only Justice Scalia's analysis on statutory interpretation is particularly relevant to the remaining parts of this Book Note, his method of both statutory and constitu-

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[1] THE FEDERALIST No.78, at 526 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

[2] ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW (1997).

tional interpretation will be discussed in Part I. Part II specifically sets forth the insights contained in the book on the impact of an accepted method of statutory interpretation on the incentives of legislators in drafting and formulating statutory law. Part III analyzes those insights and argues that widespread adoption of Justice Scalia's method of statutory interpretation would alter legislative behavior in an advantageous way. First, the incentives to pad the legislative history with individual interpretations of a law would be severely diminished. Second, legislatures would find it necessary to use clearer language in statutes. Finally, the increase in clarity and decrease in attempts to shape legislation in a specific, though not necessarily majority-concurring, way would decrease the effectiveness of rent-seeking behavior that is most often injurious to the public interest.

I. OVERVIEW OF THE ARGUMENTS PRESENTED IN *A MATTER OF INTERPRETATION*

Justice Scalia's argument centers around the merits and institutional necessity of applying textualism, also known as originalism. His argument is already familiar to those having read his judicial opinions[3] or previous academic scholarship.[4] He argues that the "science of construing legal texts" is in a "neglected state," primarily due to the adherence to a common law ideology even when dealing with civil law, or sources of law embodied in a written text. The seductive power of the common law, coupled with the importance it receives in legal education, leads many judges to embrace its methodology in areas where it is clearly inappropriate — statutory, regulatory, and constitutional construction.[5] These areas involve interpretation of a pre-existing text, not the applica-

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[3] In relation to statutory interpretation, see, *e.g.*, Conroy v. Aniskoff, 507 U.S. 511, 518 (1993) (Scalia, J., concurring); Dewsnup v. Timm, 502 U.S. 410, 420 (1991) (Scalia, J., dissenting); Wisconsin Public Intervenor v. Mortier, 501 U.S. 597, 616 (1991) (Scalia, J., concurring); John Doe Agency v. John Doe Corp., 493 U.S. 146, 160 (1989) (Scalia, J., dissenting); Thompson v. Thompson, 484 U.S. 174, 188, 192 (1988) (Scalia, J., concurring). In relation to constitutional interpretation, see, *e.g.*, Romer v. Evans, 116 S.Ct. 1620, 1629 (1996) (Scalia, J., dissenting); Morrison v. Olson, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting); Mistretta v. U.S., 488 U.S. 361, 413 (1989) (Scalia, J., dissenting); Cruzan v. Director, Mo. Dep't of Health, 497 U.S. 261, 292 (1990) (Scalia, J., concurring); Webster v. Reproductive Health Servs., 492 U.S. 490, 532 (1989) (Scalia, J., concurring); Nollan v. California Coastal Comm'n, 483 U.S. 825, 838 (1987) (Scalia, J.).

[4] *See, e.g.*, Antonin Scalia, *Assorted Canons of Contemporary Legal Analysis*, 40 CAS. W. RES. L. REV. 581 (1989); Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175 (1989); Antonin Scalia, *Judicial Deference to Administrative Interpretations of Law*, 1989 DUKE L.J. 511 (1989); Antonin Scalia, *Responsibilities of Regulatory Agencies Under Environmental Laws*, 24 HOUS. L. REV. 97 (1987); Antonin Scalia, *The Role of the Judiciary in Deregulation*, 55 ANTITRUST L.J. 191 (1986); Antonin Scalia, *The Legislative Veto: A False Remedy for System Overload*, REGULATION, Nov./Dec. 1979, at 19.

[5] SCALIA, *supra* note 2, at 3-9.

tion of a judicially crafted common-law rule or the development of a new common-law rule. In articulating the appropriate method of interpretation for respecting democratically-enacted laws, Justice Scalia distinguishes between statutory and constitutional sources.

In determining the meaning of statutory language, the intention of the legislature is to be determined by reference to the text alone, placing the relevant language in its appropriate context both internally and among previously enacted laws.[6] In searching for intent, Scalia argues that the only intent that can properly be referenced is one of "objective intent," that is, "the intent that a reasonable person would gather from the text of the law, placed alongside the remainder of the *corpus juris*."[7] Thus, only the text, placed in context, can create the meaning of a statute, for it is "simply incompatible with democratic government, or indeed, even with fair government, to have the meaning of a law determined by what the lawgiver meant, rather than by what the lawgiver promulgated."[8] Rule of Law values require such an adherence to "objective" intent, for any departure into "subjective" intent would make laws indeterminate.[9]

Judges must not be allowed to search for subjective intent, because it allows and entices them to "pursue their own objectives and desires,"[10] shaping the law under the guise of legislative "intent." Regardless of whether a judge disagrees with the outcome of any particular application of a statute, it is not for him to question the plain meaning of a text passed by the legislature.[11] As Scalia writes, "Congress can enact foolish statutes as well as wise ones, and it is not for the courts to decide which is which and rewrite the former."[12]

Consistent with his theory of the text as the beginning and the end of interpretive analysis, Justice Scalia denounces judicial reference to legislative history — statements made in floor debates, committee reports, committee testimony, or other extratextual statements of intent — as a means for determining the "intent" of the legislature.[13] Arguing that the "widespread use" of this interpretive device is "relatively new,"[14] Scalia contends that a prohibition on the use of legislative history follows from his method's prohibition on referencing subjective intent.[15] The

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6 *Id.* at 16.
7 *Id.* at 17.
8 *Id.*
9 *Id.* at 17, 25.
10 *Id.* at 18.
11 *Id.* at 20-22.
12 *Id.* at 20.
13 *Id.* at 29-37.
14 *Id.* at 29.
15 *Id.*

number of sources which could be labeled "legislative history" are numerous and often contradictory and are seldom indicative of the compromise reflected in the final text of an enacted law.[16] Scalia effectively illustrates that committee reports, for instance, are seldom read by, or even written by, elected members of Congress.[17] Thus, reliance on such materials as authoritative sources of "intent" seems obviously misguided. Moreover, a method which allows reference to legislative history dangerously increases the risk that judges will employ their personal preferences. As Judge Harold Levanthal described the use of legislative history, it is "the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one's friends."[18] There will usually be something in the history to "legitimize" any judge's desired outcome.[19]

To determine textual meaning, the judge must employ several canons of construction derived from rules of logical linguistic usage — primarily based in ensuring contextual coherence.[20] Justice Scalia defines this textualist approach as one of reasonable construction: "A text should not be construed strictly, and it should not be construed leniently; it should be construed reasonably, to contain all that it fairly means."[21] Thus, consistent with the importance he places on the Rule of Law and what a reasonable person could discern from a text, he distinguishes himself from a strict-constructionist.[22]

The concluding portion of Justice Scalia's essay analyzes the "distinctive problem of constitutional interpretation."[23] The same rules of interpretation applicable to statutes govern the interpretation of the Constitution. The Constitution's context, however, "tells us not to expect nitpicking detail, and to give words and phrases an expansive rather than narrow interpretation — though not an interpretation that the language will not bear."[24] Any reference to the Framers or other writers on the Constitution at the time of its founding should only be used to "display how the text of the Constitution was originally understood," not as any authoritative source of drafter's intent.[25] The meaning of words or phrases at the time of adoption is particularly important in relation to the interpretation of a Constitution which, by definition, sets forth basic and

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16 *Id.* at 31-33.

17 *Id.* at 32-34.

18 Conroy v. Aniskoff, 507 U.S. 511, 519 (1993) (Scalia, J., concurring).

19 SCALIA, *supra* note 2, at 36.

20 *Id.* at 25-29.

21 *Id.* at 23.

22 *Id.* at 23-25.

23 *Id.* at 37.

24 *Id.*

25 *Id.* at 38.

permanent principles. These principles are embedded in a Constitution so as to insulate them from alteration by a majority in the future. Thus, a constitution is the antithesis of a document intended to evolve over time.[26] The concept of a living Constitution is not only incompatible with "the whole antievolutionary purpose of a constitution,"[27] according to Justice Scalia, it is also logistically impossible to implement. As he explains, "there is no agreement, and no chance of agreement, upon what is to be the guiding principle of the evolution. . . . As soon as the discussion goes beyond the issue of whether the Constitution is static, the evolutionists divide into as many camps as there are individual views of the good, the true, and the beautiful."[28] For Justice Scalia, originalism at least establishes a reference point. That is, every judge knows what he is looking to find — the original meaning as understood at the time of promulgation. The evolutionists cannot provide such a definite reference point. For them, "every question is an open question, every day a new day."[29]

The Comments provide a useful framework for Justice Scalia to further develop his theories. While sharing Justice Scalia's concern for judges running "amok," Gordon Wood uses a variety of historical examples to contend that "presumably undemocratic authority" has been exercised by judges since the nation's beginning.[30] Justice Scalia responds by accepting Wood's conclusion while challenging the validity of some of his examples, which Scalia describes as "extravagant assertion[s] of judicial power" rather than any indication of "orthodoxy."[31]

Mary Ann Glendon also takes a historical approach by illustrating the decline in interpretive techniques among judges and scholars over time.[32] Recognizing many of the same dangers of unprincipled courts as Justice Scalia, she further uses a comparative analysis with the German courts to illustrate that adherence to text and judicial self-restraint are not unrealistic goals.[33] Justice Scalia takes "no sharp issue" with Glendon's comment.[34] In fact, in his response to Wood, Justice Scalia shares an optimism that implementation of his approach is realistic.[35]

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26 *Id.* at 40-44.

27 *Id.* at 44.

28 *Id.* at 45.

29 *Id.* at 46.

30 Gordon S. Wood, Comment *in* A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 49-63 (1997).

31 SCALIA, *supra* note 2, at 129-133.

32 Mary Ann Glendon, Comment *in* A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 95-114 (1997).

33 *Id.* at 104-110.

34 SCALIA, *supra* note 2, at 143-144.

35 *Id.* at 133 ("I am sure that we can induce judges, as we have induced presidents and generals, to stay within their proper governmental sphere.").

Laurence Tribe's Comment focuses on Justice Scalia's method of constitutional interpretation.[36] Tribe asserts that many provisions of the Bill of Rights are aspirational in nature, setting forth broad principles to be interpreted in succeeding generations.[37] Scalia argues that, "If you want aspirations, you can read the Declaration of Independence. . . . There is no such philosophizing in our Constitution."[38] Because documents must be interpreted in context, and because many of the provisions in the Bill of Rights are "concrete and hence obviously nonaspirational,"[39] those facially less concrete provisions randomly dispersed among these must be considered of the same sort.[40] That is, they must all be considered concrete and nonaspirational. This is not to say that the "earlier age's understanding of the various freedoms" cannot be applied to new laws and new phenomena.[41] Scalia distinguishes the application of a provision's meaning to new situations from his characterization of Tribe's argument, that the provision has no constant meaning.[42] Scalia further finds that Tribe's admitted inability to determine which provisions are aspirational, which are not, and what direction the aspirational provisions should follow in their evolution is a fatal flaw for any *interpretive* theory.[43] In his final responses to Tribe, Scalia defends his application of *stare decisis* arguing that originalism, and any other theory of interpretation used in an ongoing system, must accommodate that doctrine.[44]

Justice Scalia's adherence to original meaning at the time of constitutional promulgation is further illustrated in his response to Ronald Dworkin's comment.[45] Dworkin argues that the Eighth Amendment's prohibition on "cruel and unusual punishment" is an example of a provision requiring a moral reading, allowing its scope to change over time according to accepted morality.[46] Justice Scalia insists, however, that only a determination of the moral principles of 1791 are appropriate to determine the understood meaning of the Eighth Amendment. Because

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36 Laurence H. Tribe, Comment *in* A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 65-94 (1997).

37 *Id.* at 87-93.

38 SCALIA, *supra* note 2, at 134.

39 *Id.* at 135.

40 *Id.* This is an application of two of the canons of construction discussed in Scalia's opening essay — *ejusdem generis*, meaning "of the same sort," and *noscitur a sociis*, literally meaning "it is known by its companions" or that a word or provision is given meaning by those around it. *See id.* at 26.

41 *Id.* at 140.

42 *Id.* at 141.

43 *Id.* at 136-38.

44 *Id.* at 138-40.

45 *Id.* at 144-149.

46 Ronald Dworkin, Comment *in* A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 120-22 (1997).

capital punishment was widely used at that time, "it does not violate the abstract moral principle of the Eighth Amendment."[47] In an argument similar to the one advanced by Tribe, Dworkin also argues that some provisions of the Bill of Rights encompass freedoms which are not concrete or "time-dated."[48] Scalia provides a similar response arguing that canons of contextuality require treating the more abstract provisions as of the same sort as the obviously concrete provisions with which they are mixed.[49] Because the purpose of the Bill of Rights was to guarantee certain rights, "the passage of time cannot reasonably be thought to alter the content of those rights."[50]

II. INSIGHTS ON THE LEGISLATIVE RESPONSE TO INTERPRETIVE NORMS

Largely absent from the discourse in *A Matter of Interpretation* and much of the scholarship on interpretive methods is an analysis of the consequences such methods have for the form of legislative action and statutory drafting. Despite this, several key portions of this book address the implications on policy occurring as a result of the dominant interpretive method used in America's courts. The decreased importance of statutory text and the subsequent rise in importance of legislative history in the current interpretation of statutes has led to decreased attention to legislative drafting, both by legislators and educators, and increased attention to the benefits a legislator can gain by focusing his attention on the creation of legislative history supportive of his desired interpretation of a statute.

Justice Scalia poignantly argues that the rise in the importance of legislative history to the courts has led consequently to a rise in the focus of legislators' efforts on "creating" historical support for an interpretation a judge may wish to pick out of the crowd. He argues:

> Ironically, but quite understandably, the more courts have relied upon legislative history, the less worthy of reliance it has become. In earlier days, it was at least genuine and not contrived — a real part of the legislation's *history*, in the sense that it was part of the *development* of the bill, part of the attempt to inform and persuade those who voted. Nowadays, however, when it is universally known and expected that judges will resort to floor debates and (especially) committee reports as authoritative expressions of 'legislative intent,' affecting

47 SCALIA, *supra* note 2, at 145.
48 Dworkin, *supra* note 45, at 124-26.
49 SCALIA, *supra* note 2, at 147.
50 *Id.*

> the courts rather than informing the Congress has become the primary purpose of the exercise. It is less that the courts refer to legislative history because it exists than that legislative history exists because the courts refer to it.[51]

This argument that drafting of legislation and reports is heavily influenced by a recognition of the courts' willingness to consult legislative history has been made in the judicial opinions of Justice Scalia[52] and some other jurists.[53]

In her comment, Professor Glendon provides support for this view when arguing that the rise in the legitimacy of judicial reference to extratextual sources has led to a concomitant decline in the art of legislative drafting and the importance attributed to textual creation. She recognizes that legal education seldom focuses on statutory texts. The primary method of teaching relies on case law.[54] She also argues that the profession has "neglected the art of legislative drafting (the other side of the coin of interpretation)."[55] Agreeing with her characterizations in this respect, Justice Scalia assesses that Glendon is correct when, "She makes the point that it is difficult to maintain and apply a coherent theory of statutory interpretation when dealing with statutes that are themselves incoherent — the 'hastily cobbled compromises' of modern regulatory legislation, as opposed to 'carefully drafted codes.' "[56] Scalia contends that her argument "is unquestionably true" while adding that "what has been rendered more difficult has also been rendered more important."[57] The importance of altering the legislative incentives to encourage more careful drafting is at least partially derived from the consequences attendant to the current generally accepted mode of statutory interpretation.

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51 *Id.* at 34. *See also* Daniel A. Farber & Philip P. Frickey, *Legislative Intent and Public Choice*, 74 VA. L. REV. 423, 445 (1988) (arguing that there is a risk that, "judicial interpretation of a statute will be skewed by legislative history planted just for that purpose.").

52 *See* Blanchard v. Bergeron, 489 U.S. 87, 98-99 (1989) (Scalia, J., concurring). In *Blanchard*, Scalia states:

> As anyone familiar with modern-day drafting of congressional committee reports is well aware, the references to the cases were inserted, at best by a committee staff member on his or her own initiative, and at worst by a committee staff member at the suggestion of a lawyer-lobbyist; and the purpose of those references was . . . to influence judicial construction.

Id.

53 *See, e.g.*, Wallace v. Christensen, 802 F.2d 1539, 1559 (9th Cir. 1986) (Kozinski, J., concurring) (noting that looking beyond statutory text, "creates strong incentives for manipulating legislative history to achieve through the courts results not achievable during the enactment process.").

54 Glendon, *supra* note 32, at 95-97.

55 *Id.*

56 SCALIA, *supra* note 2, at 143.

57 *Id.*

III. ALTERING LEGISLATIVE INCENTIVES: A BENEFIT OF SCALIA'S METHOD

Realizing that courts will resort to legislative history when interpreting a statute, especially when the wording of a statute is ambiguous, those drafting laws have perverse incentives. First, individual legislators have an incentive to fill the legislative history with their personal version of a law's purpose or application. Second, in order to increase the likelihood that judges will be able to justify searching the legislative history for statutory meaning, legislators have an incentive to write laws in broad and ambiguous terms.[58]

Legislating ambiguously is, to that extent, advantageous to all lawmakers in a variety of ways. First, it allows the legislature to shield itself from accountability. So long as judges are "completing" the law by finding its meaning outside of the words, legislators can shift the responsibility for statutory outcomes to the judiciary. Secondly, each legislator can see a potential profit from ambiguous laws. Each one can gamble that their own contributions to the legislative "history" will be used to determine the final meaning of a piece of legislation. Furthermore, each legislator can more easily satisfy interest groups through such a process. Even if the interest group is unable to secure clearly favorable language in a statute, the legislator can still benefit from the rent-seeking process by padding the legislative history in the interest group's favor, even when the will of the majority of Congress may not be in support of that group's desired meaning.[59] Eskridge and Frickey argue that, "Rent-seeking . . . private interests . . . will often find it easier to insert evidence of private-interest deals in the legislative history than in the statutory language."[60] Even when it is completely impossible for the interest group to obtain legislation clearly advancing its desires, the judicial reliance on legislative history allows legislators to greatly increase the chances that

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[58] *See* Jack Schwartz & Amanda Stakem Conn, *The Court of Appeals at the Cocktail Party: The Use and Misuse of Legislative History*, 54 MD. L. REV. 432, 456-57 (1995).

[59] *Id.* at 453-457. Schwartz and Conn explain the advantage a special-interest can gain by inserting advocacy pieces in a bill file:

> This device can be an effective way of extracting an unfair gain from compromise legislation. For instance, if a lobbyist wants X for a client but lacks the votes to achieve X directly, the lobbyist could adopt the alternative strategy of pushing for ambiguous language in the bill. Those opposed to X might accept the ambiguity in order to move the bill along, and then the lobbyist need only make sure that the file contains a letter contending that the bill language means X (even though the committee members might think otherwise), and later argue in court that the bill's purpose was to achieve X, as evidenced by material in the file. . . . Perhaps X will seem to the Court of Appeals to be sound policy, and the existence of the letter in the bill file will be just the bootstrap that the court needs to reach its desired result.

Id. at 456-57.

[60] William N. Eskridge, Jr. & Philip P. Frickey, *Statutory Interpretation as Practical Reasoning*, 42 STAN. L. REV. 321, 357 (1990).

their goals will be adopted through the interpretive process of determining the "true" meaning of a statute.[61] Furthermore, this process of rent-seeking is "cheaper" for interest groups than statutory text because of the risks involved.[62] This inevitably increases the frequency and scope of rent-seeking statutes.[63]

Rent-seeking is an inherently disadvantageous process for the public interest, for it seeks to serve private interests at the expense of the overall public.[64] An interest group seeks to gain wealth transfers by obtaining legislation, or in this case a legislative interpretation, that concentrates benefits upon its interest while dispersing the costs upon society.[65] Thus, by promising endorsements or other forms of political support, campaign contributions, honoraria for speaking engagements, outright bribes, or other means, an interest-group is able to influence the political process by renting the legislator to advance its desired political outcome. Such processes fail to advance the public interest and efforts to minimize the opportunities for rent-seeking should, therefore, be minimized.

Recognizing the consequences of the currently accepted method of judicial interpretation, one can develop an additional justification for widespread adoption of Justice Scalia's model of statutory interpretation. Not only could these negative consequences be diminished in the absence of potential gain on the part of interest-groups in the use of legislative history, but one can presume that the incentive structure will change to generate socially desirable habits on the part of legislators in the drafting of statutes.

Though not directly addressed by Justice Scalia, the advantages a consensus on textualism would have on the formation of legislation is a logical outgrowth of his jurisprudential theory. Should the judiciary overwhelmingly adopt a plain meaning approach, the incentives for leg-

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61 Schwartz & Conn, *supra* note 58, at 455 (arguing "Excessive reliance on legislative history invites lobbyists to win indirectly, through the legislative history, what they lack the votes to win directly."); Kenneth W. Starr, *Observations About the Use of Legislative History*, 1987 DUKE L.J. 371, 377 (describing a "virtual cottage industry [of lobbyists] in fashioning legislative history so that the Congress will appear to embrace their particular view in a given statute.").

62 *See* Nicholas S. Zeppos, *The Use of Authority in Statutory Interpretation: An Empirical Analysis*, 70 TEX. L. REV. 1073, 1118 (1992).

63 *See Id.*; Frank H. Easterbrook, *The Supreme Court, 1983 Term — Foreword: The Court and the Economic System*, 98 HARV. L. REV. 4, 60 (1984).

64 *See generally*, ROBERT E. MCCORMICK & ROBERT D. TOLLISON, POLITICIANS, LEGISLATION AND THE ECONOMY: AN INQUIRY INTO THE INTEREST-GROUP THEORY OF GOVERNMENT (1981); Jonathan R. Macey, *Transaction Costs and the Normative Elements of the Public Choice Model: An Application to Constitutional Theory*, 74 VA. L. REV. 471 (1988); Richard A. Posner, *Economics, Politics, and the Reading of Statutes and the Constitution*, 49 U. CHI. L. REV. 263 (1982); Richard A. Posner, *The Economic Theory of Regulation*, 5 BELL J. ECON. & MGMT. SCI. 335 (1974).

65 Robert D. Tollison, *Public Choice and Legislation*, 74 VA. L. REV. 339, 343 (1988).

islating with purposeful ambiguity would greatly diminish and "packing" of legislative history would no longer be advantageous.[66] If legislators knew that judges would restrict the application of a statute to its plain meaning, they would be forced to draft legislation with more specific language if they wished for judicial application of the statute at all. Gains for legislators as well as for interest groups would primarily be limited to favorable but clear language in a text.

CONCLUSION

Though Justice Scalia's philosophy of statutory and constitutional interpretation can be discerned from a reading of his judicial decisions[67] and his previous writings,[68] *A Matter of Interpretation* presents a unique format for both the presentation of his theory and a defense of its principles against specific comments. The format, however, could have accomplished this more effectively. The majority of substance in the Comments discusses Justice Scalia's method of constitutional interpretation. A larger discourse on the methods of statutory interpretation, the subject to which Justice Scalia devotes the majority of his opening essay, would have been a useful means for increasing the awareness of the intricate problems inherent in that field of judicial activity. Moreover, a more extended discourse on the effects of a dominant interpretive analysis on statutory formation could strengthen Scalia's arguments, especially in providing a consequential foundation for his theory that goes beyond the usual discussion of the benefits obtained from adhering to the separation of powers doctrine. Nonetheless, the compilation published provides a valuable forum in an ongoing debate and should lead the interpretive novice to explore further scholarship in the field.

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66 *See generally* Jonathan R. Macey, *Promoting Public-Regarding Legislation Through Statutory Interpretation: An Interest Group Model*, 86 COLUM. L. REV. 223 (1986). Though Macey does not endorse Scalia's plain-meaning approach, his conclusions as to the benefits of decreasing judicial discretion are analogous. *Id.* *See also* Schwartz & Conn, *supra* note 58, at 462 (arguing that decreasing the realm of possible sources for interpretation would expose "naked greed" to "legislative daylight" and "deter some rent-seeking and thereby serve the public interest.").

67 *Supra* note 3.

68 *Supra* note 4.

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