

William Funk

*Review Essay, Faith in Texts - Justice Scalia's Interpretation of Statutes and the Constitution:
Apostasy for the Rest of Us?*

49 Admin. L. Rev. 825 (1997)

Abstract by Alex M. Johnson

This article gives a critical exposition of a lecture that Justice Scalia delivered concerning the proper modes of textual interpretation. Scalia contends that the “neglected state of the science of construing legal texts” is the product of a common law system where judges are relegated to lawmaking in cases involving statutory interpretation. The author notes that Scalia believes this trend has usurped principles of democracy, including the separation of powers. The article cites Scalia’s concern that common-law judges will act in defiance of their well-defined limitations on judicial power and engage in lawmaking with the current norms in interpretation. As an alternative, Scalia promulgates a concept of “textualism” which rejects the use of legislative history and “strict constructionism,” and engages in a reasonableness standard. After reviewing the arguments presented by Justice Scalia, the author balances the debate by assessing the commentary proffered by a distinguished panel of legal scholars, including Professor Dworkin, who suggests that Scalia is actually an intentionalist because he utilizes methods of interpretation that encompass the intent of the legislature. The article concludes with the author addressing the various arguments promulgated by Scalia’s discussion of interpretation, including judicial abuses in the use of legislative history, as well as critiques of these arguments by Professor Laurence Tribe.