

# Scalia and the Constitution, Rothbard #14, Arguing Labels



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*“Finding the Challenges” is an original column appearing every other week, usually on Wednesday, at Everything-Voluntary.com, by Verbal Vol. Verbal is a software engineer, college professor, corporate information officer, life long student, farmer, libertarian, literarian, student of computer science and self-ordering phenomena, pre-TSA world traveler, domestic traveler. Archived columns can be found [here](#). FTC-only RSS feed available [here](#).*

The groundhog didn’t see his shadow here in Central Kentucky. How about where you are? What establishes the rule, your locality or the specific locale, Punxatawney, PA? Neither seems to me particularly rational, certainly not scientific. Just think, the same MSM that dutifully reports on Punxatawney Phil each year is the one who keeps the drumbeat up on global warming. Oh, well, it distracts them from reporting on the primaries momentarily.

But enough for the trivial. Let’s take a look at the Constitution of the USA, again, this time as observance of the passing of Associate Justice of the Supreme Court of the United States Antonin Scalia, then we will see what Murray Rothbard has to say about the Supremes. We will try to tie that up with a discussion of the logic fallacies of labeling.

## **Scalia and the Constitution**

I have just finished listening to an excellent podcast of the Tom Woods Show, Episode 595, in which he discusses the historical impact of Antonin Scalia’s three decades, with guest, Kevin Gutzman. They do such an excellent job of discussing the details, I commend their effort for your listening. I will only write here of my general concerns with the Constitution and the Supremes, as illuminated by the Scalia story.

As you likely know, I am a Spooner man. Every time I think even momentarily about the

Constitution (or “The Con,” as I more often refer to it), I am struck by what a dismal failure it has been. Any accomplishments of this people in this land have been in spite of the Constitution, not by virtue of it. The Constitution will be the undoing of the statist edifice founded here. It tells me much that the drafters of the Declaration, Jefferson, Adams, and Franklin, had no part to play in the formulation of the Constitution (Franklin signed but did not author any of the document). What was it meant to protect, and what has it done in service to that objective?

In any event, Scalia disdained the role of revision and reinterpretation by a majority of an unelected committee in medieval regalia. He didn’t go far enough, never making the case as poignantly as Spooner that the Constitution could have no effect beyond the room full of people (a rapidly dwindling number of people by the time of signing) gathered in 1789.

Scalia may have done yeoman service in terms of keeping down some of the excesses of SCOTUS. Maybe he chose the old standby method of working from within the structure. But it did not work. In effect, nowadays, SCOTUS allows anything by any authoritarian force and nothing for broad classes of people. They make their rulings so particular that they will not carry forward to apply to other cases.

The fact that TSA has a life throughout the second half of Scalia’s term shows that nothing of import has been done. The entire selection process of all government minions shows that the process is elaborate, but with no difference-making effect.

#### **Rothbard Quote #14**

*And if the ultimate power to interpret a constitution is given to the government’s own Supreme Court, then the inevitable tendency is for the Court to continue to place its imprimatur on ever-broader powers for its own government. Furthermore, the highly touted “checks and balances” and “separation of powers” in the American government are flimsy indeed, since in the final analysis all of these divisions are part of the same government and are governed by the same set of rulers.*

So wrote Murray Rothbard, obviously a Spooner man, too, in *For A New Liberty*.

Coincidentally, Robert Higgs posted on his Facebook Page today the following:

*Checks and balances? I see far less of that than of coalescence,*

*collaboration, and mutual support in the ongoing expansion of the state's power. Checks and balances might once have worked to some extent as their designers claimed they would, but time and chance have not been kind to the framers' design ... If the state were not corrupt, crooked, exploitative, and abusive it would be quickly abandoned by its own creators and managers. After all, its fundamental purpose is to exploit its subjects and others powerless to resist its relentless extortion, theft, and personal abuse. The state's persistence testifies to its ongoing success in these nefarious undertakings.*

And what is my response to these? The moment that the oligarchy saw there was no gain in checks and balances, these provisions were relegated to extortionate threats. If you don't go along, dissidents were likely advised, these dormant checks and balances will be hung around your neck like a millstone. If government were not amenable to corruption, it would disappear over night. If the state could be checked, or balanced, how could it have gotten this far? If checks and balances served, in any way, to remove the corrupt, they would collapse like stilts being navigated through a termite colony.

#### **Logic Fallacy #44 — Labels Cannot Avoid the Strawman Trap**

The use of labels is a technique for framing an argument. Let's call a person a statesperson, or an appeaser, or an isolationist, or a warmonger, then we do not have to argue what that person might have actually done. In fact, we have pushed the debate adversary onto his or her back foot, making them dispute the label and its various ambiguities before they can even address the behavior in question.

The purpose of a straw man is to give one interlocutor an argument that they can win rather than to address the truths of an issue. But even most straw men require that the premise have a veneer of actual argumentation, albeit misdirected argumentation. The labeling fallacy is the lazy person's version of a straw man. This fallacy consists of just throwing out labels to see down which primrose path they will lead.

Labels are usually adjectives, such as activist, that have been made more obtuse by being turned into nouns that have zero content. Both a right winger and a left winger might call the other an activist. Appeaser, is that a good person or a bad person? Isolationist, is that someone overcome with apathy, an individualist, or someone who knows whose business to mind. Is Benghazi a particular event or a place on a map of Libya?

What does constitutional mean relative to unconstitutional? What does originalist mean. These terms are so lost in a haze of mythology that all the King's horses and all the King's men could not put them together again. Last column, I introduced the idea of contradiction, saying that what may seem like contradiction is only the cherry-picking of indicators from vastnesses containing multitudes.

Labels may be convenient but they fit only the most simplistic aspects of reality. The willingness to throw labels about is, at best, obfuscation.

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Maybe what we might consider is to stop with the glib capsules with which we sabotage rational analysis. Can we dispense with outmoded ideas such as checks and balances? If we ever had been honest with ourselves about these words rather than to destroy them through misuse, perhaps we might have seen that we were expecting too much of human commerce. If we had determined what useless window dressing a constitution would be in the hands of manipulators, we might have seen that nothing stays the same. Don't we know that labels are placeholders for words in various motley languages which more or less match symbols which are stand-ins for ideas that too often are based on the fight or flight instincts of both cognizant and non-cognizant animals?

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