

# Justices Ginsburg and Scalia and Love of Opera

by Michael Curtis



**We are different, we are one.** If you're ever in a jam, they said, here I am. It's friendship, perfect friendship, when other friendships are soon forgot, their's will still be hot.

It is a sad commentary on our times that a frequent comment of surprise in obituaries of Justice Ruth Bader Ginsburg was that in spite of their different legal points of view and interpretation of written texts, she had a close personal friendship with Justice Antonin Scalia. The two were rarely on the same side of controversial issues, but that did not prevent them from being "best buddies," who were bound together by a love of opera. In this present age of partisan political enmity in Washington D.C., it is refreshing to recall that the two Justices were a model of human warm relationships and this illustrated that different points of view do not prevent mutual respect, affection, and genuine

friendship.

Justice Ginsburg herself, praised the Supreme Court for not demonstrating “the animosity that currently moves the other branches of our government”. She explained that she attacked ideas, but “I don’t attack people: some very good people have some very bad ideas.” For his part, Justice Scalia jested, “What’s not to like about her, except her views on the law.”

Simply put, the two equally brilliant lawyers had widely different judicial approaches. Scalia is best known as for his emphasis on the concept of originalism, the view that statements in the U.S. Constitution should be interpreted according to the original understanding of the author or the people at the time it was ratified. His own version of the concept was that interpretation of a written constitution or law should be based on what reasonable persons living at the time of its adoption would have understood the text to mean. In contrast, Ginsburg’s approach was akin to living constitutionalism, that the U.S. Constitution, like American society, can evolve, and the Constitution should be interpreted based on the context of current times.

The two Justices seemed temperamental opposites, Ginsburg, quiet and serious in professional activities, while Scalia, “Nino”, was outspoken, with quick wit, in decades of public speaking, often provocative and “teaching against the class,” to public audiences. Close in age, the two were New Yorkers. The Jewish Ginsburg was born in Brooklyn, New York, daughter of an emigree from Odessa and a mother whose family were from Krakow, Poland. Scalia, Catholic, born in Trenton, New Jersey who moved to Queens, New York when he was three, was born of an immigrant father from Sicily and a mother who had Italian parents.

The Jewish-American and the Italian American had been friends since their days on the U.S. Court of Appeal for the District of Columbia Court before they were both on the U.S. Supreme

Court. Both were outsiders in a sense, Scalia was the first Italian American to be appointed to the Supreme Court. Ginsburg was the second woman, following Sandra Day O'Connor, to be appointed, but she broke the "glass ceiling" in accomplishments as she balanced her long equitable marriage, motherhood, and career.

A captivating facet of the friendship between the two lawyers was a mutual love of opera. They had a common interest in and enthusiasm for this musical expression of culture, and even participated in it. They attended performances of the Washington National Opera together. There is a delightful photo of the duo who had posed as extras taken with the cast of Richard Strauss' *Ariadne auf Naxos* at the National Opera in 1994. Another photo shows Ginsburg taking a curtain call after her speaking role, during which she inserted some amusing lines she wrote, in Gaetano Donizetti's opera comique, *La Fille du Regiment*, in a production in Washington. Scalia, who loved Puccini, once joined two tenors of the WNO to sing a medley of songs.

Justice Ginsburg was an ardent feminist, conscious that women have never had the chance to prove their skill and capacities. This is clear not only in her court decisions and in her marriage of brilliant equal partners, but also in some of her opera choices. This explains her otherwise surprising fondness for Richard Wagner's *Gotterdammerung* with its Immolation scene in which Brunnhilde, the powerful female figure, saved the world. In an act of self-sacrifice, she rides on her horse into the funeral pyre of Siegfried, and the flames remove the curse of the Ring, and thereby destroys the old order of the gods. Ginsburg also admired the behavior of Leonore, the noblewoman, in Beethoven's *Fidelio*, who disguised herself as a man and put her life at peril to rescue from prison her husband, Florestan, who had been fighting for freedom.

In the *Republic*, Plato suggested any "musical innovation was

fully dangerous to the whole State and ought to be prohibited...when modes of music change, the fundamental laws of the State always change with them." An interesting issue is whether operas try to change attitudes about political and social issues, cultural activities, national interests. Or, as Isaiah Berlin pointed out in his famous essay on Verdi, an artistic work may illustrate the rift between the composer and his milieu, or it may not and does not need explication or justification, but represents the drama of basic human passions. After all, Verdi himself recognized that the box office is the barometer of success.

It is intriguing to wonder if the legal decisions on fundamental laws of either Ginsburg or Scalia were prompted in any way by their opera preferences. One can agree that operas can touch on political ideas, but it is more arguable whether many can be characterized as political in any partisan fashion. Some operas carry a message, such as Marc Blitzstein's pro-union *The Cradle will Rock*, and perhaps *The Consul*, dealing with political refugees, by Gian Carlo Menotti, himself an Italian immigrant into the U.S., or Anthony Davis' *The Life and Times of Malcolm X*, depicting the conflict over the Black Muslim movement.

But most operas do not have a clear and simple political theme. To take a few examples. Verdi's *Rigoletto* features the licentious and profligate Duke of Mantua, interested in exercising power, and cruel to the tragic court jester, but it more significant for the display of great arias and quartets than as an attack on aristocracy.

The melodrama *Andre Chenier*, composed by Umberto Giordano, based loosely on the life of the poet who was critical of the clergy and the aristocracy and was executed during the French Revolution, doesn't offer opinions about the Revolution, but revolves around an ill fated love story.

Yet one wonders about others. In Verdi's *Nabucco* the chorus

of the Hebrew slaves, *Va pensiero, sull'ali dorate* (go thought, on wings of gold ) recall the period of Babylonian captivity of Jew after the loss of the First Temple in Jerusalem 586 B.C. Some scholars have seen this moving music as an anthem for Italian patriots who wanted to unify their country and free it of foreign control, but most have rejected the idea of a link between *Nabucco* and advocacy of Italian nationalism.

Other operas can be debated as possibly advocating political points of view: Verdi's drama *Don Carlo* touches on the issue of the rights of the individual against church and state; Benjamin Britten's *Billy Budd* expresses homosexual undercurrents, fate of an outsider, and miscarriage of justice; John Adams' *Nixon in China* dealing with the visit in 1972 of President Richard Nixon to meet with Mao Zedong is an exhibition of musical minimalism rather than a political satire; Gershwin's *Porgy and Bess* dealing with social issues in the American South is not political, but is an example of the U.S. cultural mix, a New York Jew writing sympathetically about African-Americans.

Justice Ginsburg has given us some indications of her musical tastes. In her shower she rather surprisingly sang the aria, "Voi lo sapete, O Mamma," the song of Santuzza , the seduced village girl from Pietro Mascagni's *Cavalleria Rusticana*. At some point, Ginsberg spoke of her five favorite operas. The top four were universal favorites, Mozart's *Marriage of Figaro* and *Don Giovanni*, Richard Strauss' *Der Rosenkavalier*, and Verdi's *Otello*. More surprising was the fifth choice, *La Fanciulla del West* (The Girl of the West), perhaps the least popular and most underrated of Puccini's operas. Ginsburg gave no explanation for this choice but the bitter sweet and emotionally complicated opera focuses on Minnie, a very strong woman of heroic valor who keeps the miners under control, saves her man, and walks off with him to start new life.

A fitting end is the composition that links the two legal giants. The remarkable friendship of the two is displayed in an opera *Scalia/Ginsburg*, composed by Derrick Wang, in a classic style, echoing Mozart's *The Magic Flute*. In Mozart's work, with its themes of love and of the tension between good and evil, the hero in order to survive faces trials of fire and water. In Wang's work,

. As Issai Berlin pointed out in his famous essay on Verdi, the musician was "sovereign" the artistic work itself meant everything and did not need explanation or justification.

Scalia is forced to defend his approach to the law, is locked in a room to explain his so-called excessive dissents and has to undergo three trials. Ginsburg enters the room to help him. She does not agree with his views and contradicts what he says, but she is a friend, and undergoes the trials with him. She sings, "We are different, we are one."

This is an ideal message for contemporary Washington, to seek friendship in a divided world. If opera be the food of friendship, sing on, give me excess of it.