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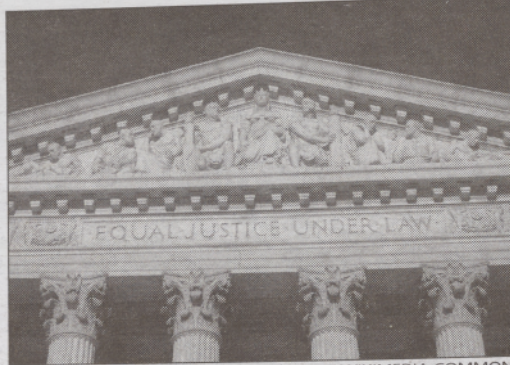


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COVERING THE COURT



PHOTO COURTESY OF DAHLIA LITHWICK

Slate senior editor Dahlia Lithwick covers the U.S. judicial system for the magazine.

Journalist Dahlia Lithwick says Justice Scalia's philosophy of originalism is a farce – and so is judicial activism. She shares her thoughts about what's next for the Supreme Court.

BY AMANDA WALDROUPE
STAFF WRITER

Dahlia Lithwick, a senior editor for Slate, writes about the Supreme Court and the United States' judicial system. But this isn't the leaden copy of briefs and summaries. This is jurisprudence for the common man, with insight into the more fascinating consequences of the highest court's decisions, process and political interference.

On Feb. 25, Lithwick gave the keynote address during the ACLU of Oregon's Liberty Dinner, arguing that public engagement and resistance to the Trump administration is a key component to energizing the country's courts system and enabling it to be a meaningful check of the administration.

Before her address, she sat down with Street Roots to talk about the politicization of the Supreme Court, the nomination of Neil Gorsuch, and the role the judicial system will play during the next four years.

Amanda Waldroupe: *You've said that this is not a typical year for someone who covers the Supreme Court as a journalist. How so?*

Dahlia Lithwick: I can carbon-date it. It's Feb. 13, 2016: That is the day that Justice (Antonin) Scalia died. No one expected him to pass away. Nobody expected that if there was a vacancy, it wouldn't be filled. I think the 2015 term, which ended in 2016, if Scalia had lived, would have been the blockbuster term for the ages, if you look at the cases that were docketed. They all sort of fizzled into 4-4 splits. And there were several that the court didn't fully decide.

A.W.: *What cases suffered from the lack of a ninth*

justice?

D.L.: I think the most notable one was the Obama immigration executive action. The court split. The executive action never went into effect. The other big one was what would have been Hobby Lobby 2.0, which would have been a huge religious liberty case. The Supreme Court kicked it back to the lower court and basically said, "Work it out." There were a whole bunch of other cases we didn't get to. One person, one vote was on the line in Texas. There was a California case about financing public-sector unions. They all just fizzled.

A.W.: *It is unprecedented for a president to nominate a justice for the Supreme Court who was not considered by the Senate, as what happened with President Barack Obama's nomination of Merrick Garland. What ramifications do you think we will see because of that in the future?*

D.L.: I think you will never again see a president get someone seated unless their party controls the Senate. What that means is that every single confirmation hearing will be a hostage situation.

A.W.: *And a political situation, which makes the Supreme Court a political ball that gets tossed around.*

D.L.: Yep, it's just a football now. If you look historically, we've had nine presidents seat 13 different justices over the years, and in an election year, there's no precedent for what just happened. As of now, the precedent will be that you can never seat anyone in your third year. By the end of October, you were hearing Republicans like Ted Cruz and John McCain say, even if Hillary Clinton wins, we're going to go four years without a confirmation hearing. We're just in a full-on

power struggle.

A.W.: *Is Neil Gorsuch going to be the newest Supreme Court justice?*

D.L.: I think Democrats in the Senate are making a decision about whether this is the hill they want to die on.

I think the thing that happened that stiffened their resolve (on voting against confirming Jeff Sessions as attorney general) was the airport revolution that happened when all the lawyers and all the judges pushed back. They looked around and said, "Holy crap, rule of law really matters to the American people." I think that really emboldened them to fight the nomination of Jeff Sessions.

I suspect they're trying to figure out if Neil Gorsuch is going to be worth a filibuster. It is filling Scalia's seat. It's swapping out a conservative for a conservative. There's going to be no net change. So maybe they're going to be willing to fight another day. My sense is that it has changed in the past week or two. Chuck Schumer is pushing back, and Sen. Richard Blumenthal recently came out and basically said if he doesn't (publicly) denounce Trump's attacks on judges, I cannot vote for him. This is new. It's part of tying Gorsuch to this administration.

A.W.: *What role do you expect the Supreme Court to play in the next four years?*

D.L.: You happen to be asking the question we're all asking about Gorsuch himself. We know where his head is on religious liberty and criminal procedure. What we know almost nothing about, because the 10th Circuit Court just doesn't do it,

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