

## TRIBUTE TO JUSTICE JOHN PAUL STEVENS

*Steven G. Calabresi\**

It is an honor to pay tribute to a man who truly needs no tributes—Justice John Paul Stevens of the Class of 1947. Justice Stevens was born in 1920 here in Chicago, Illinois, and he graduated from Northwestern Law School sixty-four years ago with the highest grade point average ever earned up to that time in the history of the law school. He served on the United States Supreme Court from 1975 to 2010, when he retired at the age of ninety after the third-longest tenure in the Court’s history. During his thirty-five years on the high court, he wrote many landmark opinions on subjects like the constitutionality of term limits, the line item veto, the death penalty, and the freedom of speech and of religion. Justice Stevens’s opinion in *Chevron U.S.A. Inc. v. NRDC*<sup>1</sup> revolutionized the field of administrative law while his famous dissents in the flag burning case and in *Bush v. Gore*<sup>2</sup> inspired many critics of the Supreme Court. Justice Stevens’s opinions were exceptionally well written and well crafted, and he enjoyed a sterling reputation as an intellectual leader on the Supreme Court. He started out strong in 1975, and, if anything, his opinions got even better in his last fifteen years on the Supreme Court. For all of my adult lifetime, Justice Stevens has been the gold standard for excelling in the art of being a Supreme Court Justice. He is quite simply, as one of my best conservative friends said, “a class act.”<sup>3</sup>

The ancient Greeks wrote that a good man is one who is wise, brave, moderate, and just. Justice Stevens exhibited all four of these virtues during his tenure on the Supreme Court. First, Justice Stevens exhibited wisdom by repeatedly exercising sound judgment in practical affairs. Justice Stevens was neither an abstract philosopher on the bench nor was he a Justice who was influenced by his emotions rather than by his mind. Practical wisdom is the virtue of having common sense and foresight, of being able to weigh competing values and give each of them their due. Justice Stevens exhibited practical wisdom, in my view, when he wrote majority opinions for the Court striking down state-imposed term limits on members of Congress<sup>4</sup> and a statutorily conferred line item veto for the President.<sup>5</sup> Justice Stevens reached the right result in those two cases by looking forward and by

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\* Class of 1940 Research Professor of Law, Northwestern University School of Law.

<sup>1</sup> 467 U.S. 837 (1984).

<sup>2</sup> 531 U.S. 98, 123 (2000) (Stevens, J., dissenting).

<sup>3</sup> Conversation with Lee Liberman Otis, Co-Founder of the Federalist Society (June 2010).

<sup>4</sup> See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

<sup>5</sup> See *Clinton v. City of New York*, 524 U.S. 417 (1998).

thinking deeply. Justice Stevens exhibited wisdom during his tenure on the bench.

Second, Justice Stevens was brave from the start of his tenure up to the day of his retirement. He was not afraid to buck the conventional wisdom and practice. Justice Stevens did this in a small way by wearing his trademark bow tie for which he was renowned during his tenure on the bench. This was surely an affirmation of individual independence. But Justice Stevens was also brave in more important ways by fighting vigorously in case after case for the values he believed in even when he was often in dissent. Justice Stevens repeatedly and vociferously challenged the view of five of his colleagues on the scope of sovereign immunity,<sup>6</sup> a battle that he never won but never gave up on. He fought similar battles on the scope of the commerce power,<sup>7</sup> the constitutionality in various settings of imposition of the death penalty,<sup>8</sup> and the balance as to how much federal courts ought to defer to executive branch interpretations of law.<sup>9</sup> In short, Justice Stevens was brave as well as wise.

Third, Justice Stevens was moderate during his tenure on the Court. He was a paragon of self-control and self-restraint both in talking with his colleagues and subordinates and in the opinions he wrote and the speeches he gave. Justice Stevens arrived on the Supreme Court in 1975 at a time in American history when the virtues of self-control and self-discipline were in short supply. But, by the force of his example, the Justice helped to bring them back into fashion. Justice Stevens's opinions were devoid of sarcasm and apocalyptic language. To the contrary, they were always scholarly and well done, and they were clearly always written by him and not his law clerks. In the 1980's, when Attorney General Edwin Meese gave two speeches arguing for originalism in constitutional interpretation, Justice Stevens cheerfully and politely joined the debate by giving a scholarly speech explaining why he thought Mr. Meese was wrong.<sup>10</sup> When Judge Robert H. Bork was nominated to the Supreme Court in 1987 and was attacked for holding views outside the legal mainstream, Justice Stevens spoke up for Bork and said his views were well within the mainstream,

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<sup>6</sup> See, e.g., *Tennessee v. Lane*, 541 U.S. 509 (2004) (Stevens, J.) (majority opinion limiting state sovereign immunity); John Paul Stevens, *Is Justice Irrelevant?*, 87 NW. U. L. REV. 1121 (1993).

<sup>7</sup> See, e.g., *United States v. Lopez*, 514 U.S. 549, 602 (1995) (Stevens, J., dissenting).

<sup>8</sup> See, e.g., *Thompson v. Oklahoma*, 487 U.S. 815 (1988) (Stevens, J.) (invalidating the death penalty for convicts under the age of sixteen in the first anti-death penalty holding since the moratorium on capital punishment was lifted).

<sup>9</sup> See, e.g., *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987) (Stevens, J.) (somewhat limiting *Chevron* deference to the INS in deportation proceedings).

<sup>10</sup> See Edwin Meese III, *Speech Before the American Bar Association* (July 9, 1985), in *THE GREAT DEBATE: INTERPRETING OUR WRITTEN CONSTITUTION I* (Federalist Soc'y ed., reprinted ed. 2005); Justice John Paul Stevens, *Speech Before the Federal Bar Association* (Oct. 23, 1985), in *THE GREAT DEBATE*, *supra*, at 27.

which they were.<sup>11</sup> Justice Stevens was thus moderate on the Court, not because he held middle-of-the-road views, but because he was self-disciplined, self-controlled, and because he did nothing to excess.

Finally, Justice Stevens was just during his tenure on the Court. In fact, he cared passionately about justice and sought to achieve it in many areas of the law. Justice Stevens hated expansive doctrines of sovereign immunity because he thought they denied justice to people who had been harmed. He hated certain applications of the death penalty because he thought them to be brutal and unfair. And above all else, Justice Stevens loved the rule of law, even though he was familiar with the legal realist critique of it, because he knew that “[w]here there is no law, but every man does what is right in his own eyes, there is the least of real liberty.”<sup>12</sup> Justice Stevens was and is a just man.

The United States is a better country today and the Supreme Court is a more respected institution as a result of Justice Stevens’s service. It is an honor for me to be able to introduce to you now a man who is wise, brave, moderate, and just—Justice John Paul Stevens of the Class of 1947.

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<sup>11</sup> See Stuart Taylor Jr., *Justice Stevens in Unusual Move Praises Bork as Nominee to Court*, N.Y. TIMES, Aug. 1, 1987, at 1.

<sup>12</sup> HENRY M. ROBERT, ROBERT’S RULES OF ORDER 4 (Robert McConnell Prods. 2d ed. 2001) (internal quotation marks omitted).

