

# The Historical Amnesia of Samuel Alito

A Review of *The Lost World of Italian American Radicalism:*

*Politics, Labor and Culture*<sup>†</sup>

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During the last months of 2005, as the nomination of Samuel Alito to the United States Supreme Court by President George W. Bush was ponderously discussed by members of the Senate Judiciary Committee, political activists and columnists, the background issue of Alito's Italian heritage occasionally seeped into the discourse, but remained for the most part an issue vital only to those of Italian extraction who saw any criticism of Alito as being driven by antipathy toward his — and their — origins. Anyone following the nomination process was aware, of course, of Bush's obligatory nod to Alito's immigrant provenance, with the usual acknowledgements of parental hard work and sacrifice so that the bright youngster, with his own appropriate self-starting and discipline, could achieve the American dream. And Alito kept to the script when he blandly addressed the members of the Judiciary Committee with opening remarks about his hard-working parents.

Even though one has nothing to do with the selection of one's parents or ethnic heritage, there is nothing inherently wrong with — and there may be much that is right in — alluding to one's forbears and directing an expression of gratitude to one's parents. But what was really at work with the Bush-Alito homage to the nominee's Italian roots was an unspoken awareness that he had risen above them and happily had forgotten the struggles and humiliations of his parents' and predecessors' generation of Italian immigrants and other new arrivals to this country.

Alito was put forward as a candidate for the Supreme Court not as an Italian acutely aware of the past hardships and deprivations endured by his group, which had for many provoked a radical critique and active resistance to economic and political exclusion and exploitation. On the contrary, Alito was appointed because his record since his college days at Princeton, through law school at Yale, and into public life revealed that he had no awareness of, let alone compassion for, his own people or others betrayed by the American promise. For Alito, there was no resonance in his soul from the past, not from the historic strikes in Lawrence, Massachusetts, and Patterson, New Jersey, not from the Palmer raids and the subsequent forced deportation of Italians, not from Sacco and Vanzetti, not from the rich tradition of Italian socialist and anarchist writing and agitating.

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<sup>†</sup> Philip V. Cannistraro & Gerald Meyer eds. (Praeger, 2003).

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When George W. Bush submitted Samuel Alito's name to the United States Senate, he knew that Alito was a white male fervently committed to the defense of capitalism, free markets, and imperialism managed by an imperial presidency, all now in their ascendancy.

During his confirmation hearings, Alito's academic and professional achievements were touted by his supporters, as was his modest and cautious personality, apparently a fitting repository for his conservative views. But this is hardly the only qualification for a judge, whether one is examining an appointee to the Supreme Court or a lesser tribunal.

When I attended the National Judicial College in Reno, Nevada, after my appointment in 1994 as an Associate Justice of the Rhode Island Superior Court, a couple of hundred of my fellow "new" trial judges were asked by one of the lecturers to list those traits universally attributed to the ideal judge. The group replied with the expected: impartiality, thoughtfulness, fairness, and so on; but the lecturer also extracted from the group references to characteristics that today's neo-cons and their president think should be jettisoned by "judges who understand their duty to apply the law as it is written" — compassion and mercy. Since the beginning of written history the virtues of compassion and mercy have been described as absolutely central to the process of judging, especially in equitable matters; and this has been recorded from the time of Aristotle, through the great English chancellors, to Roscoe Pound and Judge Jerome Frank, and to Justice Harry Blackmun's famous anti-capital punishment dissent in *Collins v. Collins*: "From this day forward, I no longer shall tinker with the machinery of death."<sup>1</sup>

One searches in vain in Alito's personal and professional life, as well as his written decisions, for compassion — or passion for that matter — and for legal commentary favoring the marginalized, the economically fragile, the voiceless. No, Samuel Alito's biography, much like that of Chief Justice John Roberts, is that of a careerist, with no greater goal than that of pleasing the ruling elite of top decision makers within and without the legal profession. Not much was made of Roberts' family or ethnic background during his confirmation, though we did learn he was the privileged, private-school educated son of a corporate executive. With Alito, on the other hand, the public was served the American dream scenario, complete with grandparents arriving "off the boat" in the early 1900s.

What his grandparents — and later his parents as they matured — surely encountered between 1913 (the date of his grandfather's arrival in the United States) and the beginning of World War II was the Italian immigrant world of unremitting, back-breaking labor in factories or construction, accompanied by discrimination and anti-immigrant animus, as well as — until the New Deal — the absence of any social safety net for the destitute, the industrially maimed or the unemployed. And his grandparents would surely have been aware of the many radicals, socialists, anarchists, and syndicalists in the midst of their community and Italian enclaves elsewhere who were organizing, speaking and writing, not merely for amelioration of the immigrants' and workers' general conditions, but for a revolutionary reordering of the allocations of power and wealth in capitalist so-

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<sup>1</sup> 510 U.S. 1141, 1145 (1994).

ciety. In *The Lost World of Italian American Radicalism*, Philip V. Cannistraro and Gerald Meyer have assembled a collection of essays by academics and independent scholars chronicling the struggles and visions, successes and failures, of this fiery lot of radicals and their many adherents who shook local companies and communities, and often the nation itself, to their foundations as they fought for social justice.

The sixteen essays the editors have compiled are each placed under one of the three rubrics that comprise the subtitle: "Politics," "Labor," and "Culture." Some of the authors focus on a specific event or personality, such as *Italian Workers on the Waterfront: The New York Harbor Strikes of 1907 and 1919* by Calvin Winslow; *The Radical World of Ybor City, Florida* by Gary R. Mormino and George E. Pozzetta; and *Mario Savio: Resurrecting an Italian-American Radical* by Gil Fagiani. Other essays address broader topics as they try to place Italian-American radicals in the context of their times and its prevailing political currents. In this category, we find *No God, No Master: Italian Anarchists and the Industrial Workers of the World* by Salvatore Salerno, *Italian-Americans and the American Communist Party* by Gerald Meyer and *The Making and Un-Making of the Italian-American Working Class* by Rudolph J. Vecoli.

The goal of each essayist, not to mention that of the editors, is to resurrect for the benefit of present day scholars and activists the vital stories and vibrant actions of Italian immigrants who not so long ago fought for justice and equality against overwhelming odds. Their stories are significant not just for people of Italian extraction seeking the history of their predecessors but also for anyone wishing to understand present-day struggles against the persistent inequities that have burdened millions for decades — and with no surcease in sight. No one does a better job of connecting the past with the present than Jennifer Guglielmo in *Donne Ribelli: Recovering the History of Italian Women's Radicalism in the United States*.

Guglielmo, a professor of history at Smith College, introduces many women who should occupy places as prominent as those of their male contemporaries such as Sacco and Vanzetti, Carlo Tresca, Joe Ettor, and Vito Marcantonio (the 1940s congressman from East Harlem known as "Vito the Red"). Here is, for example, Maria Barbieri in 1905: "To my women comrades, these thoughts are dedicated to you, from another woman worker: It is the thought and palpitation of my soul in which I feel all the social injustices, that for centuries we have been humble and obedient slaves; I am a rebel who rises up against all these inequities, and I also invite you to the struggle." Maria Barbieri was addressing silk workers in Patterson, New Jersey, and wrote for an Italian-American radical newspaper, *La Questione Sociale*.

Radical agitation by Italian women and men continued well into the 1930s. With much of this activity centered in New York and New Jersey, it is impossible that any members of the Italian community, including Samuel Alito's grandparents, were unaware of this turmoil. As Salvatore Salerno makes clear in his contribution, many of the radicals and union supporters were members of — or at least sympathetic to — the Industrial Workers of the World (IWW), with its commitment to organizing the entire labor market free from any discrimination based on gender, race or ethnicity. The IWW advocated

nothing less than worker control of the tools of production and the abolition of capitalist economic arrangements. Their vision provoked opposition not only from governmental and corporate quarters but from the American Federation of Labor as well, which, under the leadership of Samuel Gompers, believed that the goals of working people and unions should be focused narrowly on the immediate questions of wages, hours and working conditions.

The goals of the IWW, of course, never were realized, and the government's response to their activism was brutal and lawless, as evidenced by the Palmer raids of 1919, a series of warrantless roundups of IWW radicals and their supporters — ten thousand by some estimates — carried out under the direction of United States Attorney General A. Mitchell Palmer. His assaults were accompanied by the smashing of union halls and gathering places, and the people “arrested” were often deported. Even today, many people are unaware that the American Civil Liberties Union was founded, in part, to combat these assaults on the Italian immigrant community.

The essays in this collection dig deeply across a wide swath of American labor history and the contributions Italian Americans made to that struggle. The scholarship is exemplary, with each essay followed by endnotes to primary and secondary sources; and a thorough index to the collection is helpful. How these thoughtful scholars overlooked one of my favorite heroines, Anna LoPizzo, a young girl shot dead by the police while having the temerity to picket for an eight-hour day during the Lawrence textile strike of 1912, is inexplicable, but this is a quibble on my part.

What is of greater concern is why and how Justice Alito — and his conservative *paisan*, Justice Antonin Scalia — have historical amnesia regarding this period of American history, along with intellectual and temperamental aversions to its aspirations. This is remarkable because both men claim to look to the past for solutions to contemporary problems. According to his supporters, Alito is drawn especially to history and biographies, but whatever he reads, it surely is not chronicles of the people and times that are the subjects of *The Lost World of Italian American Radicalism*. In fairness, when Alito was growing up in the fifties and sixties, Italian radicalism was muted at best; and Italian-Americans, like other European immigrant groups, took advantage of their white privilege to participate in the post-World War II economic prosperity; and the Catholic church as an institutional supporter of the Cold War joined other reactionary forces in instructing its adherents to oppose all ideas and movements that the government labeled as “left” or “socialist.” These social and political realities, however, do not let Alito and Scalia off the hook because not only did these men have exceptional educational opportunities, they themselves — along with their supporters — trade on their Italian-American origins. Therefore, it behooves them to acquaint themselves with something more profound and complex than the properties of the San Giovese grape or Sophia Loren films.

Contrary to the implication of Bush and his acolytes, judges are not disembodied spirits operating free from any influence by their personal life experiences and social and political views. Any honest judge — or student of judging — knows that judges sit on the

bench wrapped in robes sewn with the many threads constituting their lives to date. This does not mean they legislate from the bench or disregard clear precedent, but it does color their examination of the law and facts in front of them. So it is hardly an outlandish proposition to suggest that judges whose experiences placed them more in contact with working people and discrimination (Justices Thurgood Marshall, Hugo Black and William Brennan, for example) will be more sympathetic to civil rights claims than, say, judges who have a life-long commitment to corporate and governmental careerism (Chief Justice John Roberts, former Chief Justice William Rehnquist, Justices Antonin Scalia and Samuel Alito, for instance).

Justice Alito's obtuseness on the issue of racial discrimination in the workplace is evidenced by his dissent in *Glass v. Philadelphia Electric Company*.<sup>2</sup> Two other members of the three-judge panel hearing the employee's appeal determined that the trial judge had improperly denied him an opportunity to introduce evidence showing that his failure to obtain a promotion was based on the company's racial hostility. During his time working for the Philadelphia Electric Company, Harold Glass, an African American, had a stellar work record and had advanced himself educationally; however, during the course of his employment, he had been active in fighting what he believed to be "racially discriminatory employment practices."

Moreover, Glass, through his attorney, made an offer to show that he had been the victim of racial slurs and that disparaging pictures of him had been painted on the walls of the facility where he worked. Alito seemed to think that this information was irrelevant to rebut Glass' contention that the company's reason for not promoting him was "pretextual." Alito reasoned that any probative value such information had was outweighed by its prejudicial affect, and in any event, Glass' attorney was able to elicit from company officials on cross-examination that Glass had indeed complained to them of being harassed on racial grounds.<sup>3</sup> Such reasoning shows the racial sensitivity of a Tony Soprano, but without the crude honesty. What was needed was the more enlightened view — and perhaps historical awareness — of Tony's daughter Meadow.

Alito's obtuseness to contemporary social and cultural realities, whether situated in a workplace or on the streets, will be comfortable alongside that of Justice Antonin Scalia, who gave the country-at-large and people of color in particular the back of his hand when he authored *Whren v. United States*, the decision that constitutionalized pretext stops by police of people of color.<sup>4</sup> It will be remembered in that case that plainclothes drug officers working for the District of Columbia stopped two young black men driving a Pathfinder in a high-crime (read black) neighborhood for remaining stopped for "an unusually long time — more [than twenty] seconds," at a stop sign, and because the driver looked into his passenger's lap.<sup>5</sup> Later the Pathfinder sped off when being trailed by the plainclothes

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<sup>2</sup> 34 F.3d 188 (3rd. Cir. 1994).

<sup>3</sup> *Id.* at 200 (Alito, J. dissenting).

<sup>4</sup> 517 U.S. 806 (1996).

<sup>5</sup> *Id.* at 808

agents who — it should be noted — were expressly precluded by a general order of their police department from engaging in police work other than drug arrests unless they observed an “*immediate threat* to the safety of others.”<sup>6</sup> Regrettably, Scalia was able to persuade all his colleagues to join him in this retreat from reality, which made no reference to any scholarly or public criticisms of racial profiling.

For those concerned about judicial oblivion relative to history and contemporary cultural realities, it is instructive to compare the substance and form of the *Whren* decision with that of the earlier court that decided *Miranda v. Arizona*.<sup>7</sup> The *Whren* decision contains two footnotes of no great moment and is impervious to the press of history rising from the streets of inner cities and the problems encountered by black males driving anywhere. *Miranda*, on the other hand, is replete with footnotes that, along with the text, discuss the realities of crime, violent and coercive police interrogations, the benign but successful techniques of the F.B.I., racial discrimination and so on. Decisions can be reality-based if the judges want them to be — as Justice Frankfurter put it so well in *Watts v. Indiana*, “...there comes a point where this Court should not be ignorant as judges of what we know as men.”<sup>8</sup> (Undoubtedly, if he were writing today, he would have said men *and* women.)

So with their historical blind spots we should not expect to hear anytime soon from either Justice Alito or Justice Scalia any words like those of Justice Frank Murphy when he eloquently dissented in the Japanese internment case, *Korematsu v. United States*: “I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life.”<sup>9</sup>

Forgetting or ignoring the history of one’s group or class is not peculiar to Italians. The lessons of political, social and cultural history for most Americans, including most judges, repose beneath dust and cobwebs in the rarely disturbed archives of libraries, newspapers, and historical societies. It is, of course, in the interest of the establishment oligarchy to keep this history hidden, and in the absence of any active opposition to contradict them, the dominant political and cultural forces will foist myths upon people about what has gone on before.

And sometimes the vested interests rearrange symbols to promote historical forgetfulness. One example of this is the transmogrification of May Day. This workers’ holiday, celebrated on May 1, began as a spontaneous expression of solidarity with the workers executed after the Haymarket demonstrations in Chicago in the late 1890s. Because the papacy over time came to disapprove of the allegiance of so many Catholics to socialist trade unionism, in the 1950s it declared May 1 to be the Feast of St. Joseph the Worker. Also around this time, one of this nation’s periodic Red Scares led the American Bar As-

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<sup>6</sup> *Id.* at 808-09 (emphasis in original)

<sup>7</sup> 384 U.S. 436 (1966)

<sup>8</sup> 338 U.S. 49, 52 (1948)

<sup>9</sup> 323 U.S. 214, 242 (1944)

sociation — which had urged the disbarment of lawyers who defended Communists — to create “Law Day,” also to be celebrated on May 1.

Alito’s forgetfulness of the Italian American immigrant experience, meaning that world beyond nonna’s gnocchis and homemade wine fueling a wedding tarantella, has advanced his career, but there is no hope that it will improve the lot of the marginalized. If Alito had been involved in student anti-war and civil rights protests while at Princeton in the seventies or had worked for the public defender’s office or a tenants’ union after law school, he would not be a Supreme Court Justice. The conservative columnist, David Brooks, wrote a paen to Alito’s lilywhite, middle-class virtues in the January 12, 2006 *New York Times*. He quotes Alito as saying that when the future jurist arrived at Princeton he found “very privileged people behaving irresponsibly.”

Brooks places Alito in the “white working-class,” a group repelled by liberals and their penchant for civil rights, restrictions on the police, peace and Bohemianism. Brooks concludes: “in a culture that celebrates the rebel, or the fashionable pseudorebel, Alito respects tradition, order and authority.”

(Mussolini and the fascists, of course, had much to say about tradition, order and authority. Indeed, as many of the contributors to *The Lost World of Italian American Radicalism* point out, one reason for the demise of Italian American radicalism was the surge among the Italian working class, including a minority of socialist agitators, towards support of Mussolini’s fascist government. This support was not engendered because of some carefully thought out political philosophy, but was rather a nationalistic response to considerable anti-immigrant sentiment, both societal and official. The government of this country often turned a blind eye toward these fascist sympathizers because its preoccupation was with “atheistic Communism.” In any event, this phenomenon, along with the participation by many Italian-Americans, along with other immigrant ethnic groups, in the post World War II boom led to the shrinking influence of radicalism within the Italian American working class.)

Despite Alito’s vaunted respect for “tradition, order and authority,” his nomination was questionable when his name first surfaced among President Bush’s high command. According to a December 27, 2002 front-page story in *The New York Times* by Neal Lewis, *Expecting a Vacancy, Bush Aids Weigh Supreme Court Contenders*, the potential nominations called for “delicate ethnic balancing,” and one anonymous “senior official” noted Alito had a problem because “there was already an Italian American on the Supreme Court, Justice Antonin Scalia.”

Apparently, there was no such quota in effect for people with safe northern European names like Souter, Stevens, O’Connor and Rehnquist and later, of course, the ultra-safe Roberts. We now know that the Court can have two Italians so long as they lack any consciousness of their own past, and perhaps the Supreme Court can handle two blacks, so long as the next one is as blind as Clarence Thomas to black history and its manifestations in the current reality. Alito may not be a fascist, but he passes the neo-con litmus test as someone who “respects tradition, order and authority.” These are code words for leaving the free market, domestic injustice, and an aggressive, preemptive foreign policy

alone. This is a world away from not only the Italian radicals, but also earlier rebels named Jefferson, Paine, Washington and Franklin who thought humans were destined for lives defined by more than the plutocracy's notions of tradition, order, and authority.

The ability to hear across the decades the cries of the oppressed and their champions for justice, fairness and equality before the law is a direct measure of one's present responsiveness to the pleas of today's ostracized and exploited. Sadly, Justice Alito — and also Justice Scalia — are prominent members of the legion of the forgetful.