

THE POLITICAL SCENE

THE ABSOLUTIST

Ted Cruz is an unyielding debater—and the far right's most formidable advocate.

by Jeffrey Toobin JUNE 30, 2014



Ted Cruz says, “In both law and politics, I think the essential battle is the meta-battle of framing the narrative.” From his reading of Sun Tzu he has learned that a battle is won by “choosing the terrain on which it will be fought.” Photograph by Pari Dukovic.

Ted Cruz, the Republican junior senator from Texas, has heard the line about how the Party needs to become more moderate to win Presidential elections. “It is amazing that the wisdom of the chattering class to the Republicans is always, always, always ‘Surrender your principles and agree with the Democrats,’ ” he told me. “That’s been true for my entire lifetime. The chattering classes have consistently said, ‘You crazy Republicans have to give up on what you believe and become more like Democrats.’ ”

And, I would note, every time Republicans do that we lose.” Cruz then offered a short history of recent Presidential politics. Richard Nixon ran as a conservative, twice a winner; Gerald Ford, moderate, loser; Ronald Reagan, also twice a winner. “President George Herbert Walker Bush ran as a strong conservative, ran to continue the third term of Ronald Reagan, continue the Ronald Reagan revolution,” Cruz went on. “Then he raised taxes and in ’92 ran as an establishment moderate—same candidate, two very different campaigns. First one won, second one lost. In 1996, you got Bob Dole; 2000 and 2004, you have George W. Bush; 2008, John McCain; 2012, Mitt Romney. And what does the entire D.C. Republican consulting class say? ‘In 2016, we need another establishment moderate!’ Hasn’t worked in four decades. ‘But next time will be the time!’ ”

As the midterm elections grow closer, with the Presidential race to follow, the Republican Party is still split roughly along the historical lines that Cruz described. On the issues, the differences between the two wings appear modest, but the temperamental, even geographic, distinctions are profound. Establishment Republicans, based in Washington, remain at some level committed to uphold rudimentary operations of government and at least talk about broadening the Party’s appeal. Ardent conservatives, including those in the Tea Party movement, regard the Capitol as a cesspool of corruption, and they see compromise as betrayal. The outcome of this struggle is uncertain, as illustrated by the varying political fortunes of two leading establishment figures. Mitch McConnell, the Republican leader in the Senate, easily survived a primary challenge in Kentucky, but Eric Cantor, the Party’s leader in the House, went down to a humiliating defeat in his primary in Virginia.

Cruz’s ascendancy reflects the dilemma of the modern Republican Party, because his popularity within the Party is based largely on an act that was reviled in the broader national community. Last fall, Cruz’s strident opposition to Obamacare led in a significant way to the shutdown of the federal government. “It was not a productive enterprise,” John McCain told me. “We needed sixty-seven votes in the Senate to stop Obamacare, and we didn’t have it. It was a fool’s errand, and it hurt the Republican Party and it hurt my state. I think Ted has learned his lesson.” But Cruz has learned no such lesson. As he travels the country, he has hardened his positions, delighting the base of his party but moving farther from the positions of most Americans on most issues. He denies the existence of man-made climate change, opposes comprehensive immigration reform, rejects marriage equality, and, of course, demands the repeal of “every blessed word of

Obamacare.” (Cruz gets his own health-care coverage from Goldman Sachs, where his wife is a vice-president.) Cruz has not formally entered the 2016 Presidential race, but he is taking all the customary steps for a prospective candidacy. He has set up political-action committees to raise money, travelled to early primary states, like Iowa and New Hampshire, and campaigned for Republican candidates all over the country. His message, in substance, is that on the issues a Cruz Presidency would be roughly identical to a Sarah Palin Presidency.

Cruz and I were talking in a back room at the Fort Worth Convention Center earlier this month, during the Texas Republican Convention. A crowd of more than seven thousand greeted Cruz’s speech there rapturously. They cheered his anti-Washington gibes. “I spent all week in Washington, D.C., and it’s great to be back in America,” he told the delegates. On another occasion at the convention, Cruz noted that some people think the name of the Washington Redskins football team is offensive. “There’s an easy way to fix that,” he said. “You can just drop the word ‘Washington.’ ” (Cruz’s go-to hashtag is #makedclisten.) Cruz’s convention booth, designed to resemble a rustic Texas cabin, with a saddle out front, was the most popular in the hall. Hundreds of people stood in line for hours to have their photograph taken with him.

Still, Cruz’s historical narrative of Presidential politics is both self-serving and questionable on its own terms. Conveniently, he begins his story after the debacle of Barry Goldwater, a conservative purist whom Cruz somewhat resembles. Nixon ran as a healer and governed, by contemporary standards, as a moderate, opening up relations with China, signing into law measures banning sex discrimination, expanding the use of affirmative action, establishing the Environmental Protection Agency, and signing the Clean Air Act. Reagan’s record as governor of California included support for tax increases, gun control, and abortion rights, so he sometimes appeared less conservative than his modern reputation suggests. George W. Bush won (if he won) as a self-advertised “compassionate conservative.” So, at this point, Cruz’s concerted attempt to establish himself as the most extreme conservative in the race for the Republican nomination has not evoked much fear in Democrats. “We all hope he runs,” one Democratic senator told me. “He’s their Mondale.” (Running against Reagan as an unalloyed liberal in 1984, Walter Mondale lost every state but his native Minnesota.) Such skepticism was nowhere in evidence at the convention in Fort Worth, and at the series of talks Cruz gave he was invariably introduced as he was at the Defense of Texas

Marriage Amendment rally: “Ladies and gentlemen, I give you the next President of the United States!”

Cruz is conservative in appearance as well as ideology. He dresses like an I.B.M. salesman circa 1975, in boxy blue suits, white shirts, and red ties. His black hair is just long enough to be slicked back. When he speaks to an audience, he usually offers a half smile that suggests an unspoken bond with his listeners. He paces the stage, like a motivational speaker, and he extemporizes but doesn’t ramble. It’s easy to follow his speeches, because he sticks to an outline, in keeping with his training as a college debater.

“Marriage is under assault,” Cruz told the crowd. “It is under assault in a way that is pervasive. We’re seeing marriage under assault in the courts, including, sadly, the Supreme Court of the United States. It struck down the California marriage laws. California had a referendum. They asked the voters of California, ‘Do you want marriage to be a traditional marriage between one man and one woman?’ And the voters of California—those crazy right-wing kooks—said, ‘Yes, now that you mention it, we like marriage to be between one man and one woman!’ Went to the U.S. Supreme Court, and the U.S. Supreme Court said, ‘You can’t say that,’ and struck it down. You want to know what judicial activism is? Judicial activism is judges imposing their policy preferences on the words of the Constitution.” (Cruz’s views on marriage equality are widely shared within the Texas Republican Party. The John Birch Society was allowed to have a booth at the convention, but Log Cabin Republicans, a gay-rights group, wasn’t.)

As Cruz built to his peroration, he said, “I’m going to encourage three very simple things. No. 1, I’m going to encourage each and every man and woman here to pray. If ever there was an issue on which we should come to our knees to God about, it is preserving marriage of one man and one woman. And this is an issue on which we need as many praying warriors as possible to turn back the tide.

“A second thing I’ll tell you: when the President tried to impose federal law in Utah, I introduced federal legislation, along with Senator Mike Lee, to prevent the federal government from setting aside the marriage laws of the states across this country. We need to stand and defend marriage, and we need to defend the prerogative of the citizens of Texas to determine what marriage means in the state of Texas.

“And the third thing we need to do is we need to rise up and we need to turn this country around,” Cruz said, to a growing rumble of cheers. “We’ve got an election coming up in 2014, and, let me tell you, it’s going to be phenomenal. We’re going to

retake the U.S. Senate! And I'll tell you this: as good as 2014's going to be, 2016's going to be even better!"

Cruz came to the Senate, in 2012, and then to national prominence, through an unusual route. Like many politicians, he is a lawyer, but his legal expertise is of a special kind, which helps explain both his fame and his notoriety. Before he ran for the Senate, Cruz was on his way to becoming one of the most notable appellate advocates in the country. "He was and is the best appellate litigator in the state of Texas," James Ho, who succeeded Cruz as solicitor general of the state, told me. Trial lawyers, civil or criminal, are often brought into cases when there are compromises to be made; much of their work winds up involving settlements or plea bargains. But appellate litigators, like Cruz, generally appear after the time for truce has passed. Their job is to make their best case and let the chips fall where they may. That is the kind of politician Cruz has become—one who came to Washington not to make a deal but to make a point. Citing Margaret Thatcher, Cruz often puts his approach this way: "First you win the argument, then you win the vote."

Many senators turn the foyers of their Washington offices into shrines to their states. Al Franken, for instance, covers the walls with pennants from every college in Minnesota. But in Cruz's foyer, in the Dirksen Building, there are only a couple of framed portraits (of Texans who have served in the Senate) and a Dr Pepper-branded refrigerator. (Dr Pepper is headquartered in Plano.) The room looks as if Cruz had just moved in. Three years ago, he was an obscure long shot making his first run for public office. As he frequently puts it, "I was at two per cent in the polls, and the margin of error was three per cent." Cruz ranks ninety-fourth in seniority in the Senate. Last fall, though, he nearly single-handedly precipitated the shutdown of the federal government. Today, polls show Cruz in the thick of the crowded race for the 2016 Republican Presidential nomination, along with Rand Paul, Marco Rubio, Chris Christie, and others. Last year, he won the Values Voter Summit's Presidential straw poll. Last month, he won the straw poll at the Republican Leadership Conference and, not surprisingly, the straw poll at the Texas G.O.P. convention. The speed of Cruz's rise makes Barack Obama's ascent seem almost stately.

Cruz's inner office is dominated by a three-panel painting of Ronald Reagan in Berlin, before the Brandenburg Gate. Reagan is Cruz's hero, though Cruz, at forty-three, is too young ever to have voted for him. Like Reagan, Cruz believes in limited government, but his basis for that belief differs in a significant way from Reagan's.

Reagan thought limited government was a matter of political choice; Cruz believes it is a constitutional mandate. Cruz comes to that belief from a position of unusual intimacy with the constitutional text.

When Cruz was in his early teens, in Houston, his parents enrolled him in an after-school program run by Rolland Storey, a retired energy executive who wanted to instill the values of the free market in young people. At the Free Enterprise Institute, Storey had his young charges read Milton Friedman, Friedrich Hayek, and other authors revered by conservatives, and then give speeches at Rotary Clubs and similar venues around the state. “They created a spinoff group called the Constitutional Corroborators,” Cruz told me. “And they took five of the students, all of whom had been involved on the free-market side, and we focussed on studying the Constitution. So we’d meet on Tuesdays and Thursdays, for a couple of hours each night, and study the Constitution, read the Federalist Papers, read the Anti-Federalist Papers, read the debates on ratification. And we memorized a shortened mnemonic version of the Constitution.”

I asked for an example.

“TCCNCCPCC PAWN MOMMA RUN,” Cruz said. “Taxes, credit, commerce, naturalization, coinage, counterfeiting, post office, copyright, courts, piracy, Army, war, Navy, militia, money for militia, Washington, D.C., rules, and necessary and proper.”

This was more than a parlor trick. During the past several decades, the ideological battles over the Constitution have often come down to the originalists, closely aligned with the textualists, against those who believe that the Constitution also protects some nontextual, or unenumerated, rights. The right to privacy is the paradigmatic unenumerated right, one that is not mentioned in the text of the Constitution but has been recognized by judges to include, for example, a woman’s right to abortion. Cruz’s memorization trick was an early stage in a textualist’s education. To textualists, the meaning of the Constitution is limited to the precise terms of the document, and nothing more.

“Ted was just an amazing speaker at fourteen, by far the most impressive student we ever had,” Winston Elliott III, who became affiliated with Storey’s organization when Cruz was a student and now serves as its president, told me. “Our program is very much committed to private property, free markets, and constitutionally limited government. When it came to the Constitution, Rolland was a great believer in original intent, and so the focus was very much on what the Constitution says. We brought in a memorization

expert. We wanted them to focus on the words. Ted was just an ideal student, because he just absorbed everything, and he came from a conservative family in the first place.”

Cruz first achieved national notice last September, when he staged a twenty-one-hour talking marathon on the Senate floor against Obamacare, as part of the political offensive that led to the government shutdown. In the best-known part of the speech, he read Dr. Seuss’s “Green Eggs and Ham” as a bedtime story to his two young daughters watching in Houston, who were supposedly tuned in to C-SPAN. (Later, he also read long excerpts from the novels of Ayn Rand, one of his literary heroes.) Several times, he drew an analogy between the “oppression” of Obamacare and the oppression that his father, Rafael, faced as a young man in Cuba. “I view that from a very personal perspective, because fifty-five years ago, when my father came from Cuba, he was eighteen, he was penniless, and he couldn’t speak English,” Cruz said on the Senate floor. “But he was lucky to be able to apply for a student visa, to get to America. He was lucky to be accepted to the University of Texas, to flee the Batista regime, where he had been imprisoned and tortured as a kid.” Later, Cruz said, “Thank the good Lord that when my dad was a teen-age immigrant in Texas fifty-five years ago, how grateful I am that some well-meaning liberal did not come and put his arm around him and say, ‘Let me take care of you. Let me give you a government check. Let me make you dependent on the government. Don’t bother washing dishes. Don’t bother working.’ ”

At the Texas Republican Convention, the line for photographs with Ted Cruz snaked through the exhibition hall. To keep those waiting from getting restless, Rafael Cruz worked the line, shaking hands and posing for photographs. White-haired, vigorous, and charismatic at seventy-five, Rafael is a familiar figure to those who have followed his son’s career. He introduces Ted’s stump speech with the boast “He will not compromise!”

Rafael Cruz fled Batista’s Cuba for Texas in 1957 after aligning himself with the anti-Batista movement. He returned to Cuba for just a month, in 1959, and became convinced that Fidel Castro was even worse than his predecessor, so he settled in the United States for good. He majored in mathematics at the University of Texas at Austin, and met and married Eleanor Darragh, who was born and raised in Delaware. (Rafael had two daughters from a previous marriage.) Rafael and Eleanor started an oil-services company after moving to Calgary, in Alberta, Canada, where Rafael Edward Cruz was born, in 1970. (Ted’s birth in Canada, with dual American and Canadian citizenship, has raised the question of whether he is a “native born” citizen and thus eligible, under the

Constitution, to be President. The answer is not completely clear, but it seems likely that the Constitution does not bar a Cruz Presidency. Recently, Ted Cruz formally gave up his Canadian citizenship.)

Rafael and Eleanor split up a few years after Ted was born, and Rafael moved to Houston. Six months later, Eleanor and young Ted also went to Houston. The couple reconciled (though they eventually divorced), and Rafael experienced a religious awakening. He left the oil business and became a charismatic minister. Pastor Cruz, as he is often called, is not currently affiliated with any church or denomination, but he is a sought-after surrogate for his son on the campaign trail. In his speeches and talks, he operates as a kind of political id for Ted, much as Ted operates as the id of the Republican Party. Rafael attacks Obama and the Democrats with a religious intensity. In many of these talks, Rafael draws explicit parallels between Fidel Castro and Barack Obama as twin betrayers of the concepts of “hope and change.”

“It all started for us in 1980, when Ted was nine years old,” Rafael Cruz told me. “I was involved with a group called the Religious Roundtable, which was working with the Moral Majority to help mobilize Christians to elect Ronald Reagan. All during that year, we talked every night about how important it was to get rid of this socialist-leftist President Carter and replace him with a constitutional conservative, Ronald Reagan. I must have told Ted a dozen times, ‘When I was in Cuba and they took away our freedoms, I had a place to go. If we lose our freedoms here, where are we going to go?’ ” Ted Cruz arrived at Princeton in the fall of 1988, after graduating from Houston’s Second Baptist High School. He quickly became friends with David Panton, a sixteen-year-old freshman from Jamaica. They became debating partners and roommates for the rest of their college years and at Harvard Law. “Ted’s views today politically are almost identical to when I met him,” Panton told me. “There’s nothing he says today that I didn’t hear in college. It all came from his father and from the Constitutional Corroborators.”

There are two main kinds of college debating programs. One focusses on a single topic every year, and the other, Cruz and Panton’s specialty, is known as parliamentary debate. “In parliamentary debate, they don’t give you the subjects in advance. You just have to be fast on your feet and know a lot about a lot of different subjects,” Panton said. “Ted was the best debater in the country, hands down. He was the No. 1 debater our senior year.”

At Princeton, Cruz wrote a senior thesis about a topic that was obscure at the time but later became of wide interest in the conservative legal movement: the Ninth and Tenth

Amendments. The Ninth states, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”; and the Tenth reads, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” Ever since the Bill of Rights was ratified, near the end of the eighteenth century, the meaning of these provisions has proved elusive to scholars and judges. Robert Bork compared the Ninth to an inkblot. Liberal scholars have generally viewed the Ninth Amendment, in particular, as a guarantee that the Constitution represents a floor for, not a ceiling on, the rights of individuals. In his thesis, Cruz wrote that he intended to “elaborate upon a conception of the Ninth and Tenth Amendments which revitalizes the Founders’ commitment to limiting government, to restraining the reach of our none-too-angelic leaders.” The conclusion is debatable, but the level of erudition in the thesis is extraordinary, especially for a twenty-one-year-old who had not yet gone to law school.

The thesis was so good that the professor who supervised Cruz’s work, Robert George, decided to play a joke on him. “When I was grading it, I dog-eared the first page and wrote ‘C-plus’ on it, so it was the first thing he’d see,” George told me. “Then inside I wrote, ‘Just kidding—A.’ I thought it might do Ted some good to wonder for a second whether he really was the smartest guy in the room.” A widely respected conservative legal philosopher, known for his opposition to same-sex marriage and abortion rights, George played godfather to right-leaning students on campus. “It’s an occupational hazard for academics like me to assume that our best students are going to become academics themselves. And so I was sure that Ted was going to become a professor.” But Cruz was already on his way to Harvard Law School.

“He came to class with his right hand in the air and he kept it in the air for the whole semester,” Alan Dershowitz, who taught Cruz’s criminal-law class, told me. Cruz and Panton sat next to each other, and both disagreed with most of what Dershowitz said throughout the semester. “They were pro death penalty, they questioned the exclusionary rule, and they were both completely brilliant.” (Panton became the second black president of the *Harvard Law Review*, after Barack Obama. He now works in private equity, in Atlanta.) At Harvard, Cruz’s ambitions came into focus. “He was going to clerk for Michael Luttig, on the Fourth Circuit, who was the big feeder for the conservative Justices on the Supreme Court, and then clerk on the Court,” Dershowitz said. “And of course that’s exactly what he did.”

From 1996 to 1997, Cruz clerked for Chief Justice William H. Rehnquist, and again he impressed both ideological allies and adversaries with his intelligence and persuasiveness. “We became friends on the first day of our clerkships,” Neal Katyal, who clerked for Stephen Breyer and went on to become Acting Solicitor General in the Obama Administration, said. “We spent the next year arguing about just about everything, especially the death penalty, which Ted definitely supported. He was conservative, of course, but he was not an ideologue. He knew how to make arguments based on the law. He was obviously already a very good lawyer.”

After his clerkships, Cruz faced the first genuine crossroads of his career. Until then, he had followed an elite path from the Ivy League to coveted clerkships. Now he had to decide what kind of lawyer he was going to be. Cruz turned down an offer from a big firm (with a big signing bonus) and joined a boutique firm then known as Cooper & Carvin, in Washington.

“When I was clerking for the Chief, Chuck Cooper and Mike Carvin came and recruited me,” Cruz told me. Cooper was a former Rehnquist clerk. At the time, the firm was nine months old and had only six lawyers. Cruz was the first new associate the partners recruited. Cooper and Carvin had served in senior roles in the Reagan Justice Department, and they created a firm that combined their passion for high-level litigation with conservative politics. Cooper has long been the outside counsel to the National Rifle Association, and, he recalled, “Ted was basically my lieutenant on all N.R.A. matters.” He helped Cooper prepare his testimony before the House Judiciary Committee in favor of the impeachment of Bill Clinton. Cruz also worked on Representative John Boehner’s civil lawsuit against Representative Jim McDermott, a Democrat, for illegally leaking the recording of a phone call involving Newt Gingrich. (Boehner won the case, and McDermott was forced to pay damages, including more than a million dollars of Boehner’s legal fees.) Carvin, who has since moved on to another firm, said, “Ted was the best law partner I ever had, but he was a junior associate.” Soon enough, though, it became clear that Cruz’s ambitions extended beyond success as a private lawyer. “Ted had this obvious burning interest in matters of important public policy,” Cooper recalled. “He had the obvious tools to succeed at the highest levels of politics. It was clear to me that it was at least in the back of his mind, and I encouraged it.” (Cooper later became best known for leading the legal defense of California’s Proposition 8, which banned same-sex marriage, before the law was ultimately overturned.)

And so, in 1999, Cruz went to work as a domestic-policy adviser on the George W. Bush Presidential campaign. “I essentially had responsibility for all the policy that touched on law,” Cruz told me. “So we all divided up the issues, but anything law-related fell under my bailiwick. The campaign was a year and a half of incredibly intense eighteen-to-twenty-hour days. The best part of the campaign was I met my wife. We were one of eight marriages that came out of the campaign, so I tell young people, ‘If you want to meet your spouse, go join a political campaign.’ ” (Heidi Cruz lives in Houston with their daughters.)

When the result of the 2000 campaign devolved into a legal struggle over the vote in Florida, Cruz was well situated to play an important role. By the Thursday after Election Day, he was in Tallahassee. “Through an odd bit of serendipity, it happened that I was the only practicing lawyer, and, in particular, constitutional litigator, who had been on the full-time campaign team,” Cruz told me. “One of the realities of the recount and life is that lawyers and political folks don’t really speak the same language. By the accident of being in that place I found myself, there was sort of a small leadership team that consisted of Jim Baker and Josh Bolten and Ted Olson and George Terwilliger and Ben Ginsberg and me. And I’m twenty-nine years old, this kid, and all of these other folks are Cabinet members and masters of the universe.” Ginsberg, the national counsel to the Bush campaign, and his associates set up seven teams of lawyers to address the sprawling controversies generated by the recount, and Cruz was the only lawyer who served on all seven. His job was to encourage communication and assure consistent positions.

“I’ve been amused at some of the subsequent descriptions of Bush versus Gore, because they sort of described us as this fine-oiled machine with a careful strategy,” Cruz said. “It was one tiny notch slightly below utter chaos.”

Cruz’s initial assignment was to assemble a legal team. His first call was to his former mentor Carvin, who wound up representing Bush before the Florida Supreme Court. Cruz’s second call was to a Washington lawyer named John Roberts. “John had been a friend and a Rehnquist clerk—I’ve known John a long time,” Cruz said. “Everyone we called, without exception, dropped everything and came down. And for a young lawyer, I mean, it was a breathtaking and humbling experience to get the chance to carry the bag and work alongside some of the most talented lawyers in the country.” Conservatives have long denounced liberal judges and lawyers for judicial activism—that is, for using the courts to overrule the work of the democratically elected branches of government. *Roe v. Wade*, which invalidated state laws banning abortion around the

country, is the consummate act of liberal judicial activism. In the eighties and nineties, however, as Reagan nominees began to dominate the federal judiciary, conservatives began to use the courts for their own political ends as well. Conservatives like Cruz never stopped denouncing liberals for their efforts to use the courts to promote their ideological agenda, even as they began to do much the same thing themselves. The heart of Cruz's legal career was a sustained and often successful undertaking to use the courts for conservative ends, like promoting the death penalty, lowering the barriers between church and state, and undermining international institutions and agreements.

In the nineteen-nineties, several states created the position of solicitor general, a chief appellate advocate, modelled on the one in the United States Department of Justice, which represents the federal government before the Supreme Court. The Texas job was started in 1999, when John Cornyn was the state attorney general. (Cornyn is now Cruz's senior colleague in the Senate.) But when Greg Abbott became attorney general of Texas, in 2002, he decided to expand the responsibilities of the solicitor general beyond simply handling appeals in cases involving the state. Abbott had served on the Texas Supreme Court and developed strongly conservative views on legal issues. "I wanted someone who had the capability to handle appellate arguments in court, but I wanted to do so much more," Abbott told me. "I wanted Texas to be a national leader on the profound legal issues of the day. I wanted us to be able to have a larger footprint, a larger impact."

Though Cruz was only thirty-two, he persuaded Abbott that he was up to the job. In 2003, he moved to Austin. "We wanted Ted to take a leadership role in the United States in articulating a vision of strict construction. I look for employees with batteries included," Abbott said. "Ted was supercharged and ready to go." In effect, he asked Cruz to roam the country in search of cases that might advance the Constitutional agenda that Cruz had first embraced as a teen-ager. Sometimes Texas was an actual party to the cases Cruz argued, and sometimes he simply volunteered to write friend-of-the-court briefs for causes that he and Abbott supported. They intervened in cases supporting gun-owners' rights, states' rights, and the right to religious expression in public places. In one high-profile case, Cruz wrote the brief that persuaded the court to approve a monument of the Ten Commandments outside the state capitol, in Austin. (Abbott argued that case.)

In just over six years, Cruz argued nine cases before the U.S. Supreme Court, more than any other Texas lawyer during this period and more than all but a few lawyers in the country. In addition, he filed dozens of briefs in federal and state appeals courts. In his arguments before the high court, Cruz won five cases and lost four, but that understates

the magnitude of his success. The cases he lost were rather minor; in one of them he appeared as a friend of the court. The cases he won had more drama and importance. The most notable, from 2008, began, as Cruz recounted to me, when “two teen-age girls who were walking home one night stumbled into a gang initiation and were horribly gang-raped and murdered. One of the most brutal crimes that shocked the conscience of the city of Houston. Ernesto Medellín was one of the leaders of the gang, and he was apprehended several days later, and he confessed to it right away. His confession was one of the most chilling documents I’ve ever read, handwritten, where he describes bragging about raping these little girls. He describes showing off his bloodstained clothes. He describes keeping, as a trophy of the night, one of the little girls’ Mickey Mouse watches. This was an unrepentant murderer. He was convicted, he was sentenced to death, and then the case took a strange turn.”

The World Court, which is the judicial arm of the United Nations, issued a directive to the United States to reopen the cases of Medellín, who was Mexican, and fifty other Mexican nationals who were on death row. After their arrests, none of the defendants had been offered the consular services of the Mexican government, a right that the United States was treaty-bound to honor. In a crucial twist, the Administration of George W. Bush agreed with the World Court judgment. The Justice Department asserted that the cases, including Medellín’s, should be reopened, because the defendants had not been granted their rights under the treaty. As both a legal and a political matter, Texas’s position looked weak. How could Abbott (and Cruz) take on a President of the United States who also happened to be a fellow-Republican and fellow-Texan? And how, in any event, could the state of Texas overrule a judgment of both the United States government and the World Court?

“In both law and politics, I think the essential battle is the meta-battle of framing the narrative,” Cruz told me. “As Sun Tzu said, Every battle is won before it’s fought. It’s won by choosing the terrain on which it will be fought. So in litigation I tried to ask, What’s this case about? When the judge goes home and speaks to his or her grandchild, who’s in kindergarten, and the child says, ‘Paw-Paw, what did you do today?’ And if you own those two sentences that come out of the judge’s mouth, you win the case.

“So let’s take Medellín as an example of that,” Cruz went on. “The other side’s narrative in Medellín was very simple and easy to understand. ‘Can the state of Texas flout U.S. treaty obligations, international law, the President of the United States, and the world? And, by the way, you know how those Texans are about the death penalty

anyway!’ That’s their narrative. That’s what the case is about. When Justice Kennedy comes home and he tells his grandson, ‘This case is about whether a state can ignore U.S. treaty obligations,’ we lose.

“So I spent a lot of time thinking about, What’s a different narrative to explain this case? Because, as you know, just about every observer in the media and in the academy thought we didn’t have a prayer. This is a hopeless case.”

Cruz decided to change the narrative into one about the separation of powers. He refashioned the case from a fight between Texas and the United States to one between the executive branch and the legislative branch of the federal government, with Texas advocating for Congress. He argued that the President could not order Texas to reopen the cases without the specific authorization of Congress. Cruz duelled with Stephen Breyer and other skeptical Justices for well over the allotted thirty minutes. Breyer ribbed Cruz: “As I read the Constitution, it says all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land, and the judges in every state—I guess it means including Texas”—the audience laughed—“shall be bound thereby.”

“Certainly, Justice Breyer,” Cruz answered. “Texas, of course, does not dispute that the Constitution, laws, and treaties are the supreme law of the land.” But, he went on, the President’s order, in this case, was none of these. The questioning of Cruz became so raucous that, at one point, Justice John Paul Stevens felt compelled to interject, “You said there are six reasons. . . . I really would like to hear what those reasons are without interruption from all of my colleagues.” Cruz won the case, six-to-three, with Stevens joining the Court’s conservatives. In another case, a major challenge to Texas’s 2003 electoral redistricting on the ground that it discriminated against minorities, the number of plaintiffs before the Court was so large that Cruz was allowed to file a hundred-and-twenty-three-page brief in response, well above the usual page limit. He won that case as well.

Cruz became so comfortable before the Justices that he even employed a touch of humor, which is always risky at the Supreme Court. In 2008, the Justices invited Cruz to argue in support of Louisiana’s position that the Constitution permitted the execution of an individual who raped a child. (To be asked to argue a case as a friend of the court is itself a significant honor for a lawyer.) At one point, Justice Stevens asked whether any country had ever made punishments for rape more draconian. “It’s interesting if you look at the history in England,” Cruz said. “Blackstone actually talks about how rape under

Saxon law was punishable by death, and then there was a period—1285—where the punishment was ‘relaxed’ to loss of the eyes and testicles. That was William the Conqueror’s kinder, gentler version.” Laughter followed. Still, the court ruled that Louisiana could not execute the defendant.

In 2010, Greg Abbott was planning on running to succeed Rick Perry as governor, and Cruz decided to step out on his own and run for attorney general. By this point, Cruz had reached such a level of prominence as solicitor general that he had basically cleared the field to take over for his boss. But Perry decided to run for reelection and, as a result, so did Abbott. Cruz stepped down as solicitor general and joined a law firm in Houston. In short order, another opportunity presented itself: Kay Bailey Hutchison was retiring from the U.S. Senate, opening up a seat in the 2012 election.

Cruz flew to Washington for a conference of the Federalist Society for Law and Public Policy Studies. There he arranged to meet with Mike Lee, a newly elected senator from Utah. The two had much in common. Both were former Supreme Court clerks and both had an intense interest in constitutional law. (The son of Rex Lee, who was Solicitor General in the Reagan Administration, Mike Lee clerked for Samuel Alito during his first year on the Court.) “At that point, I felt like I had already known Ted, because three of my co-clerks were Princeton undergrads, and he was a legendary debater,” Lee recalled. Cruz and Lee hit it off. “He and I see a lot of things the same way, through a similar lens. As someone who has studied the Constitution throughout his entire life, he understands the importance of federalism and separation of powers. As a former Supreme Court clerk and appellate litigator, he is very aware of how the courts look at things. But he also knows that we can’t leave every constitutional question to the courts. The legislative branch has to follow the Constitution, too.” The two men took a long walk around the Capitol grounds. By the end, Lee had agreed to endorse Cruz for the Senate.

David Dewhurst, the lieutenant governor of Texas (an especially powerful position there), was far and away the best-known and best-financed candidate for the Senate seat in 2012. But Cruz, calling himself a “constitutional conservative,” rallied the Tea Party movement to his side and battered Dewhurst as a conciliator and a defender of the status quo. Tea Party favorites like Sarah Palin, Rick Santorum, Rand Paul, and Jim DeMint swarmed the state for Cruz, and conservative political-action committees like the Club for Growth bought millions of dollars’ worth of advertisements on his behalf. Dewhurst finished ahead of Cruz in the first round of voting—forty-five per cent to thirty-four per

cent—but then Cruz won the runoff, with fifty-seven per cent of the vote. The general election was a formality against Texas’s moribund Democratic Party.

Cruz made his influence felt in the Senate even before he took office. He was invited to join the weekly lunch of the Senate Republican caucus on December 4, 2012, which happened to be the day the full Senate was debating the United Nations treaty on the Rights of Persons with Disabilities. The treaty seemed fairly uncontroversial, but Cruz, as the tribune of the Tea Party movement, was opposed. “I was a newly elected senator who hadn’t even been sworn in yet, but I did just pass on, having just come from the campaign trail, that issues of U.S. sovereignty resonate powerfully with the American people,” Cruz told me. The issues in the treaty were broadly similar to those in the Medellín case, in that they involved the interplay between American law and international institutions.

Dick Durbin, the Illinois Democrat who is the assistant majority leader, recalled Cruz’s influence on Republicans at that lunch. “These people walked out scared as hell,” he said. “And I thought, This guy is wasting no time to flex his muscles over there.”

As part of the effort to pass the treaty, supporters brought Bob Dole, the widely respected former Republican majority leader, to the Senate floor, in a wheelchair, to lobby for passage. But Dole, and the treaty, failed. John McCain told me, “It was the most embarrassing day in my time in the Senate, to force Bob Dole to watch that.”

Cruz explained, “I personally have been passionate for a long, long time about protecting U.S. sovereignty, that our laws should reflect American values, American mores, and not be governed by the laws or tribunals of foreign nations or foreign institutions. I urged my soon-to-be colleagues to protect U.S. sovereignty, and ultimately they did so.”

On another early trip as a senator-elect, Cruz made a speech to the Federalist Society, to which he has since returned several times. Founded in 1982, the society is a forum for discussion of conservative legal ideas. It takes no formal positions on issues, and members don’t agree with each other on every topic, but it has long operated as the network for potential Republican judicial nominees and executive-branch officials. In practice, the Federalist approach has meant an “originalist” view of the Constitution, which, in turn, reflects the priorities of the modern Republican Party—including an expansive view of an individual’s right to bear arms under the Second Amendment, a rejection of constitutional protections for a woman’s right to choose to have an abortion, a porous barrier between church and state, and a narrow conception of the power of the federal government to intervene in the economy. Dozens of judges have brought a

Federalist orientation to the bench in recent years; Cruz is the first politician, and the first prospective President, to put their ideas at the center of national debate. “Like many people in this room, I’ve grown up with the Federalist Society,” he said soon after he arrived in Washington. “This has been my home for my entire adult life, my entire professional life.” It was at a later Federalist Society dinner that Cruz was inspired to write a series of reports on what he found to be abuses of power by the Obama Administration. The idea came from another prominent conservative lawyer, Justice Samuel Alito, who was the speaker that evening.

Cruz’s facility with constitutional argument draws admiration even from those who do not share his views. “Ted is able to use erudite constitutional analysis with politically appealing slogans—that’s a rare talent,” Walter Dellinger, the former acting Solicitor General in the Clinton Administration, who has debated Cruz, told me. “The only problem is that Ted’s view of the Constitution—based on states’ rights and a narrow scope of federal power—was rejected at the Constitutional Convention in Philadelphia, and then was resurrected by John C. Calhoun, and the Confederates during the Civil War, when it failed again. It’s still around now. I think it’s wrong, but Ted does a very sophisticated version of that view.”

Since taking office, Cruz has had little use for the traditional political norms of the Capitol, as he showed when he signed a fund-raising letter for the Senate Conservatives Fund, which aims to defeat incumbent Republican senators whom it deems unduly moderate. Challenged by his colleagues in the Republican caucus, Cruz vowed to refrain from targeting incumbents. But then it happened again, with the Madison Project, which also supports candidates who challenge Republican incumbents. “It’s time to elect some conservatives who won’t run from a fight!” Cruz wrote, according to Politico. (Cruz says the letter went out without his permission.) Just a few months after Cruz had taken office, McCain was referring to him, in public, as a “wacko bird.” (The insult still stings. Introducing her husband to the delegates at the Republican convention in Fort Worth, Heidi Cruz denied that he was a wacko bird.)

By one reckoning, the twenty-one-hour speech Cruz mounted against Obamacare last September was his consummate wacko-bird moment. At that time, the House and the Senate were weighing a continuing resolution, which would keep the federal government funded and open. The Republican House, with Cruz’s encouragement, had passed a budget that denied all funds for the Affordable Care Act. It was clear that this budget would never pass the Democrat-controlled Senate and certainly never be signed by the

President. So Cruz's speech merely delayed the inevitable—the passage of a budget that included money for the bill.

There are generally two kinds of senators: those who legislate and those who run for President. Cruz's speech, and its aftermath, locked down his status in the second category. John Cornyn, his Texas colleague, opposed Cruz's efforts on the shutdown. "Ted is very smart and very articulate and he has a huge following, but the question is whether what he's doing is going to help us be a majority party," Cornyn told me. "The great thing about the Senate is that you are a free agent; you can follow your conscience. But if you want to be effective you can't get your way a hundred per cent of the time. We need to think about the eighty-twenty rule. We need to get back to the idea that it doesn't always have to be a hundred per cent our way."

Cruz takes a different view of his role in the shutdown. While the government was closed, the Obamacare Web site, healthcare.gov, made its disastrous debut, and the polls turned against the Democrats. Cruz felt that his political argument, not the failure of the Web site, produced the political turnaround. "Many voices in Washington say the fight that we had last fall was not successful," Cruz told me. "Like any good litigator, at times you think of a battle as a long-term battle. You don't always accomplish everything in the first skirmish. As a consequence of millions of people last summer and fall getting engaged in that battle, I believe we dramatically elevated the national debate over the harms of Obamacare. And today Democrats are running scared, and the prevailing wisdom is Republicans are quite likely to win control of the Senate because of Obamacare."

In any event, Cruz still glories in flouting the conventions of senatorial, even Republican Party, courtesy. Earlier this year, Mitch McConnell, the Republican leader in the Senate, made a procedural deal with the Democrats so that fifty votes, not sixty, would be needed to raise the debt ceiling. The lower threshold would allow senators like McConnell, as well as John Cornyn, to vote against raising the debt ceiling, which would help them in their primaries against Tea Party challengers. By objecting, Cruz forced some of his Republican colleagues to make a tough, politically risky vote.

"I have to tell you that there's nothing that I've done in my year and a half that enraged my colleagues more," Cruz said of his debt-ceiling maneuver. "The Republican leadership asked every Republican senator to affirmatively consent to lowering the threshold to taking up the debt ceiling from sixty votes to fifty votes. And the argument was twofold: No. 1, if we do so, it will pass, and we want it to pass. That is the outcome

we want. And, No. 2, if we don't, the Democrats can pass it on their own. Every one of us can vote no. We can go and tell our constituents we opposed the thing—we just consented to allow it to happen. And my response was simply to say that there is no universe in which I can consent to lowering the threshold and making it easier for Harry Reid to add trillions of debt to our nation.” To Cruz, McConnell’s procedural legerdemain defined what was wrong with Washington. “It’s part of the reason why I’ve said many times that I think the biggest divide we’ve got in this country is not between Republicans and Democrats,” he said. “It’s between entrenched politicians in Washington in both parties and the American people.”

The way Cruz characterizes the divide in American politics—Washington vs. the people—is demonstrably incorrect. Far more significant than the conflict between the capital and the people is the ideological clash between left and right. Cruz’s rhetoric is mostly an exercise, in the manner of Sun Tzu, of framing the narrative in the most advantageous way. “Anti-Washington” is better positioning than “doctrinaire,” but that is what Cruz is, even compared with his likely rivals for the Republican Presidential nomination. Unlike Marco Rubio, Cruz opposes comprehensive immigration reform; unlike Rand Paul, Cruz embraces the confrontational foreign policy associated with the George W. Bush Administration. Cruz speaks of challenging “the corrupt bipartisan cabal in Washington,” but what he’s really proposing is a purification ritual, the fulfillment of a conservative agenda that has moved well to the right of that of his hero Ronald Reagan. The only Republicans he wants to challenge are those who want to cooperate or compromise with Democrats. As he told the delegates in Fort Worth, Cruz wants to “abolish” the Internal Revenue Service, “audit” the Federal Reserve (though it’s not clear what that means), and, of course, repeal the Affordable Care Act.

Cruz’s sincerity in these goals is beyond question. When he was solicitor general of Texas, he had a piece of advice for the lawyers on his staff. “I tried to stress to every lawyer in the office that if any lawyer from the S.G.’s office stands in front of the judge and says, ‘The law is X and the facts are Y,’ then that judge would always, always trust that we are levelling with them and telling the truth.” He’s approached politics the same way. “Since I became a senator, a year and a half ago, I’ve kept two promises to the people of Texas,” he said. “I have endeavored to do what I said I was going to do and I have always told the truth. It says something about Washington that those are perceived as radical acts.” ♦

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