

It's apparent from the very cover of the book that Justice Gorsuch takes humility seriously. He lists as collaborators his former law clerks Jane Nitze and David Feder, who worked in his chambers at the Tenth Circuit as well as the Supreme Court. They helped the Justice sort through countless speeches and judicial opinions to select a sampling of Gorsuch's greatest hits. This recognition of their contributions is not something one would expect to see in a book authored by a Supreme Court Justice. On the point of humility, Justice Gorsuch shares a story of walking through the halls of the Supreme Court with his boss Justice White. Justice White admitted he only knew about half of his predecessors as they passed their portraits. "We'll all be forgotten soon enough," Justice White told him, and Gorsuch concludes that "this is exactly as it should be . . . most any of us who believe in [our republic's] cause can hope for it that we have done, each in our own small ways, what we could in its service."⁶ An outgrowth of this humility is Justice Gorsuch's firm belief that judges must avoid the temptation to rule for certain groups or policy outcomes. When judges rule according to their personal preferences rather than the law, he notes, "[t]he people are excluded from the lawmaking process, replaced by a handful of unelected judges who are unresponsive to electoral will, unrepresentative of the country . . ."⁷ In his view, "[v]irtually the entire anticanon of constitutional law we look back upon today with regret came about when judges chose to follow their own impulses rather than follow the Constitution's original meaning."⁸

The opinion excerpts included in the book showcase how Justice Gorsuch practices what he preaches—disagreeing with colleagues without being disagreeable, staking out positions that may be unpopular, and advocating for a judiciary that stays within its limits. In an excerpt from *Henson v. Santander Consumer USA*, his maiden majority opinion for the Supreme Court, Justice Gorsuch considers a situation where the Court was asked to act like a legislature. The case involved whether a loan purchaser can be considered a debt collector under the Fair Debt Collection Practices Act, which by its text regulates debt collection agencies and not the loan originators who hired them. "Faced with obstacles in the text and structure," Justice Gorsuch writes, "petitioners ask us to move quickly on to policy."⁹ They pressed the Court to "update" the law passed in the 1970s given changes in the industry in the intervening decades. Declining that invitation, the Justice explains, "we will not presume with petitioners that any result consistent with their account of the statute's overarching goal must be the law" and instead "presume more modestly" that the legislature says "what it means and means . . . what it says."¹⁰ It is, after all, "never our job to rewrite a constitutionally valid statutory text under the banner of speculation about what Congress might have done."¹¹

6 *Id.* at 16.

7 *Id.* at 44.

8 *Id.* at 115.

9 *Id.* at 221.

10 *Id.* at 222.

11 *Id.*

In *United States v. Nichols*, Gorsuch dissented from a Tenth Circuit ruling upholding the federal Sex Offender Registration and Notification Act that delegated to the Attorney General the power to determine how, when, and whether the law's registration requirement would apply to sex offenders convicted before the law went into effect. Gorsuch writes forcefully that this is a clear violation of the separation of powers: "[i]f the separation of powers means anything, it must mean that the prosecutor isn't allowed to define the crimes he gets to enforce."¹² Though it has been "some time" since the Supreme Court ruled that a law "cross[ed] the line" from a permissible delegation to a violation of the nondelegation doctrine (more than 80 years, in fact), it "has also been some time," then-Judge Gorsuch notes, "since the courts have encountered a statute like this one."¹³ Upholding this law

would require the Judiciary to endorse the notion that Congress may effectively pass off to the prosecutor the job of defining the very crime he is responsible for enforcing. By any plausible measure we might apply that is a delegation run riot, a result inimical to the people's liberty and our constitutional design.¹⁴

In *Gutierrez-Brizuela v. Lynch*, then-Judge Gorsuch wrote a concurring opinion asserting that the *Chevron* and *Brand X* deference doctrines violate the separation of powers. These doctrines "permit executive bureaucracies to swallow huge amounts of core judicial and legislative power and concentrate federal power in a way that seems more than a little difficult to square with the Constitution of the framers' design."¹⁵ This is "a problem for the judiciary" as well as "the people whose liberties may now be impaired not by an independent decisionmaker . . . but by an avowedly politicized administrative agent seeking to pursue whatever policy whim may rule the day."¹⁶

A number of the opinion excerpts demonstrate Justice Gorsuch's view that the judiciary should play a limited, but important, role in our government. For Justice Gorsuch, following the original meaning of laws or constitutional provisions "is the very reason we have independent judges: not to favor certain groups or guarantee particular outcomes, but to ensure that *all* persons enjoy the benefit of equal treatment under existing law as adopted by the people and their representatives."¹⁷ He dispels the notion that this approach "inevitably" leads to rulings in favor of preordained political outcomes. "Rubbish," he writes, "Originalism is a theory focused on *process*, not on *substance*. It is not 'Conservative' with a big C focused on politics. It is conservative in the small *c* sense that it seeks to conserve the meaning of the Constitution as it was written."¹⁸ The text itself is "the natural starting point for resolving any dispute over its

12 *Id.* at 87.

13 *Id.* at 95.

14 *Id.*

15 *Id.* at 76.

16 *Id.* at 79.

17 *Id.* at 10.

18 *Id.* at 114-15.

meaning.”¹⁹ For example, “[w]hen Hamlet threatens to ‘make a ghost of him that *lets* me,’” the Justice writes, “the reference may seem unclear to a modern reader. But when you look at a contemporaneous dictionary you quickly discover that ‘let’ meant ‘hinder’ . . . it’s clear that Hamlet was threatening to kill anyone who *got in his way*. Confusion solved by the original public meaning.”²⁰ “[I]n the end constitutional theory is about who decides the most important questions in our society,” and originalism and textualism serve the goal of ensuring the people, rather than unaccountable judges, decide.²¹

He shows originalism and textualism in action in several excerpted opinions. In a dissent from *Carpenter v. United States*, the Justice discusses the original meaning of the Fourth Amendment and the atextual “reasonable expectation of privacy” standard developed in *Katz v. United States*. He writes, “[f]rom the founding until the 1960s, the right to assert a Fourth Amendment claim didn’t depend on your ability to appeal to a judge’s personal sensibilities about the ‘reasonableness’ of your expectations of privacy. It was tied to the law.”²² The Fourth Amendment safeguards “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” “True to those words and their original understanding,” Gorsuch notes, “the traditional approach asked if a house, paper or effect was yours under law. No more was needed to trigger the Fourth Amendment.”²³ This protection “do[es] not depend on the breach of some abstract ‘expectation of privacy’ whose contours are left to the judicial imagination . . . [it] grants you the right to invoke its guarantees whenever one of your protected things . . . is unreasonably searched or seized. Period.”²⁴ He laments that many litigants forfeit these arguments, “leaving courts to the usual *Katz* hand-waving.”²⁵

In *United States v. Rentz*, writing for the en banc Tenth Circuit, then-Judge Gorsuch considers whether 18 U.S.C. § 924(c) allows multiple charges stemming from one act. The statute mandates five years’ imprisonment for “any person who, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm . . .”²⁶ He explains, “in the statute’s language we find three relevant verbs: uses, carries, and possesses. This alone supplies some evidence that each charge must involve an independent act of using, carrying, or possessing.”²⁷ Reading the statute “in accord with the normal uses of statutory (and sentence) construction goes some way to suggest that every

new conviction requires a new act falling into one of those three categories.”²⁸ He reasons:

Just as you can’t throw more touchdowns during the fourth quarter than the total number of times you have thrown a touchdown, you cannot use a firearm during and in relation to crimes of violence more than the total number of times you have used a firearm . . . [U]nless and until [Congress amends the statute], we will not relegate men and women to prison . . . because they did something that might—or might not—have amounted to a violation of the law as enacted.²⁹

Justice Gorsuch’s lessons on civility, courage, and humility are as relevant for laymen as they are for law students, lawyers, and judges. This sampling of his most important judicial opinions offers insight into how the Justice puts his commitment to originalism, textualism, and judicial restraint into practice. Beyond that, Justice Gorsuch offers a rare glimpse into his private world. He shares poignant stories about his final moments of anonymity before being thrust onto the national stage with his nomination to the Supreme Court. He reveals how a neighbor helped him evade reporters camped out near his home in the Colorado countryside and how he enjoyed coloring pictures with a little girl on the plane ride to Washington that would change his life forever. He writes, “Yes, I had written hundreds of judicial decisions over the last decade, sitting on an appellate court that serves about 20 percent of the continental United States. But few people outside of legal circles knew who I was. That life was now over.”³⁰ He also shares stories about tagging along to work with his mother (“a feminist before feminism”) who was the first female lawyer in the Denver District Attorney’s Office, how his father imparted his love of the outdoors (especially fishing), and how his British wife came to love life in the Great American West. There’s also a selection of photographs of his family, their many pets, and his happiest memories (fishing with his daughters). While fans of Justice Gorsuch will enjoy reading his speeches and opinions, it’s the brief piercing of the judicial veil that leaves the reader wanting more. This Gorsuch fan hopes a sequel is in the works.

19 *Id.* at 117.

20 *Id.*

21 *Id.* at 127.

22 *Id.* at 161.

23 *Id.*

24 *Id.* at 156-57.

25 *Id.* at 166.

26 *Id.* at 172.

27 *Id.* at 174.

28 *Id.*

29 *Id.* at 175.

30 *Id.* at 5.

