
BOOK REVIEWS

The Supreme Court Opinions Of Clarence Thomas, 1991-2006: A Conservative's Perspective

BY HENRY MARK HOLZER

*Reviewed by Jonathan H. Adler**

Since his nomination to the Supreme Court to replace Justice Thurgood Marshall in 1991, Justice Clarence Thomas has been a magnet for attention. His speeches and public appearances draw crowds and controversy, his principled jurisprudential philosophy both devotion and derision. After fifteen years on the Court, he is already one of the most studied Supreme Court justices of all time. Thomas has been the subject of more profiles, biographies, and book-length treatments than all but the most prominent jurists. Among the titles currently available on Amazon are Scott Michael Gerber's *First Principles: The Jurisprudence of Justice Thomas*, Ken Fostkett's *Judging Thomas: The Life and Times of Clarence Thomas*, Andrew Peyton Thomas' *Clarence Thomas: A Biography*, and the newly released *Supreme Discomfort: The Divided Soul of Clarence Thomas* by Kevin Merida and Michael Fletcher. Several more books were written about his epic confirmation battle, and more profiles are on the way. In 2003, Harper-Collins inked Thomas to a \$1.5 million book contract for *My Grandfather's Son: A Memoir*, due for release this October. This may seem a jaw-dropping sum for a Supreme Court Justice's memoir, but it was almost certainly a good investment.

A new addition to the shelf of books on and inspired by Justice Thomas is *The Supreme Court Opinions of Clarence Thomas: 1991-2006: A Conservative's Perspective* by Brooklyn Law School professor emeritus Henry Mark Holzer. Unlike other recent books, *Supreme Court Opinions* focuses exclusively on Thomas' work on the Court, eschewing biographical details or pop psychoanalysis of what makes the most enigmatic and admired Justice tick. Holzer provides a summary of the three-hundred-plus opinions authored by Justice Thomas during his first fifteen years on the Court (and includes a list of these opinions in an appendix), distilling Thomas' jurisprudence to its essentials.

Supreme Court Opinions provides a useful survey of Justice Thomas' judicial philosophy and its application to various issues, often through the language of Thomas' own opinions. As such, it succeeds in providing a highly sympathetic introduction to the jurisprudence of Justice Thomas. Those hoping for a rigorous academic treatment will be left disappointed, however, as the book lacks much critical analysis.

The book is organized by constitutional provisions, providing a tour of Thomas' opinions, virtually clause by clause. It is filled with extensive quotations and descriptions of Justice Thomas' opinions on various subjects. At times Holzer reproduces lengthy passages, or even whole paragraphs, "so that

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his words would, without need for anyone's 'interpretation,' speak for themselves." A consequence of this approach is that *Supreme Court Opinions* provides only limited explication of Justice Thomas' interpretive philosophy or its underlying rationale. For instance, Holzer notes that Thomas' dissent in *U.S. Term Limits, Inc. v. Thornton* provides the greatest insight into the Justice's "sophisticated federalism jurisprudence," but his discussion of the lengthy opinion covers less than a page.

Justice Thomas' opinions are remarkable for their philosophical and interpretive consistency. More than any other Justice on the Court—or in recent memory—Justice Thomas eschews silent acquiescence in opinions that do not track his jurisprudential views. Instead, he regularly authors short concurring opinions to qualify his support for his colleagues' interpretive conclusions. Whether or not one subscribes to Thomas' brand of originalism, his collected opinions have substantial jurisprudential force, and are worthy of searching analysis beyond the intended scope of the Holzer analysis. To probe and question Justice Thomas' opinions is to acknowledge the power and importance of his judicial philosophy and contribution to American law.

Holzer accurately describes Thomas as a "thoughtful conservative" whose "reputation among laypersons is not commensurate with his achievements." Justice Thomas has indeed distinguished himself on the Court as an able and articulate explicator of the original meaning of the Constitution. Thomas fans will not doubt enjoy Holzer's overview and summary of Thomas' unique contribution to the Court, and its hint at the further contributions that are yet to come. The substance of his distinctively conservative jurisprudence is worthy of more critical treatment and discussion. *Supreme Court Opinions* is a good reference work regarding the Justice's body of work—something like an annotated greatest hits—and should please Justice Thomas' many fans, but ultimately more work will be needed to earn more converts to his cause.

The Future of Marriage

BY DAVID BLANKENHORN

*First Review by Katherine S. Spabt**

*Second Review by Dale A. Carpenter***

David Blankenhorn's *The Future of Marriage* is an ambitious book—ambitious in its exploration of the question it takes seriously: "Will same-sex marriage strengthen or undermine the institution of marriage?" The author brings the prism of different disciplines to bear on the question, including biology, history, anthropology, sociology, and psychology. In doing so, he makes a unique contribution to the debate over "same-sex" marriage.

First, he connects the dots of big ideas inherently contained in the recognition of "same-sex" marriage, such as the elimination of the legal categories of mother and father by replacement with "legal" parent (necessarily unconnected to

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