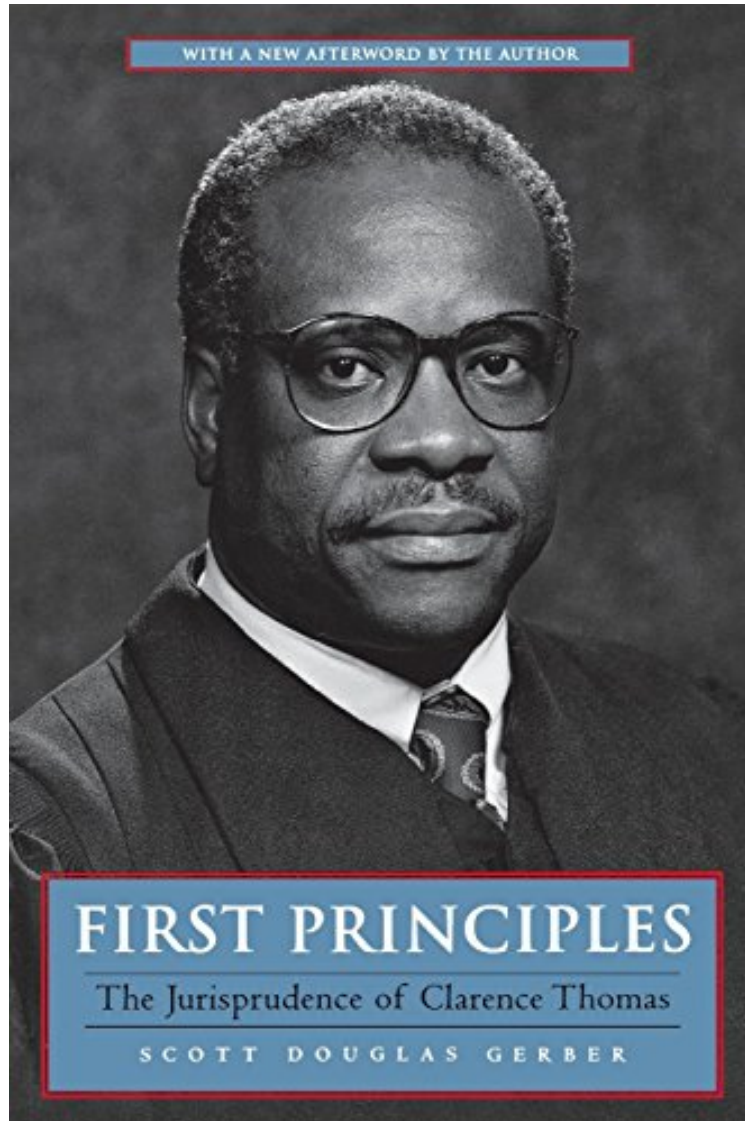


(Download ebook) First Principles: The Jurisprudence of Clarence Thomas

First Principles: The Jurisprudence of Clarence Thomas

Scott Douglas Gerber

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Scott Douglas Gerber : First Principles: The Jurisprudence of Clarence Thomas before purchasing it in order to gage whether or not it would be worth my time, and all praised First Principles: The Jurisprudence of Clarence Thomas:

4 of 8 people found the following review helpful. Insightful, but limited in views on civil libertiesBy Michael HeathI had one primary motivation for reading an arguably dated book: with the addition of Roberts and Alito to the Court, the Court will certainly transform itself from being the most effective institution, besides our military, in protecting the

reserved rights of "We the People" to a court that will most certainly expand government power as the Conservatives on the court gain control. J. Thomas, who has written many a provocative dissent, will now become a prolific writer of opinions that will grant the government sweeping powers as our individual rights are stripped away. I wanted to better understand what to expect out of Thomas as his opinions now become binding law. Gerber's book is considered the most fair, unbiased, and most accurate analysis of Thomas' jurisprudence though limited to the first five years of his tenure, though it also contains a short afterword that catches up on Thomas through 2000. What is most intriguing about Thomas is that Thomas claims to read and interpret our radically liberal constitution within the context of the even more radically, and revolutionary Declaration of Independence, unlike Scalia who claims to read only the Constitution from a textual perspective. Rather than yielding a solid libertarian view a la' Randy Barnett so well-espoused in Barnett's "The Lost Constitution", Thomas seems to constantly rule opposite of the original meaning or even original intent of those two documents if they deny a conservative political objective. So what gives? Gerber not only does a great job of providing a rhetoric-free analysis of Thomas's view, he also does a fine job of comparing those views to competing views and fairly crucifying Thomas's media critics who hate the rulings without any understanding of Thomas' arguments. As fair as Gerber is in analyzing Thomas' opinions against his judicial adversaries, Gerber also does a fascinating quantitative analysis to empirically expose whether Thomas is honestly deciding cases or is driven by conservative political objectives - the results of this research contained within the Appendices is alone worth owning this book. Some of Gerber's findings: Gerber publishes outtakes from a Thomas 1987 speech to the Heritage Foundation where Thomas claims to support the constitutional principle of the "primacy of the individual, and establishes our inherent equality as a God-given right." Thomas ends this subject in his speech arguing that Conservatives should embrace this concept rather than have this principle continue to be conservatism's "Achilles' heel". Fine rhetoric indeed, Gerber then goes on to show how in ruling after ruling, Thomas rejects his own principles to vote firmly for sweeping government power that deprives the individual of their rights with respect to civil liberties as Thomas ignores the fact that we reserved our rights and tries to limit those rights by trying to prove they are all enumerated in the Constitution, and narrowly at that. Again Gerber quotes Thomas defending the original meaning of the 9th amendment that would "explicitly deny to the national government certain powers over various subjects would imply". And throughout the book Gerber then exposes Thomas as he tries to narrowly interpret the other Bill of Rights amendments to show preference to government power rather than use the Constitution to interpret the powers delegated to the government to, as Jefferson said in the D of I, "secure the blessings of liberty", e.g., Thomas voting with a 5-4 majority approving of government funding of religious activity in *Rosenberger v. the U. of VA.* (1995); an unprecedented ruling that directly opposes the establishment clause and our equal protection rights. Not that Thomas is always on the side of non-delegated gov't power. Gerber does a very respectful and insightful analysis of Thomas views on civil rights in regards to affirmative action and Thomas' fierce defense of free speech regarding political speech, like in *McIntyre v. Ohio Elections Commission* where Thomas did support the original meaning of the Constitution by limiting government power to explicitly stated delegation of powers while broadly interpreting the people's and the press' right to speech. While the chapter on Thomas' views on Federalism, where Thomas is an active proponent of allowing states non-explicit powers to deny Americans their constitutional rights is interesting, Gerber doesn't go far enough, like Barnett has done, in analyzing whether any founding framer believed in the principle that the states could deny rights to "we the people", with the "people" being narrowly defined at that time. Many constitutional law bloggers have easily exposed Scalia as an absolute hypocrite regarding his defense of original meaning when he often, and lately almost constantly, ignores that concept when needed to support a conservative political goal. Thomas's opinions require a much more thorough examination to expose his rationale for his rulings; Gerber for the most part is up to the task. If you are a Thomas fan, you'll get plenty of support for your position, if you are aghast at his findings, you will understand how far Thomas must twist reason to support his conservative ideology, and if you are like me, a person who thinks Thomas has unlimited potential but is also aghast at his rulings, you'll find evidence that maybe with time Thomas will begin to defend our reserved rights as time develops his jurisprudence, unfortunately the two new members will most likely have no positive influence on Thomas, providing support for narrow rulings with twisted logic to claim protection of rights while ruling in a manner that destroys those very rights.

0 of 1 people found the following review helpful. Four Stars
By Marc Lemaire
Well written but a little too conservative for me.
15 of 18 people found the following review helpful. A scrupulously fair assessment of Justice Thomas
By A Customer
A post-Anita Hill assessment of the Justice's work on the Supreme Court. Other books on Thomas just look at his highly controversial confirmation hearings, but this book examines what kind of justice Thomas has dispensed. The author tries to be fair to his subject, something that other commentators on Thomas haven't felt a need to be. Gerber finds Justice Thomas to be a man of principle, grounding his economic opinions in the Constitution and his civil rights decisions in the Declaration of Independence. This book should appeal to fair-minded people who have an interest in the workings of our highest court and in the thinking of, perhaps, our most libertarian justice ever.

Clarence Thomas is one of the most vilified public figures of our day. To date, however, his legal philosophy has

received only cursory treatment. *First Principles* provides a portrait of Thomas based not on the justice's caricatured reputation, but on his judicial opinions and votes, his scholarly writings, and his public speeches. The paperback edition includes a provocative new Afterword by the author bringing the book up to date by assessing Justice Thomas's performance, and the reaction to his decisions, during the last five years.

"...the most comprehensive and incisive account of Thomas' political philosophy to date." -*First Things*"Gerber's book is a breath of fresh air, because it treats Justice Thomas and his work with respect and intellectual curiosity." -*Ideas on Liberty*"Gerber is scrupulously honest in dissecting Thomas' opinions, their legal background, and their place in the Court's jurisprudence, and he demonstrates his own excellent capabilities as an objective, fair, thoughtful, and thorough scholar."-*The Federal Lawyer*"The virtue of Scott Gerber's new study ... is that it puts in better perspective Thomas's whole career." -*The Weekly Standard*"...An excellent and balanced review of the justice's first years on the Court." -*National* About the Author Scott Douglas Gerber, Ph.D., J.D., is author of *To Secure These Rights: The Declaration of Independence and Constitutional Interpretation* and editor of *Seriatim: The Supreme Court before John Marshall*, both available from New York University Press. He teaches at Ohio Northern University College of Law.