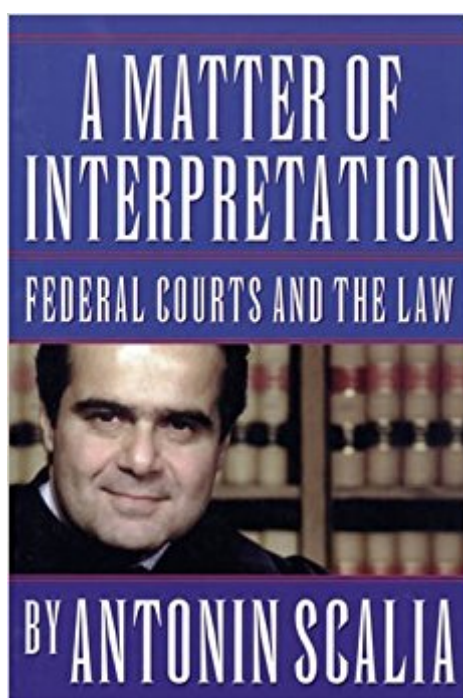


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A Matter Of Interpretation: Federal Courts And The Law (The University Center For Human Values Series)



Synopsis

We are all familiar with the image of the immensely clever judge who discerns the best rule of common law for the case at hand. According to U.S. Supreme Court Justice Antonin Scalia, a judge like this can maneuver through earlier cases to achieve the desired aim--"distinguishing one prior case on his left, straight-arming another one on his right, high-stepping away from another precedent about to tackle him from the rear, until (bravo!) he reaches the goal--good law." But is this common-law mindset, which is appropriate in its place, suitable also in statutory and constitutional interpretation? In a witty and trenchant essay, Justice Scalia answers this question with a resounding negative. In exploring the neglected art of statutory interpretation, Scalia urges that judges resist the temptation to use legislative intention and legislative history. In his view, it is incompatible with democratic government to allow the meaning of a statute to be determined by what the judges think the lawgivers meant rather than by what the legislature actually promulgated. Eschewing the judicial lawmaking that is the essence of common law, judges should interpret statutes and regulations by focusing on the text itself. Scalia then extends this principle to constitutional law. He proposes that we abandon the notion of an everchanging Constitution and pay attention to the Constitution's original meaning. Although not subscribing to the "strict constructionism" that would prevent applying the Constitution to modern circumstances, Scalia emphatically rejects the idea that judges can properly "smuggle" in new rights or deny old rights by using the Due Process Clause, for instance. In fact, such judicial discretion might lead to the destruction of the Bill of Rights if a majority of the judges ever wished to reach that most undesirable of goals. This essay is followed by four commentaries by Professors Gordon Wood, Laurence Tribe, Mary Ann Glendon, and Ronald Dworkin, who engage Justice Scalia's ideas about judicial interpretation from varying standpoints. In the spirit of debate, Justice Scalia responds to these critics.

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Customer Reviews

How should judges interpret statutory and constitutional law? Gutmann (politics, Princeton; Democracy and Disagreement, LJ 12/15/96) has edited an admirable work focusing on the relationship of the federal courts in interpreting the law. Supreme Court Justice Scalia's essay elaborates on his philosophy of textualism, an approach that eschews legislative intention in favor of focusing on the original meaning of the text to be interpreted. He applies this principle to constitutional law, arguing that we should concentrate on the Constitution's original meaning. Following this essay are brief comments by noted legal scholars Ronald Dworkin, Mary Ann Glendon, Lawrence Tribe, and Gordon Wood. It's deceptively easy to simplify Justice Scalia's ideas to a single sentence, as Gutmann does in her preface: "laws mean what they actually say, not what legislators intended them to say but did not write into the law's text." But the debates over the manner of interpreting legal texts have been held since the very beginning of our constitutional government. This collection certainly isn't the final word, but it offers an excellent starting place. For academic collections.

—Jerry E. Stephens, U.S. Court of Appeals Lib., Oklahoma City

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Supreme Court Justice Scalia posits his views of how statutes and the Constitution should be interpreted; a noted historian and three distinguished legal scholars respond. Scalia, whom journalistic shorthand often renders the intellectual leader of the Court's right wing, sets forth the principles of what he calls "textualism" and others call "original intent." To reduce a complex and subtle argument to a sentence, he believes that judges should discern a law's import from the words in which it is stated, not from divining the legislative intent behind its passage or interpreting the text through analysis of its historical context; he finds the application of common-law adjudication to constitutional issues a threat to democracy. Apart from Mary Ann Glendon, who contributes a rather dry comparison of the techniques of statutory interpretation in European civil-law countries with those derived from our common-law traditions, the replies take exception to Scalia's method. Glendon's Harvard Law School colleague Laurence Tribe lauds Scalia's insistence on a close

reading of statutory texts but contends that specific constitutional language must be studied ``in light of the Constitution as a whole and the history of its interpretation''; he doubts that any set of ``rules'' for constitutional exegesis is possible. Ronald Dworkin, of New York University Law School, finds textualism inadequate for constitutional analysis because ``key constitutional provisions, as a matter of their original meaning, set out abstract principles rather than concrete or dated rules.'' Brown University historian Gordon Wood disputes Scalia's contention that judges only recently began usurping authority from elected legislatures. Although all of the authors write clearly, it is unlikely that anyone not fairly well versed in constitutional law will fully grasp their arguments. A small but worthwhile addition to the literature. -- Copyright ©1996, Kirkus Associates, LP. All rights reserved. --This text refers to an out of print or unavailable edition of this title.

Outstanding!! Scalia writes so very clearly and logically. And in this book he gives scholars of opposing views the vehicle to debate him. Every American should understand the argument presented here. This is not really a book - it is a series of brief essays that address the most important issue in American law. How should laws and the Constitution be interpreted? You will always be glad you read this book!!

Good book! Needed it for college. :)

Very small and easy read book. To make u think.

This book was not exactly what I expected; it was better. It contains an essay by Justice Scalia about the judicial role in deciding statutory and constitutional questions. His essay is followed by comments by other individuals which, in turn, is followed by Justice Scalia's response. The most fascinating part of the entire book was the recognition by the writers that judges have taken it upon themselves to legislate and decide what government policy "ought to be" in rendering judicial decisions. Some of the writers seem to think this is acceptable and expected. To an attorney who has watched courts reach intellectually dishonest decisions in cases where there is potential economic or political impact (for example, one appellate court went so far as to render an unpublished opinion in one case -- apparently to conceal its dishonesty in letting a state divert millions of dollars from a state retirement plan -- then followed up a few months later with a published opinion by the same judges with a precisely opposite holding on an important legal question decided in the first case), the concerns expressed by Justice Scalia were more than

theoretical. While our legislators may not be the sharpest knives in the drawer, at least voters can remove them from office or persuade them to change their minds. There is no such opportunity with unelected judges who not only can manipulate facts and law in their rulings, but can issue decisions that never see the light of day and thus escape public scrutiny. Both liberals and conservatives have plenty to fear from judges who believe that they are a law unto themselves.

Short but very interesting chapter written by Scalia. Remainder of book is four or five different chapters written by legal notables about Scalia's chapter. Not what I expected. Thought the entire book was written by Scalia - disappointing.

Stellar!

This book is not an easy read but it is an important read. For those of us who believe (as I formerly did) that legislators' intent should form a basis for interpretation of a difficult statute, this essay will help you discover just how slippery is that slope.

For upcoming student of political science and the interpretation of the constitution, I LOVE this book. Gives an insight into the most unappreciated methods of interpreting the constitution. I recommend it 100% and I am glad that it is a whole section in our philosophy of law class.

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