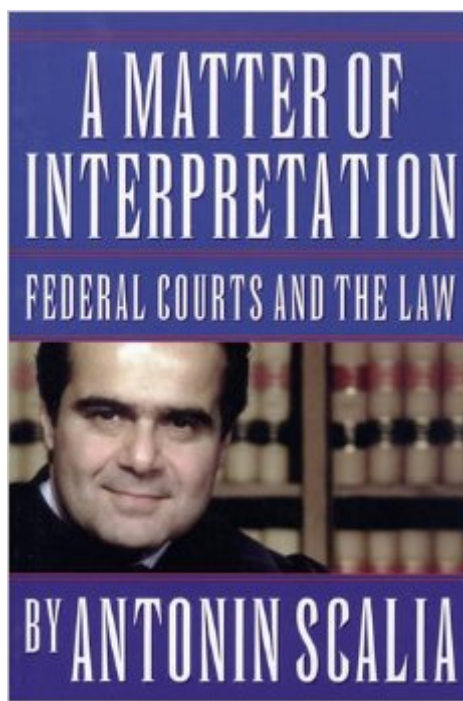


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# A Matter Of Interpretation



## 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.

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## Customer Reviews

I'd like to mention, first of all, what this book is not. It is not for the casual observer of the American judicial system. Justice Scalia gives a probing examination of various methods used in Constitutional and judicial interpretation. If the reader is not consumed with learning law, or delineating the intent of the Constitution, this book will probably be a major disappointment. On the other hand, if you have a solid foundation of knowledge on the judiciary and the U.S. Constitution, you will enjoy this book and will learn a great deal of what Justice Scalia has to offer. Scalia offers up a 50 page paper on the various methods of judicial interpretation, each method's strengths and weaknesses, and the how and why of whether or not each method is viable. Scalia's paper is then cross-examined by Ronald Dworkin, Mary Ann Glendon, Amy Gutmann, Lawrence Tribe and Gordon Wood. Scalia then offers up his rebuttal and I believe, strengthens his theories of judicial interpretation. I am not going to go into my own how's and why's, as I am a fan of Scalia's and would rather allow the reader to reach their own conclusions. Whether you like this book, or hate it, one thing is for certain, you will come away with a much better knowledge of the U.S. judicial system, how it reaches some of its conclusions, and what the consequences of continuing with current methods of judicial interpretation will be on our country. Monty Rainey[...]

I loved the format of the book! Scalia presents his judicial interpretative process, and honestly admits hypocrisy when he occasionally votes ideology rather than using his system. Then, rather than providing a half-hearted attack on his ideological opponents, he invites them to respond to his thesis, each with their own chapter! You may not agree with Scalia, but you can't doubt his moral courage based on his invitation for criticism in his own book. I also appreciated the chapter on the structure of Germany's Constitution to help us understand why principle, rather than statute, plays such a big role in American judicial interpretative processes. Everyone that cares about the Supreme Court should read this book. I have yet to find a better book to learn the motivations and processes utilized by each ideological camp. After reading this book, my ability to understand the logic of the court, for both rulings and the opinions, has been greatly enhanced. While unintended, Scalia also helped cement my personal belief that a blend of original meaning (aka textualism) and abstract

principalism, and not Scalia's textualist approach alone, is by far the optimal method for judicial interpretation based on our Constitution.

I assume you have seen a description of the book already. The book is good enough to be recommended overall, but there were some disappointments. First, the justice does not stay long on his professed topic, the interpretation of statutes, but goes over into constitutional interpretation. Those who make replies follow gladly, and there is really little on the whole about statutory instead of constitutional interpretation. Moreover, the justice did not make it clear enough to me how his textualist philosophy differs from literalism, which he explicitly disavows. Also disappointing is that I think the justice could have made a much stronger case for what I do glean to be his philosophy by invoking legal principles already understood when the constitution was written, and especially by invoking Justice Story's brilliant decision in *Martin v Hunter's Lessee*. In that decision rules of constitutional interpretation are stated clearly and authoritatively, and are much along the lines of what Scalia advocates. Lastly, Justice Scalia's essay does not measure up to the keenness of insight and language he shows in his best dissents, though there are some good moments. Despite these drawbacks, it is a very thought-provoking work and its brevity gives one less of an excuse for not reading it. It is largely free of technical vocabulary and there are no arcane discussions.

This book is a real treat for anyone who loves legal (constitutional that is) thought. It would also make a great introduction into what several of the greatest thinkers in the Anglo-American legal profession think. The book is mainly a lecture by Scalia where he lays out his theory of 'textualism,' that is closely grounding constitutional interpretation to the original meaning of the words of the constitutional (or statutory) text. It is a spirited explanation of the theory and includes defenses against some of the more common attacks on the theory. But the book gets better. Four legal experts, Laruence Tribe, Ronald Dworkin, a historian and Glendon all give their comments on textualism. Scalia then replies to these comments at the end. A wonderful look into debate between five incredible minds who often disagree.

Antonin Scalia is blessed with a powerful intellect and a persuasive manner of expression. It's about time that a member of the US Supreme Court explained in terms intelligible to the average "newspaper reader" just what is going on in federal appeals courts. If not all of Justice Scalia's recommendations are correct, he certainly, at long last, has been able to ask the right questions. Proponents of judicial activism (and Scalia graciously shares space with two of the most famous,

Tribe & Dworkin) will be hard-pressed to keep up the pretense that federal courts today are much more than arenas for elite social engineers to rework society in their own image and likeness. A fine study in modern legal philosophy, I recommend this work with few reservations. My complete review of Justice Scalia's book can be found in "National Catholic Register" 26 Oct. - 1 Nov. 1997, p. 6. I have seen the review posted on the Web as well.

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