

# REGENT UNIVERSITY LAW REVIEW

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Volume 12

1999-2000

Number 2

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*Because of his dedication to the principles of higher law,  
the editors respectfully dedicate this issue to  
Justice Clarence Thomas.*

## JUSTICE CLARENCE THOMAS: REVIVING RESTRAINT AND PERSONAL RESPONSIBILITY

*Senator John D. Ashcroft\**

In 1974, my friend and mentor Jack Danforth hired me to work in the Missouri attorney general's office. One of the attorneys in that office was an intense young man, fresh out of Yale and Holy Cross, named Clarence Thomas. The young attorney destined for the Supreme Court impressed me then with his intelligence, his honesty, and his high standards of ethical conduct. He continues to impress me today.

On the Court, he has been a strong and clear voice, calling on the courts to understand the Constitution as written, and to resist the impulse to read new rights or meanings not included in the original text. His concurrences lead the majority in the right direction. His dissents show a person unafraid to stand up for what is right. His decisions make me proud that he sits on the Court.

Two of Justice Thomas's opinions, in particular, demonstrate his leadership role on the nation's highest court. The cases were not high-profile; by the empyrean standards of the Supreme Court, they were ordinary. But these two cases highlight Justice Thomas's vital role in advancing the conservative legal tradition of interpreting the law, not creating it.

In the 1995 case of *U.S. Term Limits, Inc. v. Thornton*,<sup>1</sup> Justice Thomas wrote a devastating dissent to the majority opinion, which held that states and individuals lack the right to impose term limits on their representatives. I believe in term limits, but that is not why I admire this decision. I admire it because Justice Thomas did not make his

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\* United States Senator from Missouri.

<sup>1</sup> 514 U.S. 779 (1995).

decision on the basis of support for term limits, but on the basis of his support for the Constitution.

Justice Thomas summed up his powerful, 46 page opinion in the following three short sentences: "Nothing in the Constitution deprives the people of each State of the power to prescribe eligibility requirements for the candidates who seek to represent them in Congress. The Constitution is simply silent on this question. And where the Constitution is silent, it raises no bar to action by the States or the people."<sup>2</sup>

Of these sentences, the third is the most powerful and I often quote it in speeches. In one short sentence of 18 words, Justice Thomas summarized the conservative philosophy of jurisprudence. We live in a constitutional democracy, and when the Constitution does not speak, the people or the states—not the courts—should determine the law on an issue. Unfortunately, too often this is not the case, as the majority decision in *Thornton* demonstrated. Too many judges believe that they can legislate from the bench, disregarding our time-tested, carefully constructed, constitutional system.

The rest of the decision hammers home that one overarching point. Justice Thomas argues that there is "nothing in the Constitution that precludes the people of each State (if they so desire) from authorizing their elected state legislators to prescribe qualifications on their behalf."<sup>3</sup> This is a measured conclusion, and it is measured in an important way. Justice Thomas did not argue, as a judicial activist would argue, that term limits should be the law of the land or that term limits have positive effects. All Justice Thomas said was that in our system, the states and the people have the authority to determine whether they will impose term limits. This approach does not change his decision, but it changes the way decisions are made.

In the case of *United States v. Lopez*, also decided in 1995, Justice Thomas agreed with the majority that the Commerce Clause of the Constitution did not grant Congress the right to make it a federal offense to possess a firearm in a school zone.<sup>4</sup> Most likely Justice Thomas opposes firearms in school zones, but his decision is about the limits of the Commerce Clause, not his personal view. According to Justice Thomas, the interpretation of the Commerce Clause that would permit such a law, "if taken to its logical extreme, would give Congress a 'police power' over all aspects of American life."<sup>5</sup> Justice Thomas's limited interpretation of the Commerce Clause is a protection to individuals

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<sup>2</sup> *Id.* at 846 (Thomas, J., dissenting).

<sup>3</sup> *Id.* at 883.

<sup>4</sup> 514 U.S. 549 (1995).

<sup>5</sup> *Id.* at 584 (Thomas, J., concurring).

from excessive police power by the state, and I am glad that he is on the Supreme Court to make that case.

Outside the Court, Justice Thomas has performed a different, but equally valuable, service for America. In his speeches, including the speech you are about to read, Justice Thomas preaches the doctrine of individual responsibility. For a young man who grew up in a poor, single-parent family with limited opportunities, individual responsibility was the only way to make the journey from Pin Point, Georgia, to the marbled majesty of the Supreme Court. His grandfather taught him about personal responsibility, and, in this speech, Justice Thomas continues to pass on his grandfather's lesson.

The speech takes on the theme of personal responsibility and explains how American society fails to teach that vital message, which Justice Thomas learned from his grandfather as a youngster in Savannah. Unfortunately, American society tends to celebrate victims, not heroes.

To change this worrisome development, Justice Thomas argues, our culture should look to the heroes who take responsibility, rather than to the "victimologists" who constantly cry foul. He recalls the heroes of his youth—George Washington, Abraham Lincoln, George Washington Carver, and the plucky protagonists from the tales of Horatio Alger. What these characters shared was that they were decidedly not victims. They took life as it came, exercised responsibility, and made the most they could with what they had. They did not ask for special privileges, did not sue the most successful person in sight, did not complain that society had dealt them bad circumstances.

This is a lesson our society should learn anew, today. It is time to teach children to admire not the most famous or most victimized, but the most virtuous and responsible. It is difficult to change course. But every step we take in the wrong direction lengthens the journey back to the right path.