# A Matter of Interpretation: Federal Courts and the Law: Federal Courts and the Law (The University Center for Human Values Series)

*Von Antonin Scalia*
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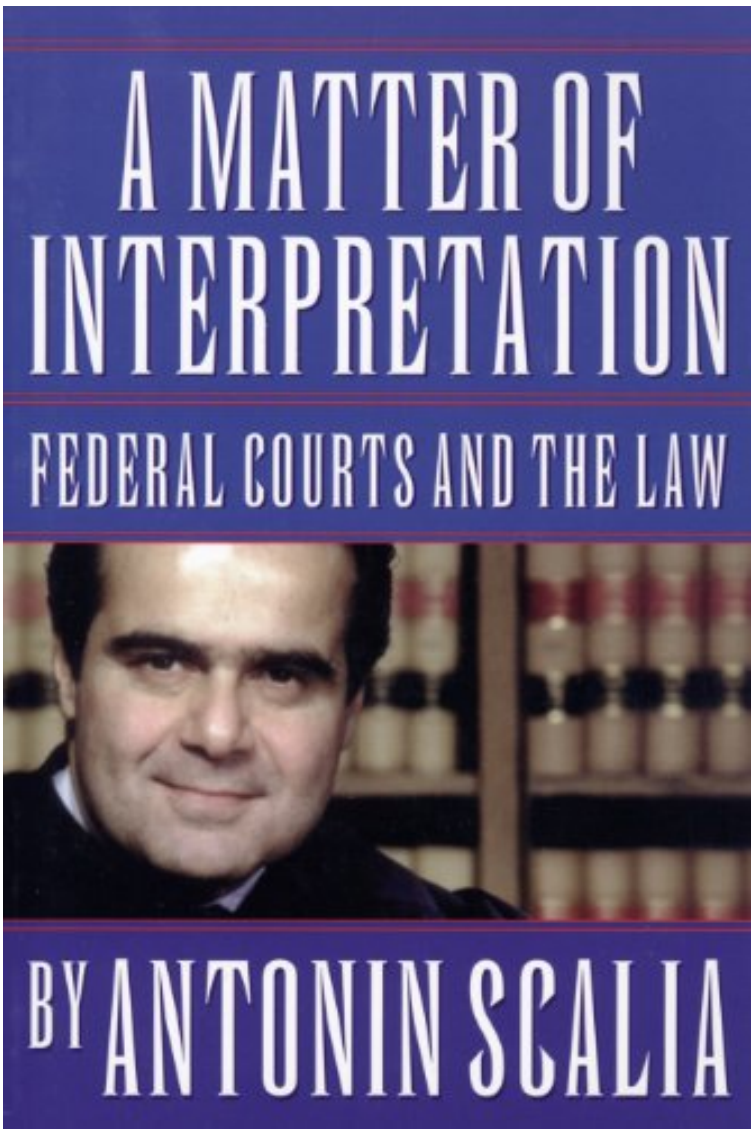




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**Von Antonin Scalia : A Matter of Interpretation: Federal Courts and the Law: Federal Courts and the Law (The University Center for Human Values Series)** before purchasing it in order to gage whether or not it would be worth my time, and all praised A Matter of Interpretation: Federal Courts and the Law: Federal Courts and the Law

(The University Center for Human Values Series):

KundenrezensionenHilfreichste Kundenrezensionen0 von 0 Kunden fanden die folgende Rezension hilfreich. Recommended, but with reservations.Von Ein KundeI 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 dissappointing 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.0 von 0 Kunden fanden die folgende Rezension hilfreich. Ignores data on literacy processes and social identities.Von Ein KundeUnfortunately, Justice Scalia's views demonstrate a profound ignorance of any scientific understanding related to his topic. His all too common scientific blindspot can be assessed by comparing his analysis to works like E. D. Hirsch, Jr.'s (1987), Cultural Literacy, and Tom Tyler et. al.'s (1997), Social Justice in a Diverse Society. Quite correctly, Scalia identifies his approach as "an art or a game, rather than a science" (p. 8). By contrast, Hirsch and Tyler et. al. show how reliable data can contribute to our knowledge of important literacy processes like reading, writing, and judging.Hirsch's literature review related to "The Discovery of the Schema" (Ch. 2) leads him to conclude that most of the "meaning" from any printed page comes not from the text but from the reader's own literacy, i.e., prior knowledge, ignorance, and disinformation. From research in social psychology Tyler et. al. show how relevant social identities shape our judgments of justice and injustice. In this limited but increasing empirical light, we can understand our legal conflicts much better, e.g., the 1856 Dred Scott decision that denied federal citizenship to African Americans, the belated voting rights of women in 1920, and the Warren Court's recognition that suspects (like Richard Jewell) need and deserve meaningful constitutional protection.Contrary to Justice Scalia, the key to understanding these historical and continuing conflicts is not "moral principles" that "are premanent" (p. 146) and tied to any text and its original context. Rather, congruent with Professor Dworkin's "semantic intention" (pp. 118-119) and Professor Tribe's "abstract principles," the most valid literacy keys are the different ways that we perceive and value or devalue the identities of others. (This should be quite obvious to anyone who takes the time and trouble to read the Dred Scott "reasoning" "judgment," including the two dissenting opinions.) The fundamental key to proper legal understanding begins with perceiving African Americans, women, children, suspects, and even prisoners as persons. Then, as the introductory or Identity Clause of the Fourteenth Amendment says, "All persons born or naturalized in the United States" are citizens and, thus, are entitled to the due process of law and its equal protection. Depersonalization of any of these persons undermines our literacy process, the Constitution, and the democratic morality that can unite as a one nation and People.0 von 0 Kunden fanden die folgende Rezension hilfreich. A fine critique of modern legal philsophy in the US.Von Edward PetersAntonin 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.

KurzbeschreibungWe 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.From Kirkus sSupreme 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 adjudicature 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. -- From Library JournalHow 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