
BOOK
REVIEW

THE ENIGMA OF CLARENCE THOMAS: A CRITICAL
ANALYSIS

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*There is nothing you can do to get past black skin. I don't care how educated you are, how good you are—you'll never have the same contacts or opportunities, you'll never be seen as equal to whites. - Clarence Thomas*¹

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I. INTRODUCTION

The preceding quote would strike many as unlikely to come from a Republican-appointed Supreme Court justice, the "Tea Party justice,"² and Donald Trump's favorite justice.³ It seems more likely to be said by a conservative only as a way to mock the liberal view on race. This demonstrates the enigma of Clarence Thomas as covered

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¹ COREY ROBIN, THE ENIGMA OF CLARENCE THOMAS 2 (2019).

² *Id.*

³ *Id.* at 3.

in Corey Robin's *The Enigma of Clarence Thomas*. The book aims to understand a man who has praised Malcolm X⁴ and Louis Farrakhan,⁵ while also vehemently arguing against affirmative action.⁶ While making sense of a person who holds these unlikely sets of views is not easy, Robin does a good job with the subject. This essay is a critical analysis of the book, focusing on the areas of bias, Anita Hill, and race.

II. BIAS

When writing about any modern-day political figure, an author's personal bias will inevitably be apparent. Overall, Robin handles this well. He is upfront regarding how he "reject[s] virtually all of Thomas's views."⁷ Nevertheless, he faithfully presents Thomas's jurisprudence, and the critiques provided are—for the most part—well founded, adding to the understanding of Thomas, the man.

There are, however, areas where Robin's bias seems to go too far, particularly when he alleges that Thomas holds contradictory views. Yes, Thomas is adamantly opposed to affirmative action.⁸ And yes, he likely would not have been accepted to Yale Law School without affirmative action.⁹ But it is not clear, as Robin asserts, that this demonstrates an inconsistency. First, the counterfactual nature of history does not allow one to claim with certainty that there was a net benefit to Thomas's life from affirmative action. Perhaps his life would have ultimately been "better"—however defined—if he would have attended a less prestigious law school, or no law school at all. Second, it is not *per se* inconsistent to accept a benefit from a program while maintaining the position that the program should be abolished.¹⁰ Finally, it would make little sense for people to be locked

⁴ *Id.*

⁵ *Id.* at 9.

⁶ *Id.* at 33.

⁷ *Id.* at 15.

⁸ Mark S. Brodin, *The Fraudulent Case Against Affirmative Action—The Untold Story Behind* Fisher v. University of Texas, 62 BUFF. L. REV. 237, 238 (2014).

⁹ ROBIN, *supra* note 2, at 33. It is interesting to note that he was accepted to Yale Law School at a time when they implemented a quota system—10 percent of the incoming class was to be students of color—which would now be struck down as an impermissible affirmative action scheme. See Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978).

¹⁰ For example, if someone is against a taxpayer subsidized stadium being built, it is not necessarily inconsistent for that person to attend games at the stadium.

into positions for life based on benefits they partook in during their twenties.

Elsewhere, Robin claims that a contradiction exists between Thomas's belief that the state cannot affirmatively help African Americans and his belief that state involvement only serves to make things worse for African Americans.¹¹ While Thomas's opinions on these two issues may or may not be supported by the evidence, there is no logical contradiction in maintaining these two positions. An analogy helps to illustrate: It is not a contradiction for someone to maintain that allowing a child to intervene in the process of painting a portrait will both not provide any benefit and only serve to make things worse.

As to be expected on controversial political issues, Robin occasionally engages in the practice of selectively presenting information to cast Thomas's jurisprudence in a negative light. For example, he says that Thomas "defends the rights of the wealthy to donate unlimited sums to their favored candidates."¹² This is true, but the fact that *Citizens United v. Federal Election Commission*¹³ also defends the rights of labor unions to do likewise is never mentioned.¹⁴ The book is not saturated with these biases, but they do exist. This will likely cause frustration to Clarence Thomas supporters, as the author even makes explicit mention as to how the book is written with the intended audience of Thomas opponents.¹⁵

III. ANITA HILL

While the Anita Hill incident is relegated to only three pages, Robin makes a lot of bold claims in that limited space. He states that it is "clear that Thomas lied to the Judiciary Committee when he stated that he never sexually harassed Anita Hill."¹⁶ Having stated

¹¹ ROBIN, *supra* note 2, at 114.

¹² *Id.* at 129.

¹³ 558 U.S. 310 (2010).

¹⁴ *See generally id.*

¹⁵ ROBIN, *supra* note 1, at 221. When discussing how "Thomas begins from premises that are shared yet arrives at conclusions from which we recoil," he starts by responding, "When brought face-to-face with an enemy whose vision we share . . ." *Id.* Therefore, Robin is assuming that the audience he is writing to "recoils" from Thomas's conclusions and views him as an "enemy."

¹⁶ *Id.* at 163.

his certainty as to Thomas's guilt in the first sentence, Robin then moves on to speculating as to why the guilty Thomas responded to Anita Hill in the way he did.¹⁷ Here, Robin goes too far. He alleges that Thomas's response was due to his view of black women as, among other negative things, "treacherous sources of dependency and dissolution."¹⁸ If, as Robin does, one begins with the assumption that Thomas was guilty,¹⁹ it seems far more likely that Thomas's response to the Anita Hill accusation was a function of him wanting to be appointed to the Supreme Court, not some deep-seated hatred of black women. Thomas's defense, that his opponents were engaging in a "high-tech lynching for uppity blacks"²⁰—whether accurate or not—was highly effective. Despite being a conservative appointed by a Republican president, he received 70% support from African Americans.²¹

IV. INSERTING RACE EVERYWHERE

Conservatives often criticize liberals for artificially inserting race into issues where it is not present.²² This makes Thomas's favorable standing with conservatives so peculiar because, as Robin points out, he engages in this activity likely more than any other justice.²³ For example, in supporting the *Citizens United* decision, he associated campaign finance laws to white supremacy.²⁴ In his concurring opinion in *Zelman v. Simmons-Harris*—which concerned whether the Establishment Clause barred the use of public money to send people to attend religious schools²⁵—Thomas attempted to turn the issue into

¹⁷ *Id.* at 163–64.

¹⁸ *Id.* at 164.

¹⁹ This author makes no claim either way on the issue.

²⁰ *Id.* at 163.

²¹ *Black Support for Nominee Rises*, CHI. TRIB. (Oct. 15, 1991), <https://www.chicagotribune.com/news/ct-xpm-1991-10-15-9104030243-story.html>.

²² See generally Christopher F. Rufo, *Even After Trump Ordered an End, Federal Agencies Still Push Insane 'Critical Race Theory'*, N.Y. POST (Sept. 15, 2020, 8:39 PM), <https://nypost.com/2020/09/15/federal-agencies-still-pushing-insane-critical-race-theory/> (displaying that conservatives oppose the liberal push to use "critical race theory" as part of personnel training for federal employees).

²³ ROBIN, *supra* note 1, at 41 ("Thomas raises the banner of race in precincts that neither liberals nor conservatives believe involve race at all").

²⁴ *Id.* at 42–43.

²⁵ 536 U.S. 639 (2002).

one involving race.²⁶ In his *Kelo v. City of New London*²⁷ dissent, Thomas took a case about eminent domain and attempted to make it into one involving racial oppression.²⁸

V. CONCLUSION

The topics discussed in this review are only a small sample of what the book provides. Other topics include an interesting interpretation of Thomas's political conversion story²⁹ and an analysis on how Thomas uses claims that the government denies citizens "dignity" inconsistently.³⁰ Namely, why does affirmative action deny dignity but not same-sex marriage bans?³¹ The book also contains numerous anecdotes that provide a glimpse into the dualistic nature of Thomas. One example is how Thomas displayed a Confederate flag next to a Pan-African flag in his law school apartment.³²

Readers will likely still view Thomas as an enigma after reading the book, but they will do so with a better understanding of how, at least in his own mind, Thomas reconciles his positions. Robin strikes a satisfactory balance between the two extremes of writing a biography and a legal analysis of Thomas's jurisprudence. Likewise, despite the critiques provided in this review, overall, Robin obtained a healthy balance between an entirely dispassionate, neutral analysis of Thomas's jurisprudence and an advocacy piece against Thomas.

²⁶ ROBIN, *supra* note 1, at 48.

²⁷ 545 U.S. 469 (2005).

²⁸ ROBIN, *supra* note 1, at 115–18.

²⁹ *Id.* at 83–86.

³⁰ *Id.* at 58.

³¹ *Id.*

³² *Id.* at 87.