

[THOMAS QUOTATIONS ON NATURAL LAW]

KEYNOTE ADDRESS, PACIFIC RESEARCH INSTITUTE'S CIVIL RIGHTS
TASK FORCE, AUGUST 4, 1988

"THE AMERICAN CONCEPTION OF THE RULE OF LAW PRESUPPOSES
APPRECIATION FOR THE POLITICAL PHILOSOPHY OF NATURAL RIGHTS
IN ALL THE DEPARTMENTS OF GOVERNMENT. THE CONSERVATIVE
FAILURE TO APPRECIATE THE IMPORTANCE OF NATURAL RIGHTS AND
HIGHER LAW ARGUMENTS CULMINATED IN THE SPECTACLE OF SENATOR
BIDEN, FOLLOWING THE DEFEAT OF THE BORK NOMINATION, CROWING
ABOUT HIS BELIEF THAT HIS RIGHTS WERE INALIENABLE AND CAME
FROM GOD, NOT FROM A PIECE OF PAPER. WE CANNOT EXPECT OUR
VIEWS OF CIVIL RIGHTS TO TRIUMPH, BY CONCEDED THE MORAL
HIGH GROUND TO THOSE WHO CONFUSE RIGHTS WITH WILFULNESS."

- * SPEECH AT FEDERALIST SOCIETY FOR LAW AND POLICY STUDIES,
UNIVERSITY OF VIRGINIA SCHOOL OF LAW, MARCH 5, 1988

"HIGHER LAW PRINCIPLES HAD TO WORK THEIR WAY THROUGH THE CONSTITUTION'S TEXT. A NATURAL RIGHTS UNDERSTANDING OF THE CONSTITUTION DOES NOT GIVE JUSTICES A RIGHT TO ROAM. RATHER, IT POINTS THE ENTIRE GOVERNMENT TOWARD FREEDOM."

- * KEYNOTE ADDRESS CELEBRATING THE FORMATION OF THE PACIFIC RESEARCH INSTITUTE'S CIVIL RIGHTS TASK FORCE, AUGUST 4, 1988

[WHAT MAKES THE FOLLOWING QUOTATION SIGNIFICANT IS THAT THOMAS IS CRITICIZING A SPECIFIC SUPREME COURT CASE ON THE BASIS OF NATURAL LAW -- INDICATING THAT NATURAL LAW IS NOT JUST A "PHILOSOPHY," BUT HELPS DECIDE -- AND EVEN CONTROLS JUDICIAL DECISIONS.]

"CONSERVATIVE HEROES SUCH AS THE CHIEF JUSTICE FAILED NOT ONLY CONSERVATIVES BUT ALL AMERICANS IN THE MOST IMPORTANT COURT CASE SINCE BROWN V. BD. OF EDUCATION. I REFER OF COURSE TO THE INDEPENDENT COUNSEL CASE, MORRISON V. OLSON. ... JUSTICE ANTONIN SCALIA'S REMARKABLE DISSENT IN [MORRISON] POINTS THE WAY TOWARD [THE CORRECT] PRINCIPLES AND IDEAS. HE INDICATES HOW AGAIN WE MIGHT RELATE NATURAL RIGHTS TO DEMOCRATIC SELF-GOVERNMENT AND THUS PROTECT A REGIME OF INDIVIDUAL RIGHTS.

"JUSTICE SCALIA'S DISSENT CITED THE MASSACHUSETTS BILL OF

RIGHTS, WHICH ARTICULATES THE FUNDAMENTAL BASES OF DECENT GOVERNMENT. HE QUOTED THE LAST OF THE 30 ARTICLES OF THAT DOCUMENT. ... BY RECALLING ARTICLE 30, THE SCALIA OPINION MAY PUT US ON THE WAY TO RECOGNIZING THE IMPORTANCE OF ARTICLE ONE OF THE MASSACHUSETTS BILL OF RIGHTS: QUOTE 'ALL MEN ARE BORN FREE AND EQUAL, AND HAVE CERTAIN NATURAL, ESSENTIAL, AND UNALIENABLE RIGHTS; AMONG WHICH MAY BE RECKONED THE RIGHT OF ENJOYING AND DEFENDING THEIR LIVES AND LIBERTIES; THAT OF ACQUIRING, POSSESSING, AND PROTECTING PROPERTY, IN FINE, THAT OF SEEKING AND OBTAINING THEIR SAFETY AND HAPPINESS.' END QUOTE ...

"THIS SHORT PASSAGE SUMMARIZES WELL THE TIE BETWEEN NATURAL RIGHTS AND LIMITED GOVERNMENT. BEYOND HISTORICAL CIRCUMSTANCE, SOCIOLOGICAL CONDITIONS, AND CLASS BIAS, NATURAL RIGHTS CONSTITUTE AN OBJECTIVE BASIS FOR GOOD GOVERNMENT. SO THE AMERICAN FOUNDERS SAW IT, AND SO SHOULD WE."

* NOTES ON ORIGINAL INTENT, UNDATED (THOMAS IS QUOTING A LETTER WRITTEN BY ANDREW HAMILTON)

"THE YOUNG [ANDREW] HAMILTON DEFENDED AMERICAN RIGHTS AGAINST A TORY BY ARGUING 'THE FUNDAMENTAL SOURCE OF ALL YOUR ERRORS, SOPHISMS, AND FALSE REASONINGS IS A TOTAL IGNORANCE OF THE NATURAL RIGHTS OF MANKIND.' THIS COULD APPLY TO VIRTUALLY ANY JUDGE OR DARE I SAY ANY TEACHER OF

LAW TODAY. . . . THE NATURAL RIGHTS, HIGHER LAW UNDERSTANDING OF OUR CONSTITUTION IS THE NON-PARTISAN BASIS FOR LIMITED, DECENT, AND FREE GOVERNMENT."

- * FEDERALIST SOCIETY FOR LAW AND PUBLIC POLICY STUDIES, U. VA. SCHOOL OF LAW, MARCH 5, 1988

"FAR FROM BEING A LICENSE FOR UNLIMITED GOVERNMENT AND A ROVING JUDICIARY, NATURAL RIGHTS AND HIGHER LAW ARGUMENTS ARE THE BEST DEFENSE OF LIBERTY, AND OF LIMITED GOVERNMENT. MOREOVER, WITHOUT RECOURSE TO HIGHER LAW, WE ABANDON OUR BEST DEFENSE OF A COURT THAT IS ACTIVE IN DEFENDING THE CONSTITUTION BUT JUDICIOUS IN ITS RESTRAINT AND MODERATION. HIGHER LAW IS THE ONLY ALTERNATIVE TO THE WILFULNESS OF BOTH RUNAMOK MAJORITIES AND RUNAMOK JUDGES."

- * SPEECH BEFORE THE KIWANIS CLUB, WASHINGTON, JAN 14, 1987

"AS DR. KING MAINTAINED, AMERICAN POLITICS AND THE AMERICAN CONSTITUTION ARE UNINTELLIGIBLE WITHOUT THE DECLARATION OF INDEPENDENCE, AND THE DECLARATION IS UNINTELLIGIBLE WITHOUT THE NOTION OF A HIGHER LAW BY WHICH WE FALLIBLE MEN AND WOMEN CAN TAKE OUR BEARINGS. THAT IS WHAT I GREW UP ACCEPTING."

- * "AFFIRMATIVE ACTION: CURE OR CONTRADICTION?" CENTER MAGAZINE, NOV/DEC. 1987.

"THE RULE OF LAW IN AMERICA MEANS NOTHING OUTSIDE

CONSTITUTIONAL GOVERNMENT AND CONSTITUTIONALISM, AND THESE ARE SIMPLY UNINTELLIGIBLE WITHOUT A HIGHER LAW. MEN CANNOT RULE OTHERS BY THEIR CONSENT UNLESS THEIR COMMON HUMANITY IS UNDERSTOOD IN LIGHT OF TRANSCENDENT STANDARDS PROVIDED BY THE DECLARATION'S "LAWS OF NATURE AND OF NATURE'S GOD." NATURAL LAW PROVIDES A BASIS IN HUMAN DIGNITY BY WHICH WE CAN JUDGE WHETHER HUMAN BEINGS ARE JUST OR UNJUST, NOBLE OR IGNOBLE."

* SPEECH AT FEDERALIST SOCIETY FOR LAW AND POLICY STUDIES, UNIVERSITY OF VIRGINIA SCHOOL OF LAW, MARCH 5, 1988 (THE EMPHASIS IS THOMAS'S)

"HARLAN'S RELIANCE ON POLITICAL FIRST PRINCIPLES [AS EXPRESSED IN THE DECLARATION OF INDEPENDENCE -- SEE PRECEDING PARAGRAPH] WAS IMPLICIT RATHER THAN EXPLICIT, AS IS GENERALLY APPROPRIATE FOR SUPREME COURT OPINIONS. HE GIVES US A FOUNDATION FOR INTERPRETING NOT ONLY CASES INVOLVING RACE BUT THE ENTIRE CONSTITUTION AND ITS SCHEME OF PROTECTING RIGHTS. ... THE HIGHER LAW BACKGROUND OF THE CONSTITUTION, WHETHER EXPLICITLY APPEALED TO OR NOT, PROVIDES THE ONLY FIRM BASIS FOR A JUST, WISE, AND CONSTITUTIONAL DECISION."

[THOMAS ON ECONOMIC RIGHTS]

[IF THOMAS WAFFLES ON WHETHER HE THINKS ECONOMIC RIGHTS NEED MORE PROTECTION, THE FOLLOWING QUOTES INDICATED HIS DISSATISFACTION WITH THE EXISTING STATE OF AFFAIRS]

[THESE QUOTES SUGGEST THOMAS THINKS ECONOMIC RIGHTS ARE VITALLY IMPORTANT, AND UNDERAPPRECIATED]

* "REWARDS BELONG TO THOSE WHO LABOR," BY CLARENCE THOMAS, WASHINGTON TIMES, JAN. 18, 1988.

"TODAY WE ARE FAR FROM THE LEGAL INEQUITIES MY GRANDFATHER SUFFERED. INDEED, OUR CURRENT EXPLOSION OF RIGHTS -- WELFARE RIGHTS, ANIMAL RIGHTS, CHILDREN'S RIGHTS AND SO ON -- GOES TO THE POINT OF TRIVIALIZING THEM. FURTHERMORE, ECONOMIC RIGHTS ARE CONSIDERED ANTAGONISTIC TO CIVIL OR HUMAN RIGHTS -- THE FORMER BEING MATERIALISTIC AND DIRTY WHILE THE LATTER ARE LOFTY AND NOBLE. THE SPLIT HAS EVOLVED IN SUCH A WAY THAT SOME WHO CONSIDER THEMSELVES GREAT CHAMPIONS OF HUMAN RIGHTS CONTRAST THEMSELVES WITH ADVOCATES OF PROPERTY RIGHTS OR ECONOMIC RIGHTS."

* LETTER TO THE EDITOR, WASHINGTON TIMES, SEPTEMBER 2, 1987

"ABOVE AND BEYOND THE NEED FOR CONSTITUTIONAL AMENDMENTS (WHOSE MEANING CAN ALWAYS BE DISTORTED) IS A RENEWED UNDERSTANDING THAT THE FOUNDERS' CONSTITUTION INTENDED TO PROTECT INDIVIDUAL RIGHTS -- THE FULL INDIVISIBLE RANGE,

ECONOMIC AND CIVIL. THE FATHER OF THE CONSTITUTION, JAMES MADISON, PUT IT SUCCINCTLY: 'AS A MAN IS SAID TO HAVE A RIGHT TO HIS PROPERTY; HE MAY EQUALLY BE SAID TO HAVE A PROPERTY IN HIS RIGHTS.'

* ABA BUSINESS LAW SECTION SPEECH, AUGUST 11, 1987.

[ECONOMIC RIGHTS] "ARE SO BASIC THAT THE FOUNDERS DID NOT EVEN THINK IT NECESSARY TO INCLUDE THEM IN THE CONSTITUTION'S TEXT, WITH THE IMPORTANT EXCEPTIONS OF THE CONTRACT CLAUSE AND THE LAST CLAUSES OF THE FIFTH AMENDMENT."

* PACIFIC RESEARCH INSTITUTE SPEECH, AUGUST 10, 1987.

"OF COURSE, THERE ARE SEVERAL DIFFERENT VERSIONS OF NATURAL LAW AND NATURAL RIGHTS, INCLUDING SOME IN SHARP CONFLICT WITH ONE ANOTHER. YET, I THINK ALL OF THEM WOULD HAVE TO AGREE ON CERTAIN ELEMENTS CONCERNING ECONOMICS. THESE ARE: FIRST, THE COMMON SENSE OF THE FREE MARKET; SECOND, AS LINCOLN PUT IT, 'THE NATURAL RIGHT TO EAT THE BREAD [ONE] EARNS WITH [ONE'S] OWN HANDS;' THIRD, THE DIGNITY OF LABOR."

* PACIFIC RESEARCH INSTITUTE SPEECH, AUGUST 10, 1987

"I WOULD ONLY ADD TO BLOOM'S WISE OBSERVATIONS HERE, THAT A

RENEWED EMPHASIS ON ECONOMIC RIGHTS MUST PLAY A KEY ROLE IN THE REVIVAL OF THE NATURAL RIGHTS POLITICAL PHILOSOPHY THAT HAS BROUGHT THIS NATION TO ITS SECOND BICENTENNIAL YEAR."

* NOTES ON ORIGINAL INTENT, UNDATED

"I WOULD ADVOCATE INSTEAD A TRUE JURISPRUDENCE OF ORIGINAL INTENT, ONE WHICH UNDERSTOOD THE CONSTITUTION IN LIGHT OF THE MORAL AND POLITICAL TEACHINGS OF HUMAN EQUALITY IN THE DECLARATION. HERE WE FIND BOTH MORAL BACKBONE AND THE STRONGEST DEFENSE OF INDIVIDUAL RIGHTS AGAINST COLLECTIVIST SCHEMES, WHETHER BY RACE OR OVER THE ECONOMY. MORALITY AND POLITICAL JUDGMENT ARE UNDERSTOOD IN OBJECTIVE TERMS, THE FOUNDERS' NOTIONS OF NATURAL RIGHTS."

[THESE QUOTES SUGGEST THOMAS WILL NOT SUPPORT
RADICAL CHANGE IN THE COURT'S TREATMENT OF ECONOMIC
RIGHTS]

* PACIFIC RESEARCH INSTITUTE SPEECH, AUGUST 10, 1987.

"LET ME SAY THIS IN PASSING ABOUT RECENT ISSUES INVOLVING THE SUPREME COURT. I FIND ATTRACTIVE THE ARGUMENTS OF SCHOLARS SUCH AS STEPHEN MACEDO WHO DEFEND AN ACTIVIST SUPREME COURT, WHICH WOULD STRIKE DOWN LAWS RESTRICTING PROPERTY RIGHTS. BUT THE LIBERTARIAN ARGUMENTS OVERLOOKS THE PLACE OF THE SUPREME COURT IN A SCHEME OF SEPARATION OF

POWERS. ONE DOES NOT STRENGTHEN SELF-GOVERNMENT AND THE RULE OF LAW BY HAVING THE NON-DEMOCRATIC BRANCH OF GOVERNMENT MAKE POLICY."

- * KEYNOTE ADDRESS, PACIFIC RESEARCH INSTITUTE'S CIVIL RIGHTS TASK FORCE, AUGUST 4, 1988

"UNFORTUNATELY, THE ATTACK ON JUSTICE COMES NOT ONLY FROM CONSERVATIVES BUT FROM LIBERTARIANS AS WELL. LIBERTY CANNOT BE PRESERVED SIMPLY BY DECLARING MORE RIGHTS OR GIVING MORE POWER TO A SUPREME COURT WHICH WOULD BE ENCOURAGED TO ZEALOUSLY PROTECT THESE PARTICULAR RIGHTS. THERE IS NO MORE A RIGHT TO USE DRUGS THAN THERE IS A RIGHT TO SELL ONESELF INTO SLAVERY. NOW, ECONOMIC LIBERTY OR PROPERTY RIGHTS IS CERTAINLY AN ESSENTIAL PART OF THE INDIVIDUAL RIGHTS WE AS AMERICANS CHERISH. ... YET TOO GREAT AN EMPHASIS ON ECONOMIC RIGHTS DISTORTS THE PRINCIPLES OF GOOD GOVERNMENT. IN FACT, TOO GREAT AN EMPHASIS ON RIGHTS CAN BE HARMFUL TO DEMOCRACY."

- * ABA BUSINESS LAW SECTION SPEECH, AUGUST 11, 1987

"IF IT TAKES A JUDGE TO SOLVE OUR COUNTRY'S PROBLEMS, THEN DEMOCRACY AND THE RULE OF LAW ARE DEAD. AND I FOR ONE, ALONG WITH BOB BORK, AM NOT YET READY TO GIVE UP ON SELF-GOVERNMENT. IRONICALLY, BY OBJECTING AS VOCIFEROUSLY AS THEY HAVE TO JUDGE BORK'S NOMINATION, THESE SPECIAL INTEREST GROUPS UNDERMINE THEIR OWN CLAIM TO BE PROTECTED BY THE

COURT. THE COURT HAS ITS DIGNITY, AND ITS POWER, BY VIRTUE OF BEING ABOVE AND BEYOND SUCH CLAMORING. FOR SIMILAR REASONS I CANNOT ACCEPT THE LIBERTARIAN JURISPRUDENCE WHICH ARGUES THAT THE COURT SHOULD ONCE AGAIN EXPLOIT THE DUE PROCESS CLAUSES AND BECOME ACTIVE IN STRIKING DOWN LAWS WHICH REGULATE THE ECONOMY. THIS IS YET ANOTHER ASSAULT ON THE NOTION THAT THE WHOLE CONSTITUTION IS A BILL OF RIGHTS, AND THAT THE SEPARATION OF POWERS IS ESSENTIAL TO DEMOCRATIC REPUBLICANISM."

* SPEECH TO CATO INSTITUTE, APRIL 23, 1987

"IF YOU THINK SUCH AN APPROACH WILL LEAD TO INCONSISTENCIES, YOU'RE CERTAINLY RIGHT. BUT CONSIDER THE CURRENT EAGERNESS OF SOME LIBERTARIANS TO DEVELOP A JURISPRUDENCE WHICH JUSTIFIES JUDICIAL ACTIVISM BY THE COURTS TO STRIKE DOWN LAWS AND REGULATIONS CONCERNING ECONOMIC AND BUSINESS ACTIVITY. DO SUCH PEOPLE REALLY THINK SUCH A POWERFUL COURT WOULD STOP AT STRIKING DOWN ONLY THOSE LAWS? THAT DEFIES REALITY."

EMPHASIS IS THOMAS'S)