

An Ode to the Constitution

A Republic, If You Can Keep It

Justice Neil Gorsuch (Crown Forum 2019), 352 pages

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Many years ago, as a young, idealistic attorney who had just started working at the Department of Justice's Office of Legal Policy, I had the opportunity to meet, for just a moment, the newly confirmed Tenth Circuit Judge Neil Gorsuch. By reputation, he was a legal superstar—confirmed to the federal appellate bench before he turned forty. In person, he came across as extraordinarily kind and gracious to that very junior attorney. Now, many years later it is my honor to review his recent book, *A Republic, If You Can Keep It*.¹

Weighing in at over 300 pages, *A Republic, If You Can Keep It* is a thoughtful reflection on the Constitution, constitutional and statutory interpretation, the role of judges, the role of lawyers, and notions of justice. It also provides insights into Justice Gorsuch's childhood and confirmation process. Written primarily for a non-legal audience, the book is quite accessible to individuals not versed in constitutional law. It was such an easy read that I read a good portion of it on my back porch gazing at the mountains behind our house—a location that Justice Gorsuch, a native Coloradan, would no doubt heartily endorse.

I was a bit surprised by the format of the book. It is made up of seven chapters on topics ranging from "Our Constitution and its Separated Powers"² to "On Ethics and the Good Life."³ Each chapter starts with a few pages of text that introduce the topic. The remainder of the chapter is composed of edited speeches, articles, and judicial opinions that Justice

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¹ NEIL GORSUCH, *A REPUBLIC, IF YOU CAN KEEP IT* (2019).

² *Id.* at 39.

³ *Id.* at 279.

Gorsuch has given or written since becoming a judge over a decade ago. While the format was not my favorite thing about the book, it did allow Justice Gorsuch to cover quite a diverse set of topics, something that might not have worked as well with a different format. For example, he was able to include several key judicial opinions from his time on the Tenth Circuit,⁴ a Letterman-style top-ten list of things to do in your first ten years out of law school,⁵ and an essay he wrote for an exchange between judges in the United States and the United Kingdom on “Access to Affordable Justice.”⁶

As a fellow child of the west, I appreciated Justice Gorsuch’s folksy style, which permeates the book and adds to the ease for non-legal readers. In reading the book, I gleaned three main themes that could appeal to legal and non-legal readers alike: civility, the Constitution, and courage.

Civility. Early in the book, Justice Gorsuch bemoans the “civility crisis”⁷ facing our country. After citing studies that demonstrate Americans’ belief that our country is facing a “major civility problem,”⁸ he notes that this is problematic: “Without civility, the bonds of friendship in our communities dissolve, tolerance dissipates, and the pressure to impose order and uniformity through public and private coercion mounts.”⁹ His discussion of the issue was so poignant to me, I read a portion of it to my 1L Constitutional Law class on the first day of the Spring 2020 term. The excerpt that I read hopefully reminded them that our rights come with responsibilities, including

tolerating those who don’t agree with us, or whose ideas upset us; giving others the benefit of the doubt about their motives; listening and engaging with the merits of their ideas rather than dismissing them because of our own preconceptions about the speaker or topic.¹⁰

While uncivil discourse has certainly been part of America’s past, I appreciate Justice Gorsuch’s efforts to draw attention to the rise in incivility in our culture and urge his readers to act better. In fact, his later chapters that discuss a lawyer and a lawyer’s role dovetail nicely with his earlier discussion of civility.

The Constitution. Perhaps what surprised me most about the book was how much emphasis Justice Gorsuch places on the structural protections in the Constitution, especially separation of powers.¹¹ Most

4 See, e.g., *id.* at 75.

5 *Id.* at 301.

6 *Id.* at 254.

7 *Id.* at 31.

8 *Id.*

9 *Id.*

10 *Id.*

11 See, e.g., *id.* at 9.

of the structural provisions of the Constitution are found in its main text, as opposed to the amendments. These provisions are what divides power among the three branches of government to protect against any one branch getting too much power. Most people like to focus on the sexier parts of the Constitution—the First Amendment, the Second Amendment, the Fourteenth Amendment—which contain many of the individual rights in the Constitution. While I certainly enjoy teaching those provisions, it is the structural parts of the Constitution that protect those rights. Justice Gorsuch devotes a significant portion of his book to discussing the need to protect the separation of powers and the institutional design of our government as set forth in the Constitution. He also carefully discusses how judges should interpret the Constitution, with a strong emphasis on originalism.¹² In fact, in reading these parts of the book, I wondered if Justice Gorsuch will be an even stronger vote for separation of powers than his predecessor. Time will tell.

Courage. Finally, Justice Gorsuch talks about the need for courageous attorneys—attorneys like Atticus Finch and John Adams.¹³ People who are willing to take cases because justice demands it, not because it is the popular thing to do. He cites several examples in the book, including the Department of Justice lawyers who spoke out against the inaccuracies in the government’s brief in *Korematsu*.¹⁴ Although these attorneys did not live to see their concerns addressed, another courageous lawyer, Neal Katyal, “as acting solicitor general, took the admirable step of acknowledging the government’s failure to be fully forthcoming to the [Supreme] Court” in the case.¹⁵ He also pays tribute to courageous judges and the rule of law. He notes a few times in the book that a good judge will not always like the outcome of every case, but fidelity to the law should trump policy preferences.¹⁶

This book and Justice Gorsuch’s distinguished judicial career confirm the reputation I heard so long ago—he is a legal superstar. The stories in his book, including a delightful one about an airplane ride sitting next to a young girl who was frightened of the turbulence and just needed a friend, also confirm my early impression of his kindness.¹⁷ While not everyone will agree with the sentiments expressed in the book, I think many would agree that it would be enjoyable to spend an afternoon hiking or fly-fishing in Colorado with its author.

¹² See, e.g., *id.* at 105–27.

¹³ See, e.g., *id.* at 182–84.

¹⁴ *Id.* at 184.

¹⁵ *Id.*

¹⁶ *Id.* at 321.

¹⁷ *Id.* at 311.