

## Conversations with Bill Kristol

**Guest:** Justice Clarence Thomas, U.S. Supreme Court

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### **I: On the Supreme Court (00:15 – 32:38)**

KRISTOL: Hi, I'm Bill Kristol. Welcome to CONVERSATIONS. I'm very pleased to be joined today by Justice Clarence Thomas of the Supreme Court – just finished a quarter century on the Supreme Court. It's hard to believe.

THOMAS: Well, yeah, it is.

KRISTOL: I knew you before then. We're not as young as we once were.

THOMAS: Isn't that interesting? I met you, what, 30 years ago?

KRISTOL: In the Reagan Administration. This will be your first term without your good friend and wonderful colleague, Antonin Scalia. You spoke so beautifully about him, and you eulogized him at his funeral, and then later on you made some remarks when you gave the Hillsdale commencement address about Justice Scalia. Do you want to say a word about him?

THOMAS: Well, I mean it's one of the hard parts of being on the Court, watching what happens to your colleagues as time goes by. I've always said that the hard part was watching your colleagues get older and pass away.

And, of course, his sudden death. No one could have anticipated. Which is pretty shocking. So, I mean it's a big loss in a lot of ways. He was a friend, he was somebody I trusted, someone I felt instinctively close to, worked with for almost a quarter of a century.

KRISTOL: And you agreed on a lot of the issues – not all issues – and constitutional law, I guess, though, coming from different backgrounds.

THOMAS: You know it's really interesting. I had not met him until I got to the Court. I had met Maureen [Scalia] briefly, but not him. I had read some of his work – he hadn't been on the Court that long – and thought that his approach was probably the most true to the original understanding of the Constitution, particularly in cases like in the [Olson](#) case. I think even [Mistretta](#), some of those.

At any rate, I thought that I could agree with him, but I didn't know him. They had sort of – he had this reputation of being somewhat caustic, at least that's the way he was portrayed. Well pleasantly, when I get to the Court, I'm pleasantly surprised. He's really a fun man to be around. Never saw that side. He might disagree with you, but that was nothing.

We never had major disagreements. There was a respect even when we didn't agree on things, it was done in such a fun way. He would dissent – I think in one of his dissents in his last term, he referred to

one of my opinions involving the Fourth Amendment, where I said it was an anonymous tip about a drunk driver that turned out to be guys hauling drugs, and he dissented.

I thought it didn't violate the Fourth Amendment, search and seizure – unreasonable searches and seizure rule – and then he thought it did, and so he dissented and said that my opinion was “a liberty destroying cocktail.” I just thought that was hilarious. I understood his point, but he would say things like that, and people would portray that as caustic.

He thought it was really good use of language. That was a lot of fun. I truly will miss him. He was a wonderful friend, and somebody I trusted implicitly.

KRISTOL: I want to ask you about constitutionalism and originalism and the whole philosophy of law that you have followed and advanced so much, I think, in your quarter century on the Court. You mentioned the [Morrison v. Olson](#), the case where, I recall, Justice Scalia dissented alone and then was vindicated I think, everyone thinks, 15 years later or something like that.

THOMAS: It was the independent counsel that he thought violated separation of powers. And it turns out, you know, so years ago I'm sitting at the EEOC [Equal Opportunity Employment Commission] and the guys that got me very interested – I was just interested in government and why this form of government and what were the protections, so I hired these speechwriters, Ken Masugi and John Marini – these Straussians. And that began this really wonderful intellectual journey.

But along the way, we look at things like some of the Court's opinions, including the separation of powers – it was *Morrison v. Olson*. I remember giving a speech at CATO, when it was just in a small building on Capitol Hill, saying that the Chief Justice had disappointed us – Chief Justice Rehnquist had disappointed us. I'd never met the man; didn't think I would ever meet him.

KRISTOL: Did he remember this speech later when you joined the Court?

THOMAS: You know he probably did, but he was good enough not to mention it. But Justice Scalia's opinion, pointing out that this jeopardized liberty, individual liberty. You had these structural protections in the Constitution – separation of powers, of course, enumerated powers, federalism – that had checks and balances in there to protect individual liberty.

When you start violating those, you jeopardize liberty. And that was consistent with what I was – you know, since if you follow Magna Carta and up to our Founding, I said, “Well, I don't know him but that's pretty much my view.” Well, I was, of course, when I went through my confirmation that was raised – “How could you dare? Don't you think we should be able to do this, that, and the other?” I think it was Senator Kennedy.

And to see years later, some years later, when the shoe's on the other foot, that people suddenly see that principle, that this could be of concern. That was probably the first opinion of Justice Scalia's that I looked at with any sort of exactness and certainly expressed my agreement with him. It was on that basis that I thought he would be someone I agreed with when I got to the Court, but that's a fairly thin read.

KRISTOL: One thing – I was interested by that, because I was talking to a friend who teaches at a law school, saying we were going to have this conversation. And he said, “One thing I'd like to ask Justice Thomas” – and this is sort of inside baseball, but I think people are interested in this.

You have to pick your fights on the Court. Obviously, you say what you believe, and you interpret the Constitution or the laws and statutes, but also you make alliances with other Justices, you sometimes don't say everything you would say in order to have five votes – and he said he'd be curious what you thought the relative weight of a strong, forceful dissent – even if there is only one of you or two of you – is, as opposed to pulling some punches, let's say, to get a few other Justices on board or to be part of the majority?

And I thought of Justice Scalia's lonely dissent in that case, and he was sometimes criticized for being, you know, too tough-minded in a sense – dissenting instead of looking to build alliances. How does that work, and how do you think about that? Or do you think much about it? I'm curious about that.

THOMAS: I think that's an individual thing, but I think that – this is not a political body. You can't trade off – “You give me this bridge, and I'll give you that.” I don't do vote trading. I think that's – from my perspective, I'm not speaking for other people – I don't think that's consistent with the oath I took.

I think there are matters of principle that you can't concede. I think there are first principles, there are – when you concede the premise, you lose the argument. You have to really be careful with that. If you look at, for example, when I got to the Court, I wrote some “dormant” Commerce Clause opinions; I went along with them because I hadn't thought it through. But, over time, you think these things through. And I think once you think them through, you are obligated to explain why this approach versus another approach. You'll see, like in [Camp Newfound](#), I took my leave of the “dormant” Commerce Clause; that's simply because it ceased to make sense to me.

You see it also in the area of commercial speech, where, I didn't have an axe to grind when it came to commercial speech. But as you think it through, I think, in the [Central Hudson](#) “test” – which was a four-factor “test” that I didn't quite understand – and it didn't do any real work. It would be like being in your car, stuck in the mud, and you're just constantly pressing the accelerator. Well, that's not doing any work; you're not going any place, you're literally spinning your wheels. And I just thought that we shouldn't have tests – Justice Scalia agreed with “[the Lemon test](#)” in the Establishment Clause area – that if it's not doing any work, and it just looks like it's masquerading as a test that's doing work, you need to be really careful with that sort of thing, and you can't go along with that.

KRISTOL: Even if it's been around for a long time, right? You've been thought to be a Justice who is more willing to challenge sort of “established” opinions in constitutional law, by going back to the original understanding of the Constitution.

THOMAS: Well, you think about it. You know, people say that, but then, how do you explain a deviation from [Plessy v. Ferguson](#)? It was a 70-year-old precedent.

KRISTOL: With a lonely dissent, right? By Justice Harlan?

THOMAS: Exactly, who didn't go along. How do you explain, for example, Brandeis's overruling of [Swift v. Tyson](#) and [Erie v. Tompkins](#)? That was a 96-year-old precedent; nobody asked him to overrule it. So, the Court changes.

I think what happens, and it's for this reason I taught at the University of Georgia, earlier this month, on *stare decisis* – took quite a bit of time. The point was to just go through all the cases, and to go through the development of the whole notion under English common law and through our own jurisprudence. And I think what has happened – and maybe [Arthur] Goldberg was right in his assessment of *stare decisis* – where people get what they want in the law and then they say, “If you want to review that, you apply *stare decisis* rigidly. For what I would like to do, the advances I'd like to personally make in the law, we will have sort of a loose form of *stare decisis*.” That's the point Goldberg makes, I'm just recasting what he said; the approach wasn't quite that, but it was similar to that.

You know, I think we are obligated – even if we follow cases – to explain to people, not to just sort of rote cite cases as though people are automatons or something like that. This is, you know, this sort of ritualistic incantation of old cases: “This is handed down from God. This is from the Burning Bush. This is the Decalogue of law, and you are to accept that. It's revealed wisdom.” It's not. It's an opinion. Even if you follow it, you should have people justify it, and you should explain it. And you should understand it. If you want, if you're going to affect people's lives, you should understand exactly what you're doing – even if you have to go along.

So again, you know, one of the cases where I did that involved – it was a [McDonald](#) case involving the Privileges or Immunities Clause in the Fourteenth Amendment. Well, those words are in the Fourteenth Amendment. And it is central, it is really critical to the application of the Fourteenth Amendment. Why have it? It addresses this problem that you had with *Dred Scott*. Certainty, it's personally something that affected by life.

What you're saying is "this is there; substantive due process is not there." Shouldn't we at least explain to people why we are talking about something? We're using a phrase – something that is not in the Constitution – "substantive due process," to so affect our lives, and then, here's something that's in the Constitution – "privileges or Immunities" – and we're not using it, or we have bled the heart of it out. See what I'm saying? We've depleted it of its meaning in the [Slaughterhouse Cases](#).

KRISTOL: I'm old enough to remember when you – before you were on the Court, really – and then Justice Scalia and a few others were 'originalists.' I'm not even sure when the term even came about, but you were criticizing the whole trend of letting constitutional law substitute for the actual Constitution, and go back to the real meaning of the Constitution, and then there were differences among the originalists. In a way, it's an amazing success story over 30 years, I would say, of something that was just at the very fringes of the law schools and of the Court becoming a central strain in modern jurisprudence.

A lot of people, a lot of young people – your clerks and students and people who admire you, and Justice Scalia, and others – elaborating on many, many, and debating different aspects of originalism – I'm curious, how do you think it stands now? Do you feel like this is – is originalism ascendant? Is it in retreat a little bit? Have you succeeded intellectually, do you think, in convincing a lot of people and, especially, younger people coming up that this is the right way for judges and Justices to interpret the Constitution?

THOMAS: You know, I don't know. I guess I don't spend a lot of time thinking about that. Justice Scalia, what a good man, he a lot of time would think that, you know, there were times – I shouldn't say a lot, but there were times he questioned whether or not he was wasting his time. I think we all go through that, particularly in this city.

And I remember saying to him, I said, "You know, Nino, people now actually, even if they're pretending, they have to go through the motions of reading the text – of looking at the intent of either the drafters of a statute or the Framers of the Constitution, people who actually wrote it, they have to go back and look at what they thought and at least try to come up with some rationale of why they would have done this, or done that."

So, in that sense – just sort of the mode that you use in interpreting documents or interpreting statutory or Constitutional provisions – it's the approach that's been affected. Now there are a lot of arguments about what's exactly the right approach, and I understand that, but I don't usually spend a lot of my time on that.

I'm just trying to get the right answer. When I teach with young – I just love doing that. It's a lot of work; it's a busman's holiday, but it's an important holiday. Students are curious. They really want to be told the truth. And I think they tend to be a little bit skeptical in doing that; skepticism can be healthy skepticism, and it can be unhealthy skepticism.

What I'm trying to do when I work with them is tell them not the answer, but just simply say, "Wouldn't you want to know more about this case? Wouldn't you want to know more; wouldn't you want to feel confident that you've done a lot of work to make sure you're right?" If you're a doctor and someone comes in with a complicated health problem, I think a doctor, they say "Get a second opinion, let's run a couple of tests to make sure, let's do this, and let's do that. I think this is the answer, but we should do some more tests to make sure."

Why don't we do that with law? That's basically the approach that we take with originalism. You know, I don't know what the answer is; I don't want to make up a theory and then it's all about me and affecting your law. I want to go back and make sure this actually is what the Framers or the common law or the

legislature said the law was. Then you take into account precedent, but you want to make sure the precedent is right. Do you think we've had an effect? You know, I don't really get caught up in that part.

KRISTOL: I think you have. I just was curious. I'm struck, you know, I audited – I think, I don't think I took it – a Constitutional law course my first or second year in college, so this is the very early 70s. And I didn't know anything about it. I thought, "Okay, I think this will be a real interpretation of the Constitution and what they meant and, of course, the development."

And I was really – well, I've got to say – shocked that it was just people's opinions based on the times, and with the politics of the different Justices, and various theories that some law professors had developed – some of which were intelligent and some of which I agreed with, for that matter – but it didn't seem to have much to do with the actual Constitution. I do think, in that respect, a combination of your work, and Justice Scalia's and others, and some of the political scientists who rediscovered, I'd say, and some of the political philosophers, the kind of the importance of Constitutionalism. I do feel like that's a big difference.

They can't ignore – in public life, too, political life, talking about the Constitution is so much more central for at least some political figures than it was, I don't know, 30, 40 years ago, it seems to me. You must feel that I think, don't you? When you went to Yale Law School, did you study the Constitution or constitutional law?

THOMAS: No, we did not study the Constitution, we studied constitutional law. And there is a difference. That's probably, you know, you mentioned that – you know, I had sort of like had my questions about that, is precisely because of that. I think it is, I'm probably the way I am because I went to Yale Law School, and that was unsatisfying when I studied constitutional law. They were good people. They were smart people, if not brilliant people. But we didn't study the Constitution; we – in fact, if you go back, you see that the Constitution was in the back of the casebook. I think it was [Gerald] Gunther's casebook, so it was in the rear of the casebook, and we rarely referred to that.

It would seem to me you would do it the other way. You know, Hillsdale has this [Constitution Reader](#). That's what I would start with today if I were teaching, because you'd want to start with the Founding documents, perhaps go through the drafting – even if you had them read something that was not necessarily law, like *Ratification* or something, one of those books – so people can actual go through it and feel it. Or even watch. Even watch like the *John Adams* series. You don't read the book – at least watch, and get a sense of what are they going through and sort of founding a country? What are some of the problems as a result of that? What were the risks of doing that? What were they concerned about, you know, with the confederation and things like that?

You know we didn't do it when I was in law school, and that's one of the reasons I think we ought to do it. I'm not sure about these theories. I'll tell you the theories that got me in law school. They would talk about, like, applying the Bill of Rights to states. Well, because, on its terms, the Bill of Rights didn't apply to states, it applied to national government so you'd say "through the Fourteenth Amendment," so you come up with absorption theory. You got "partial incorporation," "selective incorporation" – you got all these different theories, "total incorporation." And I said, "What the heck are these? These are just theories. It's not there, the people who drafted the amendments didn't say it. I'm just interested in that."

And so you were supposed to accept that. And then the basis for which ones to absorb, you know – not jury right, but maybe the First Amendment right? But, then, why the Establishment Clause? You never got a satisfactory explanation. You're trying to find answers to those sorts of things. The analogy I use is this, with my kids: Imagine that every case, that law is a very long train – I mean, those long trains that block us at railroad crossings when we're in a hurry.

Let's say there are hundreds of cars, like Supreme Court cases. And every new case is adding one more car to a very long train. Now, I think before you do that, you have an obligation to take your time, walk through all the cars, see what's up in the engine of the train, see who's driving – it may be an orangutan, for all we know; it may be going over a cliff, for all we know; it may be running headlong into a station, for

all we know. Then why are we adding another car? So I think, before, we are obligated to at least know to what train and why we are adding a car and where is that train heading before we add another car.

Just think of it that way. People say, “You don’t believe in *stare decisis*,” or this – I say, you’re just going through the train to make sure it’s headed in the right direction, and there’s a basis for it in the Constitution, in the Founding documents, in our history, in our tradition, and not something that’s made up in the mind of a law professor or a very crafty lawyer.

KRISTOL: I talk to young people, as you do, and a lot of ones, especially who are more on my side of the political spectrum are sort of depressed these days – and the last term of the Court and what – the constitutional moment seems to have passed, and are we ever going to get back to real constitutionalism, limited government, and a good understanding of the separation of powers and the Constitution in our country? I don’t know. I’m not sure I do a very good job of reassuring them. I do usually cite the dissents that then get vindicated years or decades later, whether it’s Justice Harlan or Justice Scalia or you.

What do you say? Obviously, you’re doing your job as a Justice, so you’re worrying most about getting it right, but are you encouraged, and how do you encourage young people? What is your sort of general view of the current state of constitutional self-government in America? Not so much the Court, but the broader question, you know? You’ve thought a lot about this and spoken a lot --

THOMAS: You know, I don’t know if I’m the – I don’t know. I’m more concerned about other things – the academy, the culture, the state of education.

KRISTOL: Do you feel sometimes that we’re swimming awfully upstream here against awfully big institutions and forces?

THOMAS: I think we are required to swim upstream no matter what it is; I think it’s a matter of principle no matter – My grandfather was that sort of person, that no matter what others were doing or how bad it looked, we had things we were supposed to do.

I think we are required to do what is right despite how bad things look. I don’t know whether or not, I think it was when I was a kid – I’m Catholic, and one of the great sins was to despair. I think that it’s hard to get up in the morning as a despairing person.

You have to be hopeful. You know, I just look around as I was riding to the studio to do this and coming across Pennsylvania Avenue. When I came here in 1979, the prime interest rate in the country was around 20 percent. We were immersed in the Iranian hostage situation. You had inflation that was double digit. It was the era of malaise – I always say “mayonnaise.” I was riding a bus down Pennsylvania Avenue, commuting to Capitol Hill where I worked. Those days Pennsylvania Avenue was open all the way through, and I couldn’t afford to drive a car or anything in.

And the world changes; things change in your life. Was I in a position to despair then? Absolutely. Things weren’t really looking good. But you are obligated not to despair. Now, about our country? Yeah, things may not look good, but we are obligated not to despair. Do I know what the outcome is going to be? No.

Do I know that we are going to be vindicated? No. But that’s not why you do it. You don’t do it to necessarily persuade, to feel that you’re going to persuade other people – you do it because it’s right. I think we are obligated to do that. Do I hope that, at some point, it becomes the, sort of the prevailing view? Yes. But I have no guarantee, and I don’t do it on the condition that I win.

I don’t mind writing dissents, but I don’t write them to be showy, I write them because I think I’m right. It’s sort of like, I think we’re obligated to show the, sort of the – those who are not there, to say to them, “Here’s a way I think it should be done, and here’s why.” It’s not like you cast a vote in the Senate or something like that. You have to explain everything, and you have that wonderful opportunity to do precisely that.

You explain it to your colleagues, too. I loved working with Justice Scalia because we read everything. It all mattered. Syntax mattered, vocabulary mattered, the history mattered – everything. In the small case, the big case. He didn't just wait for the big case and then show up and "that's all I care about." No, no, no. Every single case, every single sentence, every phrase. Every turn of phrase, every footnote.

And so you work that way with people – you persuade them, you bring them along. They, in fact, they also then help you as you write your opinions, even when they disagree. If they challenge this point, then you have to respond to that. You have to make the point sharper. This point may be unclear, but by challenging it, you have clarify. Does that make sense?

KRISTOL: Totally. One of the great things about America is, even if one doesn't like these opinions, these decisions, you do have to write the opinions. If people think about that, it shows the commitment of our government, really, and certainly the judicial branch, to having to defend one's opinions.

You don't just have a vote and that's it, and no one has to explain the vote. Once you have the requirement of explanation, it is a kind of tribute to the importance of reasoning and the fact that self-government involves thinking about what the right thing to do is. It's not just majority vote; that's it, be quiet if you lose.

THOMAS: At the end of term, I go to Gettysburg, and I take my law clerks there. We were there one time at Little Round Top – I kind of like all these things. So this guy runs up to me – he's breathless.

He's like – he's in great shape, you know, but he's breathless – he said, "Look, I want you to sign this," and he had this opinion of mine on a sort of fake parchment paper he'd printed it out. He said – I looked at it, and it was like a Federal Maritime Commission opinion I had written. He said, "I read this. Thank you. I'm not a lawyer, but I understand. And thank you for writing it in a way that I understand it."

It's sort of – like I enfranchised him or something. But at any rate, he hands me this thing, and I said, "Why are you reading the Federal Maritime Commission opinion?" He said, "That's what this is all about," speaking of Gettysburg. I had no idea. I thought it was just a Federal Maritime Commission. Think about it, when you write – I also think opinions have to be accessible. They have to be like the ramps on a street or something like that, they have to be accessible to our fellow citizens.

It's their Constitution. This guy, that was probably one of the great moments for me. So here is a guy, who's not a lawyer, not a scholar or anything – he's just a citizen who believes in his country and wants to follow what's happening to his country and his Constitution, and the opinion is accessible to him. He didn't say he agreed with me, by the way, but he said he understood. He felt as though he was a part of whatever process it was that was going on at the Supreme Court.

I think sometimes when we write these opinions, we write in language that is inaccessible. I tell my law clerks that "Genius is taking a 20-dollar idea and putting it into a two-dollar sentence. It's not taking a two-dollar idea and putting it into a 20-dollar sentence." I think sometimes we do the latter, not the former. I think it's really important to sort of – not in dissents or in concurrences or whatever – to show, to explain to people what we're doing and why we're doing it. Not to come up with words – you know, "negative precepts," "levels of generality," "double entendres" – and all these sorts of things that people are thinking, "Oh my goodness, what the heck is going on there?" It's sort of hides the ball. I think we should do better than that.

KRISTOL: That's what government by reflection enjoins, right? They have to see the reflection and understand it.

## **II: The Education of Clarence Thomas (32:38 – 1:09:36)**

KRISTOL: You mentioned your grandparents and your grandfather, and your memoir, *My Grandfather's Son*, which came out about 10 years ago is, in my opinion, one of the really great American memoirs. It

could have been called “The Education of Clarence Thomas.” *The Education of Henry Adams* is another famous memoir, but I prefer yours, personally. But talk a little bit about that: What shapes you, what influenced you, what educated you over the years? What thinkers? What people?

THOMAS: You know, I think as you sort of advance in life – you know, I’ve never been the sort to reflect a lot when you’re working long hours and things. As time goes on you, especially in the world we’re in now, you reflect about how did we get here? It is totally – I always tell my wife, “My whole life is just one miracle after another” because it doesn’t make any sense anymore.

It should have ended tragically. But my grandparents were the sine qua non of that not happening. It’s just literally fortuitous – and I won’t go into too much – that we wound up living with them in 1955.

And then a series of things after that – he had converted to the Catholic Church, and as a result of that, he was close to the nuns. And as a result of that, I was able to go to parochial schools.

KRISTOL: He was not himself a well-educated man?

THOMAS: He had nine months of education his entire life. I remember sitting there and watching him look at a piece of paper as though it was a mystery.

I watched him probably – the hardest things were to watch him look up a name. Let’s say he was going to look up Bill Kristol, and he had it written down on a piece of paper – that’s the only way he would look it up. You wrote your name down, and he needed your number. He would sit there and start with the A’s in the phone book, and start looking for your name, and he would go down every page looking for Bill Kristol.

Then, as I was probably third or fourth grade, he would just say, “Look, my eyes are bad. You look it up.” And, of course, I would immediately just go to “K,” and then just write it down.

KRISTOL: He wanted you, obviously, to be educated.

THOMAS: That’s why he and the people around us, my grandmother who went to sixth grade, all the people in your neighborhood – my cousin, my cousin Hattie, for example, was totally illiterate. Miss Gladys. They weren’t educated, but they thought it was really important. “Boy, get your education. Boy, get it in your head, and they can’t take it away from you.” It became sort of like a Holy Grail.

KRISTOL: I remember in the book you discuss being at the library as a very little kid, I think. As a six- or seven-year-old.

THOMAS: Seven. I still, that probably – They never, it’s sort of interesting, there were things they didn’t want us to do. But going to the library and the school were like, you could always go.

KRISTOL: This was the public library near you?

THOMAS: This was the Carnegie Library, which was segregated. It was the black library. People make it seem like, “Oh, it was horrible.” It was a library. “You didn’t have good books.” They had words in them!

And the people could not have been better. Anyway, it started – actually I was still living with my mother, we were living in Aline, and on Saturday mornings, they would have readings for little kids in the basement, on the ground floor of that library. Honestly, it was about the cookies and punch that they gave you; it was not about the books. I was not all that interested in that, but the lady was really nice. I think that’s how I came across, like Dr. Seuss.

Later on, I developed that love for going to that library, and the people there were just wonderful. They introduce you to things like *Encyclopedia Britannica*, *Encyclopedia Americana*, *National Geographic*, all the newspapers, *Life Magazine*, *Look Magazine*. I mean, they were all there. It was this treasure trove.



It closed at nine o'clock, and my grandfather – the only time we could stay out after dark was if I was at the library. So, God, I spent a lot of time there. The most common interaction with the librarians are “Shhh, you,” sort of, “this is a contemplative environment.” The nuns, nuns they were just wonderful. They were Irish immigrants; they were the Missionary Franciscan Sisters of the Immaculate Conception.

And they taught us. I mean, I started thinking –

KRISTOL: Was the parochial school was segregated, too? Even though they didn't believe in it.

THOMAS: They did not believe in it. They believed that we were inherently equal; we were all God's children. The nuns pushed traditional education. They believed you have national Catholic exams, and they wanted us to perform.

You know pushed, they were very demanding. I still can remember, and I don't even know if these things are still around, there was this SRA reading program, and we didn't speak Standard English at home, obviously, but there was this program where you used to have to do all these exercises. I thought, “Oh my God, I'll never learn this stuff.” But they never stopped trying – diagramming sentences, vocabulary, syntax, grammar, etc. Even though they knew, when we went home, we did not speak Standard English, they demanded that we learn it.

I thank them for this, because they would not allow us to remain uneducated.

KRISTOL: Wow, that's great. Then you went to Holy Cross, one or two – You went to seminary, and then you went to Holy Cross for college, and I think you wrote that that's a very important, that was very important for you.

THOMAS: Well, I was lucky. I mean, I just quit the seminary in a huff. Things happen when you're 19-years-old, it's not like you're thinking straight.

I wound up at Holy Cross my last three years of college, and it was fortuitous because it was a different Holy Cross – it was the traditional, liberal arts education. And I was blessed to have a very traditional liberal arts background, a background in high school in Latin and sciences, and then languages, German and French.

KRISTOL: That's amazing, we were discussing that before filming. You took Latin, French, and German?

THOMAS: In high school.

KRISTOL: In a segregated high school. There was no –

THOMAS: I took French in a segregated high school, then I transferred and went to all-white schools. I went to all-black and then all-whites – with the exception of me, and then one other kid and me the last two years I was there. There I had Latin, which was very intense; German, and – I didn't have French that year; I had two years of French in the all-black school.

Then I had French again in college. Then you had like physics and chemistry and all those things. There were only nine kids in my graduating class, so it wasn't like you could hide. That was very good to me. Then Holy Cross was wonderful, because it allowed you – it was a period where you couldn't get away with hiding from education. There was – we had a lot of required courses and very few electives.

KRISTOL: Were you always interested in politics and government?

THOMAS: I was never interested in politics, never. I was never interested in politics. I can't tell you --

KRISTOL: A lot of the people who make the most difference, in my opinion, in politics weren't that interested in politics. Anyway, what were – were you science, literature –?

THOMAS: To be honest with you, the only goal I've ever had was to be a priest. Everything else was by default. When I was at Holy Cross College, I couldn't really figure out what to do. My problem was I grew up speaking a dialect, Geechee, and – people know it as Geechee or Gullah in the Coastal Carolinas and Georgia. And I needed to learn English, so I majored to English in order to learn English, and to speak English, and to write English.

Then, I was going to be a lawyer and just return to Savannah. That's all I ever wanted to do. So I'm going to be a priest or become a lawyer and return to Savannah. That's it.

KRISTOL: But you didn't return to Savannah?

THOMAS: No, I was on my way when I stopped here in 1979. The thing that really happened was – I said my life has been a miracle. I could not get a job after law school in Georgia, so I wound up taking the only job I got. There was one other offer in New Haven, but I didn't want to stay in New Haven.

But I took the only other job, and it was in Missouri and was for a Republican Senator – then-Republican Attorney General Jack Danforth. And that's how I wound up in Missouri. Then when he came to the Senate, I went to Monsanto in St. Louis. And I figured that was not, after two-and-a-half years, where I should be. So I quit that job, he offered me a job here, and it was a way to get to the East Coast. I was going to do that for a little while, and then I was going to head on home. And that was 1979, and here we are.

KRISTOL: Well, that's like a lot of people come to Washington and think, "I can't," think it's for a year or two and then you end up, here we are 30 years later. It's good that you stayed. I want to say that. On behalf of the American people –

THOMAS: I'm not gonna be that one that says that. But I stayed, that's all I can say.

KRISTOL: What about your education more broadly? Thinkers that influenced you? I know you discussed in the book, I think you mentioned, particularly, [Thomas Sowell](#), who, thank God, is still alive and well and writing at age 86.

Really a wonderful economist, but more than an economist. Say a word about him, if you want or about others?

THOMAS: You know, I actually the – again, I think that the people in my life who required me to look for actual facts and reason and truth have a lot to do with my development, people like my grandparents.

My granddad, he had this one saying that I was allowed to – he said, "Boy, if it don't make no sense, it's 'cause it don't make no sense." And so you're always trying to make sense of things, and you look around you and see that there are so many things that didn't make sense. And when you ask people for explanations, for example – when I was in law school, you'd, say, tell people to explain a social policy, and they would tell me, for example, "You should believe that because you're black."

Well, that's a non-starter with me. That's like people who would say when I was in college, "What kind of music you listen to?" Well, they'd say, "You should listen to jazz" or maybe, Hugh Masekela or something like that. I'd say, "Why?" "Because you're black." Well, I'm not going to do that. That's like in the South, you have to be in this part, go to that school, because you're black. I'm not doing that. So I started listening to other music, you know, like classical or country or whatever. Now, what am I?

But the – Tom Sowell was a guy who I ran into when I was in law school, when he wrote a book called *Black Education Myths and Tragedies*. I thought, "Well, a black guy can't think that way" so I tossed it. Some years later, in the mid-1970s – 1976 or so – I was in Jefferson City, Missouri, and ran across a

review of his book by Michael Novak in the *Wall Street Journal*, of Tom Sowell's book, *Race and Economics*. A friend of mine, who has since passed away, brought it to my attention.

And I said, "Well, I'll be danged. This guy is pointing out something that makes sense on race and education, etc." So I found *Race and Economics*, and read it – I mean, literally gobbled it down, or wolfed down, whichever way you want to put it. I said, "Finally, it makes sense!"

KRISTOL: You had never met Tom Sowell?

THOMAS: I'd never met him. It would be 1978, after I moved to St. Louis, that I met him. I went over, someone showed me a brochure where he was appearing at Washington University Law School. So I go over in my little cheap suit, and he's debating one Professor Ruth Bader Ginsburg. So I go over, and I'm going to get my book signed as a groupie, and I listened to the debate. He signs my book and looks at me like, "Whoa" – because there weren't that many people there, but I was there. I was enthusiastic.

Another person who was on that program, who was not on that particular panel, was one Professor Antonin Scalia. I just thought that was fascinating. That was 1978 at Washington University, that's the first time I met him. It would be the year 1980 or so – when I was in Washington – that I would meet him again, and then we became friends.

KRISTOL: That's great. His work is very much worth reading. Some of it is on race, but a lot of it isn't. A lot of different things. Real important.

THOMAS: A lot of cultural things. I would say, in high school there were these wonderful people – the people at the library, there were these ladies at a little book store, there were people at Savannah Public Library and the Carnegie Library, and the nuns that introduced me to different things. It was my English teacher in high school seminary – every six weeks, you were required to do a book report, independent of your other work.

You'd read books like *Fail-Safe*, that was popular back then. There were other books, but it had to be something serious and you had to prove it. I started sort of reading more serious things, not just sports books and comic books and things like that. You eventually, with these wonderful ladies – God, people have been so good to me. There are these wonderful people who introduced me to books like Richard Wright or Ralph Ellison, and you know, Richard Wright was popular back then.

There were the angry novels – *Native Son*, *Black Boy*, *Outsider*. Then you have Ralph Ellison, *Invisible Man*. They were race-related, so, of course, I was fascinated by these and how complicated it was – particularly with Ralph Ellison – as you wrestled with all these things, sort of like these stereotypes and who you really are.

Then, they introduced me – I'm a little kid, I'm like 16, 17-years-old – they introduced me to Ayn Rand. I wound up reading *The Fountainhead*, *Atlas Shrugged*, etc., and I continue reading them from time to time and throughout the rest of my life. So then you start thinking, think about why I would, in Georgia, be interested in sort of libertarian ideology. You see the sort of the rules that the state imposes on you because of race or because of this or because of that, and you can't do anything about it. So the libertarians are, "Well, I don't want that." I mean, you want less of that or none of that. And it was very attractive.

So I started reading those things, so all these ideas take seed. And then you take philosophy, and, you know, you took a lot at the nihilists and things like that in college; I wasn't all that interested in them. Again, those were just people. You know I read, later in life – I read, you know, for example, your mother – the Victorian virtues, Jewish virtues, I think it was, a piece that she had written. See those sorts of things, the ideas, the ideals appealed to me. I would read voraciously. It would be later on that idea that this love that you should learn, you're required to learn, you're required to go to the front of the train.

When I was at the EEOC and I hired those Straussians to work for me – Ken Masugi and John Marini – we started reading more of this stuff, started discussing more and going to the Political Science Association meetings. But the idea was to find the ideas, to think about them and – as my grandfather says, the other side of what he said – was to make sense of these things. Why this government? Why this form of government? Not just a policy, but why? Why us? The larger questions, and try to answer them.

KRISTOL: I'm curious, is there one or two novelists or philosophers or essayists that you come back to the most, or that you sort of particularly treasure? You read very widely and at different stages in your life, different types of literature, essays, or biographies.

THOMAS: I come back to *To Kill a Mockingbird*. I come back to that one.

KRISTOL: Did you read that as a young man in the South?

THOMAS: Went to the movie. It was – of course, it was particularly poignant in the 1960s. We all, in some extent, become Gregory Peck. And it was probably why I even thought of law because it was all I knew about law. I come back to *Native Son*, to *Invisible Man*.

KRISTOL: *Invisible Man* is just – I looked at, I should reread the whole thing. I looked at it for some reason a few years ago – I think we had something in *The Weekly Standard* – that's an amazing book. And I don't think it is read nearly as much as it should be.

THOMAS: Because it doesn't play into the narratives now. We are a world of narratives. And what he was wrestling with was precisely that – where we've created these stereotypes and they interact with each other. I'm supposed to have a stereotype of you, you of me, and then the individuals are over here. I think it's important to dig through all of that stuff.

I started wrestling with that in high school, the individual versus and then, of course, with Ayn Rand, the individual versus collective. But also, the individual versus the stereotypes. There are stereotypes in lots of ways. We have them today: that if you're black, you're supposed to do this or that, and that fact that we're created with our sameness. We all are supposed to look a certain way and that's individuality, but we all look the same and we're doing the same things.

These were things that were going on back in the 60s. You define yourself. "You're black, you have to have an afro." I refused to have one, so what am I? I preferred to be me. "Well, you can't be because you're black." I think Ralph Ellison got it. I come back to that, you know? But there are other things. I read widely. I try to read books that people say they've read.

KRISTOL: Any of the Founders or earlier Justices who, particularly, you admire and would want or recommend to a young person if they said, "Who should I read a biography of? I went through college, no one ever assigned any biographies because that's not what they do anymore." They read – God knows what they read – social history or whatever. But what would you say, who would you say?

THOMAS: I think, to be honest with you, I think if they just read.

I try to read things that I was interested in at that time. And then to stretch myself some, to read about things I was interested in. If I had a question about Reconstruction, and I read – what's his name? He's more of a revisionist historian up at Columbia, but he wrote a book on Reconstruction. I may not agree with him on two things, but it's very interesting book on Reconstruction.

I just finished *A History of the English* by this guy, Robert Tombs. That's pretty long. Before you start reading books that people say they've read, that they haven't read like *The Wealth of Nations*. How many people you know have actually read that? Or *Human Action* by von Mises? They've read like a Cliff Notes or something. I think we're obligated to read these things, to think about them.

But for young people, I say just read. Not just sort of current events, but to push yourself. I tend to like the classical things. If I could encourage them to put one paperback on their desk and read it occasionally without getting into too deep about things personally, it would be Hillsdale's Constitutional Reader, from Hillsdale College.

It's one book, and it has a lot of the Founding documents – it has the Constitution, the Declaration; it's got it all in one place. It has the progressives who disagree, some of the criticisms. If you just did that, you would be one of the better informed people in the country.

If you had to watch, even if you don't read, I still think, for me, that *John Adams* series was important. I mean, the book would be great if they read it, but I understand being sort of a realistic, I think that series was really good. Or any of the Civil War stuff. I read, I remember – I think the Civil War is pivotal in our country – on race and post-Civil War Reconstruction – all of it is really important. Jim McPherson wrote a really good book that was influential back in the 80s, *A Battle Cry of Freedom*. I think he's retired now. It's a one-volume series on the Civil War.

I happen to be a big Churchill fan. Because I didn't understand why the rest of the world allowed Hitler to goose-stomp across the world, I just thought that was wrong. Evil is evil. And that's how I discovered Churchill, back in the 1980s. I'm a big fan of Churchill for a lot of reasons, but – I'm a big fan of Lincoln. I think biographies of Lincoln, of great people. I'm a big fan of Fredrick Douglass.

KRISTOL: He's fantastic. And you quote him, I think, at the beginning of one of your opinions just a few years ago.

THOMAS: I've quoted him in speeches; I'm a huge fan. If you want to read a biography, read his.

KRISTOL: It's a wonderful autobiography.

THOMAS: Same thing with Lincoln. I'm a big fan of Booker T. Washington; he was very popular during my youth.

KRISTOL: He wasn't yet so politically incorrect that you couldn't read him? Still okay in the 50s?

THOMAS: He was popular. He was one of the most popular people among blacks in the South. My grandfather, in fact, there were lots of people whose name was "Booker T." There's that great group, "Booker T. and the M.G.'s."

KRISTOL: That's a wonderful book. I remember teaching that at an American Political Thought course. Him and Douglass, really fantastic.

THOMAS: But they denigrated Booker T. Washington. You still have Tuskegee but they've denigrated him. And George Washington Carver, people like that, we grew up with. I just think that there are these people who have actually done things, that you see them under attack – they're rewriting them. No one claimed that they were perfect.

I was just at Monticello. I certainly wouldn't claim that Jefferson was perfect, but there are lots of people who aren't. These are people who have done great things, and we should know about them. We should read about things that they have done, as well as what they've said.

KRISTOL: I didn't know you took your clerks to Gettysburg. I love Gettysburg myself, and I should get there much more often. I have friends who do staff rides there, where they really go over the battle and all that. Are you a student of it? Do you read it? But you've read some of them? Do you like the Shaara books on Gettysburg and the movie?

THOMAS: I've seen – it was Shaara who did *The Battle Cry* – he did *The Killer Angels* and then the wonderful one they did on the Battle in the Wilderness in – what was it?

KRISTOL: I don't remember the name.

THOMAS: *Gods and Generals*. Yeah, I've seen all of those. I love going. I do not do the daylong things. I usually like to do three or four hours, and I go at least once a year. I love – every time I go, I learn something different. I read a lot about it.

I've read the Shelby Foote series. I go through these periods – one year, it's economics; another year, it's history; it was the Civil War for a while, and Churchill for a number of years, Lincoln for a while.

But Gettysburg is central. If the South had won in Gettysburg, I would not be sitting here. This would be a very different country. It's a pivotal moment in our history. It was a moment where the "Great Contradiction" comes to head. You have what the Declaration says, you have what the Constitution said, but the "great contradiction" of slavery. It just – that contradiction, we're still suffering from it. You have, one of the reasons why there were so many of us that thought that *Plessy* was such a horrible opinion was because it extends the contradiction.

That goes on until the 20th century. If you go back and you read what Harlan's saying, he knew; he was the only Southerner who sat on that case. He's from Kentucky. Just go and take a look. He understood what that meant, the implications of it. And look at the long-term implications. What if the Court did what, say, the Iowa Supreme Court had done long before that and just simply said, "The Constitution knows no color?" Let's assume that Harlan's opinion was the majority opinion, you see what I'm saying? I'm not saying you would have a perfect world, but you would never have had another almost century of this.

KRISTOL: These things really do matter.

THOMAS: It all matters. You asked me earlier about dissenting: What if Harlan went along because everybody else went along? What if Harlan went along, because he couldn't go to the club anymore because people would be after him? What if they started calling him slurs because he didn't go along? What if they said, "You're an outlier?" What if they said that, you know, "You're not up with the mainstream?"

Does that make him, that fact that he's an outlier, does that make him wrong? Who was right? The Court? The majority? Or the dissent? What if there were no dissent by Harlan? You said you loved the dissent – I loved it, Justice Marshall loved it, it was something to hang on. Maybe it didn't persuade his colleagues, but it persuaded history.

KRISTOL: That's so moving for you to say that and impressive. I shouldn't end without discussing the thing you care the most about, Nebraska football, I suppose. How did you become a huge Nebraska fan? Do you know? Seems like – you are a huge Nebraska football fan? Out of control.

THOMAS: In fact, I will tell you – I was watching on Wednesday night the Nebraska volleyball team, the number one team in the country, and we just beat Illinois. We just beat – there's so many ranked teams in the Big 10.

KRISTOL: This is what happens when your football team goes down a little bit; suddenly, it's the volleyball team. I'm just teasing you.

THOMAS: You should see; these are wonderful women. This is a great team. Anyway, our football is back – and I mean, we're number 15 in the country, so we're headed back up. You know, my wife is from Nebraska. My wife is totally my best friend. Virginia and I have been married almost 30 years, and she's the love of my life.

Her mother, she and I were very close, and her mother was a big fan, her father was a big fan; they had season tickets for 50 years. I just, I like Nebraska. I like the – I would move to Nebraska in a heartbeat.

KRISTOL: I like the idea of moving the Supreme Court to Nebraska. That might make them a little more grounded and in touch with –

THOMAS: Good luck with that one, buddy. I like the fact they graduate a lot of players. 90 percent who stay for their eligibility graduate. They have the highest number of Academic All-Americans in the nation. I just like – I mean, they're three Nebraska players on the Redskins, all graduated from college. They're wonderful people. I like Tom Osbourne, who was the coach for years and won the National Championships.

I like the enthusiasm; I like the fact that the opposing teams are cheered, not booed. I like the way they treat each other, and they've had, the last time they did not sell out a football game was the Cuban Missile Crisis. That's the last time, because the Air Force base –

The women, the volleyball team that I talked about – highest attendance in the nation. Standing room only, over 8,000 per match. You can see I am a huge fan of every sport. Volleyball, softball, it doesn't matter – if it's Nebraska, I'm for it. I think a part of that is, that this city, we get really full of ourselves, and we can become self-important and sort of there's an insularity to it.

Sort of a self-sustaining insularity and sort of self-exultation, and I think you got to get out of this stuff. One way out, I'm a motor-homer too. We're literally, you might be staying in a truck stop or in an RV park or some other place, a rest stop.

KRISTOL: You do this during the summer when you're out –

THOMAS: I didn't do much this summer because I was doing *stare decisis*, but we love it – 17 years now.

There's a wonder out here, a democracy where people can be in a small popup-tent, they could be hiking on the back of a motorcycle, but there is just this great country of people doing all this stuff out here, and you meet them and they don't know who you are, but there is this common experience.

You get to see the wonder of the country. If we stay here, we become self-important. It's sort of like we feed on each other, we push each other up, we pump each other up. This, sort of like what's important here. Getting away from it, going out to Nebraska, going to the football games, talking to people – talking to the guy who just got off a combine to come and watch the game. Or who has a feed lot. Or has just a regular job and you have something in common with them, it's the same thing in the RV parks. You got something in common with people from totally different backgrounds.

We were sitting in an RV park some years ago in Ludington, Michigan, Poncho's Pond. I'm sitting there talking to this fellow, and I think he had retired from the Postal Service or something. And he said, "Where are you from?" We told him we were from the DC area, and he said, "What do you do?" I said I do some law, and he said, "That's good."

And he went on and he talked about whatever he was talking about; I think we sat there a couple of hours. He never had a clue who I was, and I wasn't going to tell him because it would have ruined the moment. That's one of my great experiences, and that's been replicated hundreds of times all over this country. It keeps you normal. It's like football, or going to my volleyball games or something. You're with the rest of your country as opposed to insulated or isolated from them.

I mean, you've been at the Court. It truly is "the marble palace" over there. We're isolated – even from DC. And I think we all should be a little bit concerned about that. That we can be that isolated. At least, I don't want it to distort too much the way I do things.

KRISTOL: I don't think it has in your case, and thank you for what you've done on the Court and for the country, and thank you for joining me for this conversation. It was really terrific, thank you for taking time.

The term begins next week, is that right? This was great to be able to get you before you get swamped in writing those dissents – and maybe some majority opinions, as well.

THOMAS: I'm not going to be too hopeful. I was swamped my first term, and we're not exactly killing it.

KRISTOL: The number of cases is coming down. It's good when you can decide on your own workload, right? Big advantage of the Supreme Court.

THOMAS: It's really kind of interesting, you know, maybe we shouldn't be doing any more than we're doing. Cuts down on the opportunities. I kind of actually think we're doing as many as we probably should be doing for now. It may change with demands, but, you know, we could probably do up to 110 or 120 pretty safely. I don't think we're avoiding cases; I just think they're simply not there.

KRISTOL: Thank you so much so much for taking this time, and thank you for rejoining us on CONVERSATIONS.

[END]