

incomes, and health insurance coverage. One hopes it will not enjoy that distinction for long. Future analyses will have to take into account not only Mulligan's projections, but more important his methodology.

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### **The Law of the Land: A Grand Tour of Our Constitutional Republic**

Akhil Reed Amar

New York: Basic Books, 2015, 376 pp.

Akhil Reed Amar's *The Law of The Land: A Grand Tour of Our Constitutional Republic* seeks to take the reader on a "grand tour" of the various regions of the American Republic and define their contribution to constitutionalism in general. The object was to explicate the "différance," as Derrida might say, between Amar's identified 12 distinct cultural regions and to tie that uniqueness into the present tapestry of our constitutional fabric.

This book is a bit of a mixture. On the one hand, it does a fine job exploring constitutional history of various clauses (such as the Second Amendment qua Wisconsin constitutionalism) and individuals (for example, Justice Robert Jackson). Yet, on the other, it doesn't really provide a regionalized "tour" of the constitutional republic. Instead, it attempts to shoehorn a book on significant moments and aspects of constitutional history into a book on regional constitutionalism.

The author somewhat readily admits this flaw in the conclusion, giving a mea culpa for focusing on 12 constitutional instances rather than performing a 50-state survey. But the flaw is a bit deeper. Consider the chapter on Justice Hugo Black.

Amar's premise is that certain constitutional figures or moments are emblematic of a region's contribution to our constitutional fabric. But his discussion of Hugo Back is almost entirely divorced from Alabama and the larger region of the Deep South. Aside from some references to Justice Black's being from Alabama and ruling on cases that came out of Alabama, there is nothing to tie the Deep South to Justice Black's legacy of textual originalism and total incorporation of the Bill of Rights to the states. Indeed, the chapter—while a

fascinating discussion of Justice Black's legacy—does not illustrate anything in particular about Deep South constitutionalism.

Amar's discussion of Kansas's contribution to American constitutionalism through the lens of *Brown v. Board of Education* suffers from the same flaw. While Amar stresses the town of "Topeka" several times in the chapter, he does not at any point describe how Topeka is unique in its contribution to the legacy of American apartheid—and Amar readily admits that segregation is not unique to Kansas or even the Outer Southern Region (how Amar describes the belt around the Deep South that contains Kansas). "Topeka" serves as more of a talismanic incantation than a fixed point in analyzing regional constitutionalism. Thus, the reader is left thinking little about Kansas or the Outer South as a unique region. The most unique part of the chapter is when Amar gives his personal justification of *Brown* as an originalist case based on some interpretative gymnastics around the Titles of Nobility Clause.

To be sure, this flaw is not seen everywhere in the book. Amar makes a much more intricate biographical discussion of Abraham Lincoln and how notions of constitutionalism in Illinois and the Old Northwest shaped Lincoln's understanding of the Republic's constitution and federal supremacy in particular. Moreover, the argument is made much more convincing through an analysis of Lincoln's inaugural address. Nevertheless, readers should take the book with a grain of salt: it is a solid piece of work on important aspects of constitutional history, but the focus on regionalism is a bit misplaced in some chapters.

One historical point in Amar's conclusion in particular bears particular relation to recent events—the death of Justice Antonin Scalia. While the book was written well before the death of the late justice, its brief historical discussion of circuit-riding seems to bear on the present controversy over Senate consent to Supreme Court nominees.

Amar points out that, until the late 1800s, the seats on the Supreme Court were thought of as the Southern seat, the Northern seat, and so on—and for good reason. Justices, as they are now, were assigned a particular circuit, yet, unlike now, they had to visit and hear cases in that circuit. Back then, transportation was so cumbersome as to require the appointment of a justice who *could* ride a particular circuit, necessitating a regional division of justices rather than a political or ideological one per se, regional interests notwithstanding.

The qualifications for justices, at least informally, once included special familiarity with the law of the circuit and presence within the circuit (to facilitate riding). Nowadays, justices are not selected based on their regionalism but are selected based on their judicial philosophy, which inevitably is politicized during nominations.

Indeed, the current controversy over Justice Scalia's seat readily exemplifies this shift from regionalism to ideology. The concern over filling the seat is not that a particular region will not be represented but that the conservative viewpoint on the court will be repressed after nearly 40 years of conservative control of the Court. The Scalia battle is over the nationalization of the judiciary and the shift to a focus on pure ideology and balance, rather than on the nomination process being shaped by practical and regional considerations.

All in all, Amar's book is a good read. It underdelivers on the promise of a grand tour of our constitutional republic, but it is a fine survey of key points of constitutional history. It also provides an historical window into modern conflicts, such as the battle over Scalia's seat.

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