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The Law of the Land: A Grand Tour of Our Constitutional Republic.
By Akhil Reed Amar. New York: Basic Books, 2015. 357 pp.
\$29.99 hardcover.

Reviewed by Julie Novkov, Department of Political Science, University at Albany, SUNY

Constitutional law scholar Akhil Amar's latest book analyzes federalism under the constitution through the creative means of a road tour—an examination of critical interpreters, cases, and constitutional provisions on the ground in 12 different states encompassing every region of the continental United States. The book, however, is not an analysis of the importance of regional constitutional politics on constitutional development, but rather a series of observations designed to illustrate how American constitutionalism manifests itself in a variety of ways inflected by its situation in the states. The seeds planted by the constitution's framework develop into the same American species of plants, but their local soil, water, and sunlight conditions have made them flower differently.

Substantive issues that Amar addresses on the interpretive front in the book's first section include the problems of crafting a multiracial union (Illinois), the modest populism of the constitution embraced by Alabama's Hugo Black, the practical reasoning of former politician and New Yorker Robert Jackson, and Justice Kennedy's gradual evolution toward a Californian ideal of equality. The second section of the book uses landmark cases as both interpretive and geographic lenses. He explores the meaning of segregation as a form of American apartheid outside the south in a chapter on *Brown*, considers the central democratic importance of political dissent in a discussion of Iowa's *Tinker v. Des Moines*, and explores the relationship between state and federal constitutional law through Florida's litigation culminating in *Bush v. Gore*. The final section addresses particularly vexed constitutional provisions in geographic situ: Ohio's and Texas's engagement with presidents and the problem of mandates and succession, Wyoming and the gendered and racialized implications of the Second Amendment, Massachusetts and the

lost history of the warrant requirement, and finally New Jersey and the possibility of state enforcement of federal constitutional rights.

The general theme of the book is that attending to this context enables us to understand “a larger and distinctly American mosaic of federalism—a mosaic reflecting subtle constitutional variation from state to state and across broader geographic regions” (Preface, xii). This point was well taken when the book was published in 2015, but it resonates more strongly in the wake of the election of 2016, as do several of Amar’s individual chapters.

When the book came out, readers likely encountered his discussion of the problem of presidential mandates and the technicalities of how the Twenty-Fifth Amendment allows the vice president to assume presidential powers as interesting thought experiments. Now, however, questions of what constitutes a mandate in a presidential election, how to understand voters’ intentions in casting a ballot for a ticket with two ideologically disparate candidates, and how to think about a potentially conflicted relationship between a president and vice president are potentially concrete and serious. Amar criticizes the electoral college system as problematic primarily because it allows for a lengthy lag between the election of the president and the president’s assumption of office, but notes only briefly the potential legitimacy concerns with a disjuncture between electoral and popular vote winners.

Amar’s discussion of *Bush v. Gore* and Florida, however, raises points worth emphasizing strongly. As he notes, Florida’s experience in the election of 2000 revealed that election officials themselves often make the process of registering to vote and exercising the franchise more difficult for some voters. “Under the banner of combating fraud, many jurisdictions are imposing inappropriate burdens on those who are fully eligible to vote, burdens that often disproportionately disadvantage young, old, nonwhite, and non-wealthy voters” (p. 161). On November 14, 2016, New York University’s Brennan Center released a preliminary report identifying significant and concerning problems with the presidential election even before taking into account the effect of new fraud prevention measures implemented prior to the election: voters in key states reported long lines, malfunctioning voting machines, numerous problems with voter registration, confusion over restrictions, and episodes of voter intimidation (Brennan Center 2016). These findings, which will likely be bolstered with more substantial and troubling evidence by the time this review goes to press, implicate the legitimacy of American democracy. As Amar emphasizes, elections present a fascinating and complex example of federalism in action, with many elements traditionally falling under state rather than national authority. His book, however, raises an important point that resonates here: states can and should take responsibility for

ensuring that federal constitutional guarantees are met. In the case of elections, the drastically *different* conditions under which citizens in the *same* state exercise a fundamental right raises serious constitutional concerns. And unlike many other fundamental rights, the right to vote is one that cannot be exercised at all outside the framework of state implementation.

Amar's picture of the constitution and constitutionalism is a bit optimistic for this political scientist's taste. While he acknowledges real concerns about the constitution and its contemporary operation, his celebration of figures like Lincoln and Anthony Kennedy betray a deep faith in the ultimate triumph of egalitarianism, progressive development, rights as bulwarks against state oppression, and the fundamental goodness of the American constitutional mission. In the wake of a successful presidential electoral campaign based in division, xenophobia, race-baiting, and misogyny, and in surveying the rise and success of right-wing political movements abroad, I am not so sanguine about the continued triumph of liberalism or even that liberalism is a sufficiently strong, cohesive, or protective ideology. Amar's last substantive chapter, however, suggests that states and localities can function as reservoirs for creative and assertive paths to protect and preserve fundamental rights if things go ill. I accept his invitation to consider the possibilities here and encourage others to do so as well.

Reference

Brennan Center (2016) "Voting Problems Present in 2016, But Further Study Needed to Determine Impact." Available at <http://www.brennancenter.org/analysis/voting-problems-present-2016-further-study-needed-determine-impact>. Accessed March 28, 2017.

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The Seductions of Quantification: Measuring Human Rights, Gender Violence, and Sex Trafficking. By Sally Engle Merry. Chicago and London: Univ. of Chicago Press, 2016. 249 pp. \$25.00 paperback.

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As the saying goes, numbers do not lie. Yet numbers do not tell the whole truth, and nor are they immune to the inequalities of power. In this fascinating book, Sally Merry seeks to critically explore the