Constitution and thus conceived of constitutionalism not as Madisonian, but as a matter of limiting judicial discretion, ironically, drawing instead, in Thomas's account, upon the New Deal and legacy of text and tradition to formulate its originalism.

In a book this short with a historical scope this sweeping, it is inevitable that some matters will be given short shrift. I was disappointed, for instance, that Thomas does not sort out the complex historical and philosophical dimensions of social, civil, and political equality in the Civil War amendments, that he gives little attention to the interpretive role of states and juries in the Madisonian Constitution, that he does not attend to the once-important distinction between democratic and republican government. That said, this book is an impressive work, especially for a young scholar. It provides an illuminating framework that brings into proper focus the truly dynamic process of constitutional interpretation. It corrects the excessive historical tidiness of Bruce Ackerman's *We the People*, especially the latter's portrayal of the Supreme Court as playing a "preservationist role" for the most recent expression of *the People* and calls readers' attention to its philosophical naïveté in attempting to ground the Constitution in Rousseau's *Social Contract*. And perhaps most important, this book should make readers more comfortable with conflicting interpretations of the Constitution. Conflict is not an aberration or cause for alarm, but an essential part of our liberal democratic government.

Reference

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Case Cited

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Multiculturalism and Law: A Critical Debate. By Omid A. Payrow Shabani, ed. Cardiff: University of Wales Press, 2007. Pp. xiv+338. $35.00 paper.

Reviewed by Christopher F. Zurn, University of Kentucky

This edited volume presents 13 high-quality essays in political philosophy concerned with legal multiculturalism, specifically with issues raised when liberal democracies adopt legal policies in response to group-based claims for differential treatment of ethnic, cultural, linguistic, and national minorities and indigenous

https://doi.org/10.1111/j.1540-5893.2009.00393_7.x Published online by Cambridge University Press

persons. While this may seem well-trodden territory, this collection's importance lies in the way some of the most important contemporary political and legal theorists here incorporate insights from older debates while moving on to new, more sophisticated explanatory and analytic frameworks, all the while taking seriously the empirical evidence from the implementation of multiculturalist legal policies in varied forms and across diverse political contexts.

Stylizing strongly, one can see this volume as at the cutting edge of a third phase of theorizing about multiculturalism in the context of liberal democracies. In the first phase, issues were approached largely through the matrix developed to think about the assimilation of immigrants, and so the main issues concerned the best way of negotiating the tensions between formal legal equality and transitory exceptions to accommodate cultural differences. However, given that this schema assumed that differences would wither away over time, it proved singularly inapt for understanding the justice claims of those seeking various forms of group-based recognition for identities, practices, traditions, and forms of life distinct from those of the mainstream through such policies as group representation in political institutions, enduring ethnocultural and language rights, land ownership and various forms of territorial autonomy, and power sharing and self-government arrangements. In the second phase of political reflection, then, theorists began trying to explain the normative importance of personal identity and the role of distinctive traditions, practices, cultures, and social relations in forming indispensible contexts for the development and maintenance of such identity. Beginning then with a universal account of the importance of identity, theory aimed to justify abstract normative principles, then apply those principles to the legal and political arrangements of liberal democracies in order, finally, to generate recommendations for multiculturalist policies and rights. Thus were born the debates in political theory between liberal and communitarian versions of multiculturalism, and between multiculturalists and more traditional difference-blind proponents of formal equality in law and politics.

The articles in this volume epitomize the third phase of theorizing in this area. Paying particular attention to the empirical diversity of claims, groups, and political-institutional contexts involved in demands for multiculturalist justice, and eschewing the ideal-theory-first, top-down prescriptive mode of the second phase, the contributors urge a move toward second-order theorizing on the best political procedures and legal structures for social actors themselves to design the terms of their legal consociation. The idea shared throughout is that specifically dialogical and democratic practices of law creation and interpretation provide the best prospects for negotiating the tensions

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induced by multiculturalism in a normatively legitimate manner. Of course, there is currently much philosophical ferment about what democracy is and entails, and this ferment is productively mirrored here. The present book thus collects contributions with a range of views on democracy, law and politics, from liberal egalitarians such as Jeremy Waldron, to liberal multiculturalists such as Will Kymlicka and Jeremy Webber, and from more Kantian critical theorists such as Jürgen Habermas and Thomas McCarthy, to more Hegelian and Nietzschean critical theorists such as Douglas Moggach, Michel Rosenfeld, and James Tully. Derived from a 2004 conference, the collection is usefully structured in a dialectical manner: Lead essays laying out a position are followed by one or two response works that seek not only to raise critical questions about the original, but also to put forward the author's own preferred vision of the best way to approach the issues. The dialectical structure helps get a clear view of the main issues and stakes in contemporary debates, while the substance and originality in most of the response articles helps the volume surpass the usual limits of conference proceedings.

The book covers a wide range of topics that become pressing once political theorists take seriously the enduring normative pluralism and ethnocultural diversity evinced in both established and newly emergent constitutional democracies: the character of political deliberation, proper methods of legal adjudication and interpretation, the variety of legal approaches to the accommodation of difference, the prospects for transnational constitutionalism, international regimes of minority rights specification and enforcement, and so on. This breadth, combined with some striking case studies of particular examples of multicultural legal structures, means that the book will be useful in many different contexts, beyond the target audience of political philosophers and legal theorists, extending to political scientists, sociologists, and law and society scholars. For students and scholars alike concerned to gain a perspicuous overview of the state of the art in the field, they could hardly do better than *Multiculturalism and Law*.

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Eligible for Execution: The Story of the Daryl Atkins Case. By Thomas G. Walker. Washington, DC: Congressional Quarterly Press/ SAGE. Pp. 261. $26.95 paper.

Reviewed by Sarah Beth Kaufman, New York University

In the world of criminal justice, modern death penalty trials and appeals are notoriously complex. As such, most general descriptions of the processes are poor facsimiles by their nature

https://doi.org/10.1111/j.1540-5893.2009.00393_7.x Published online by Cambridge University Press