admit if requested by defense counsel. Third, the prosecution's position on the admissibility of the science was the most common winner in the admissibility decision, indicating support for the goal of law enforcement. As for regional influence, the only statistically significant result was that northwestern U.S. courts were more likely to reject DNA evidence. Finally, external policy actors played a surprisingly minimal role in the decisionmaking process about the novel sciences, having filed few amicus briefs in the cases. The one exception was a national research foundation's formal support for the validity of DNA evidence, which was correlated with the judicial trend toward its broader acceptance.

While this work provides an enriching perspective on the politics of judicial decisions on new scientific theories, there is one notable weakness. The author acknowledges, but leaves to future study, the role of state statutes that mandate the admissibility or rejection of the types of scientific evidence at issue in this research. But since this legislative cooptation of gate-keeping decisions likely had some causative effect on state variation in, and judicial patterns of, admissibility in these cases, it preferably would have been a variable to control for in the main research.

In sum, *Black Robes, White Coats* provides an innovative approach to studying judicial behavior that goes beyond traditional logic-based legal analysis by exploring the impact of internal and external political factors. Any one judicial gatekeeping decision about a science should not be considered in a vacuum since it has likely been influenced by other factors and it may itself affect larger trajectories of admissibility patterns. The reliability of science in the courtroom, the author determines, is filtered through scientific, legal, and, more important, political lenses. The result implicates public policy concerns to further consider. This book will be useful to a variety of readers, including criminal law practitioners, sociolegal scholars, and expert witnesses.

Cases Cited

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The Madisonian Constitution. By George Thomas. Baltimore: Johns Hopkins University Press, 2008. Pp. xi+248. $50.00 cloth.

Reviewed by Stanley C. Brubaker, Colgate University

In the popular imagination (and high school civic textbooks) it is the courts generally, and the Supreme Court in particular, with

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which the Constitution has vested sole responsibility for safeguarding the Constitution. Senators too, over the past generation, eager to divest themselves of the moral burden of constitutional responsibility and perhaps cowed by the increasingly technical character of legal doctrine, limit their responsibility for constitutional interpretation to making sure that nominees to the Supreme Court share their philosophy. And, in recent decades, the Supreme Court, while feigning hope that this bitter cup will pass, quaffs down the intoxicating empowerment, telling others that when *it* resolves an "intensely divisive" controversy the time has come for the contending sides "to end their national division by accepting a common mandate rooted in the Constitution"—in other words, "we're in charge here."

Constitutional scholars generally know better. They recognize that Chief Justice John Marshall made a more modest claim for the courts in *Marbury v. Madison*, claiming only that the Constitution was intended "as a rule for the government of *courts*, as well as of the legislature" and "*courts* as well as the other departments, are bound by that instrument" (*Marbury v. Madison*, 5 U.S. 137, 180 [1803]; italics in original for both quotations). Most scholars also know that general acquiescence in this doctrine of "judicial supremacy" is of recent origin, but some, taking note of this judicial excess, use it as an excuse for generating one of their own—the "popular Constitution," which enables "we the people" to make and remake the Constitution as they please, regardless of the formalities of the Article V amendment process.

In *The Madisonian Constitution*, Thomas charts a philosophically grounded and historically informed course between these extremes, showing that James Madison and most others responsible for framing the Constitution, as well as major statesmen who followed, had a more prudent approach in mind. It might be stated as the obverse of Chief Justice Marshall's comment: the Constitution was intended as "a rule for the government of *legislatures* and *executives* as well as the courts." The book owes a debt to Aristotle, not just in its avoidance of extremes but in its portrayal of the American Constitution as a descendent of his mixed regime, pitting distinct power bases and competing principles of justice against one another to encourage moderation and a more complete account of justice (equal treatment for equals, as democrats would emphasize, but also unequal treatment for unequals, as oligarchs would emphasize). Rather than bases of power, the American Constitution builds on the distribution of powers between state and federal government and, more important for this analysis, the separation of powers according to function of Congress, President, and the courts. And rather than class-based principles of justice, the American Constitution builds on the traditions of natural rights

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and popular sovereignty, liberalism, and democracy (or republicanism)—each tradition appealing to the nonhierarchical ideals of liberty and equality but each providing quite distinct meanings. *The Madisonian Constitution* bears some resemblance to departmentalism—the idea that each branch of government is authorized to interpret the Constitution concerning its distinctive function and constitutional powers. But Thomas argues that in the true Madisonian spirit the branches should not be so limited. Instead they should each look to the "whole genius" of the Constitution—as they understand it.

With this framework of constitutional understanding, Thomas explores how competing conceptualizations of liberalism and democracy bring the words of the text to life in four episodes following the Founding.

First, he discusses the endeavor of President Abraham Lincoln and congressional Republicans to "complete" the Constitution by extending the liberal principle of natural rights to all members regardless of race and authorizing the federal government to protect these rights against state encroachment. This vision succeeds only in part with the Supreme Court, especially in *Slaughterhouse Cases* and the *Civil Rights Cases*, drastically limiting the scope of the Civil War amendments by adhering to elements of the antebellum Constitution.

Second, Thomas relates the effort of Progressives to recast the Constitution as a living organism without fixed meaning, an effort partially checked by shifting coalitions on the Supreme Court that expressed at times endorsement, at other times disapproval in the name of visions of the preceding antebellum republicanism or natural rights liberalism.

Third, he discusses the New Deal, which more successfully extended the Progressive vision of an administrative state with plenary authority to regulate the economy, this time supported—eventually—by the Supreme Court. But the Court, having deracinated natural rights liberalism from its grounding in property, bequeathed an ambiguous legacy regarding civil liberties, reflected on the Court by the tradition-based jurisprudence of Justice Felix Frankfurter and the text-based jurisprudence of Justice Hugo Black. Later courts resolved the ambiguity by relying on neither text nor tradition as they grew more venturesome in the protection of privacy and asserted stronger claims to judicial supremacy.

Finally, Thomas brings up the Reagan Republicans who checked the Progressive/New Deal vision of plenary authority over the economy, but who, with important exceptions (including President Ronald Reagan himself and his attorney general, Edwin Meese), accepted plenary authority of the judiciary over the

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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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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

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