THE ORIGINAL PRINCIPLES OF CRIMINAL PROCEDURE

Reviewing:


Undoubtedly, Akhil Reed Amar, professor of law at Yale University, is one of the most perceptive and provocative scholars of constitutional law, as measured by frequency of the times in which his writings have been cited, and the equally frequent times that legal scholars have quoted him. Amar’s impact on criminal procedure is tremendous. His recently released *The Constitution and Criminal Procedure: First Principles* is a beautifully written, thoroughly researched and meticulously referenced collection of many of his previously published works on the Constitution and criminal procedure. Consistent with his previous work, Amar forcefully argues for more democratic and humane constitutional principles.  

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1 See e.g., AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 27 (1998) (arguing that that the original ten amendments were not intended solely, or even primarily, to defend individual rights. Instead, they were designed to elaborate and qualify the structural principles of the Constitution); AKHIL REED AMAR & ALAN HIRSCH, *FOR THE PEOPLE: WHAT THE CONSTITUTION REALLY SAYS ABOUT YOUR RIGHTS* 1–5 (1998) (reinterpreting the constitutional history and its related substantive issues as it relates to the Bill of Rights); Akhil Reed Amar, *Law Story, 102 Harv. L. Rev. 688, 691 (1989)* (reviewing PAUL M. BATOR ET AL., *HART AND WEISSCHLER’S THE FEDERAL COURTS AND THE FEDERAL SYSTEM* (3d, 1988)); Akhil Reed Amar, *The Central Meaning of Republican Government: Popular Sovereignty, Majority Rule, and the Denominator Problem, 65 U. Colo. L. Rev. 749 (1994)* (arguing that the central pillar of republican government is popular sovereignty); Akhil Reed Amar, *Did the Fourteenth Amendment Incorporate the Bill of Rights Against the States?, 19 Harv. J. L. & Pub. Pol’y 443 (1996)* (arguing that the Fourteenth Amendment bars
He combines philosophy and constitutional theory to create a highly readable and intriguing work that serves as an excellent text for understanding what criminal procedure was intended to accomplish.

The contents of Amar’s tract are as provocative as the image of the handcuffed wrists on its front cover. Readers will find a collection of Amar’s articles on each of the amendments to the Constitution. Each article reinvents the constitutional provision at issue based on Amar’s close analysis and interpretations of the Constitution’s text, structure, and history. But unlike most historical accounts of the Constitution, he works from text and original intent, to provide suggestions for concrete doctrinal reforms. At the outset of his impressive intellectual project, Amar criticizes and challenges the fact that the present state of constitutional law is in poor condition. “[T]he kind of constitutional law discourse and scholarship that now dominates criminal procedure is . . . bad constitutional law . . . insouciant about constitutional text, ignorant of constitutional history, and inattentive to constitutional structure”, he says.2

The book is logically organized and neatly divided into four sections. Part one briefly summarizes the history of the Fourth Amendment. The second part covers the Supreme Court’s Fifth Amendment jurisprudence. Part three offers a general framework for understanding the Sixth Amendment and illuminates its internal architecture.3 Part Four concludes with Amar’s observations about potential jury reform and his outlook on the future of American criminal procedure. As an integrated whole, it reflects Amar’s concerns about the provision, which he considers as “the heartland of constitutional criminal procedure”.4 Amar returns to the roots and the original language of the Constitution. His aim is straightforward. Amar wants to show how the Fourth, Fifth and Sixth Amendments fit together. The Constitution and Criminal Procedure: First Principles attempts to reconceptualize the basic foundations of the three provisions. In doing so, Amar demonstrates how the Supreme Court has constitutionalized vast areas of criminal procedure in ways that often reward the guilty while

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3 Ibid.
4 Ibid., p. 89.