It is a great honor and privilege for me to comment on this wonderful book by my friend Akhil Amar.

Born Equal is the second volume of Akhil's grand trilogy, a constitutional history of the United States. This is a bold and ambitious project. As Akhil stated in his first volume, we have multitudes of books on this and that constitutional issue, narrow monographs that never see beyond their particular subject or particular period. But we have precious few treatments of our constitutional history that are wide-angled and multigenerational and that sweep over the entire exciting 250-year history of our constitutional struggles.

Akhil rightly believes that our constitutional conversation that chugs along in courtrooms, classrooms, newsrooms, family rooms and everywhere in between needs a better historical foundation than it has at present. And who could quarrel with that? He hopes that his trilogy will unite history and law in a broad and multigenerational narrative that seeks both

to understand the past and to evaluate it using proper historical and legal tools of analysis.

This second volume deals with the eighty -year period between 1840 and 1920, a period of immense change including a civil war, a period in which the United States became a modern nation resembling the other nations of Europe.

The scale of Akhil's trilogy—-the entire constitutional history of the United States-- poses all kinds of organizational and writing problems that I believe he is solving in the most imaginative and persuasive ways. He can't include everything, but he can't omit too much or his readers might complain. He doesn't want his history to be merely a description of a series of constitutional events---this happened, and this happened, and this happened. He wants to have a narrative and yet be able to stop periodically and engage in rich and deep analyses of persons and events. Most important, he wants his book to be exciting and

accessible to a readership that he hopes will range from high-school students to Supreme Court justices.

Akhil's history is selective, and his criterion of selection is the constitutional importance of the person or the event. His technique is brilliant. Rather than simply moving from one constitutional event after another seriatim, he develops his narrative by selecting one important event or person, filling out and enriching that constitutional subject, and then using that event or person to expand outward, both backward and forward, to illuminate other events and developments connected with the original subject. With such a technique he can combine both narrative movement and deep analysis.

For example, he opens his book with a detailed description of the first World Anti-Slavery Convention held in London in 1840. It was open to activists around the globe, and a number of Americans attended. In its first meeting the convention voted to categorically deny all the female delegates, eight of them, all

Americans, the right to vote or speak, even if they had credentials to attend. These attendees included Lucretia Mott and the newly married Elizabeth Cady Stanton.

Akhil brilliantly uses this event, which he spends a considerable amount of time on, to explore the tensions involved in men being opposed to slavery and yet at the same time unwilling to allow women the right to speak against it. Akhil uses the convention setting to reach back to Philadelphia in 1787 and the discussion of slavery in relation to the Constitution and then he fills in what happened to slavery and antislavery up to the 1840s.

In a like way Akhil uses the presence of Elizabeth Stanton and Lucretia Mott at the London Convention as a basis for understanding the meeting at Seneca Falls in 1848, a meeting which Frederick Douglass attended. Akhil sets the Senaca Falls Declaration of Sentiments alongside the Declaration of Independence and reveals the clever way in which Stanton exploited the great

Declaration of 1776. According to Akhil, no other historian has ever made this side-by-side comparison of the two documents in just this manner.

This is his technique. In other words, Akhil's book in no simple narrative with one thing happening after another. It is the most extraordinary kind of history that I have read, using key events, key dates, and maps, especially maps, to illuminate the history of the nation. No other historian, as far as I know, has ever used colored maps so successfully to illustrate and illuminate developments in the nation's history.

At the outset he drew a distinction between ordinary historians like me and legal historians who have been formally legally trained as he was. He understands correctly that ordinary historians simply seek to understand the past in its own terms. We run-of-the-mill historians don't usually get involved in making normative judgments about the participants in the past. It would be a strange history of seventeenth century Massachusetts, for example, if we spent a great

amount of time condemning John Wintrop and his fellow Puritans for their bigoty and their narrow-minded prejudices on religious matters. Most of us ordinary historians do not purposefully write our history in order to teach lessons for us in the present. We don't, for example, write about the Puritans so that we can better appreciate our separation of church and state.

Yet because Akhil has been legally trained, he needs to find what was legally right and what was legally wrong in the psst. He says lawyers, judges and lawmakers necessarily approach the past differently from ordinary historians. They need to make judgments about constitutional issues in the past because past legal behavior has important implications for us in the present.

Unlike many ordinary historians, he also uses counterfactual history to illuminate what might have happened, a dangerous but sometimes helpful technique that ordinary historians rarely use. Had there been no Mexican War and California never joined the Union, he

asks, would the southern states have seceded? Akhil concludes that they would still have left the Union.

He then makes judgments that most ordinary historians would likely not make. The southern political leaders, he says, were so stupid that they would have found some pretext or another to justify their secession. He goes on to tell us what the South should have done if it were not so burdened by its stupid leaders. The South, he suggests, should have paid more attention to the northern arguments against slavery instead of gagging them. But like George III and his ministers in the 1760s and early 70s, they refused to listen to any sensible constitutional arguments. "Slavery, he writes, "had made the slavocracy stupid." Didn't South Carolina know that it had no legal or constitutional right to leave the Union?

This kind of writing makes me uneasy. That is not what a standard, run-of-the-mill historian would say. But legal historians write a different kind of history,

and judgments about the behavior of the participants in the past come easy to them. I don't think the southern leaders were stupid, but I do believe they saw the Western world pressing in on them, and beneath their bravado, they were bewildered and desperate, believing rightly that their entire way of life was threatened by the antislavery movement. That is why they left the Union so suddenly when Lincoln was elected.

Of course, with Akhil's technique of highlighting and exploring particular events, he has to leave out some nineteenth century history, and thus readers will sometimes have to have some prior contextual knowledge to fully understand the constitutional discussions. Although we have no account of the Mexican war itself, we do learn why it occurred and what the great territorial consequences were. But it seems to me that little of importance is omitted from the narrative, and certainly no constitutional issue is missed. Because the Texan Revolution has constitutional importance, we

get a fairly full account of it, including Texas's constitutional integration into the nation.

Akhil is interested in some issues that are not technically constitutional. He includes, for example, a fascinating exploration of the historical importance of a good death and the significance of death paintings, stimulated by Benjamin West's famous painting of the death of General Wolfe in 1770. This subject allows him to have many marvelous illustrations in the book, lots of great deaths.

Akhil is very interested in the Adams family, and he devotes a considerable amount of space to the Adamses. In that discussion he reveals his often conversational style of writing that allows him to make several personal and often sarcastic insertions. He describes John Adams's severe lecture to his son John Quincy, at the time a young man in his twenties, "if you do not rise to the head not only of your Profession but of your Country it will be owing to your own Laziness, Slovenliness and Obstinacy." Here Akhil

injects a parenthetical comment in italics "(*Thanks for the pep talk, Dad*.)" This kind of snarky insertion is perhaps not to everyone's taste, but they are very revealing of Akhil's sweet and pixieish personality.

Akhil spends a lot of time with John Quincy Adams, especially focusing on his later career as a congressman tormenting the South over its attempts to gag the spread of antislavery literature in the southern states, and on his dramatic collapse in the Congress in 1848, followed by his death several days later.

1848, what a year! And Akhil makes the most of it: republican revolutions throughout Europe, the Seneca Falls declaration of women's rights, the end of the Mexican war, and the discovery of gold in California. 1848 was also the year in which Abraham Lincoln was serving his single term as a congressman alongside John Quincy Adams,

Akhil pays a lot of attention to Harriet Beecher Snow's great novel, Uncle Tom's Cabin, arguing

persuasively that Snow was among the most important women in American constitutional history. She was, as he says, certainly the first American woman to hold center stage in national political discourse.

Akhil finds connections in our past that other historians have missed, and his statements are often electrifying. ”No nation in modern history,” he writes, “had grown this much, this fast, in either population or landmass.” Those kinds of bold statements wake up the reader.

The prevalence of his use of originalism will probably be quite controversial. Americans in the antebellum period, he says, possessed “a profoundly originalist culture, almost idolatrous in its founding worship.” Akhil mounts a massive amount of evidence to show how much Americans worshipped their founding and its founders. The Constitution was everything to everyone. Even the dozens of presidential vetoes during this period rested on constitutional objections.

He doesn't mention Wesley Frank Craven's book of 1956, The Legend of the Founding Fathers. Craven, who was a professor history at Princeton, claimed that for many Americans the founders before the 1840s were the seventeenth-century founders, John Smith, John Winthrop, William Penn, and so on. Martin Van Buren in the New York constitutional convention of 1820 told his colleagues that the men who drafted the Constitution of 1787 had nothing to tell us. They were aristocrats, said Van Buren, and we are democrats. The antislavery movement changed everything, and changed the meaning of the founders for Americans.

Akhil tells us which political leaders interpreted the Constitution correctly and which got it wrong. When he does this, Akhil is speaking as a lawyer or jurist, not as a run-of- the-mill historian. Ordinary historians would probably not make those kinds of confident normative judgments about the nature of the Constitution, but would instead simply describe the

different views of the Constitution by people at the time.

Lincoln is Akhil's hero. According to Akhil, no one worshiped the founders more, no one was more of an originalist, and no one interpreted the Constitution more correctly than Lincoln. Lincoln, he says, incorporated in himself the best of each of the leading founders. I agree with Akhil that Lincoln was a superb politician, the best of his time, surely, and maybe the best of the entire century. According to Akhil, Lincoln was the "preeminent originalist," and he was constitutionally correct on every issue, even on those issues that some scholars have questioned. Akhil seems to apply the term originalist to anyone who looked to the Constitution alone for an understanding of constitutional issues. Akhil's use of originalism and his argument that Lincoln was the supreme originalist are bound to be disputed, but I like his juristic boldness.

Akhil doesn't like Stephen Douglas. During his brilliant analysis of the Lincoln-Douglas debates, one of the best I have ever read, Akhil points out the shiftiness of Douglas's argument, and then asks, "*If you were in the audience, would you buy a used carriage from this man*?".

Akhil explains better than most accounts I have read how each of the three constitutional amendments enacted at the end of the Civil War were connected: each of them, he points out, required the next in a three-part harmony. He parses the five sections of the fourteenth amendment more clearly than I had ever seen before. He also clearly demonstrates how the fourteenth amendment applies most of the Bill of Rights to the states, the doctrine of incorporation. He also shows how the language of the amendments built upon all the earlier reform movements. Somehow everything was brought together by the Civil War.

Stating that the period between 1870 and 1915 was far less illuminating than the previous thirty years

for those who today seek a proper understanding of the Constitution, Akhil decided merely to briefly summarize the principal Supreme Court decisions of those years. He ends his book with the Progressive amendments and the nineteenth amendment granting women the right to vote.

In a postscript Akhil explains some of the eccentricities of his writing style, one of which I found disconcerting. He says he became close friends with some of his characters in the past and decided to refer to them by their first names, as friends do, instead of using their surnames, which he says is intrinsically patriarchal. So we have Abe, Elizabeth, Lucretia, Harriet, Frederick, Wendell, and so on. All I say about this is that I hope in next volume he develops no friends among his characters.

1840 t0 1920 was an amazing period for constitutional history, and Akhil has captured all the dynamism of those eighty years in this wonderful volume. It is a fitting successor to his first volume

In the Words That Made Us. In this second volume of this great trilogy, he has paid tribute to the power of equality in our political and constitutional lives as no other historian ever has. I congratulate him on its publication.