

# Designing Democracy

## What Constitutions Do



Cass R. Sunstein

# Designing Democracy What Constitutions Do

**Adam Chilton, Mila Versteeg**



## **Designing Democracy What Constitutions Do:**

*Designing Democracy* Cass R. Sunstein, 2001-09-27 In modern nations political disagreement is the source of both the gravest danger and the greatest security writes Cass Sunstein All democracies face intense political conflict But is this conflict necessarily something to fear In this provocative book one of our leading political and legal theorists reveals how a nation s divisions of conviction and belief can be used to safeguard democracy Confronting one explosive political issue after another from presidential impeachment to the limits of religious liberty from discrimination against women and gays to the role of the judiciary Sunstein constructs a powerful new perspective from which to show how democracies negotiate their most divisive real world problems He focuses on a series of concrete concerns that go to the heart of the relationship between the idea of democracy and the idea of constitutionalism Illustrating his discussion with examples from constitutional debates and court cases in South Africa Eastern Europe Israel America and elsewhere Sunstein takes readers through a number of highly charged questions When should government be permitted to control discriminatory behavior by or within religious organizations Does it make sense to govern on the basis of popular referenda Can the right to have an abortion be defended Can we defend Internet regulation Should the law step in if children are being schooled in discriminatory preferences and beliefs Should a constitution protect rights to food shelter and health care Disputes over questions such as these can be fierce enough to pose a grave threat But in a paradox whose elaboration forms the core of Sunstein s book it is a nation s apparently threatening diversity of opinion that can ensure its integrity Extending his important recent work on the way deliberation within like minded groups can produce extremism Sunstein breaks new ground in identifying the mechanisms behind political conflict in democratic nations At the same time he develops a profound understanding of a constitutional democracy s system of checks and balances Sunstein shows how a good constitution fostering a republic of reasons enables people of opposing ethical and religious commitments to reach agreement where agreement is necessary while making it unnecessary to reach agreement when agreement is impossible A marvel of lucid subtle reasoning

DESIGNING DEMOCRACY makes invaluable reading for anyone concerned with the promises and pitfalls of the democratic experiment Crafting Constitutional Democracies Edward Schneier, 2006-05-12 By examining the institutions of government through the lens of constitution making *Crafting Constitutional Democracies* provides a broad and insightful introduction to comparative politics Drawn from a series of lectures given in Jakarta Indonesia on the drafting of the U S constitution the book illustrates the problems faced by generations of founders through numerous historic and contemporary examples Both Indonesia in 1999 and the United States in 1789 faced the same basic issue how to construct a central government for a large and diverse nation that allowed the majority of the people to govern themselves without intruding on the rights of minorities What kinds of institutions make for good government What factors need to be considered in designing a government Author Edward Schneier explores these questions through a rich variety of examples from both recent and

historic transitions to democracy Drawing frequently upon the arguments of the American Federalist Papers and more contemporary theories of democratization Crafting Constitutional Democracies lucidly explores the key questions of how and why democracies succeed and fail A concluding chapter on constitutional change and decline raises provocative and important questions about the lessons that citizens of the world s older democracies might take from the struggles of the new

**Comparative Constitution Making** David Landau,Hanna Lerner,2019 Recent years have witnessed an explosion of new research on constitution making Comparative Constitution Making provides an up to date overview of this rapidly expanding field p p1 margin 0 0px 0 0px 0 0px 0 0px font 10 0px Arial Making Constitutions in Deeply Divided Societies Hanna Lerner,2011-05-12 How can societies still grappling over the common values and shared vision of their state draft a democratic constitution This is the central puzzle of Making Constitutions in Deeply Divided Societies While most theories discuss constitution making in the context of a moment of revolutionary change Hanna Lerner argues that an incrementalist approach to constitution making can enable societies riven by deep internal disagreements to either enact a written constitution or function with an unwritten one She illustrates the process of constitution writing in three deeply divided societies Israel India and Ireland and explores the various incrementalist strategies deployed by their drafters These include the avoidance of clear decisions the use of ambivalent legal language and the inclusion of contrasting provisions in the constitution Such techniques allow the deferral of controversial choices regarding the foundational aspects of the polity to future political institutions thus enabling the constitution to reflect a divided identity Constitution Making during State Building Joanne Wallis,2014-09-15 This book argues that fragmented divided societies that aren t immediately compatible with centralised statehood can best adjust by emphasising the role of constitution making *The Democratic Constitution* Brian E. Butler,2017-08-21 The Supreme Court is seen today as the ultimate arbiter of the Constitution Once the Court has spoken it is the duty of the citizens and their elected officials to abide by its decisions But the conception of the Supreme Court as the final interpreter of constitutional law took hold only relatively recently Drawing on the pragmatic ideals characterized by Charles Sanders Peirce John Dewey Charles Sabel and Richard Posner Brian E Butler shows how this conception is inherently problematic for a healthy democracy Butler offers an alternative democratic conception of constitutional law democratic experimentalism and applies it in a thorough reconstruction of Supreme Court cases across the centuries such as Brown v Board of Education Citizens United v Federal Election Commission Lucas v South Carolina Coastal Council and Lochner v New York In contrast to the traditional tools and conceptions of legal analysis that see the law as a formally unique and separate type of practice democratic experimentalism combines democratic aims and experimental practice Butler also suggests other directions jurisprudential roles could take for example adjudication could be performed by primary stakeholders with better information Ultimately Butler argues persuasively for a move away from the current absolute centrality of courts toward a system of justice that emphasizes local rule and democratic choice Constitutions,

Religion and Politics in Asia Dian A. H. Shah, 2017-10-26 As religious polarisation in society deepens political actors and policy makers have begun to struggle with questions on the role of the dominant religion and how religion influences constitutional commitments and development By focusing on Indonesia Malaysia and Sri Lanka Constitutions Religion and Politics in Asia demonstrates how constitution making and the operation of constitutional arrangements involving religion cannot be separated from the broader political dynamics of society Although constitutions establish legal and political structures of government institutions and provide tools for rights protection they do not operate in a vacuum divorced from the games of power and the political realities surrounding them Here Shah sets out how constitutions operate and evolve and demonstrates how constitutional provisions can produce unintended consequences over time A vital new source of scholarship for students and scholars of law and religion and comparative constitutional law and those interested in issues of constitutionalism and legal and political history in Asia

The Constitution of the Environmental Emergency Jocelyn Stacey, 2018-04-19 This book argues for a reframing of environmental law It starts from the premise that all environmental issues confront lawmakers as emergencies Environmental issues pose a fundamental challenge to law because it is impossible to reliably predict which issues contain the possibility of an emergency and what to do in response to such an unforeseen event These features undermine the conventional understanding of the rule of law This book argues that approaching environmental issues from the emergency perspective leads us to an understanding of the rule of law that requires public justification This requirement recentres the debates in environmental law around the question of why governance under the rule of law is something worth having in the environmental context It elaborates what the rule of law requires of decision makers in light of our ever present vulnerability to catastrophic environmental harm Controversial compelling and above all timely this book presents an important new perspective on environmental law

**Roles and Perspectives in the Law** David Carter, Matthew Palmer, 2002 Contains papers presented at a conference entitled Roles and perspectives in the law held in April 2002 at Victoria University of Wellington Law School honouring Sir Ivor Richardson upon his retirement as President of the Court of Appeal Covers eight distinct and contrasting areas of law the juxtaposition of which illustrates the underlying principles tensions and values that run through the law Includes sections on taxes and commercial regulation

*Constituting Scotland* W. Elliot Bulmer, 2016-07-08 Before the independence referendum in 2014 the First Minister of Scotland Alex Salmond promised a written constitution for Scotland in the event of a Yes vote The UK is almost unique in having never adopted a written constitution or other fundamental law Why did this commitment arise in Scotland

*How Constitutional Rights Matter* Adam Chilton, Mila Versteeg, 2020-06-19 Does constitutionalizing rights improve respect for those rights in practice Drawing on statistical analyses survey experiments and case studies from around the world this book argues that enforcing constitutional rights is not easy but that some rights are harder to repress than others First enshrining rights in constitutions does not automatically ensure that those rights will be respected For rights to

matter rights violations need to be politically costly But this is difficult to accomplish for unconnected groups of citizens Second some rights are easier to enforce than others especially those with natural constituencies that can mobilize for their enforcement This is the case for rights that are practiced by and within organizations such as the rights to religious freedom to unionize and to form political parties Because religious groups trade unions and parties are highly organized they are well equipped to use the constitution to resist rights violations As a result these rights are systematically associated with better practices By contrast rights that are practiced on an individual basis such as free speech or the prohibition of torture often lack natural constituencies to enforce them which makes it easier for governments to violate these rights Third even highly organized groups armed with the constitution may not be able to stop governments dedicated to rights repression When constitutional rights are enforced by dedicated organizations they are thus best understood as speed bumps that slow down attempts at repression An important contribution to comparative constitutional law this book provides a comprehensive picture of the spread of constitutional rights and their enforcement around the world

*Building the Constitution* James Fowkes, 2016-12-15 This revisionary perspective on South Africa's celebrated Constitutional Court draws on historical and empirical sources alongside conventional legal analysis to show how support from the African National Congress ANC government and other political actors has underpinned the Court's landmark cases which are often applauded too narrowly as merely judicial achievements Standard accounts see the Court as overseer of a negotiated constitutional compromise and as the looked to guardian of that constitution against the rising threat of the ANC However in reality South African successes have been built on broader and more admirable constitutional politics to a degree no previous account has described or acknowledged The Court has responded to this context with a substantially consistent but widely misunderstood pattern of deference and intervention Although a work in progress this institutional self understanding represents a powerful effort by an emerging court as one constitutionally serious actor among others to build a constitution

*Constitutionalism and a Right to Effective Government?* Vicki C. Jackson, Yasmin Dawood, 2022-10-27 This interdisciplinary volume highlights the crucial role of effective government in sustaining democratic constitutionalism In each chapter leaders in the fields of constitutional law and politics provide innovative analyses of the relationships between effective government and democratic constitutionalism its principles and its institutions

Justice Stephen Field's Cooperative Constitution of Liberty Adam M. Carrington, 2017-06-30 This book examines liberty's Constitutional meaning through the jurisprudence of Justice Stephen Field one of the late Nineteenth Century's most influential Supreme Court Justices A Lincoln appointee who served on the Court from 1863-1897 Field articulated a view of Constitutional liberty that speaks to contemporary disputes Today some see liberty as protection through government regulation against private oppression Others see liberty as protection from government through limits on governmental power Justice Field is often viewed as siding against government power to regulate acting as a pre cursor to the infamous Lochner Era of the Court This work explains how Field instead saw both these

competing conceptions of liberty as legitimate In fact the two cooperated toward a common end In his opinions Field argued that protections through and from government worked in tandem to guard fundamental individual rights In describing this view of liberty Field addressed key Constitutional provisions that remain a source of debate including some of the earliest interpretations of the Due Process Clause its relationship to state police power and civil rights and some of the earliest assertions of a national police power through the Commerce Clause This work furthermore addresses the underpinnings of Field s views namely that he grounded his reading of the Constitution in the context of the common law and the Declaration of Independence In his principles as well as his approach this book argues Justice Field presents a helpful discussant in ongoing debates regarding the meaning of liberty and of the Constitution Founding Acts Serdar Tekin,2016-05-25

Founding Acts argues that how constitutions are made or their pedigree is morally and politically as significant as what they are made of or their content On this view democratic constitution making is not only about making a democratic constitution but also about making it democratically **The Design Way, second edition** Harold G. Nelson,Erik Stolterman,2014-08-29

A book that lays out the fundamental concepts of design culture and outlines a design driven way to approach the world Humans did not discover fire they designed it Design is not defined by software programs blueprints or font choice When we create new things technologies organizations processes systems environments ways of thinking we engage in design With this expansive view of design as their premise in *The Design Way* Harold Nelson and Erik Stolterman make the case for design as its own culture of inquiry and action They offer not a recipe for design practice or theorizing but a formulation of design culture s fundamental core of ideas These ideas which form the design way are applicable to an infinite variety of design domains from such traditional fields as architecture and graphic design to such nontraditional design areas as organizational educational interaction and healthcare design The text of this second edition is accompanied by new detailed images schemas that visualize conceptualize and structure the authors understanding of design inquiry The text itself has been revised and expanded throughout in part in response to reader feedback **The Story of Constitutions** Wim Voermans,2023-11-02

Adopts an interdisciplinary approach to trace the surprising story of written constitutions since the agricultural revolution of c 10 000 B C **Routledge Handbook of Comparative Political Institutions** Jennifer Gandhi,Rubén Ruiz-Rufino,2015-04-10

The Routledge Handbook of Comparative Political Institutions HCPI is designed to serve as a comprehensive reference guide to our accumulated knowledge and the cutting edge of scholarship about political institutions in the comparative context It differs from existing handbooks in that it focuses squarely on institutions but also discusses how they intersect with the study of mass behaviour and explain important outcomes drawing on the perspective of comparative politics The Handbook is organized into three sections The first section consisting of six chapters is organized around broad theoretical and empirical challenges affecting the study of institutions It highlights the major issues that emerge among scholars defining measuring and analyzing institutions The second section includes fifteen chapters each of

which handles a different substantive institution of importance in comparative politics This section covers traditional topics such as electoral rules and federalism as well as less conventional but equally important areas including authoritarian institutions labor market institutions and the military Each chapter not only provides a summary of our current state of knowledge on the topic but also advances claims that emphasise the research frontier on the topic and that should encourage greater investigation The final section encompassing seven chapters examines the relationship between institutions and a variety of important outcomes such as political violence economic performance and voting behavior The idea is to consider what features of the political sociological and economic world we understand better because of the scholarly attention to institutions Featuring contributions from leading researchers in the field from the US UK Europe and elsewhere this Handbook will be of great interest to all students and scholars of political institutions political behaviour and comparative politics Jennifer Gandhi is Associate Professor Department of Political Science Emory University Rub n Ruiz Rufino is Lecturer in International Politics Department of Political Economy King s College London

**Comparative Constitutional Law** Tom Ginsburg, Rosalind Dixon, 2011-01-01 This landmark volume of specially commissioned original contributions by top international scholars organizes the issues and controversies of the rich and rapidly maturing field of comparative constitutional law Divided into sections on constitutional design and redesign identity structure individual rights and state duties courts and constitutional interpretation this comprehensive volume covers over 100 countries as well as a range of approaches to the boundaries of constitutional law While some chapters reference the text of legal instruments expressly labeled constitutional others focus on the idea of entrenchment or take a more functional approach Challenging the current boundaries of the field the contributors offer diverse perspectives cultural historical and institutional as well as suggestions for future research A unique and enlightening volume Comparative Constitutional Law is an essential resource for students and scholars of the subject

**How Constitutions Change** Dawn Oliver, Carlo Fusaro, 2011-08-09 This set of essays explores how constitutions change and are changed in a number of countries and how the constitution of the EU changes and is changed For a range of reasons including internal and external pressures the constitutional arrangements in many countries are changing Constitutional change may be formal involving amendments to the texts of Constitutions or the passage of legislation of a clearly constitutional kind or informal and organic as where court decisions affect the operation of the system of government or where new administrative and other arrangements eg agencification affect or articulate or alter the operation of the constitution of the country without the need to resort to formal change The countries in this study include from the EU a common law country a Nordic one a former communist state several civil law systems parliamentary systems and a hybrid one France Chapters on non EU countries include two on developing countries India and South Africa two on common law countries without entrenched written constitutions Israel and New Zealand a presidential system the USA and three federal ones Switzerland the USA and Canada In the last two chapters the editors conduct a detailed



comparative analysis of the jurisdiction based chapters and explore the question whether any overarching theory or theories about constitutional change in liberal democracies emerge from the study

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