

# Designing Democracy

## What Constitutions Do



Cass R. Sunstein

# Designing Democracy What Constitutions Do

**David Magleby**



## **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

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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

*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

**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

**The Constitution of Risk** Adrian Vermeule, 2014 The Constitution of Risk is the first book to combine constitutional theory with the theory of risk regulation The book argues that constitutional rulemaking is best understood as a means of managing political risks Constitutional law structures and regulates the risks that arise in and from political life such as an executive coup or military putsch political abuse of ideological or ethnic minorities or corrupt self dealing by officials The book claims that the best way to manage political risks is an approach it calls optimizing constitutionalism in contrast to the worst case thinking that underpins precautionary constitutionalism a mainstay of liberal constitutional theory Drawing on a broad range of disciplines such as decision theory game theory welfare economics political science and psychology this book advocates constitutional rulemaking undertaken in a spirit of welfare maximization and offers a corrective to the pervasive and frequently irrational attitude of distrust of official power that is so prominent in American constitutional history and discourse

The Constitution of the United Kingdom Peter Leyland, 2012-01-31 This acclaimed book provides a topical and contextual outline of the principles doctrines and institutions that underpin the United Kingdom constitution The second edition of The Constitution of the United Kingdom has been extensively rewritten to take account of recent constitutional developments particularly changes made following the 2010 general election The chapters are written in sufficient detail for anyone coming to the subject for the first time to develop a clear and informed view of how the constitution is arranged and how it operates The main themes include discussion of the history sources and conventions of the constitution later chapters deal with constitutional principles the role of the Crown Parliament and the electoral system government and the executive the constitutional role of courts including the protection of human rights the territorial distribution of power between central devolved and local government and the European Union dimension In addition the book offers an analytical discussion of the development of the constitution its strengths and perceived weaknesses and of reforms aimed at its modernisation

**Power & Choice** W. Phillips Shively, 2005 Gift to King s University College Library from Prof Martin Westmacott

**Crafting Constitutional Democracies** Edward Schneier, 2006-04-27 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

**The Adelaide Law Review**, 2002      **Composing a Civic Life** Michael Berndt, Amy Muse, 2004 Promoting the examined life as an ideal that brings inquiry and action together this text addresses the critical thinking reading and writing skills It promotes active citizenship by encouraging students to write as a means of inquiry and civic participation It shows students how to work toward negotiation and positive social action      Constitution Drafting in Post-conflict States Symposium, 2008

*The George Washington International Law Review*, 2006      **Government by the People - National Version** David Magleby, 2006 The most authoritative text for American Government Government By the People is always one step ahead Building on a long tradition of clear and accessible writing sound scholarship and currency it has become the most reliable responsive and respected text for today's American government course Its distinguished author team addresses your needs and the needs of your students in every edition with the most innovative response to teaching trends as well as trends in the discipline With this text's essential foundation students will be set to respond as involved American citizens to the political issues facing their country and their world in the twenty first century      *Convention on Europe* Jo Shaw, Paul Magnette, Lars Hoffman, Anna Vergés Bausili, 2008-06-10 This new study explores issues of legitimacy and subsidiarity in the debate about the future of Europe It looks at the assumptions behind the Constitutional Convention and its working methods as well as its implications for reform processes in the European Union It also analyzes the concept of subsidiarity both from the perspective of the division of powers and as a factor legitimizing the political structures of Europe The book also provides an analytical analysis of how the Constitutional Convention ties in the broader constitutionalization process of the European Union

**Chicago Journal of International Law**, 2002 The Chicago Journal of International Law is an interdisciplinary forum for discussion and analysis of international law and policy issues      **Special Issue**, 2009      Regulation Through Agencies in the EU Damien Geradin, Rodolphe Muñoz, Nicolas Petit, 2005 The past decade has witnessed a proliferation of regulatory agencies at both the national and the EU level This coherent and clearly structured book is the first of its kind to analyse in equal measure and interdependently both national regulatory authorities and European agencies It brings together a select group of highly esteemed contributors authorities in their fields to provide a systematic and over arching view of regulation in the EU Unlike many of the previous attempts to shed light on this increasingly opaque and complex co existence of regulatory systems this book takes a genuinely multi disciplinary approach with integrated perspectives from

law politics and economics Exploring firstly the rationales for the existence of agencies the book then goes on to examine how agencies are designed in the EU before considering the legal and political challenges they raise and finally comparing them with international agencies and agencies in an enlarged Europe and the wider world Academic researchers in the fields of law economics and politics will find Regulation through Agencies in the EU of great interest as will EU law practitioners policymakers and regulators in Europe

Negotiating Nationalism W. J. Norman, 2006-05-25 There are at least three times as many nations as states in the world today This book addresses some of the special challenges that arise when two or more national communities re the same multinational state As a work in normative political philosophy its principal aim is to evaluate the political and institutional choices of citizens and governments in states with rival nationalist discourses and nation building projects The first chapter takes stock of a decade of intense philosophical and sociological debates about the nature of nations and nationalism Norman identifies points of consensus in these debates as well as issues that do not have to be definitively resolved in order to proceed with normative theorizing He recommends thinking of nationalism as a form of discourse a way of arguing and mobilizing support and not primarily as a belief in a principle A liberal nationalist then is someone who uses nationalist arguments or appeals to nationalist sentiments in order to rally support for liberal policies The rest of the book is taken up with the three big political and institutional choices in multinational states First what can political actors and governments legitimately do to shape citizens national identity or identities This is the core question in the ethics of nation building or what Norman calls national engineering Second how can minority and majority national communities each be given an adequate degree of self determination including equal rights to carry out nation building projects within a democratic federal state Finally even in a world where most national minorities cannot have their own state how should the constitutions of multinational federations regulate secessionist politics within the rule of law and the ideals of democracy More than a decade after Yael Tamir s ground breaking Liberal Nationalism Norman finds that these three great practical and institutional questions have still rarely been addressed within a comprehensive normative theory of nationalism

**American Government 2006** Karen O'Connor, Larry J. Sabato, 2006-12 This election update edition of the number one book in American government continues to provide the most current and engaging introduction available for the course without chapters dedicated to policy Written with the belief that knowledge of the development of American government is integral to fully understand our current political system American Government Continuity and Change offers a strong historical perspective that highlights the evolution of government and engages students with examples relevant to their lives today

**American Government** Karen O'Connor, Larry J. Sabato, Stefan Haag, Gary Keith, 2005-03 The new edition of this bestseller in American government has been aggressively revised to provide the most in depth and current coverage of the 2004 elections the beginnings of the second George W Bush administration and the ongoing wars on terror and in Iraq while also providing expansive new coverage of the United States and Texas s Constitutional roots The Texas Edition includes

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The book is crafted in an easy-to-understand language and is complemented by engaging illustrations. This book is highly recommended for anyone seeking to gain a comprehensive understanding of Designing Democracy What Constitutions Do.

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