Designing Democracy: What Constitutions Do

by Cass R. Sunstein

Synopsis

"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.
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