

Constitutional Process

A Social Choice Analysis of
Supreme Court Decision Making



Maxwell L. Stearns

With a Foreword by Alan Epstein

Constitutional Process A Social Choice Analysis Of Supreme Court Decision Making

Austin Sarat



Constitutional Process A Social Choice Analysis Of Supreme Court Decision Making:

Constitutional Process Maxwell L. Stearns, 2002 This is the first comprehensive analysis of how the collective nature of Supreme Court decision making affects the transformation of the justices preferences into constitutional doctrine Analyzing the Supreme Court from the perspective of social choice theory Maxwell L Stearns offers new insights into Supreme Court decision making that have profound implications for understanding the outcomes in a number of cases and the resulting doctrinal development within constitutional law which traditional analyses have proven ill equipped to explain The book models several important process based Supreme Court rules including outcome voting the narrowest grounds rule stare decisis and justiciability with a particular emphasis on standing These doctrines have each had a significant impact upon the evolution of modern constitutional law including but not limited to the following areas affirmative action school desegregation racial gerrymandering obscenity and abortion Each model is presented in nontechnical language with several concrete illustrations drawn from recent Supreme Court case law The book offers a new understanding of two apparently paradoxical situations first cases in which there are separate majorities on specific issues in the case that suggest logically that there should be a majority for the dissenting result and second cases in which discrete minorities as opposed to the apparent majority control the identification and resolution of dispositive case issues In addition the book sheds new light on why the Court employs stare decisis even though the doctrine grounds the evolution of legal doctrine on the order in which cases are presented and decided and on how the modern standing doctrine ameliorates the incentives for interest groups to time the litigation of cases in a way that will exert a disproportionate influence over the direction of constitutional doctrine This book will appeal to scholars of the Supreme Court or judicial decision making It should also be of interest to students of social choice and of law and economics who have not previously considered the Supreme Court or constitutional law as fertile ground for their disciplines Maxwell L Stearns is Professor of Law George Mason University School of Law

The Oxford Handbook of Political Economy Barry R. Weingast, Donald Wittman, 2008-06-20 Over its long lifetime political economy has had many different meanings the science of managing the resources of a nation so as to provide wealth to its inhabitants for Adam Smith the study of how the ownership of the means of production influenced historical processes for Marx the study of the inter relationship between economics and politics for some twentieth century commentators and for others a methodology emphasizing individual rationality the economic or public choice approach or institutional adaptation the sociological version This Handbook views political economy as a grand if imperfect synthesis of these various strands treating political economy as the methodology of economics applied to the analysis of political behavior and institutions This Handbook surveys the field of political economy with 58 chapters ranging from micro to macro national to international institutional to behavioral methodological to substantive Chapters on social choice constitutional theory and public economics are set alongside ones on voters parties and pressure groups macroeconomics and politics capitalism and

democracy and international political economy and international conflict

The Oxford Handbook of the U.S.

Constitution Mark V. Tushnet, Mark A. Graber, Sanford Levinson, 2015 The Oxford Handbook of the U S Constitution offers a comprehensive overview and introduction to the U S Constitution from the perspectives of history political science law rights and constitutional themes while focusing on its development structures rights and role in the U S political system and culture This Handbook enables readers within and beyond the U S to develop a critical comprehension of the literature on the Constitution along with accessible and up to date analysis Whether a return to the pristine constitutional institutions of the founding or a translation of these constitutional norms in the present is possible remains the central challenge of U S constitutionalism today

Mathematical Programming and Game Theory for Decision Making S. K. Neogy, 2008 This edited book presents recent developments and state of the art review in various areas of mathematical programming and game theory It is a peer reviewed research monograph under the ISI Platinum Jubilee Series on Statistical Science and Interdisciplinary Research This volume provides a panoramic view of theory and the applications of the methods of mathematical programming to problems in statistics finance games and electrical networks It also provides an important as well as timely overview of research trends and focuses on the exciting areas like support vector machines bilevel programming interior point method for convex quadratic programming cooperative games non cooperative games and stochastic games Researchers professionals and advanced graduates will find the book an essential resource for current work in mathematical programming game theory and their applications

Inconsistency and Indecision in the United States Supreme Court Matthew P Hitt, 2019-05-20 The United States Supreme Court exists to resolve constitutional disputes among lower courts and the other branches of government allowing elected officials citizens and businesses to act without legal uncertainty American law and society function more effectively when the Court resolves these ambiguous questions of Constitutional law Since lower courts must defer to its reasoning the Court should also promulgate clear and consistent legal doctrine giving a reason for its judgment that a majority of justices support Yet a Court that prioritizes resolving many disputes will at times produce contradictory sets of opinions or fail to provide a rationale and legal precedent for its decision at all In either case it produces an unreasoned judgment Conversely a Court that prioritizes logically consistent doctrine will fail to resolve many underlying disputes in law and society Inconsistency and Indecision in the United States Supreme Court demonstrates that over time institutional changes lobbied for by the justices substantially reduced unreasoned judgments in the Court s output coinciding with a reduction in the Court s caseload Hence the Supreme Court historically emphasized the first goal of dispute resolution but evolved into a Court that prioritizes the second goal of logically consistent doctrine As a result the Court today fails to resolve more underlying questions in law and society in order to minimize criticism of its output from other elites In so doing the modern Court often fails to live up to its Constitutional obligation

The Supreme Court and the Attitudinal Model Revisited Jeffrey A. Segal, Harold J. Spaeth, 2002-09-16

Two leading scholars of the Supreme Court explain and predict its decision making **Precedent in the United States Supreme Court** Christopher J. Peters, 2014-02-11 This volume presents a variety of both normative and descriptive perspectives on the use of precedent by the United States Supreme Court It brings together a diverse group of American legal scholars some of whom have been influenced by the Segal Spaeth attitudinal model and some of whom have not The group of contributors includes legal theorists and empiricists constitutional lawyers and legal generalists leading authorities and up and coming scholars The book addresses questions such as how the Court establishes durable precedent how the Court decides to overrule precedent the effects of precedent on case selection the scope of constitutional precedent the influence of concurrences and dissents and the normative foundations of constitutional precedent Most of these questions have been addressed by the Court itself only obliquely if at all The volume will be valuable to readers both in the United States and abroad particularly in light of ongoing debates over the role of precedent in civil law nations and emerging legal systems *Constitutionalization of Politics in Comparative Perspective* Paweł Laidler, Dariusz Stolicki, Łukasz Jakubiak, Jacek Sokołowski, 2024-11-25 Scholars from political science and law examine the latest research on the constitutionalization of politics in comparative perspective The scope includes both inter country and intra country perspectives institutional and systemic analyses common and civil law systems focusing on historical and contemporary case studies There are chapters limited to a concrete legal and political system analyzing the tools and processes guarding constitutionalization of politics in such countries as the United States Germany France Italy Poland Finland and Bulgaria as well as studies offering comparative analysis of various institutions representing different countries and different legal and political systems Taken together this book uncovers a wide variety of legal and political cultures systems of governments and forms of territorial organization Once uncovered this approach makes it easier to determine repetitive patterns which may be observed in constitutional review and constitutional interpretation or significant differences occurring in the models of constitutionalization of politics around the world *Constitutionalization of Politics in Comparative Perspective* tackles important debates among academics interested in the theoretical and practical aspects of constitutions and constitutionalism and will appeal to social scientists including sociologists philosophers security studies and international relations experts but also cultural studies scholars The publication is a result of a research project *Constitutionalization of Politics as an Element of Checks and Balances System in Comparative Perspective* funded by the Polish National Science Center NCN 2018 31 B HS5 02637 **The American Supreme Court** Robert G. McCloskey, 2010-07-15 Celebrating its fiftieth anniversary Robert McCloskey's classic work on the Supreme Court's role in constructing the U S Constitution has introduced generations of students to the workings of our nation's highest court For this new fifth edition Sanford Levinson extends McCloskey's magisterial treatment to address the Court's most recent decisions As in prior editions McCloskey's original text remains unchanged In his historical interpretation he argues that the strength of the Court has always been its sensitivity to the

changing political scene as well as its reluctance to stray too far from the main currents of public sentiments In two revised chapters Levinson shows how McCloskey s approach continues to illuminate developments since 2005 including the Court s decisions in cases arising out of the War on Terror which range from issues of civil liberty to tests of executive power He also discusses the Court s skepticism regarding campaign finance regulation its affirmation of the right to bear arms and the increasingly important nomination and confirmation process of Supreme Court justices including that of the first Hispanic justice Sonia Sotomayor The best and most concise account of the Supreme Court and its place in American politics McCloskey s wonderfully readable book is an essential guide to the past present and future prospects of this institution

Institutional Games and the U.S. Supreme Court James R. Rogers,Roy B. Flemming,Jon R. Bond,2012-10-05 Over the course of the past decade the behavioral analysis of decisions by the Supreme Court has turned to game theory to gain new insights into this important institution in American politics Game theory highlights the role of strategic interactions between the Court and other institutions in the decisions the Court makes as well as in the relations among the justices as they make their decisions Rather than assume that the justices votes reveal their sincere preferences students of law and politics have come to examine how the strategic concerns of the justices lead to sophisticated behavior as they seek to maximize achievement of their goals when faced with constraints on their ability to do so In Institutional Games and the U S Supreme Court James Rogers Roy Flemming and Jon Bond gather various essays that use game theory to explain the Supreme Court s interactions with Congress the states and the lower courts Offering new ways of understanding the complexity and consequences of these interactions the volume joins a growing body of work that considers these influential interactions among various branches of the U S government Contributors Kenneth A Shepsle Andrew De Martin James R Rogers Christopher Zorn Georg Vanberg Cliff Carrubba Thomas Hammond Christopher Bonneau Reginald Sheehan Charles Cameron Lewis A Kornhauser Ethan Bueno de Mesquita Matthew Stephenson Stefanie A Lindquist Susan D Haire Lawrence Baum

The Blackwell Companion to Law and Society Austin Sarat,2008-04-15 The Blackwell Companion to Law and Society is an authoritative study of the relationship between law and social interaction Thirty two original essays by an international group of expert scholars examine a wide range of critical questions Authors represent various theoretical methodological and political commitments creating the first truly global overview of the field Examines the relationship between law and social interactions in thirty three original essay by international experts in the field Reflects the world wide significance of North American law and society scholarship Addresses classical areas and new themes in law and society research including the gap between law on the books and law in action the complexity of institutional processes the significance of new media and the intersections of law and identity Engages the exciting work now being done in England Europe Australia and New Zealand South Africa Israel as well as Third World scholarship

Strategy on the United States Supreme Court Saul Brenner,Joseph M. Whitmeyer,2009-02-16 To what extent do the justices on the Supreme Court

behave strategically In Strategy on the United States Supreme Court Saul Brenner and Joseph M Whitmeyer investigate the answers to this question and reveal that justices are substantially less strategic than many Supreme Court scholars believe By examining the research to date on each of the justice s important activities Brenner and Whitmeyer s work shows that the justices often do not cast their certiorari votes in accord with the outcome prediction strategy that the other members of the conference coalition bargain successfully with the majority opinion writer in less than 6 percent of the situations and that most of the fluidity in voting on the Court is nonstrategic This work is essential to understanding how strategic behavior or its absence influences the decisions of the Supreme Court and as a result American politics and society

University of Chicago Law Review University of Chicago Law Review,2013-06-28 The University of Chicago Law Review s second issue of 2013 features articles and essays from internationally recognized legal and policy scholars Contents include Article Property Lost in Translation by Abraham Bell Gideon Parchomovsky Article Tiers of Scrutiny in Enumerated Powers Jurisprudence by Aziz Z Huq Article State and Federal Models of the Interaction between Statutes and Unwritten Law by Caleb Nelson Article Our Electoral Exceptionalism by Nicholas O Stephanopoulos Essay Reverse Advisory Opinions by Neal Devins Saikrishna B Prakash Review Essay The Inescapability of Constitutional Theory by Erwin Chemerinsky reviewing a new book by Judge J Harvie Wilkinson III Comment Amongst the Waives Whether Sovereign Immunity for Contractual Damages Is Waived under the Public Vessels Act or the Suits in Admiralty Act by Maria A Lanahan The University of Chicago Law Review first appeared in 1933 thirty one years after the Law School offered its first classes Since then the Law Review has continued to serve as a forum for the expression of ideas of leading professors judges and practitioners as well as student authors and as a training ground for University of Chicago Law School students who serve as its editors and contribute original research Principal articles and essays are authored by internationally recognized legal scholars Quality eBook editions feature active Contents linked footnotes and linked URLs in notes

Towards a European Constitution Michael Gehler,2005 This volume represents a historical comparison of the American and the EU European constitutional experiences and lessons to be derived therefrom for the present time It is designed to deepen the understanding of the historical and political dimensions of constitutional designs and practises on two continents Hopefully such historical depth charts will expand the horizon of debates among experts and decision makers The first part concentrates on the historical dimension It deals with the experiences and perceptions of basic American political principles developments of international and humanitarian law and the historical dimension of constitutional debates The second part of the book aims at culling potential lessons from the American constitutional experience and the remarkable longevity of the U S constitution Additional chapters concentrate on specific aspects and elements of the European constitutional debate courts of law human rights minority protections as well as gender equality Still other contributions focus on the historical context of the recent European Constitutional Convention Chapters on writing a European bill of rights the EU reform debates of the 1990s and finally an analysis of the Brussels

Constitutional Summit of June 2004 are also included The spillover effects of the economic and monetary union on the constitutional debates are covered here as well as Asian perceptions of European integration Practitioners and scholars address in this volume historical political and diplomatic dimensions and achievements in the process of European constitution making and its chances of success in the future Finally the current tensions in the Atlantic world are analysed and what they may portend for the future of European Union security options **Constitutional Commentary**, 2000

Predictocracy Michael Abramowicz, 2008-10-01 Predicting the future is serious business for virtually all public and private institutions for they must often make important decisions based upon such predictions This text explores how institutions might improve their predictions and arrive at better decisions by means of prediction markets *The Power of Precedent* Michael J. Gerhardt, 2011 The author connects the vast social science data and legal scholarship to provide a wide ranging assessment of precedent He outlines the major issues in the continuing debates on the significance of precedent and evenly considers all sides **The System of the Constitution** Adrian Vermeule, 2011-12-30 Adrian Vermeule analyses constitutionalism through the lens of systems theory originally developed in biology computer science political science and other disciplines *Judicial Review in New Democracies* Tom Ginsburg, 2003-07-23 New democracies around the world have adopted constitutional courts to oversee the operation of democratic politics Where does judicial power come from how does it develop in the early stages of democratic liberalization and what political conditions support its expansion This book answers these questions through an examination of three constitutional courts in Asia Taiwan Korea and Mongolia In a region that has traditionally viewed law as a tool of authoritarian rulers constitutional courts in these three societies are becoming a real constraint on government In contrast with conventional culturalist accounts this book argues that the design and functioning of constitutional review are largely a function of politics and interests Judicial review the power of judges to rule an act of a legislature or national leader unconstitutional is a solution to the problem of uncertainty in constitutional design By providing insurance to prospective electoral losers judicial review can facilitate democracy **Encyclopedia of Law and Society** David S. Clark, 2007-07-10 Introduction to and survey of the field of law and society Includes interdisciplinary perspectives on law from sociology criminology cultural anthropology political science social psychology and economics

Constitutional Process A Social Choice Analysis Of Supreme Court Decision Making Book Review: Unveiling the Magic of Language

In an electronic digital era where connections and knowledge reign supreme, the enchanting power of language has become apparent than ever. Its capability to stir emotions, provoke thought, and instigate transformation is actually remarkable. This extraordinary book, aptly titled "**Constitutional Process A Social Choice Analysis Of Supreme Court Decision Making**," written by a very acclaimed author, immerses readers in a captivating exploration of the significance of language and its profound affect on our existence. Throughout this critique, we will delve into the book's central themes, evaluate its unique writing style, and assess its overall influence on its readership.

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