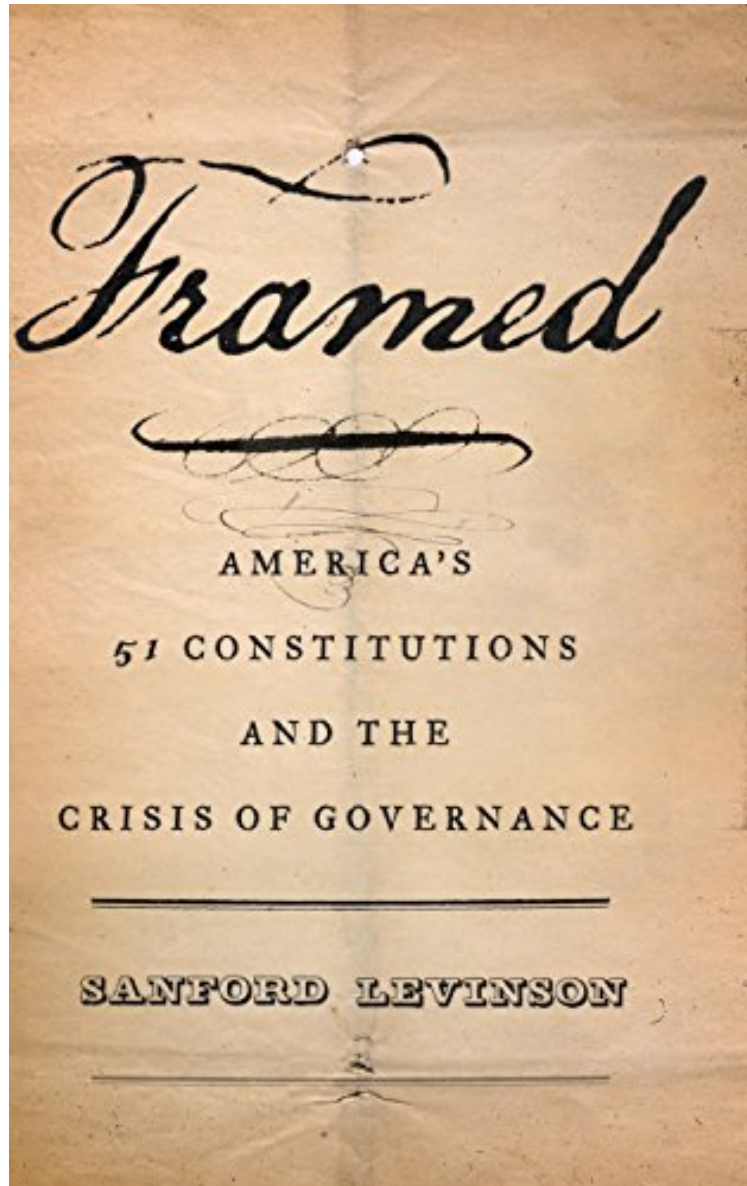


Framed: America's 51 Constitutions and the Crisis of Governance

Sanford Levinson

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#1661755 in Books Oxford University Press, USA 2012-04-03 Original language: English PDF # 1 6.50 x 1.40 x 9.30l, 1.55 #File Name: 0199890757448 pages | File size: 18.Mb

Sanford Levinson : Framed: America's 51 Constitutions and the Crisis of Governance before purchasing it in order to gage whether or not it would be worth my time, and all praised Framed: America's 51 Constitutions and the Crisis of Governance:

3 of 3 people found the following review helpful. UPDATING THE CONSTITUTIONBy Paul FroehlichReaders who

think they know a lot about the Constitution will find out how much more they have to learn from this book. Law Professor Sanford Levinson examines parts of the document few people pay attention to, and he compares the Constitution to state constitutions and to the constitutions in other countries. In our era of political polarization, one thing that unites Americans across the spectrum is the perception that the federal government is profoundly dysfunctional. Only about one in ten Americans approve of the job Congress is doing, and trust in government is at historic lows. Levinson has a simple thesis, namely that government failure is caused in part by the constitutional structure of government, at both the federal and state levels, and that as much attention should be paid to the 50 state documents that also make up American constitutionalism. Americans hold the Constitution in high regard, so criticizing it is considered akin to radicalism if not disloyalty. Most would-be reformers of the political system shy away from trying to change the structure. Levinson recognizes the towering achievement the Constitution represented in the 18th century, but he also believes it needs to be updated to meet current conditions, which are quite different from those of 1787. Levinson agrees that the political culture of a society matters in how well government functions. Yet political behavior happens within the formal institutional structures as defined by the Constitution. Political scientist Robert Dahl describes it well: The biggest obstacles to energetic, coherent action are systemic. Our ungainly eighteenth-century legislative mechanism, drowning in twenty-first century campaign cash, is shot through with veto points. That basic structure has its pluses as well as its minuses, of course. Anyway, were stuck with it. Levinson agrees with all by the last sentence in the Dahl quote, asking Americans of 2015 whether we continue to share the assumptions that underlay the Constitution in 1787? If not, why do we remain so devoted to a Constitution based on them? While not criticizing the Framers, Levinson does wonder why Americans today refuse to ask the probing questions the Framers were willing to ask about the adequacy of their own institutions. Levinson's secondary thesis is that attention should be paid to the other 50 constitutions found in the states. Those constitutions have been amended far more frequently than the U.S. Constitution, and many have been replaced over the years with new documents to meet the challenges of a new time. There is something to learn from the willingness of the states to reflect on the adequacy of their existing constitutions and to do something about perceived deficiencies, in contrast to the all too rarely reflected-upon U.S. Constitution. A look at how state constitutions differ from the US Constitution informs about what changes would be made to the latter if and when the opportunity to update it ever arises: All of the states have constitutions providing for more democracy than the Constitution. The US Constitution is, by a far measure, the most undemocratic constitution among the fifty-one constitutions that exemplify constitutionalism in America. The Framers were deeply suspicious of direct democracy, but this attitude has become a distinctly minority opinion not only in the contemporary United States but also in the world at large. Is it fair to describe the Constitution as hopelessly anachronistic in its disregard of any role for direct decision making by whoever constitutes We the People? No state has a long a transition period between an election and inauguration. The President is sworn in on Jan. 20, but states all require swearing in the winners closer to election day. No state bans naturalized citizens from becoming governor, unlike the Constitution that bans naturalized citizens from serving as president. Forty-eight states have judicial terms for a fixed number of years, or retirement at a set age, as opposed to lifetime tenure among federal judges. Unlike the Preamble to the Constitution, all of the preambles to state constitutions invoke the deity. All but three States have lower minimum age requirements for legislators than the Constitution. In Illinois, 21 is the minimum age. Two states set the age at 18 (Ohio and Wisconsin). No State requires natural-born citizenship for its highest offices, nor does any state distinguish between citizens on the basis of duration of their citizenship (re eligibility to serve) the way the Constitution does. Every State except Delaware either allows or requires popular ratification of constitutional amendments, while most states have some opportunity for popular initiative and referendum. Thirty-two State constitutions require balanced budgets, unlike the U.S. Constitution. All states choose their chief executives by direct popular election. Fourteen states permit voters to decide whether to call a new state Con-Con. Most governors have some form of line-item veto, particularly in spending bills. Many states require their governors to share the pardoning power with other officials, while six states place the power entirely in a pardoning board where the governor plays no role, and 37 States prohibit pre-conviction pardons. In 48 states, governors do not appoint Attorneys General and cannot fire them. In sum, the states have dramatically rejected the design preferences reflected in the 1787 Constitution. The Constitution was the result of compromises. James Madison argued that to get to agreement at the Constitutional Convention, some lesser evils must be accepted, such as the equal representation of all states in the Senate. Yet evils they remain, writes Levinson. At the time of the Great Compromise on Senate representation, the population ratio of the most populous to the least populous state was 11.5 to 1. Today that ratio is 70 to 1. Regardless of whether a particular compromise was defensible at the time it was made, Levinson contends it is a mistake in feeling ourselves indelibly wedded to such institutional structures long after their rationales have ceased to make any sense. Levinson discusses a variety of other Constitutional provisions that made more sense in 1787 than they do in 2015. He favors a Constitutional Convention to modernize the document. He would select the delegates using the Athenian model. An important feature of Athenian democracy was the selection of public decision-makers by lottery. There were no elections, no campaigns, no mudslinging, and no campaign donations; selection was by chance. Levinson realizes the odds are steep against another Convention, but there are calls for a Convention from voices on

the political right and left. The odds were also steep against the Founding Fathers who recognized the Articles of Confederation were inadequate. This book is full of fascinating insights. Those who like to study the Constitution will enjoy it. 0 of 0 people found the following review helpful. Very interesting information in a hard to understand format. By Hazel Twist This book was given to us as assigned reading for an American Politics class. Though the content is quite interesting, Levinson's writing style is difficult to get through and often detracts from the point he's trying to make. As long as one is accustomed to reading books written by lawyers, it really is a good read. For anyone else though... one classmate had to read every chapter three times to understand the content and it put most of my other classmates to sleep. Listening to the Audible version helped a lot and the person voicing it did a wonderful job. Good luck! 0 of 5 people found the following review helpful. Not what I had hoped for. By Jim Bruner Alas, Levinson's discussion of this immense problem is limited to a couple of pages of Chapter 1. On page 29, he even lets another author, Daniel Rodriguez, define the problem: "[T]he basic range of policies and policy choices made by state and local officials dwarf (sic)--indeed always have dwarfed (sic)--national political activity." Ever since Tip O'Neill said, "All politics is local," that has been my observation, and why it should be a mystery to any other serious student of American history is beyond me. In our dysfunctional national legislative family, 50 squabbling children (mostly bicameral state legislatures) individually devise their own conflicting "playground rules" and pry "lunch money" from their citizens (and then petition Congress via the IRS Form 1040, Schedule A to refund part of it), even though the U.S. Constitution gives only Congress the right to tax (and specifically only incomes at that). Not satisfied with salaries and perks provided by the IRS, the members of the parent Congress engorge themselves on generous "campaign contributions" from corporate members of the American Legislative Exchange Council, which has no allegiance to any state, and (given its tendency to hide profits offshore) probably not to the nation, either. The U.S. Constitution, as currently interpreted, allows greedy corporate entities like ALEC to methodically divide and conquer ignorant voters in the 50 states while the peasants anxiously and sporadically watch the DC media circus, hoping that Congress will somehow save them from their own folly. Most Americans don't know enough math or have enough patience to file their own tax returns, let alone realize when snake-oil salesmen are taking them to the cleaners, and none of our 51 constitutions offer them much protection. No wonder we have income inequality. This is why we need to scrap all of our constitutions and start over.

In his widely acclaimed volume *Our Undemocratic Constitution*, Sanford Levinson boldly argued that our Constitution should not be treated with "sanctimonious reverence," but as a badly flawed document deserving revision. Now Levinson takes us deeper, asking what were the original assumptions underlying our institutions, and whether we accept those assumptions 225 years later. In *Framed*, Levinson challenges our belief that the most important features of our constitutions concern what rights they protect. Instead, he focuses on the fundamental procedures of governance such as congressional bicameralism; the selection of the President by the electoral college, or the dimensions of the President's veto power--not to mention the near impossibility of amending the United States Constitution. These seemingly "settled" and "hardwired" structures contribute to the now almost universally recognized "dysfunctionality" of American politics. Levinson argues that we should stop treating the United States Constitution as uniquely exemplifying the American constitutional tradition. We should be aware of the 50 state constitutions, often interestingly different--and perhaps better--than the national model. Many states have updated their constitutions by frequent amendment or by complete replacement via state constitutional conventions. California's ungovernable condition has prompted serious calls for a constitutional convention. This constant churn indicates that basic law often reaches the point where it fails and becomes obsolete. Given the experience of so many states, he writes, surely it is reasonable to believe that the U.S. Constitution merits its own updating. Whether we are concerned about making America more genuinely democratic or only about creating a system of government that can more effectively respond to contemporary challenges, we must confront the ways our constitutions, especially the United States Constitution, must be changed in fundamental ways.

"From America's greatest revolutionary constitutionalist, a profoundly important book, that will be at the center of the next reform movement." --Lawrence Lessig, author of *Republic, Lost* "Anyone who cares about America's future should read Sandy Levinson's book. His fresh thinking illuminates old debates and his understanding of political nuance gives power to his analysis. You don't have to agree with him to know you are in the presence of a scholar who is a constitutional giant." --Senator Bill Bradley "Sandy Levinson has authored an important, and cautionary, book-one that needs to be read as much by those who disagree with him as by those who share his analysis." --Glenn Harlan Reynolds, Professor of Law, University of Tennessee College of Law, founder of Instapundit "I've been Framed! Levinson sparks a long-overdue conversation about the relationship between America's current governing crisis and the American Constitution-or rather, 'constitutions,' since he takes the unusual and valuable step of looking at state constitutions as well. His message: Pay attention to the 'Constitution of Settlement,' the established rules of the political game, not just the 'Constitution of Conversation' that sparks continuing legal dispute. It is a measure of the success of his stimulating book that he makes what once seemed settled appear newly ripe for debate." --Jacob S.

Hacker, Stanley Resor Professor of Political Science, Yale University; co-author, *Winner-Take-All Politics* "The most remarkable feature of Levinson's most remarkable book is his effort to place himself and his readers in the positions of the founding fathers and the founding generation." --Tulsa Law About the Author Sanford Levinson is Professor of Law and Political Science at the University of Texas-Austin. His books include *Our Undemocratic Constitution*, *Constitutional Faith*, and *Wrestling with Diversity*.