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Design of Constitutions. Edited by Stefan Voigt. Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2013. Pp. v, 758. ISBN: 978-0-85793-790-2. US\$425.00.

Design of Constitutions is a 758-page anthology edited by Stefan Voigt, Director of the Institute of Law and Economics at the University of Hamburg in Germany. The book is No. 36 of Edward Elgar's "Economic Approaches to Law" series edited by Judge Richard A. Posner and Francesco Parisi. The book contains previously published articles and book chapters and centralizes for scholars in a one-volume work the literature on constitutional design published from 1995–2010. This collection of reprints omits papers on the same topic published in the two-volume 2003 *Constitutional Political Economy* set published in Edward Elgar's "International Library of Critical Writings in Economic" series.

Because the essays in this collection come from different publications, they appear in different font types and sizes, and retain their original pagination. The compilation, however, adds continuous pagination. While the compilation has no index, readers can search through the e-book version, if they access via Edgaronline, by keyword.

In his introductory chapter, Stefan Voigt gives an overview of the literature in the field and a summary of the papers reproduced in the anthology. According to Voigt, the book concerns the "deliberate creation of constitutions" with a focus on the economics of constitutional design or applied constitutional economics. While the articles should interest scholars of constitutional political economy and constitutional law and economics, Voigt specifically expresses the hope that the collected essays will encourage rational choice scholars to work on the issues raised.

Voigt organizes the remaining 23 chapters in the following five parts: Part I: "Getting Started: State of the Art and Conceptual Issues"; Part II: "The Relevance of Procedure for..."; Part III: "Basic Rights"; Part IV: "State Organization" (with sub-parts on electoral systems, form of government, bicameralism, federalism, and direct democracy); and Part V: "Beyond Conventional Perspectives." There is no concluding chapter.

Part I, "Getting Started," begins with Dennis C. Mueller's overview of the literature on constitutional political economy in Europe. Then Donald L. Horowitz provides a history of post-1989 constitution-making in which he critiques "a desire to graft one institution on to another rather than to design an ensemble of institutions." Horowitz stresses that divided societies need to look at other divided societies when designing their constitutions. His paper is

followed by Arend Lijphart's piece on consociational or power-sharing democracy as optimal for divided societies and places where there is ethnic conflict.

Part II starts with Jon Elster's influential 1995 article detailing how constitutions are made in Europe, North America, and Eastern Europe. Elster discusses the constraints on constitutions, the conditions under which framers write constitutions, the motivations of the framers, and aggregation mechanisms. He concludes by suggesting an optimal design for the constitution-making process. Elster's essay is followed by Stefan Voigt's piece on whether popular participation in constitution-making has an effect on the content and success of the constitutions. He compares discourse ethics and normative constitutional economics' emphases on procedures as well as Habermas's and Elster's approaches. While Elster set the following three criteria for considering a constitution successful (1) the constitution matters, (2) the constitution works in that collective decisions are taken and carried out in an orderly way, and (3) the constitution lasts, Voigt adds that a constitution does not succeed unless the citizens attribute legitimacy to the constitution, and a successful constitution must also lead to (4) growth of income levels, (5) a just distribution of income and wealth, and (6) improved average happiness.

John M. Carey continues the exploration of what makes constitutions successful and questions if how they are made affects their success. Constitutional ideals include democracy, temperance (division of power), and durability. Using the Comparative Constitutions Project, the Constitution Writing and Conflict Resolution Project, and Polity IV, Carey concludes that inclusiveness (involving multiple institutional actors in constitution-making) contributes to the success of constitutional moments. "The content of constitutions depends on who sits at the table to hammer out their provisions."

In their article, Tom Ginsburg, Zachary Elkins, and Justin Blount focus on who is involved in the process of making constitutions and if it matters. They reviewed the literature (including Widener's 114-page bibliography³ of sources relating to post-1975 constitutional design) and gathered data on the process of adoption for 460 national constitutions promulgated from 1789–2005. They found broad consensus in the literature on the importance of public participation in the constitution-making process, but noted that many of the assumptions are untested. They found a positive correlation between public participation in the adoption of constitutions and the presence of language concerning rights in the documents forming democratic institutions.

Part III, on basic rights, starts with a piece by Lorenz Blume and Stefan Voigt on "The Economic Effects of Human Rights." Reviewing human

³ Jennifer Widner, *Constitution Writing & Conflict Resolution*, <http://www.princeton.edu/~pcwcr/index.html> (last visited September 3, 2015).

rights data from many sources, they conclude that effective protection of some human rights significantly favors economic growth and welfare, but it depends on the right. Some rights affect growth, some affect investment, and some affect productivity development. Blume and Voigt assert that their paper is the “first try” at analyzing the economic effects of human rights violations such as imprisonment without trial, torture, and political killings. Avi Ben-Bassat and Momi Dahan present data from the constitutions of 68 countries on five social rights: the right to live in dignity (also called the right to social security), education, health, housing, and protection of the rights of workers. They state that their paper is the “first attempt to construct a quantitative index that reflects the constitutional commitment to social rights, using the constitutional text only.” They found that embedded social rights mostly do not affect public policy except in the case of the right to social security.

Part IV begins with an article on “Electoral Rules and Government Spending in Parliamentary Democracies” by Torsten Persson, Gerard Roland, and Guido Tabellini. Persson and Tabellini are authors of the oft-cited *The Economic Effects of Constitutions* (2003) and other important theoretical contributions. According to the authors, empirical evidence indicates no direct influence of electoral rules on government spending. This is followed by a David Turchi and Andrea Vindigni piece on “Endogenous Constitutions” which concludes that societies with higher levels of disparity in wealth tend to adopt majoritarian constitutions whereas society with relatively lower levels of inequality choose consensual constitutions.

Part IV continues with another Persson/Roland/Tabellini piece, this time on “Separation of Powers and Political Accountability.” The article includes a discussion of constitutions that enable voters to hold their elected officials accountable and curtail abuse of power. An article on “Endogenous Political Institutions” by Philippe Aghion, Alberto Alesina, and Francesco Trebbi follows. They use a delegation of power/political insulation model to compare constitutional design across democracies. Roger D. Congleton summarizes the rational choice literature on bicameralism and empirical data on the effects of bicameralism on public policy. Cecilia Testa continues the discussion of bicameralism in her article on its impact on corruption based on empirical study of 35 democracies from 1996–2004. She finds that divided party control decreases accountability of legislators to voters, yet voters opt for divided control of the two chambers anyway.

Part IV concludes with articles on federalism. Rui J.P. de Figueiredo, Jr. and Barry R. Weingast investigate sustainable federalism as a contribution to the literature on equilibrium institutions. A coordination device helps create a “culture of federalism” that helps sustain federalism. Robert P. Inman and Daniel L. Rubinfeld use South Africa as an example of how a federal agreement led to a successful democratic transition. In “Direct Democracy:

Designing a Living Constitution,” Bruno S. Frey and Alois Stutzer examine the pros and cons of referenda and initiatives as instruments of institutional change and conclude that increased political participation of citizens is important to democracy. Lorenz Blume, Jens Müller, and Stefan Voigt conclude Part IV with a cross-country analysis of the effects of direct-democratic institutions.

Part V begins with a 2000 article by Bruce Ackerman on whether an American separation of powers model should be emulated by other countries and concludes that the American system is not ideal. Ackerman says “we should be restrained in exporting our peculiar institutional system,” and “we honor Montesquieu and Madison best by seeking new constitutional forms” such as “constrained parliamentarism.” Stefan Voigt and Eli M. Salzberger present a paper on positive constitutional economics with a focus on allocation of decision-making powers by legislators. Voigt and Salzberger ask what considerations lead legislators to delegate their powers, and whether legislators should do so domestically or internationally.

The penultimate piece is Tom Ginsburg’s “Locking in Democracy: Constitutions, Commitment, and International Law.” One of the questions he addresses is “Under what circumstances will constitution-drafters allow customary international law to be directly binding in the domestic legal order?” According to Ginsburg, constitutions are precommitment devices. Those engaged in constitutional design should consider the implications of locking in international law commitments. Locking in international law is best for states making the transition to democracy. “By locking in policies [in the constitution], international law can be effective on the domestic level even when it is ignored on the international plane.”

The collection concludes with an article by Stefan Voigt, Michael Ebeling, and Lorenz Blume on delegating judicial competence to improve government credibility, using the Judicial Committee of the Privy Council (JCPC) as an example. The JCPC is a final appeals court for UK overseas territories (13 dependencies) and for 15 independent Commonwealth countries. Some former British colonies and newly independent states opted out of the JCPC. The authors tested to see whether countries that retain JCPC jurisdiction have greater credibility internationally than countries that do not by looking at economic growth and foreign direct investment data. Countries who retained the JCPC fared better with regard to a number of economic indicators.

At \$US428, *Design of Constitutions* might be considered expensive for a collection of economics, political science, public policy, and law papers that duplicate journals and books that might already be available in print or e-accessible in a law library. Also some of the papers in the book are very technical in nature and may be difficult to understand for persons not trained

in economics and calculus. Many of the papers use economic models for the decision-making processes and simplifying assumptions. This is a compilation for the researcher who is already familiar with the field and not an introductory work.

However, *Design of Constitutions* is a convenient, curated compilation of original, innovative, empirical, and theoretical papers on constitutional design written by some of the leading scholars in the field. The papers also include useful literature surveys and many of the papers set forth areas for future research that can inspire new scholarship.

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Africa and the Responsibility to Protect: Article 4(h) of the African Union Constitutive Act. Edited by Dan Kuwali and Frans Viljoen. Oxford and New York: Routledge, 2014. Pp. xviii, 398. ISBN: 978-041-5722-31-5. US\$155.

If, like many people, you hesitate before buying conference proceedings, I urge you to make an exception for this book. Too many collected conference proceedings present an almost random assortment of tangentially related essays. Unlike those efforts, this volume provides a comprehensive, well-organized treatment of its topic—in this case, the Responsibility to Protect (R2P) as an African issue. The book evolved from the proceedings of a 2012 conference on Article 4(h) and its potential to end mass atrocities in Africa. The distinguished editors have assembled an impressive (and largely African) group of contributors; the resulting collection has much to offer.

Four major themes organize the chapters. First, a section called “Conceptual Issues” tackles the purpose and meaning of Article 4(h). This Article of the African Union Constitutive Act (in force 2001) provides,

Article 4 – The Union shall function in accordance with the following principles:

...
(h) the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.

Article 4(h) represents the first inclusion of this principle, sometimes called humanitarian intervention, in a treaty. As such, its contours lack the