argues that we must make institutional changes that will remove some barriers to developing countries. Second, he contends that we must provide more funds to these countries to enable them to educate, house, and provide medical care for their citizens. That would permit their citizens to flourish.

How might we remove the barriers to the development of these countries? First, by modifying the practices of the global economic order to discourage unscrupulous people from taking over a country. Then we should refuse to use our strong bargaining position to gain advantages over those who are already disadvantaged. The result would be to make the world more economically open.

How might we provide more resources for the developing countries? He suggests that, since the developed countries use a disproportionate amount of the world’s nonrenewable resources, we should, via a “Global Resources Dividend,” tax the use of those resources and make the money available to the poor. This tax could lessen poverty and provide impoverished nations with more secure access to basic goods.

The book is a powerful work in moral philosophy, chock full of arguments and relevant empirical data. Even those who dislike Pogge’s conclusions, remain unconvinced by his arguments, or question his data must still acknowledge that books like this would advance the cause of practical moral philosophy.

Although I find myself moved by much that I read, I remain unsure why Pogge rejects the claim that we have a positive obligation to assist others in need, especially when the net effect of his argument is to downplay the moral significance of the act/omission distinction within social, political, and economic institutions.

I also would have liked more argument about why the ordinary citizen of the developing countries bears such heavy responsibility for the actions of its leaders, corporate executives, government, and nongovernmental organizations (NGOs). Finally, I am also concerned that Pogge implies that our primary, if not sole, duty is to work for political change. It is not that I deny the importance of institutional change. Rather, I worry what this means for individual citizens when their governments don’t do what they should. Under these conditions, what are our obligations, if any, to the impoverished of the world?

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Constitutions are sometimes tools used by the powerful few to keep democracy down. On the other hand, democratic processes need to be legally “constituted.” In a democratic system, it is a matter of law that lawmakers must be elected. This higher law would be a constitution. Constitutions should also protect the democratic nature of the process. On democratic grounds, a constitution could invalidate laws that would undermine the political process, such as a law limiting the franchise or inhibiting political expression. In these respects, constitutions have a democratic value.
Constitutions can also play less democratic roles. Even when laws don’t undermine democracy, they might violate rights or invite disaster of some other kind. A law might punish embezzlers with torture, or dissolve the national defense, or declare civil war. Constitutions could protect against errors of these other kinds as well. Call this a substance-protecting function for a constitution, to contrast it with the function of protecting the democratic nature of political processes. A substance-protecting function is harder to justify on democratic principles alone.

Over a wide body of work, Cass Sunstein has been developing a democracy-based constitutionalism. This book revises and extends several of his central ideas and adds several new ones. Sunstein emphasizes the democracy-constituting and process-protecting roles of constitutions. In some hands, this would be a way of shortening the reach of constitutional law by keeping it out of matters of substance. There’s an analogy with a kind of deism in theology, the view that God sets up the structure and sets humanity free to make history as it will, well or badly. God’s role is sharply limited, to the benefit of free human will. Analogously, a strongly democratic approach often sees constitutions as making and protecting the political process but then setting the process free to deal with the substantial—that is to say nonprocedural—issues and problems. Citizens and legislators are free (or doomed) to make these decisions themselves and to make them well or badly as the case may be.

Sunstein’s account is not this deistic, hands-off approach. He argues that many issues that seem to have little to do with the integrity of the democratic process are important for it after all. The democratic process, on his view, includes the value of free and equal discussion of political choices by citizens of all kinds. This aspiration depends on legal, social, and economic conditions going far beyond equal formal political rights. Therefore, constitutional reasoning—in its democracy-making and process-protecting roles—applies more widely than just guaranteeing equal suffrage, free political speech, and the like.

He describes several important threats to such a process and returns to these repeatedly when he turns to concrete political issues. Here are three of his recurring tools:

*Group polarization:* There is evidence that individuals deliberating with like-minded others, where most tend toward the same pole or position on the issue at hand (say, toward the left, or toward the right, for just one example) will tend to shift their views further toward that pole after discussion. What is troubling about this is not that the result will be extreme in any alarming sense. First, that depends. Second, there’s no reason to assume the best decision would be far from both poles. Nevertheless, it is troubling that we can predict the shift in opinions by the makeup of the group, since then the shift can’t be understood as tending toward better decisions. Scenarios that encourage the polarization effect are to be avoided when possible.

*Judicial minimalism:* While courts have a certain expertise and cool-headedness, the larger political forum (when not too defective) is open to a wider range of views and arguments, and this has potential to produce better decisions. Second, Sunstein believes, when people feel that their best arguments have been voiced and reckoned with in a political process they have special reason to regard the outcome as legitimate even if they disagree with it. For these and other
reasons, courts should be reluctant to make decisions or even to offer arguments that unnecessarily invite controversy and conflict. Sunstein often appeals to the value of “incompletely theorized agreements,” decisions that can find more support if the justification offered for them does not venture too deeply into contested principles or values; appeal to the values of a democratic process would often meet this standard.

Anticaste: Even if every adult has the legal right to vote, run for office, and speak her mind in public, a society in which citizens are divided into higher and lower castes would plainly cripple those in the lower castes when it comes to playing the equal role in political deliberations to which they are entitled. On Sunstein’s view, there is a special reason not to let disadvantage attach to groups whose members are readily identifiable.

I turn next to several of the practical political problems to which Sunstein applies this analytical framework. (For reasons of space, I pass over his treatments of secession and impeachment.)

Homosexuality: Laws against consensual homosexual behavior, or against same-sex marriage, should probably be unconstitutional for two reasons. First, they form part of the system of discrimination against women: gays are hated mainly for figuratively turning men into women. Second, discrimination against gays tends to produce a group of second-class citizens, though not as decisively as discrimination against groups with visible membership, such as women or blacks. This second reason is democracy based, protecting the political position of gays. The sex-discrimination argument seems more straightforwardly substantive rather than democracy based.

Sex roles and religion: Sunstein argues that constitutions should protect religious associations in the interest of having a diversity of views in democratic forums of deliberation. Nevertheless, he also thinks that this interest can be outweighed when religious practices would tend to create a lower caste of citizens and that the cumulative effect of many practices within religious communities may be legally regulable on this ground. Both points stem from an interest in a robust process of political deliberation.

Constitutional rights to shelter: Sunstein discusses recent constitutional innovations in South Africa protecting a right to adequate housing. He argues that such an issue is within the purview of constitutions because adequate housing is fundamental to the political empowerment of people and groups. When a person lacks the safety and peace of secure housing, this curbs his ability to promote his interests and views in the political forum and to attend to the views of others.

Sunstein doesn’t say where the limits of a democracy-based approach to constitutions might lie, but we can briefly scout them out.

I doubt that a constitutional ban against punishing embezzlers with torture (even after due process) can be justified in the interest of the democratic process. A democracy-based constitutionalism might respond either by keeping such measures out of constitutions or by arguing that antitorture provisions are somehow important to democratic process. But how are we to explain what is undemocratic about torture, even where it is not used for political purposes and even when it doesn’t promote a caste system, and so on?

A second worry is this: if democratic procedure stretches to cover the torture
case, it can probably be stretched to cover everything, or at least everything important. As a result, everything important becomes a constitutional matter. (This would be like a deism in which God, in setting up the structure within which humans will freely act, ends up settling all important matters himself.) If every issue about which citizens have strong and reasoned disagreements is settled by the proper view of what a deliberative democratic process requires, then the substance of politics, and so the scope for exercising democratic agency, would seem to have disappeared. Once the structure is in place, we are not really set free to decide anything important.

One response would be to conceive of democratic process much more narrowly and leave all other matters out of the constitution. This probably leaves too much to ordinary politics. Another response would be to explain how (even deliberative) democratic process is not the only legitimate constitutional value. This would avoid expanding the idea of democratic process endlessly and so avoid bringing every important issue under the constitution. Perhaps this approach has more promise.

I have emphasized the skeleton of Sunstein’s methodological framework, but there is much admirable flesh on these bones, not all of it strictly serving the structure or elegance of the argumentative strategy. The book is rich with observations, ideas, and aspirations. The style seems to me tailored for a wider audience than an academic treatise on the idea of constitutionalism would normally expect to receive. This sometimes costs something in argumentative rigor, a rigor that Sunstein often supplies in other books and articles on these same topics. By moving somewhat quickly, however, the book brings a very wide range of practical concerns together under a cohesive theoretical approach. It is a successful mix of theoretical ambition with vivid and pragmatic attention to the real practical issues of our time.

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Paul Weirich has written an ambitious book that deserves the serious attention of anyone interested in rational choice theory. Weirich seeks to provide a framework within which all types of utility can be understood, including the intrinsic utility of outcomes, the expected utility of individual actions, and the group utility of collective acts. As Weirich sees it, each of these “dimensions” of utility captures a different sort of consideration or reason that can be offered for thinking that a prospect is desirable. The point of any utility analysis is to reduce the utility of an action to the reasons for or against doing it (p. 5).

Weirich argues that all such analyses have a common normative core in what he calls the “Principle of Pros and Cons.” The basic idea is that, for a given type of reason, one can analyze the utility of an action by listing all the reasons for and against doing it, provided that one also makes sure that no relevant reason is omitted or counted twice. Each reason for or against an act contributes