

# Democratic Decision-Making

*edited by*

**David Lewis Schaefer**

*contributors*

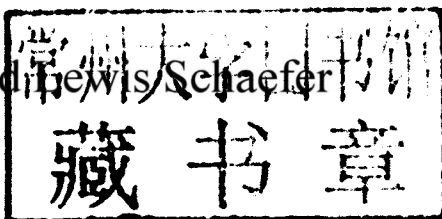
Daniel Cullen, William A. Galston, Dustin A. Gish, Leslie Friedman Goldstein, Nancy A. Jimeno, Daniel Klinghard, Peter McNamara, David Lewis Schaefer

*Historical and  
Contemporary Perspectives*

# Democratic Decision-Making

## *Historical and Contemporary Perspectives*

Edited by David Lewis/Schaefer



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# Democratic Decision-Making

# Editor's Introduction

David Lewis Schaefer

This book consists of eight essays by political scientists (all but one of them previously unpublished), who address various aspects of the process of democratic decision-making. The goal is to promote reflection on that process by offering a variety of perspectives on it and the forms it can take. Although the themes of the essays sometimes range well beyond contemporary concerns, the editor and authors hope that all of them will contribute to a better understanding of democracy by its friends, both domestic and foreign.

In the first essay, William Galston explores the theme of democratic leadership, or statesmanship. Drawing on Aristotle, he argues that leadership in a democracy calls for somewhat different qualities from those that would characterize it in other political regimes; these include qualities that promote the regime's ends (such as liberty), or that reflect its core beliefs (such as socioeconomic mobility). Although democratic elections, Galston goes on to observe, reflect the aristocratic wish to select the persons best qualified to hold office, the democratic principle requires that the ambitions of those who deem themselves most meritorious be moderated, as Abraham Lincoln maintained, by a spirit of reverence for the Constitution and laws, and more generally by an attitude of "democratic humility" which recognizes that political legitimacy depends not only on merit, but on the people's consent. Galston proceeds to consider the particular skills that democratic statesmen require, and what he terms the "ultimate test" of democratic leadership, "the willingness to eschew or surrender power in the name of a cause that one is unwilling to compromise."

Peter McNamara's study of "political opportunism" in a constitutional democracy elaborates one of the themes introduced in Galston's essay, the need for a democratic statesman, no less than a Machiavellian prince, to know how to take advantage of "the times" in bringing about needed political

reforms. His two chief examples are Alexander Hamilton's establishment of his economic program as treasury secretary and Abraham Lincoln's decision on how and when to issue the Emancipation Proclamation. Both Hamilton and Lincoln, McNamara shows, needed "to shape not just events but public opinion as well" in the face of significant opposition to their policies. Both had to distinguish well between issues on which they could and could not afford to compromise. And both men, he suggests, sought their reward in the consciousness of having served their country well, along with the hope that they *might* someday be remembered for their achievement by their countrymen.

The next two essays address the question of how far democracy, in the literal sense of majority rule, requires the admixture of elements that are not simply democratic in order to make it a decent regime. On the one hand, Leslie Friedman Goldstein, in her essay on "American Innovations in Democratic Decision-Making," traces the series of developments by which American statesmen, jurists, and political thinkers invented a series of devices to moderate the democratic principle so as to make it compatible with the preservation of minority rights. These included a written constitution limiting the actions of government that was to be popularly ratified but then be enforced by judicial review; the establishment of a large and diverse republic containing a multitude of factions, as outlined in *Federalist* no. 10; the constitutional division of powers among the branches of government and between federal and state governments, buttressed by the scheme of checks and balances; and, subsequently, John Calhoun's proposal for government by "concurrent majority," partly mirrored today in the senatorial filibuster and the congressional system of committees and seniority. On the other hand, Dustin Gish makes the case for classical, direct democracy—in contrast to the American Founders' disparagement of it—by defending Athenian democracy against the charge that it exhibited a characteristic irrationality, lawlessness, and injustice in the famous trial of the generals following the battle of Arginousai. He argues that Xenophon's account of the trial—our only extensive eyewitness source—shows it to have been conducted in a far more deliberate and lawful fashion than antidemocratic critics have contended. Gish's purpose is not of course to advocate dismembering the American constitutional system, including the checks on democracy discussed by Goldstein. Rather, he aims to defend the legitimacy of democratic partisanship, and indeed the dependence of any sort of democracy (direct or representative) on such partisanship, owing to its connection with the passion of *thumos* (spiritedness) which makes citizens willing to defend their regime against threats both domestic and foreign. His argument is directed specifically against contemporary theorists of so-called "deliberative democracy" who seek to constrain democratic decision-making not for the sake of protecting the rights guaranteed in the Declaration of Independence and the

Constitution, but in the name of an abstract vision of democratic deliberation that is designed to advance certain partisan goals espoused by the theorists themselves—without regard to the opinions, passions, and perceived interests of the citizenry as they exist.

My own essay further develops the theme of the questionable compatibility of the academic doctrine of deliberative democracy with genuine democracy or, more generally, popular self-government in a meaningful sense. Whereas the inventor of the term, the political scientist Joseph Bessette, used it to describe the Founders' original plan of government, under which the structure of the federal government (in conjunction with the influence of the states) would compel the members of the government to deliberate more or less rationally in an open-ended fashion in order to arrive at workable solutions to public problems that would secure popular consent, contemporary deliberative-democracy theory aims to *constrain* democratic decision-making through such means as an enhanced role for America's (already quite activist) judiciary, "liberating" political parties from dependence on private campaign contributions, and an artificial restriction of the content of political deliberation, designed to advance the theorists' particular vision of justice (such as economic egalitarianism). I challenge the theorists' assumption that turning political controversy more fully into a debate over ideological first principles would cause public policy-making to be either more rational or more responsive to reasonable public demands.

Daniel Cullen's contribution addresses the topic of deliberative democracy from a different perspective: its relation to the thought of the premier modern theorist of democracy, Jean-Jacques Rousseau. As Cullen observes, there are important links between the theory of deliberative democracy as articulated by one of its best-known proponents, Joshua Cohen, and Rousseau's argument in the *Social Contract*—notably their joint rejection of a form of representative government that is based largely on the aggregation and balancing of individual interests. But Cohen, as Cullen points out, overlooks or underestimates the objections that Rousseau poses in advance, so to speak, to the doctrine of deliberative democracy: notably his denial that the process of popular deliberation will tend of itself to foster either sound public policy or the transcendence of individual self-interestedness. In his realism about the possibility of transforming "men" into "citizens," Cullen suggests, Rousseau adopts a "chastened attitude toward democracy" that may have more in common with the outlook of the American Founders than with the theory of deliberative democracy.

The final essays in this collection, by Daniel Klinghard and Nancy Jimeño, discuss two versions of what I have termed (somewhat imprecisely) "informal" modes of democratic decision-making. In his study Klinghard articulates and partly defends the vision of democratic politics that is implicit in the talks on "practical politics" set forth by the New York political boss



George Washington Plunkitt at the turn of the twentieth century. Plunkitt's version of democratic politics sounds strange to contemporary ears: he thought that voters should be guided in their electoral choices not by their views on the issues debated by national politicians (in which Plunkitt thought most people didn't have much of an interest anyway), but rather by their loyalty to local political leaders who they believed had addressed their particular needs—whether by helping them find a job or giving them a place in the machine-sponsored baseball team or glee club. But while it is hard to find anyone who would favor such a system today, Klinghard reminds us of the cost of the “nationalization” of party politics as the result of candidates making direct, programmatic appeals to voters: it may actually alienate voters as their sense of political efficacy is weakened by the absence of meaningful local ties.

Nancy Jimeno's essay describes a very particular instance of democratic decision-making, the establishment of habitat conservation plans in California through collaborative negotiations among interested parties—developers, environmentalists, and government representatives—as distinguished from “top-down” settlements imposed by legislators, bureaucrats, or judges, in a manner that may hold promise for working out other regulatory issues in a manner that is both reasonable and responsive to a wide range of popular concerns. Such an approach demonstrates how prudent public policies in a democracy often require taking seriously the concerns of all parties that will be affected by them, rather than imposing “solutions” that rely purely on naked political (or judicial) power.

As will be apparent from the foregoing summary, there is no common viewpoint that unites the essays in this volume (although several essays offer a critique of the contemporary theory of deliberative democracy). It is hoped, however, that the range of insights they contain will enhance understanding of some of the central issues that arise from consideration of the process of democratic government today.

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*I*

# **Democratic Statesmanship**

# Contents

Editor's Introduction	vii
<i>David Lewis Schaefer</i>	
<b>I: Democratic Statesmanship</b>	
1 Democratic Leadership	1
<i>William A. Galston</i>	
2 The Constitutional Morality of Political Opportunism	11
<i>Peter McNamara</i>	
<b>II: How Far Does Democracy Require Limits?</b>	
3 American Innovations in Democratic Decision-Making	37
<i>Leslie Friedman Goldstein</i>	
4 In Defense of Democracy: Antidemocratic Sentiment and Democratic Deliberation from Ancient Athens to the American Founding	57
<i>Dustin A. Gish</i>	
<b>III: "Deliberative" Democracy?</b>	
5 "Deliberative Democracy": The Transformation of a Political Concept	85
<i>David Lewis Schaefer</i>	
6 Democracy by Constraint: The Ideal of Deliberative Democracy in the Light of Rousseau	101
<i>Daniel Cullen</i>	

**IV: Informal Modes of Democratic Decision-Making**

<b>7</b>	“This Is an Awful Serious Proposition”: George Washington Plunkitt in the Context of Nineteenth-Century Party Nationalization <i>Daniel Klinghard</i>	125
<b>8</b>	Habitat Conservation Plans: Redesigning Development Through Collaborative Negotiations <i>Nancy A. Jimeno</i>	151
	Index	173
	About the Contributors	179

## *Chapter One*

# **Democratic Leadership**

William A. Galston

### DEMOCRATIC LEADERSHIP AND HUMAN EXCELLENCE

Everywhere and always, political communities need good leaders. Statesmanship is a particular kind of leadership displayed in particular circumstances. It is an ensemble of qualities that enable its possessors to preserve regimes against profound challenges or to improve them in fundamental ways. Times that call only for routine governance do not permit the exercise of statesmanship, which can be displayed only in extreme situations—founding, war, economic collapse, deep civic division. Accordingly, ambitious leaders in tranquil times sometimes yearn for less orderly circumstances in which they can distinguish themselves. But if leaders prove unequal to such circumstances, they win, not glory, but ignominy (James Buchanan, Neville Chamberlain).

We may wonder whether the excellences of leadership are everywhere and always the same. In *Politics* (III. 4), Aristotle famously argues that the virtues of citizens are relative to the regime, which means that good citizens are not necessarily good human beings. But what about leaders? Aristotle seems to suggest that the virtues of good rulers are the same as the virtues of good men, which are the same in all times and circumstances. If that were so, there would be nothing distinctive about democratic leadership.

But the matter is more complicated. Near the beginning of *Politics*, Aristotle grounds politics in the human capacity for speech (I.2), and he goes on to argue that political leadership is qualitatively different from other kinds of rule in that it is “over free and equal persons” (I.7). Politics involves a relationship among human beings who are not in principle rightly subject to either coercion or command. The core of political rule is persuasion—the

ability to induce agreement about what should be done to preserve and improve the community. On the eve of Dwight Eisenhower's inauguration, outgoing president Harry Truman is said to have remarked that Ike "will say, 'Do this! Do that!' and nothing will happen. Poor Ike—it won't be a bit like the army."<sup>1</sup> While Truman failed to grasp how much of Eisenhower's success as supreme commander of the allied forces had rested on his powers of conciliation through persuasion, he was right about the underlying principle: the essence of politics is coordination of wills through persuasion rather than through unchallenged commands and unquestioning obedience.

Whether good leadership is always and everywhere the same depends on whether the capacity for persuasion is the same in all political circumstances. To clarify this issue, we must turn to *Rhetoric*, in which Aristotle identifies three sources of persuasion—character, emotion, argument. On inspection, all three prove to be relative in different ways to the political context in which one is operating. In the first place, certain kinds of character traits will commend speakers to their audience in particular contexts but not elsewhere. As Aristotle puts it, "We ought to be acquainted with the characters of each form of government; for in reference to each, the character most likely to persuade must be that which is characteristic of it" (1.8). While certain traits—such as probity in financial matters and devotion to the common good—are universally prized in politics, others are more regime-specific. The latter are traits that promote a regime's distinctive ends. If the end of democracy is liberty, then democratic citizens will prize traits seen as defending liberty. (From a democratic perspective, it would be hard to improve on "Give me liberty or give me death.") In an Aristotelian spirit, we can add that while some valued traits promote a regime's ends, others reflect and honor its core beliefs. So if equal opportunity and upward mobility are prized, as they are in the United States, then someone who started with nothing and took advantage of the chance to "work her way up" will be regarded as possessing admirable traits of character—grit and determination, among others. As American history repeatedly shows, these traits commend themselves to democratic electorates and to their representatives. (No doubt Sonia Sotomayor's inspiring rise from obscurity eased her confirmation as the first Hispanic Supreme Court justice.)

Similarly, there are passions and emotions more characteristic of democratic polities than others. For example, people who prize liberty will tend to be on their guard against those who might deprive them of it if given the chance, and those who wield power are in a position to do just that. So democracy and suspicion of authority tend to go together. Another example: If the equal freedom of democratic citizens leads them to regard themselves as possessing equal worth and merit, then they will resent individuals seen as "giving themselves airs"—that is, as claiming to be better than others. Populist resentment is an enduring staple of democratic politics. To avoid resent-

ment, democratic leaders who are to the manor born must display an unfeigned common touch, treating their fellow citizens (and others) as their social equals. Franklin Roosevelt, who came from an aristocratic family, successfully conveyed his commitment to democratic equality, once serving hot dogs to the king and queen of England at a Hyde Park picnic, a decision the *New York Times* treated as front-page news.<sup>2</sup> A third example: As Plato was perhaps the first to observe, the democratic preference for liberty tends to generate a certain mildness toward, and tolerance of, varying ways of life. The desire to live just as one desires softens antipathy to those who live differently but do not impede one's own choices. Live and let live is a perennial democratic sentiment to which would-be leaders can appeal.

Finally, the content of premises that are generally accepted as bases of public argument will vary in accordance with political context. For example, claims erected on the foundation of individual rights are more powerful in the United States than in most other nations—even other advanced democracies. Each country possesses a distinctive public culture—beliefs that amalgamate principle, shared history, and distinctive ethnicities.

## DEMOCRATIC LEADERSHIP AND LEGITIMACY

The basis of the claim to exercise authority varies with the regime. So in Iran, for example, the “supreme leader” is supposed to excel in theological understanding and in commitment to the preservation of the republic based on that understanding. The current supreme leader, Ali Khamenei, possesses only modest credentials as a scholar of Islam, weakening his legitimacy in the eyes of even conservative clerics. In democracies, where legitimacy flows from popular consent, disputed election results can call into question the legitimacy of those who eventually prevail, as George W. Bush discovered in the wake of the Florida controversy in 2000.

But elections are an ambiguous basis of authority. While they reflect the public's will, they are also designed to select individuals with the requisite talent and character to discharge the duties of public office. As Aristotle observed, a lottery is the most purely democratic method of selecting public officials; elections have an aristocratic tendency (*Politics* IV.9). Defending the proposed Constitution's means of selecting the president, Alexander Hamilton declared in *Federalist* no. 68 that it would afford a “moral certainty” that the office would seldom fall to any man “who is not in an eminent degree endowed with the requisite qualifications.” Indeed, he continued, “there will be a constant probability of seeing the station filled by characters preeminent for ability and virtue.” In a letter to John Adams, Thomas Jefferson wrote that “there is a natural aristocracy among men. The grounds of this

are virtue and talents . . . May we not even say that that form of government is best, which provides the most effectually for a pure selection of these natural *aristoi* into the offices of government?" This, he argued, was the genius of our constitutional order, "to leave to the citizens the free election and separation of the *aristoi* from the *pseudo-aristoi*, the separation of the wheat from the chaff." As a general matter (though not in every case), we can rely on the people to make discriminating judgments, to "elect the really good and wise."

A deep difficulty lurks in the shadow of elections, so understood. It is natural for people of unusual ability to believe that their merits entitle them to positions of leadership, and to a measure of deference. They may ask themselves why those of lesser merit should be able to confer or withhold what belongs by right to those with greater political capacities, and they may come to resent what they experience as the stultifying, even demeaning, processes of popular consent.

Shakespeare presents us with a perfect example of such a man. Returning in triumph after his victory over the Volscians, the Roman nobleman and warrior Coriolanus is on the verge of being named consul. Now that the Senate has given its consent, custom demands that the candidate present himself to the commoners and request their support. When he meets the people, they ask him why he has come. "Mine own desert," he replies. The people are astonished and displeased; this is not the stance of supplication they expected. Coriolanus then asks them the price of the consulship. "The price is, to ask it kindly," replies one. The proud Coriolanus utters—but almost chokes on—the required words. After the citizens have taken their leave, he bursts forth in an angry soliloquy: "Better it is to die, better to starve, than crave the hire which first we do deserve" (*Coriolanus* II. iii). As the action of the play reveals, this passion is a threat to the civic order.

In a youthful speech on "The Perpetuation of our Political Institutions," Abraham Lincoln cautioned against complacency that the Constitution, established for half a century, was secure. "Men of ambition and talents," he declared, "will . . . continue to spring up amongst us. And when they do, they will as naturally seek the gratification of their ruling passion, as others have so done before them." Such men belong to "the family of the lion" and the "tribe of the eagle." Their drive for the unfettered exercise of their gifts, and for the distinction that only great deeds can bring, will lead them to trample established institutions, "whether at the expense of emancipating slaves, or enslaving freemen." The question is how this drive can be kept within democratic bounds. Lincoln's answer: only "a reverence for the Constitution and laws" can channel the ambitions of great men so as to fortify, rather than undermine, republican government.<sup>3</sup>



General Douglas MacArthur may well have been America's Coriolanus. While MacArthur was a gifted and charismatic military leader and a statesman who orchestrated Japan's immediate postwar reconstruction, his belief in his own merits led him to challenge the principle of civilian control over the military. At the height of the Korean War, he sent a letter to the House minority leader disagreeing with President Truman's effort to avoid a wider war with China, and his public statements undermined Truman's diplomacy. In April 1951, Truman relieved him of command, replacing him with General Matthew Ridgway, who knew MacArthur as well as anyone did. Ridgway professed the deepest respect for his "abilities, for his courage and for his tactical brilliance . . . for his leadership, his quick mind and his unusual skill at going straight to the point of any subject and illuminating it . . . He was . . . a truly great military man, a great statesman, and a gallant leader." Ridgway was anything but blind to MacArthur's flaws, however, noting "his tendency to cultivate the isolation that genius seems to require, until it became a sort of insulation . . . ; the headstrong quality . . . that sometimes led him to persist in a cause in defiance of all logic; [and] a faith in his own judgment . . . that finally led him close to insubordination."<sup>4</sup> If MacArthur had pursued the presidency, as he was widely expected to do in 1952 after his triumphant return to the United States, his character flaws could have posed a threat to the constitutional order.

These reflections point toward a core virtue of democratic leadership—democratic humility: the recognition that the legitimacy of your power ultimately depends on the will of the people and not just on your own merit. It is easier to state this proposition than to practice it. During the confirmation process for senior positions in the executive branch and the judiciary, even the most outstanding nominees are instructed to flatter the representatives of the people, to answer—gravely and with respect—even their most uninformed questions, and to treat even their most trivial utterances as pearls of wisdom. Candidates for high elective office find themselves pressured to evade what they know to be the real choices and to make promises they cannot keep. Many officials privately believe, even if they will not publicly state, that sound public policy requires a substantial degree of insulation from public scrutiny and judgment. Lincoln thought that only a carefully cultivated reverence for the Constitution, and the principle of human equality at its base, could preserve us from anti-democratic sentiments. James Madison believed that the chastening effects of elections—the requirement to seek public authorization—would habituate representatives to respect republican norms (*Federalist* no. 57). Both were right; both understood the centrality of democratic humility to the kind of leadership that preserves and strengthens the institutions of self-government.

## THE SKILLS OF DEMOCRATIC LEADERS

Specific virtues are required for democratic leadership; so too are specific skills, all of which reflect the need to obtain and sustain public support. To begin, democratic leaders must understand, and be able to articulate, the public culture of their community. In so doing, they invite the people to unite around the fundamentals of their civic identity. Martin Luther King, Jr.'s "I Have a Dream" speech, drawing as it did on America's biblical and constitutional heritage, was a classic of that genre. So was Franklin Roosevelt's "Four Freedoms" address. And so, in a different vein, was Ronald Reagan's acceptance speech at the 1980 Republican convention. He summoned up the Mayflower Compact, the signers of the Declaration of Independence, Abraham Lincoln, FDR, even Tom Paine. Invoking "family, work, neighborhood, peace and freedom," Reagan implored the American people to "renew our compact of freedom . . . for the sake of this, our beloved and blessed land." He defined this "new beginning" as a commitment to "care for the needy; to teach our children the values and virtues handed down to us by our families; to have the courage to defend those values and the willingness to sacrifice for them [and] to restore, in our time, the American spirit of voluntary service, of cooperation, of private and community initiative, a spirit that flows like a deep and mighty river through the history of our nation." Reagan's deep patriotism impressed even those whom he did not persuade and helped lay the foundation for an effective presidency.<sup>5</sup>

Another key requirement of democratic leadership is the capacity to understand what is required in particular circumstances to maximize persuasion and popular consent. In the months leading up to the Supreme Court's 1954 decision in *Brown v. Board of Education*, Earl Warren displayed this capacity in ample measure. By 1952, five major school segregation cases had reached the court, which decided to hear them collectively. Meeting to decide the case, the justices soon realized that they were badly divided. Unable to reach a resolution by the end of the 1952–1953 term, they decided to rehear the cases in December of 1953. In the interim, Chief Justice Fred Vinson died, and Governor Earl Warren of California was confirmed as his replacement. Warren quickly concluded that unless the court achieved unanimity, a decision declaring school segregation unconstitutional would not achieve the requisite degree of public acceptance. Over the next six months, he worked patiently to bring about that result, adopting the recommendation of Justice Robert Jackson to delay taking formal votes until the issues were thoroughly explored and debated. This process enabled the justices to identify areas in which all could agree. On May 14, 1954, the chief justice was able to announce a unanimous decision outlawing school segregation.<sup>6</sup>