

# Star Wars, Science Fiction and the Constitution

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Cass R. Sunstein, [The World According to Star Wars](#) (2016).

Cass Sunstein is one of America's leading legal scholars. Both his work generally and his book about Star Wars specifically have attracted enormous attention from both academics and the general public. But one theme of his new book, **The World According to Star Wars**, highlights an area that is often neglected: the depiction of constitutional issues in science fiction and fantasy.

Both legal scholars and other commentators on law and public policy would do well to pay more attention to this subject. Far more people watch science fiction movies and read science fiction books than pay attention to serious nonfiction commentary on political and constitutional issues. Whether we like it or not, these products may well have an impact on public attitudes, a possibility supported by some social science research.<sup>1</sup> They also often reflect the concerns of their time.

The Star Wars franchise, the focus of Sunstein's book, is perhaps the most popular science fiction series of our time. Its only plausible rival for that title is Star Trek, which Sunstein also discusses. There is therefore good reason to think about what, if any, message the series conveys about constitutional issues.

In his insightful new book, Sunstein devotes a good deal of space to the implications of Star Wars for constitutional questions, as well as political issues closely related to them. He also, of course, has numerous excellent insights on aspects of Star Wars that have little or nothing to do with law and politics. The book is a treasure trove for Star Wars fans and science fiction fans more generally. But it is the constitutional and political aspects of Sunstein's analysis that most concern us here.

One point he makes is that the series raises the question of the extent to which it is a good idea for the legislature to delegate power to the executive (Pp. 118-20). After all, Chancellor Palpatine is able to subvert the Galactic Republic and turn it into a despotic empire by utilizing emergency powers delegated to him by the Senate in order to wage the Clone Wars. As Sunstein notes, this issue resonates with current controversies about the use of wide-ranging executive discretion in the War on Terror, and in domestic regulation and law enforcement. Sunstein himself believes that such concerns are overblown (at least with respect to the Obama administration), but recognizes that they raise legitimate issues that we would be unwise to ignore.

Sunstein also uses Star Wars to critique originalist approaches to constitutional theory (Pp. 145-57). He points out that the Star Wars universe developed in directions very different from what George Lucas may have originally intended in the 1970s, and that the alterations made by later writers and directors often made the story better. He analogizes this to the way in which modern court decisions and political movements have changed constitutional doctrine, often also (he contends) for the better.

Unlike in the case of executive power, I think Sunstein's analogy here is somewhat strained. There are many obvious differences between designing a plot for a movie series and interpreting a constitution. Among other things, changes in the former need not follow a set amendment process, and do not implicate the coercive authority of the state. Instability and internal contradictions in a movie or TV

series plot line also have far less potential for harm than similar phenomena in constitutional law.

Even within the context of Star Wars, not all fans of the series will agree with Sunstein's optimistic appraisal of the twists and turns in the plot added since the original movie. To take just one example, many decry the various innovations developed in the three prequel movies, especially when they seem to contradict the original trilogy on various key points.

Sunstein also argues that "Star Wars is obsessed with the separation of powers" and that it opposes "democratic systems to fascist ones" (P. 116). It is, he believes, especially hostile to the "concentration of power in one person" (*Id.*). In some ways, he is surely right. The replacement of the Galactic Republic with the dictatorship of Emperor Palpatine leads to massive oppression and injustice. As already noted, that chain of events is set off by what seems to be excessive delegation of power to the executive.

But if the series condemns dictatorship, it does not necessarily come out strongly in favor of democracy. Whenever we see democratic institutions at work (most notably the Galactic Senate), they seem sclerotic and incompetent. Such good as the Old Republic does mostly seems to be the responsibility of the Jedi Order, an unelected elite of genetically superior Force users that usually has little if any accountability to democratically elected bodies.

When the Empire is defeated, it is not by a democratic popular movement, but by a relatively small force of rebels, led by aristocrats (*Princess* Leia) and elite Force users, such as Luke Skywalker and his mentors Yoda and Obi-Wan Kenobi. While the Rebels seek to restore the Republic, we get little indication of what that might mean in institutional terms – other than the overthrow of the Emperor, of course.

More generally, there is very little sense in Star Wars that institutions (other than perhaps the absence of dictatorship) matter to good governance. Rather, the dominant impression is that things will be fine if good people are in power – people like Luke, Leia, or (in the prequel movies) the Jedi Order and the few "good" politicians, such as Bail Organa and Padme Amidala. In a 1999 interview,<sup>2</sup> George Lucas famously said that "a benevolent despot is the ideal ruler" and criticized "dysfunctional" democracies where "[y]ou get these individual voices that are very loud." To some degree, at least, the series reflects that perspective. It is often ambivalent about whether we should fear concentration of power generally, or merely concentration in the wrong hands.

The emphasis on heroic elites may be a more general limitation of science fiction, and perhaps popular culture generally. It is much easier for a movie, TV series, or other work of fiction to portray the importance of heroic individuals than that of political institutions. Luke, Leia, and Han Solo inspire our empathy and admiration far more readily than a legislature, a court, or a well-run bureaucracy ever could. Star Wars, like many other works of fiction, implicitly conveys the message that the antidote to tyranny and oppression is to make sure the right people are in power.

The series does, however, make one troubling institutional point about democracy that has troubling real-world parallels: The rise of Palpatine is facilitated by widespread voter ignorance. As the prequel movies and the *Clone Wars* TV series show, Palpatine is successful in large part because the public is oblivious to what is really happening. They do not understand, for example, that the entire conflict between the Republic and the secessionist rebels was trumped up by Palpatine and his allies in order to facilitate his seizure of power. They are also unaware of the risks of concentrating so much power in the office of the chancellor.

*The Force Awakens*, the most recent Star Wars movie, suggests that the voters have not learned their lesson even in the aftermath of the collapse of the Old Republic and the atrocities of the Empire. Just as

Old Republic voters were oblivious to Palpatine's machinations, those of the New Republic fail to notice the rise of the menacing First Order right under their noses. Sadly, the voter ignorance portrayed in Star Wars is an exaggerated, but recognizably similar, counterpart to the widespread voter ignorance that exists in the real world.<sup>3</sup> Like that in Star Wars, real-world voter ignorance is often remarkably persistent.

The fact that Star Wars effectively highlights this problem does not necessarily mean it offers a good solution. Among other things, there is little sense that public ignorance is a problem that might require institutional solutions, as opposed to merely a tool that the villains manipulate, and the heroes strive to overcome. But the series deserves credit for at least raising this important issue.

Although I take a more critical view of Star Wars' approach to constitutional and political issues than Cass Sunstein does, he is absolutely right to highlight this aspect of the series. Even more importantly, he deserves our gratitude for noting the importance of the portrayal of constitutional issues in popular culture generally. Other scholars would do well to build on his work in that respect.

Despite the inherent difficulty of the task, some science fiction works treat institutional issues with greater sophistication than Star Wars does. Examples include the *Babylon 5* TV series and at least some of the Star Trek series, particularly *Deep Space 9*. There are also some examples in fantasy literature, a genre closely related to science fiction. These and other fictional universes might well repay the sort of analysis that Sunstein devotes to Star Wars.

1. For example, survey data suggests that children who grew up reading the Harry Potter series have different political views than otherwise similar members of the same generation who did not. See Anthony Gierzynski, **Harry Potter and the Millenials: Research Methods and the Politics of the Millenial Generation** (2013).
2. [George Lucas: 'I'm a Cynic Who Has Hope for the Human Race.'](#) **New York Times** (Mar. 21, 1999).
3. I discuss voter ignorance and its dangers in much greater detail in Ilya Somin, **Democracy and Political Ignorance: Why Smaller Government is Smarter** (2nd ed. 2016).

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