

## GOV 357M Comparative Constitutional Design

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### Course Description and Objectives

Recent constitutional reconstruction in Iraq and Afghanistan, among other settings, has redirected our attention to the problems of creating foundational charters. In this course we will examine the design and implementation of national constitutions. In particular, we will address the following questions. What are the basic elements of constitutions? How do these elements differ across time, across region, and across regime type? What is the process by which states draft and implement constitutions? What models, theories, and writings have influenced the framers of constitutions? What are the expected consequences of different constitutional choices? The course requires careful and diligent reading, consistent participation, regular reaction papers, two in-class exams, and the preparation of a short analytic report.

### Online Materials

Information for this course will be posted on the class Blackboard site. There you will find updates to this syllabus, electronic copies of selected readings, instructions for uploading assignments, and regular announcements.

If you have any problems with your password or accessing Blackboard, contact ITS. If you can access Blackboard, but cannot access any material from this course, please contact Professor Elkins by email.

### Requirements and Grading

This is a seminar for undergraduates who have taken at least six hours of Government coursework or related coursework in other departments. Discussion of the written material is a central component of the course, and the expectation is that you come fully prepared to discuss the readings assigned on any given day. Your grade will be based on the following components:

- (1) *Class Participation (20%)*. The participation score will be based on both attendance and, more importantly, your contribution to class discussions.
- (2) *Reaction papers (20%)*. For at least six of the sessions, you will be required to respond to the readings in a short reaction paper. You may choose which of the six sessions you turn in papers, except that you must complete three in each half of the course (that is, three before March 3 and three after). Reaction papers are short (roughly 500-word) essays in which you reflect on the readings and address any criticism(s) or reactions to the readings. Some weeks you might be asked to address a particular question, but for most weeks you can address the issues or questions of your choice. For more guidance, see the handout, "How to Write a Reaction Paper," which is available on the course website.

Reaction papers for each week must be posted on the website by **10 PM on the day before class**. See the handout for specific instructions on how to post your paper.

Reaction papers are graded on an acceptable/unacceptable basis. As long as you show that you have read, and reflected on, the reading in a coherent thoughtful fashion, your paper will be deemed acceptable and you will receive full credit.

- (3) *Short Analytical Paper (20%)*. As part of a series of classes on the process and practice of constitutional assistance, you will review a recent or draft constitution from a country currently or recently involved in constitutional design and write up your findings.

(4) *Exams (40%)*. You will take two in-class exams (a midterm and a final) in which you will be asked to respond to a series of questions testing your comprehension of the reading.

*Grading Scale*. Grades will be assigned on a (+/-) basis according to the following scale: 94-100 = A; 90-93 = A-; 87-89 = B+; 84-86 = B; etc.

### **Policy for Missed Deadlines**

*Reaction papers*. The intent of the reaction papers is for you to reflect upon the readings prior to our discussion of them. Accordingly, late reaction papers will not be accepted.

### **Required Materials**

The following books are available for purchase at the UT Co-op or from online bookstores at your convenience. All other materials will be available on the course website.

Lijphart, Arend. 1999. *Patterns of Democracy*. Yale University Press.

### **Accommodations**

*Disabilities*. Students with disabilities may request appropriate academic accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities, 471-6259, <http://www.utexas.edu/diversity/ddce/ssd/>. Please let me know *at the beginning of the semester* if you will need accommodations of any sort.

*Religious Observance*. By UT Austin policy, you must notify me of your pending absence at least fourteen days prior to the date of observance of a religious holy day. If you must miss a class, an examination, a work assignment, or a project in order to observe a religious holy day, you will be given an opportunity to complete the missed work within a reasonable time after the absence.

### **Academic Integrity**

Students who violate University regulations on academic honesty will receive a failing grade for the course, in addition to University penalties, *which can include expulsion from the University*

### **Emergency Evacuation Guidelines**

In the event of a fire or other emergency, it may be necessary to evacuate a building rapidly. Upon the activation of a fire alarm or the announcement of an emergency in a university building, all occupants of the building are required to evacuate and assemble outside. Once evacuated, no one may re-enter the building without instruction to do so from the Austin Fire Department, University of Texas at Austin Police Department, or Fire Prevention Services office.

Students should familiarize themselves with all the exit doors of each room and building they occupy at the university, and should remember that the nearest exit routes may not be the same as the way they typically enter buildings.

Students requiring assistance in evacuation shall inform their instructors in writing during the first week of class. Faculty members must then provide this information to the Fire Prevention Services office by fax (512-232-2759), with "Attn. Mr. Roosevelt Easley" written in the subject line.

Information regarding emergency evacuation routes and emergency procedures can be found at <http://www.utexas.edu/emergency>.

### Schedule of Topics and Readings

**January 18: Introduction.** What is constitutional design? Why should we study it? How should we study it?

**January 20: Constitutional Identity.** How, precisely, do we identify constitutions? What is their purpose and role in a society? Could one “design” an “unwritten constitution”? How original are they anyway?

Elkins, Ginsburg, and Melton. 2009. *The Endurance of National Constitutions*. Chapter 3.

**January 25. On the circumstances and process of constitutional design.** Replacement versus revision; how to write and revise documents collectively; the problem of self-dealing.

Federalist #40

Donald Horowitz “Constitutional Design: Proposals versus Processes” in Andrew Reynolds, ed. *Architecture of Democracy* (1999).

**January 27. TBA**

**February 1. Ratification and, more generally, referenda.** How to involve the public in constitutional design?

Hart, Vivien. 2003. “Democratic Constitution-Making.” USIP Special Report.

**February 3. Executive-Legislative Relations, Part I.** The classic conceptualization (presidentialism v. parliamentarianism) and its intermediate forms (e.g., “semi-presidentialism”).

Lijphart, Chapter 7

**February 8. Executive-Legislative Relations, Part II.** The consequences of various choices.

Linz, Juan. 1993. “The Perils of Presidentialism.” *Journal of Democracy*.

**February 10. The Question of Executive Term Limits**

Maltz, Gideon. 2007. “The Case for Presidential Term Limits.” *Journal of Democracy* 18.1: 128-142.

Posner, Daniel N. and Daniel J. Young. 2007. “The Institutionalization of Political Power in Africa.” *Journal of Democracy* 18.3: 126-140.

**February 15. Electoral Systems (legislatures).** To what degree should electoral procedures be constitutionalized? What are the consequences (intended and unintended) of the various procedures?

Horowitz, Donald. 2004. “Electoral Systems and their Goals: a Primer for Decision Makers.” *Journal of Democracy* 14.4: 115-127

Lijphart, Chapter 8

**February 17. Electoral Systems (executives).** The U.S. in comparative perspective.

Levinson, Sanford. 2006. *Our Undemocratic Constitution*. Oxford University Press. Chapter 3.

**February 22: Designing a Judiciary.** Who should interpret the constitution and what other powers should that body have? The goal of judicial independence; selection and removal procedures; term length.

Lijphart, pp. 223-31.

Levinson, Sanford. 2006. *Our Undemocratic Constitution*. Oxford University Press. Chapter 4.

**February 24: Federalism, Part I.** The origins and consequences of federal arrangements. On the distinction between “decentralization” and “federalism.”

Lijphart, Chapter 10.

**March 1: Federalism, Part II.** As salve for ethnic conflict; the specter of secession; and the question of control over the means of violence.

Horowitz, Donald. 2003. “The Cracked Foundations of the Right to Secede.” *Journal of Democracy* 14.2: 5-17.

**March 3: Bicameralism**

Lijphart, Chapter 11.

**March 8: Review**

**March 10: Midterm Exam**

### Spring Break

**March 22: Rights, an Introduction.** Negative and positive rights; first, second, and third generation rights; the relationship between national constitutions and international human rights treaties.

Henkin, Louis. 1990. *The Age of Rights*. New York: Columbia University Press. [Introduction: the Age of Rights]

**March 24: Citizenship**

Rogers Smith. 1997. *Civic Ideals*. Chapter 5. Pp. 115-137. [This book is available as an ebook at the Library’s website].

**March 29: Language Rights**

Kymlicka, Will and Alan Patten. 2003. “Language Rights and Political Theory.” *Annual Review of Applied Linguistics*.

**March 31: TBA**

**April 5: Political Rights.** In particular, suffrage, candidate restrictions, and campaign finance.

Lijphart, Arend. 1997. “Unequal Participation: Democracy's Unresolved Dilemma.” *American Political Science Review* 91: 1-14.

**April 7: Property Rights.** The tension between redistribution and property rights.

Alexander, Gregory. 2009. "Property Rights." In Vikram David Amar and Mark Tushnet (eds.) *Global Perspectives on Constitutional Law*. Oxford University Press.

**April 12: Imposed Constitutions, Part I: Colonial Legacies**

Go, Julian. 2003. "A Globalizing Constitutionalism? Views from the Post-Colony, 1945-2000." *International Sociology* 18: 71-95.

**April 14: Imposed Constitutions, Part II: Military Occupation**

Arato, Andrew. 2003. *Sistani v. Bush: Constitutional Politics in Iraq*. Constellations.

**April 19: Emergency powers**

Gross, Oren. 2010. "Constitutions and Emergency Regimes." In Ginsburg and Dixon, eds., *Handbook of Comparative Constitutional Law*.

[various emergency powers provisions from constitutions around the world]

**April 21: Constitutional Change**

Elkins, Ginsburg, Melton. *The Endurance of National Constitutions*. Chapter 2

**April 26: "Introducing constitutions"—On Preambles, their form and function(s)**

Levinson, "What Is the Point of Constitutions?"

[read through a selection, of your choice, of preambles in the constitutional repository on [constitutionmaking.org](http://constitutionmaking.org)]

*Recommended:*

Liav Orgad, "The Rise of the 'Forgotten Constitution' The Preamble in Constitutional Interpretation"

**April 28: Constitutional Assistance, Part I**

Kenya's Draft Constitution, v. April 2010

Online background material on Kenya (at your discretion)

**May 3: Constitutional Assistance, Part II**

Kenya's Draft Constitution, v. April 2010

**May 5: Conclusion**

\*Kenya paper due

**May 12: Final Exam**

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