

Political Science 499
Professor Elkins and Professor Ginsburg
Fall 2005

Comparative Constitutional Design

Course Description and Objectives

Iraqi leaders are scheduled to promulgate a new Iraqi constitution at the end of 2005. This document, which many see as a significant step in the country's transition to democracy, will affect political and social outcomes in Iraq for years to come. In this course we will examine the design and implementation of such 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 are the critical debates that arise during constitutional deliberations? What models, theories, and writings have influenced the framers of constitutions?

The course is divided in two parts. In the first half, we review the historical roots of constitutions and investigate their provisions and formal characteristics. We will also discuss the circumstances surrounding the drafting of several exemplary or noteworthy constitutions.

In the second half of the course, students will participate in an ongoing research project under the direction of Professor Elkins and Professor Tom Ginsburg. The purpose of the project is to produce a dataset that will be of use both to those designing new constitutions as well as well as scholars of constitutional design. Participants in the class will collect data on the characteristics of current and historical constitutions using a survey developed by Professors Elkins and Ginsburg. Consultants and political actors throughout the world will likely make use of the data collected by participants in the class.

Eligibility

The course is open to advanced undergraduates with prior coursework in political science or related fields. Enrollment requires the approval of the instructors.

Teaching Assistant

James Melton

Required Materials

Selected photocopied readings will be made available by the instructors.

The following books will be available for purchase at TIS Books (5th St., between Green and John) after September 5:

Brown, Nathan. 2002. *Constitutions in a Non-Constitutional World: Arab Basic Laws and the Prospects for Accountable Government*. Albany, NY: State University of New York Press.

Ginsburg, Tom. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge, UK: Cambridge University Press.

Requirements and Grading

Students will be evaluated based on the following criteria:

- (1) *Participation* (25%). Students are expected to read the required reading carefully, attend class sessions, and participate actively in class discussions.
- (2) *Midterm Exam* (15%)
- (3) *Country Assignments* (40%). Students will be given a set of constitutions to analyze and interpret, using the methods and tools developed during the course.
- (4) *Final Project* (20%). This will be an 8-10 page paper, the subject of which to be arranged individually with the instructor.

SCHEDULE OF TOPICS AND READINGS

August 24 Introduction

August 29 Constitutions: Purposes and Patterns

Jackson, Vicki and Mark Tushnet. 1999. *Comparative Constitutional Law*. New York: Foundation Press. Pp. 190-222.

Arjomand, Said Amir. 2003. "Law, Political Reconstruction and Constitutional Politics." *International Sociology* 18 (1):7-32.

August 31 American Foundations

Ackerman, Bruce. 1993. *We the People: Foundations*. Cambridge: Belknap. Excerpts

Dahl, Robert. 2003. *How Democratic Is the United States Constitution?* 2nd ed. New Haven: Yale University Press. Excerpts

September 5 [Labor day, no class]

September 7 A Glance at the Iraqi Transitional Acts

Iraqi Transitional Administrative Law

Diamond, Larry. 2005. *Squandered Victory: The American Occupation and the Bungled Effort to Bring Democracy to Iraq*. New York: Henry Holt and Company. Pp. 11-25, 140-178

September 12, 14 Constitutions in the Arab World

Brown, Nathan. 2002. *Constitutions in a Non-Constitutional World: Arab Basic Laws and the Prospects for Accountable Government*. Albany, NY: State University of New York Press. Pp. 3-110

September 19 Constitutional Design at Gunpoint: Japan

Hideo Tanaka. 1976. *A History of the Constitution of Japan of 1946*, excerpts.

Gordon, Beate Sirota. 1997. *The Only Woman in the Room*. New York: Kodansha. Pp. 103-25.

September 21 The “New World Order” and Post-communist Constitutionalism

Jackson, Vicki and Mark Tushnet. 1999. *Comparative Constitutional Law*. New York: Foundation Press. Pp. 260-287

Selected Constitutions

September 26 Presidentialism versus Parliamentarism

Juan Linz, "The Perils of Presidentialism," *Journal of Democracy*, Vol. 1, no. 1 (Winter 1990), pp. 51-69

José Cheibub, "Presidentialism and Democratic Performance," in Reynolds (ed.) *The Architecture of Democracy*, pp. 104-27 (not to the end).

September 28 Managing Ethnic Diversity

Horowitz, Donald. 1993. "Democracy in Divided Societies." *Journal of Democracy* 4 (4):18-38.

Bermeo, Nancy. 2002. "The Import of Institutions." *Journal of Democracy* 13 (2):96-110.

Reilly, Ben. 2002. "Electoral Systems for Divided Societies." *Journal of Democracy* 13 (2):156-170.

October 3, 5 Judicial Review

Ginsburg, Tom. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge, UK: Cambridge University Press.

October 10, 12 The Iraqi Constitution of 2005

Latest draft of the Iraqi Constitution

Other readings to be announced and distributed

October 17, 19 Surveying National Constitutions: An Introduction

Elkins, Zachary, Tom Ginsburg, and James Melton. 2005. *Formal Characteristics of National Constitutions*. [survey instrument and glossary]

[Take-home midterm exam due October 24]

October 24 – November 28 Surveying National Constitutions

Class schedule and assignments to be announced

November 28 The Analysis of National Constitutions

Readings, if any, to be announced

November 30 -- December 7 Presentation of Preliminary Reports

December 14 Final Reports Due