

CONSTITUTIONALISM IN DIVIDED SOCIETIES

GOV 355M (37315) | Fall 2024

Classroom: PAR 1

Class time: MW 2:30pm-4:00pm

Office hours: M 10:00am-1:00pm, or by appointment

Ashley Moran

Department of Government

University of Texas at Austin

ashleymoran@utexas.edu

Deeply divided societies remain one of the thorniest challenges in constitutional design. In such communities, social divisions like race, ethnicity, or religion are a driving force in politics, forming a core basis for political discourse, alliances, and mobilization. These societies thus challenge traditional models of democratic politics that assume the composition of coalitions and majorities will change over time in response to varied issues and changing circumstances. Instead, in divided societies, the identity-based considerations that shape politics can lead to persistent polarization and political stalemate, discrimination, group exclusion, and even violent conflict. Constitutions are often charged with avoiding these dire outcomes and bringing disparate groups together to live peacefully under a unified state.

This course analyzes a wide range of constitutional strategies to manage division, exploring many of the same questions constitution drafters must consider in divided societies: How should territory, governance, and elections be structured to meet the needs of a particular state? Who gains and loses under various formulations? Which institutions and rights are needed to ensure government responsiveness to all groups in society? What guarantees are there for communities at risk of marginalization or persecution? Should certain languages, religions, or other identities be recognized by the state? Can secular, religious, and customary law be blended in a coherent way? Is ambiguity helpful in constitutional design? Which steps give traction to the constitution after adoption? How will courts guide the process? And how will the constitution provide both stability and the flexibility to evolve as society evolves?

The course covers a wide range of cases from Asia, Australia, Europe, the Middle East and North Africa, North America, South America, and Sub-Saharan Africa. In doing so, it provides an opportunity to learn about and reflect on our constitutional system in the United States as well.

OBJECTIVES

The course aims for students to: (1) analyze constitutional development in a range of contexts, legal traditions, and geographic regions, (2) assess the historical, socioeconomic, and political factors that shape divided societies today, (3) assess constitutional design options and their potential benefits and risks related to group dynamics, and (4) diagnose (where applicable) the constitutional factors contributing to current political crises and identify alternative designs that could in theory alleviate them.

ASSIGNMENTS

Coursework includes the following components, weighted as noted:

- 10% **Class participation:** Part of each class will center around structured discussion. Students should be prepared to discuss key points from the readings, make insightful arguments or counterarguments, and respond to points raised by others in class. Half of the class participation grade will be determined by attendance tracked in Canvas. The other half will be determined by the level of preparedness and contributions in class.
- 20% **Discussion posts:** Discussion posts will be due most (but not all) Sundays to facilitate students' engagement with topics under study the following week. Discussion posts can address any topic

covered in any of the readings that week. They can analyze the authors' arguments, apply them to current events, or grapple with that week's readings in any other way that stays true to our class objectives. Detailed instructions are on Canvas. Discussion posts must be submitted on Canvas on assigned Sundays by 5pm (see due dates below).

- 10% **Constitutional amendment exercise:** Students will work in groups to propose an amendment to the U.S. Constitution addressing a challenge related to social divisions in the United States. Groups will submit their amendment text on Canvas by Sunday, October 20 at 5pm. Groups will present their amendment pitch in class on Monday, October 21 or Wednesday, October 23.
- 40% **In-class midterm exams:** The first midterm exam will be held in class on Wednesday, September 25 and will cover readings and lectures from roughly the first third of the course. The second midterm exam will be held in class on Wednesday, October 30 and will cover readings and lectures from roughly the second third of the course.
- 20% **Take-home final exam:** The final exam will look holistically at issues across the whole course. The exam will be available on Canvas after class on Monday, December 9, and must be submitted on Canvas by Thursday, December 12 at 5pm.

DUE DATES

Below is a summary of due dates for assignments described above. The schedule further below provides more information on the specific readings covered by each discussion post.

Sep 1, 5pm:	Discussion post 1 on constitutional design in divided societies
Sep 8, 5pm:	Discussion post 2 on ethnicity and religion
Sep 15, 5pm:	Discussion post 3 on nationality and language
Sep 25, in class:	In-class midterm exam 1
Sep 29, 5pm:	Discussion post 4 on power sharing, power dividing, and centripetalism
Oct 6, 5pm:	Discussion post 5 on federalism and territorial asymmetry
Oct 13, 5pm:	Discussion post 6 on election systems
Oct 20, 5pm:	Constitutional amendment text
Oct 21 or 23, in class:	Constitutional amendment pitch (due date depends on the group's presentation date)
Oct 30, in class:	In-class midterm exam 2
Nov 3, 5pm:	Discussion post 7 on constitution making
Nov 10, 5pm:	Discussion post 8 on constitutional elaboration
Nov 17, 5pm:	Discussion post 9 on constitutional reform
Dec 1, 5pm:	Discussion post 10 on constitutional crises
Dec 12, 5pm:	Take-home final exam

COURSE POLICIES

Academic environment: Our classroom provides an open space for the civil exchange of ideas. It is my intent to ensure that students from diverse backgrounds and viewpoints are well served by this course, that all students' learning needs are addressed, and that the diversity students bring to this class can be comfortably expressed and viewed as a resource, strength, and benefit for all students. I ask students to help create an atmosphere of mutual respect for, and interest in, others' views and experiences.

Academic integrity: Students must abide by the university's honor code and standards of academic integrity. Students who violate university rules on academic integrity are subject to disciplinary penalties, including the possibility of failure in the course and/or dismissal from the university. The university's policies on this topic

are available on the Office of the Dean of Students website on [Standards of Conduct](#). I highly encourage you to also review UT's very helpful resources on [avoiding academic misconduct](#) and [avoiding plagiarism](#).

Attendance: Attendance includes being on time, being fully present (meaning, not on phones or checking email), and staying for the full class. Students may miss two classes for any reason without the absences affecting class participation grades. Students wishing to have an absence excused must submit the reason and any needed documentation to the professor within one week of returning to class. A one-day absence due to illness may be counted as excused without a note. A multi-day absence due to illness requires a note from the university or a medical professional to be counted as excused.

Citation standards: In this course, you are welcome to use APA, Chicago, or MLA citation styles. You must use one of these in your written assignments to cite any materials or ideas you reference that are not your own.

Communication: Your success in this course and at UT is important to me. If there are aspects of this course or other challenges that prevent you from learning, please let me know as soon as possible. Together we'll develop strategies to meet both your needs and the requirements of the course. I also encourage you to reach out as any questions come up or just to chat. You can talk with me after class, drop by office hours, schedule a time to meet, or email me anytime.

Disabilities: The university is committed to creating an accessible and inclusive learning environment consistent with university policy and federal and state law. Please let me know if you experience any barriers to learning so I can work with you to ensure you have equal opportunity to participate fully in this course. If you are a student with a disability, or think you may have a disability, and need accommodations, please contact the university's [Disability and Access Services](#) (D&A). If you are already registered with D&A, please deliver your Accommodation Letter to me as early as possible in the semester so we can discuss your approved accommodations and needs in this course.

Grading: All assignments will be graded on a 100-point scale. The final course grade will be the weighted average of these grades, rounded to the nearest whole number, on the following UT scale: A = 94-100, A- = 90-93, B+ = 87-89, B = 83-86, B- = 80-82, C+ = 77-79, C = 73-76, C- = 70-72, D+ = 67-69, D = 63-66, D- = 60-62, F = 0-59. For example, a grade of 93.6 is an A, a 93.3 is an A-, and an 89 is a B+. I won't deviate from these rules, so for those concerned about the final grade (meaning, all of you!), I encourage you to participate actively in class, prepare thoroughly for every assignment, and talk to me early in the semester if you experience factors that prevent you from doing so.

Individual work: The assignments are an opportunity to engage with constitutional design issues that defy singular or simple answers. I am thus interested in your individual analysis and perspective on these issues. Group collaboration on assignments is not allowed, except on the group constitutional amendment exercise. Use of artificial intelligence tools is not allowed on any assignments.

Late work: The discussion posts intend to allow you to reflect on the readings prior to our discussion of them. Late discussion posts thus will only be accepted for up to two days after the due date for full credit; after that, the assignment will receive a grade of 0. Late work will not be accepted for the amendment text, amendment pitch, or exams. There are no exceptions to these late work policies without approval prior to the due date or a note from the university or a medical professional.

Office hours: Regular office hours are held on Mondays from 10am-1pm. Students can drop in or email me to reserve a time. I'm also happy to schedule a time to meet outside these office hours.

Prohibition on sharing course materials: No materials used in this class—including but not limited to readings, lectures, handouts, assignments, papers, exams, review sheets, and other course materials—may be

shared online or with anyone outside of the class without explicit, written permission of the professor. Lecture recordings are reserved only for students in this class for educational purposes and are protected under FERPA. The recordings should not be shared outside the class in any form.

Readings: Keeping up with the reading is essential to your success in class discussions and assignments. Readings listed as “required” are, of course, required. Readings listed as “background” are meant to be a resource for you in this class and beyond; they provide more nuance, cases, or historical background on topics raised in or related to the required reading. If you have interest in a particular area, you might want to read one or skim all of the background readings in that area. I’ll also synthesize the background readings in my lectures.

MATERIALS

Course materials are posted on the class [Canvas](#) site. This includes the syllabus, readings, lecture slides, announcements, assignments, and grades. Readings are also available from [UT Libraries](#) with a student login. We will also regularly use the [Constitute](#) site to review texts of current constitutions. From the Constitute home page, click on “constitutions” in the top navigation bar to see all constitutions, then click on “search | topics | filters” to search constitutions by keyword or filter by topic.

All lectures are recorded using the UT Lectures Online recording system. This records the audio and video material presented in class so you can review it after class or if you miss class. Recording links will appear in the Lectures Online tab in the left-side navigation bar on our class Canvas page.

SCHEDULE

Aug 26 | Introduction and Overview

Conceptual Foundations

Aug 28 | Divided Societies

Discussion: What are the features of a divided society? What are the risks? Why do divided societies deserve special attention in constitutional design?

Required:

- Adrian Guelke. 2012. *Politics in Deeply Divided Societies*. Cambridge: Polity Press, 13-32.

Background:

- Karl Cordell and Stefan Wolff. 2010. *Ethnic Conflict: Causes, Consequences, and Responses*. Cambridge: Polity Press, 25-75.
- Toby Dodge. 2007. State Collapse and the Rise of Identity Politics. In *Iraq: Preventing a New Generation of Conflict*, edited by David Malone, Markus E. Bouillon, and Ben Rowswell, 23-39. Boulder: Lynne Rienner Publishers.
- Kanchan Chandra. 2006. What Is Ethnic Identity and Does It Matter? *Annual Review of Political Science* 9: 397-424.
- James D. Fearon and David D. Laitin. 1996. Explaining Interethnic Cooperation. *American Political Science Review* 90 (4): 715-719, 730 only.

Sep 1 | Discussion post 1 on constitutional design in divided societies readings due by 5pm

Sep 2 | Labor Day Holiday

Sep 4 | Constitutional Design in Divided Societies

Discussion: What functions do constitutions serve in democratic systems? Is the role of a constitution different in a divided society? What are the rationales behind accommodative and integrative (or, power-sharing and power-dividing) approaches to constitutional design? How do their proposals differ for structuring power, electing officials, and protecting rights?

Required:

- Elliot Bulmer. 2017. *What Is a Constitution? Principles and Concepts*, 2nd Ed. Stockholm: International Institute for Democracy and Electoral Assistance (International IDEA), 6-15 only.
- Sujit Choudhry. 2008. Bridging Comparative Politics and Comparative Constitutional Law: Constitutional Design in Divided Societies. In *Constitutional Design for Divided Societies: Integration or Accommodation?*, edited by Sujit Choudhry, 3-7. Oxford: Oxford University Press.
- John McGarry, Brendan O'Leary, and Richard Simeon. 2008. Integration or Accommodation? The Enduring Debate in Conflict Regulation. In *Constitutional Design for Divided Societies: Integration or Accommodation?*, edited by Sujit Choudhry, 41-46, 51-67, and 70-71 only. Oxford: Oxford University Press.

Background:

- Philip G. Roeder. 2012. Power Dividing: The Multiple-Majorities Approach. In *Conflict Management in Divided Societies: Theories and Practice*, edited by Stefan Wolff and Christalla Yakinthou, 66-83. London: Routledge.
- Arend Lijphart. 2002. The Wave of Power-Sharing Democracy. In *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, edited by Andrew Reynolds, 37-54. Oxford: Oxford University Press.
- Donald L. Horowitz. 2002. Constitutional Design: Proposals Versus Processes. In *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*, edited by Andrew Reynolds, 15-36. Oxford: Oxford University Press.

State Identities and Rights

Sep 8 | Discussion post 2 on ethnicity and religion readings due by 5pm

Sep 9 | Ethnicity

Discussion: Is granting rights to specific groups beneficial or essential to their protection? Does recognition of specific groups challenge equality for all, or state unity? How should a polity decide which identities receive special status?

Required:

- Yash Ghai. 2011. Ethnic Identity, Participation, and Social Justice: A Constitution for New Nepal? *International Journal on Minority and Group Rights* 18: 309-334.

Background:

- Explore ethnicity provisions in a few constitutions on [Constitute](#).
- David Feldman. 2012. The Nature and Effects of Constitutional Rights in Post-Conflict Bosnia and Herzegovina. In *Rights in Divided Societies*, edited by Colin Harvey and Alex Schwartz, 151-167. Oxford: Hart Publishing.
- H. Kwasi Premeh. 2013. Constitutionalism, Ethnicity and Minority Rights in Africa. *International Journal of Constitutional Law* 11 (2): 438-443.
- Jan Hessbruegge and Carlos Fredy Ochoa García. 2011. Mayan Law in Post-Conflict Guatemala. In *Customary Justice and the Rule of Law in War-Torn Societies*, edited by Deborah Isser, 77-118. Washington: United States Institute of Peace.
- Will Kymlicka. 1995. *Multicultural Citizenship*. Oxford: Oxford University Press, 10-48.

Sep 11 | Religion

Discussion: Should religion be explicitly addressed in a constitution? How? What are the advantages and risks? Can secular and religious law be blended in a coherent way?

Required:

- Asli Bâli and Hanna Lerner. 2016. Constitutional Design Without Constitutional Moments: Lessons from Religiously Divided Societies. *Cornell International Law Journal* 49: 101-168 (skim where possible while still capturing main points of each section).

Background:

- Explore religion provisions in a few constitutions on [Constitute](#).
- Intisar A. Rabb. 2008. “We the Jurists”: Islamic Constitutionalism in Iraq. *Journal of Constitutional Law* 10 (3): 527-579.
- John Nagle. 2022. Northern Ireland: Still a Deeply Divided Society? *Foreign Policy Centre*. July 19.

Sep 15 | Discussion post 3 on nationality and language readings due by 5pm

Sep 16 | Nationality

Discussion: What are different visions for the relationship between state and national identities? Who wins and loses under each approach? How can constitutions best meet the needs of multiple nationalities in divided societies?

Required:

- Brendan O’Leary and Khaled Salih. 2005. The Denial, Resurrection, and Affirmation of Kurdistan. In *The Future of Kurdistan in Iraq*, edited by Brendan O’Leary, John McGarry, and Khaled Salih, 3-36 only. Philadelphia: University of Pennsylvania Press.
- Nick Burns. 2022. [Chile Could Become “Plurinational.” What Does That Mean?](#) *Americas Quarterly*, August 29. [Note: Chilean voters rejected this constitutional proposal in 2022]

Background:

- Explore nationality and citizenship provisions in a few constitutions on [Constitute](#).
- Margarette Moore. 1997. On National Self-Determination. *Political Studies* 45 (5): 900-913.
- Ernest Gellner. 2006 (1983). *Nations and Nationalism*, 2nd Ed. Oxford: Blackwell Publishing, 52-61.
- Harris Mylonas. 2012. *The Politics of Nation-Building: Making Co-Nationals, Refugees, and Minorities*, 17-37, 170-186.
- Shireen Morris. 2020. *A First Nations Voice in the Australian Constitution*. Oxford: Hart Publishing, 8-41.

Sep 18 | Language

Discussion: How can constitutions address linguistic diversity? What are the advantages and risks of each approach? Does the intersection of language, nationality, and other identities complicate constitutional recognition of identity groups?

Required:

- David D. Laitin. 1998. *Identity in Formation: The Russian-Speaking Populations in the Near Abroad*. Ithaca: Cornell University Press, 3-9, 85-93.
- Sujit Choudhry. 2009. Managing Linguistic Nationalism through Constitutional Design: Lessons from South Asia. *International Journal of Constitutional Law* 7: 577-618 (skim where possible while capturing main points of each section).

Background:

- Explore language provisions in a few constitutions on [Constitute](#).

- Sujit Choudhry and Erin C. Houlihan. 2021. *Official Language Designation*. Stockholm: International IDEA.

Sep 22 | No discussion post due this week

Sep 23 | In-class midterm review 1

Sep 25 | In-class midterm exam 1

State Institutions

Sep 29 | Discussion post 4 on power sharing, power dividing, and centripetalism readings due by 5pm

Sep 30 | Power Sharing

Discussion: Do power-sharing institutions ‘work’? What issues do they address? What are their drawbacks?

Required:

- Allison McCulloch. 2014. *Power-Sharing and Political Stability in Deeply Divided Societies*. New York: Routledge, 34-91 (read intro and one country case, skim other two country cases).

Background:

- Andrew Reynolds. 2011. *Designing Democracy in a Dangerous World*. Oxford: Oxford University Press, 139-158.
- Pippa Norris. 2008. *Driving Democracy: Do Power-Sharing Institutions Work?* Cambridge: Cambridge University Press, 132-136, 149-156.
- Sumantra Bose. 2017. Mostar as Microcosm: Power-Sharing in Post-War Bosnia. In *Power-Sharing: Empirical and Normative Challenges*, edited by Allison McCulloch and John McGarry, 189-210. London: Routledge.
- Stef Vandeginste. 2017. Power-Sharing in Burundi: An Enduring Miracle? In *Power-Sharing: Empirical and Normative Challenges*, edited by Allison McCulloch and John McGarry, 166-188. London: Routledge.
- Joanne McEvoy. 2017. Power-Sharing and the Pursuit of Good Governance: Evidence from Northern Ireland. In *Power-Sharing: Empirical and Normative Challenges*, edited by Allison McCulloch and John McGarry, 211-228. London: Routledge.

Oct 2 | Power Dividing and Centripetalism

Discussion: Do power-dividing and centripetal institutions ‘work’? What issues do they address? What are their drawbacks?

Required:

- Philip G. Roeder. 2005. Power Dividing as an Alternative to Ethnic Power Sharing. In *Sustainable Peace: Power and Democracy after Civil Wars*, edited by Philip G. Roeder and Donald Rothchild, 51-67, 76-82 only. Ithaca: Cornell University Press.
- Allison McCulloch. 2014. *Power-Sharing and Political Stability in Deeply Divided Societies*. New York: Routledge, 92-105, 117-142 only (read intro and one country case, skim second country case, and skip Sri Lanka case).

Background:

- Donald L. Horowitz. 2013. *Constitutional Change and Democracy in Indonesia*. Cambridge: Cambridge University Press, 261-296.

- Jon Fraenkel. 2017. Mandatory Power-Sharing in Coup-Prone Fiji. In *Power-Sharing: Empirical and Normative Challenges*, edited by Allison McCulloch and John McGarry, 103-123. London: Routledge.
- John Boye Ejobowah. 2008. Integrationist and Accommodationist Measures in Nigeria's Constitutional Engineering: Successes and Failures. In *Constitutional Design for Divided Societies: Integration or Accommodation?*, edited by Sujit Choudhry, 233-257. Oxford: Oxford University Press.

Oct 6 | Discussion post 5 on federalism and territorial asymmetry readings due by 5pm

Oct 7 | Federalism

Discussion: Do federalism and decentralization ‘work’? What issues do they address? What are their drawbacks?

Required:

- Pippa Norris. 2008. *Driving Democracy: Do Power-Sharing Institutions Work?* Cambridge: Cambridge University Press, 157-185.

Background:

- Donald Horowitz. 2014. [Federalism for Severely Divided Societies: Possibilities and Pathologies. Herbert L. Bernstein Memorial Lecture in Comparative Law.](#) Durham: Duke University School of Law, particularly minutes 7-53.
- John McGarry and Brendan O’Leary. 2009. Must Pluri-national Federations Fail? *Ethnopolitics* 8 (1): 5-25.
- Zachary Elkins and John Sides. 2007. Can Institutions Build Unity in Multiethnic States? *American Political Science Review* 101 (4): 693-708.

Oct 9 | Territorial Asymmetry

Discussion: Does territorial asymmetry ‘work’? What issues does it solve? What are its drawbacks?

Required:

- Patricia Popelier. 2019. Asymmetry and Complexity as a Device for Multinational Conflict Management: A Country Study of Constitutional Asymmetry in Belgium. In *Constitutional Asymmetry in Multinational Federalism: Managing Multinationalism in Multi-Tiered Systems*, edited by Patricia Popelier and Maya Sahadžić, 17-45.

Background:

- Michael Keating. 2015. Territorial Autonomy in Nationally Divided Societies: The Experience of the United Kingdom, Spain, and Bosnia and Herzegovina. In *Territorial Pluralism: Managing Difference in Multinational States*, edited by Karlo Basta, John McGarry, and Richard Simeon, 121-147. Vancouver: UBC Press.

Representation

Oct 13 | Discussion post 6 on election systems readings due by 5pm

Oct 14 | Election Systems

Discussion: What is the rationale behind majoritarian, centripetal, and proportional election systems? Which do you see as the best approach to manage conflict and build inclusive democracy?

Required:

- Benjamin Reilly. 2021. Cross-Ethnic Voting: An Index of Centripetal Electoral Systems. *Government and Opposition* 56 (3): 465-484.

- Andrew Reynolds. 2011. *Designing Democracy in a Dangerous World*. Oxford: Oxford University Press, 71-87.

Background:

- Andrew Reynolds, Benjamin Reilly, and Andrew Ellis. 2005. *Electoral System Design: The New International IDEA Handbook*. Stockholm: International IDEA, particularly 5-14 and 27-118.
- Pippa Norris. 2008. *Driving Democracy: Do Power-Sharing Institutions Work?* Cambridge: Cambridge University Press, 103-131.
- Christina Murray and Richard Simeon. 2008. Recognition without Empowerment: Minorities in a Democratic South Africa. In *Constitutional Design for Divided Societies: Integration or Accommodation?*, edited by Sujit Choudhry, 409-437. Oxford: Oxford University Press.

Oct 16 | Election Systems (1/2 of class)

Discussion: How does the choice of election system shape group inclusion? How can party bans or other election design choices shape identity group dynamics?

Required:

- Andrew Reynolds. 2011. *Designing Democracy in a Dangerous World*. Oxford: Oxford University Press, 89-118.

Background:

- Ashley Moran. 2022. [Engineered Majorities: U.S. Senate Malapportionment in Comparative Context](#). Balkinization. September 25.
- Mattias Basedau and Anika Moroff. 2011. Parties in Chains: Do Ethnic Party Bans in Africa Promote Peace? *Party Politics* 17 (2): 205-222.
- Marina Ottaway and Danial Kaysi. 2010. *De-Baathification as a Political Tool: Commission Ruling Bans Political Parties and Leaders*. Washington: Carnegie Endowment for International Peace.

Constitutional Amendment Exercise (1/2 of class)

In-class group work to research and draft your proposed constitutional amendment text

Oct 20 | Constitutional amendment text due by 5pm

Oct 21 | Constitutional amendment pitch due in class for groups presenting on Oct 21

Oct 21 | Constitutional Amendment Exercise

In-class group presentations of proposed constitutional amendments

Oct 23 | Constitutional amendment pitch due in class for groups presenting on Oct 23

Oct 23 | Constitutional Amendment Exercise

In-class group presentations of proposed constitutional amendments

Oct 27 | No discussion post due this week

Oct 28 | In-class midterm review 2

Oct 30 | In-class midterm exam 2

Processes

Nov 3 | Discussion post 7 on constitution making readings due by 5pm

Nov 4 | Constitution Making: Participation

Discussion: Who should have input into the constitution-making process? At what points? How important is inclusiveness versus efficiency in drafting a constitution in a divided society? How does the process shape constitutional legitimacy, constitutional effectiveness, and stability?

Required:

- Tom Ginsburg, Zachary Elkins, and Justin Blount. 2009. Does the Process of Constitution-Making Matter? *Annual Review of Law and Social Science* 5: 201-23.

Background:

- Gabriel L. Negretto and Mariano Sánchez-Talanquer. 2021. Constitutional Origins and Liberal Democracy: A Global Analysis, 1900-2015. *American Political Science Review* 115 (2): 522-536.
- Ran Hirschl and Alexander Hudson. 2024. A Fair Process Matters: The Relationship between Public Participation and Constitutional Legitimacy. *Law & Social Inquiry*: 1-28.
- Jennifer Widner. 2008. Constitution Writing in Post-Conflict Settings: An Overview. *William and Mary Law Review* 49: 1513-1541.
- Jonathan Morrow. 2005. *Iraq's Constitutional Process II, An Opportunity Lost*. Washington: United States Institute of Peace.

Nov 6 | Constitution Making: Specificity and Timing

Discussion: How might ambiguous or conflicting language be useful in constitutions in divided societies? Or is it more damaging? Is it advisable to delay drafting in some cases or defer some decisions to a later lawmaking process?

Required:

- Hanna Lerner. 2010. Constitution-Writing in Deeply Divided Societies: The Incrementalist Approach. *Nations and Nationalism* 16 (1): 68-88.

Background:

- Rosalind Dixon and Tom Ginsburg. 2011. Deciding Not to Decide: Deferral in Constitutional Design. *International Journal on Constitutional Law* 9: 636-672.
- Jason Gluck. 2011. *Constitutional Reform in Transitional States: Challenges and Opportunities Facing Egypt and Tunisia*, Peace Brief 92. Washington: United States Institute of Peace.
- Asli Bâli and Hanna Lerner. 2016. Constitutional Design Without Constitutional Moments: Lessons from Religiously Divided Societies. *Cornell International Law Journal* 49: 168-184 only.

Nov 10 | Discussion post 8 on constitutional elaboration readings due by 5pm

Nov 11 | Constitutional Elaboration: Democracy

Discussion: What roles do courts with constitutional jurisdiction play in advancing democracy in a divided society? Does this provide a useful independent arbiter, or leave too much responsibility to often-unelected judges?

Required:

- Samuel Issacharoff. 2004. Constitutionalizing Democracy in Fractured Societies. *Journal of International Affairs* 58 (1): 73-93.

Background:

- Tom Ginsburg. 2013. The Politics of Courts in Democratization: Four Junctures in Asia. In *Consequential Courts: Judicial Roles in Comparative Perspective*, edited by Diana Kapiszewski, Gordon Silverstein, and Robert A. Kagan, 45-66. Cambridge: Cambridge University Press.
- Diego González. 2020. Explaining the Institutional Role of the Colombian Constitutional

Court. In *From Parchment to Practice: Implementing New Constitutions*, edited by Tom Ginsburg and Aziz Z. Huq, 189-207. Cambridge: Cambridge University Press.

Nov 13 | Constitutional Elaboration: Identity

Discussion: How do courts with constitutional jurisdiction help resolve constitutional ambiguity and competing state identities in a divided society? Is this role unique to divided societies? Should court composition be independent of, or representative of, identity groups in society?

Required:

- Ashley Moran. 2024. *Constitutional Elaboration Amid Division: Court Impact on Institutional Development and Minority Inclusion in Iraq*, excerpts.

Background:

- Robert Schertzer. 2016. *The Judicial Role in a Diverse Federation: Lessons from the Supreme Court of Canada*. Toronto: University of Toronto Press, 62-98.
- Sujit Choudhry and Richard Stacey. 2012. Independent or Dependent? Constitutional Courts in Divided Societies. In *Rights in Divided Societies*, edited by Colin Harvey and Alex Schwartz, particularly 87-95 and 120-121 (skim cases on 95-120). Oxford: Hart Publishing.

Nov 17 | Discussion post 9 on constitutional reform readings due by 5pm

Nov 18 | Constitutional Reform: Approaches

Discussion: What are the varied approaches constitutions take in providing for their own amendment? What are the rationales and implications of each approach? Which types of provisions do countries make more difficult to amend?

Required:

- Rosalind Dixon and David Landau. 2018. Tiered Constitutional Design. *The George Washington Law Review* 86 (2): 438-512 (skim where possible while still capturing main points of each section).

Background:

- Explore amendment provisions in a few constitutions on [Constitute](#).
- Yaniv Roznai. 2013. Unconstitutional Constitutional Amendments—The Migration and Success of a Constitutional Idea. *The American Journal of Comparative Law* 61 (3): 657-719.

Nov 20 | Constitutional Reform: Timing

Discussion: How do we know if constitutional arrangements are working (even partially) or if they need amending? Is constitutional reform too dangerous or difficult to achieve in a polarized society? Is *lack* of reform too dangerous to avoid if it's needed?

Required:

- Tom Ginsburg and Aziz Z. Huq. 2016. Assessing Constitutional Performance. In *Assessing Constitutional Performance*, edited by Tom Ginsburg and Aziz Z. Huq, 12-23 only (skim cases on 23-30). Cambridge: Cambridge University Press.

Background:

- Rosalind Dixon and David Landau. 2016. Competitive Democracy and the Constitutional Minimum Core. In *Assessing Constitutional Performance*, edited by Tom Ginsburg and Aziz Z. Huq, 12-23 only (skim cases on 23-30). Cambridge: Cambridge University Press.
- Martin van Vliet, Winluck Wahiu, and Augustine Magolowondo. 2012. *Constitutional Reform Processes and Political Parties: Principles for Practice*. The Hague: Netherlands Institute for Multiparty Democracy, International IDEA, and African Studies Centre.

Nov 25-29 | Thanksgiving Break

Dec 1 | Discussion post 10 on constitutional crises readings due by 5pm

Dec 2 | Constitutional Crises: Forms and Processes

Discussion: What, exactly, is a constitutional crisis? How does it emerge? How is a state's constitutional identity challenged by crisis?

Required:

- Keith Whittington. 2023. [Bad Faith Constitutionalism](#). *Balkinization*. May 17.
- Nancy Bermeo. 2016. On Democratic Backsliding. *Journal of Democracy* 27 (1): 5-19.

Background:

- Stephen Haggard and Robert Kaufman. 2021. The Anatomy of Democratic Backsliding. *Journal of Democracy* 32 (4): 27-41.
- David Landau. 2013. Abusive Constitutionalism. *UC Davis Law Review* 47 (1): 189-260.
- Kim Lane Schepppele. 2023. [States of Emergency as a Script for Undermining Constitutional Government](#). *Balkinization*. May 16.

Dec 4 | Constitutional Crises: Responses

Discussion: How can divided societies best respond to constitutional crises? Might other constitutional strategies we've discussed enflame or quell secession? Is partition a viable last resort?

Required:

- Jason Brownlee and Kenny Miao. 2022. Why Democracies Survive. *Journal of Democracy* 33 (4): 133-149.

Background:

- Diego A Zambrano et al. 2024. How Latin America's Judges Are Defending Democracy. *Journal of Democracy* 35 (1): 118-33.
- Angela K. Bourne and Fernando Casal Bértoa. Mapping 'Militant Democracy': Variation in Party Ban Practices in European Democracies (1945-2015). *European Constitutional Law Review* 13: 221-247.
- Adrian Guelke. 2012. *Politics in Deeply Divided Societies*. Cambridge: Polity Press, 95-112.
- Nicholas Sambanis and Jonah Schulhofer-Wohl. 2009. What's in a Line? Is Partition a Solution to Civil War? *International Security* 34 (2): 82-118.

Taking Stock

Dec 8 | No discussion post due this week

Dec 9 | Risk and Benefit Analysis

Discussion: Which constitutional strategies have the biggest risks in your view? How can these be offset? Do any have clear payoffs? How should we measure the success of a constitution in a divided society? Is there a 'low bar' that reflects the minimum a constitution must do? Are there high bars we can target as well?

Dec 9 | Take-home final exam available

Dec 12 | Take-home final exam due by 5pm