

UNIVERSITY OF TEXAS AT AUSTIN
Department of Government
Spring 2021
GOV 312L, Unique Number: 38499
F 10:00 – 11:00 AM, BUR 106

US Constitutional Design in Comparative Perspective

Joseph Francesco Cozza, MSc

Office Hours: Monday 10:00 – 11:30; Wednesday 10:00 – 11:30

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Course Description:

This course asks students to consider: Does the United States need a new constitution? In seeking to address this question, the course provides a comprehensive overview of the design of the US Constitution, placing it in comparative perspective. The course will cover the basics of constitutional theory, drafting, and amendment, political institutions, and constitutional rights and liberties. Throughout the course, these features of the US Constitution will be compared to those in constitutional systems around the world. This course will also place a particular emphasis on domestic and foreign case law to highlight the critical questions surrounding contemporary constitutional design and implementation. In addition to mastering a set of basic facts about constitutional systems, students will learn theories addressing “big questions” in constitutional design. We also explore critical assessments of the evidence brought to bear on these questions.

Course Goals:

The goal of this course is to give students the tools with which they can critically analyze the design of the US Constitution. Rather than simply answering the question proposed above, students will use the material from this course to make their own assessment about the nature of the US Constitution, bringing modern developments and innovations to bear and the major questions surrounding the US Constitutional system. Equipped with this knowledge and a broader perspective, students will be prepared to contribute intelligently to ongoing civil conversation about US and global politics. Students will learn how to state arguments about these issues thoughtfully, carefully, and creatively and will learn how each side of these debates are structured.

Class Structure:

This course will combine both online and in-person instruction. The online portion will consist of weekly recorded lectures posted to Canvas each Monday by 9:00 AM. All lecture videos can be found under the Panopto video tab. Additionally, in person discussion sessions will be held each Friday during the normally scheduled lecture time to discuss the week’s material. A Zoom session will also be held during this time for those who are unable to attend in-person. You are expected to view all recorded lectures and complete all assigned readings in advance of the discussion sessions.

Technology:

Class will be partially conducted online for the semester. Thus, to participate, students will need internet access and access to a laptop or desktop computer. If at any point during the semester a student expects to be without access to an internet capable device during a scheduled quiz, exam, or discussion session or for an extended period of time, the student should alert me so that we can implement alternative arrangements. Students should bring their laptops or tablets to the Friday discussion sessions in order to access the readings and lecture materials we will be discussing and so that we may run a simultaneous Zoom session.

Course Communication

Course materials, including all readings outside of the core text, will be posted on the course Canvas page. All important course communication outside of class time will be posted as an announcement on the class Canvas page. I do not anticipate using this feature frequently, but I would encourage you to check the Canvas page daily or change your Canvas settings to email you when an announcement is posted. You will also use Canvas to submit the short paper and the blog post assignments.

Office Hours: Office hours are your time and will be held via Zoom by appointment using the Canvas Calendar app (see sign up [instructions](#)). You are welcome to log on and discuss course material, current events, or simply talk politics. If you need to arrange a meeting outside my office hours, please email me with suggested times. I will do my best to accommodate these requests, but they should only be used in circumstances where attendance to my normal office hours is impossible.

Email: The easiest way to contact me outside of office hours is via email. Please understand that emails are professional communications that are retained by the university as part of the public record and should be structured as such. I will only respond to emails during normal business hours (8-6pm, M-F) and will be sure to respond within 24 hours.

Required Text:

Patterns of Democracy: Government Forms and Performance in Thirty Six Democracies by Arend Lijphart

Additional mandatory readings listed on the syllabus will be posted under the “Readings” Folder on Canvas.

GRADING

EXAMS (3) (60% Total) (20% each)

Exams cover material in the assigned readings and from lecture. These exams are not cumulative. The exams will be in a multiple-choice format and will be administered via Canvas.

Exam Dates:

- Exam 1: Friday, February 19th
- Exam 2: Friday, April 2nd
- Exam 3: Friday, May 7th

If you foresee problems with the exam dates, see me during office hours or contact me by e-mail at least two weeks *before* the assigned dates.

PAPER (1) (20% Total)

Students will be asked to write a short paper responding to a prompt posted to Canvas. The assignment should be between 500 and 750 words in length and will draw on the material from the course. Papers will be accepted via Canvas and will be due on April 30th. Papers WILL NOT be accepted via email. Additional details and the question prompt will be posted on Canvas.

CONSTITUTIONAL DESIGN BLOG (10) (15% Total)

Each assigned week, students will write a 5 sentence response post on Canvas reflecting on the week's lectures and readings and what they mean for constitutionalism in the United States. These posts will be assigned for 13 weeks and students will be required to respond to 10 prompts. Responses must be posted by 10:00 AM on the listed due date. Posts cannot be made until one week prior to the due date. Late posts/early posts will not count. Additional details can be found on Canvas.

QUIZZES (9) (5% Total)

There will be nine weekly quizzes throughout the semester beginning in the second week. Quizzes will consist of 3-5 multiple choice questions based on the week's readings and lectures and will be posted on Canvas at 10 AM each Friday and must be completed by 10:10 AM the same day. For those who attend, the quizzes will be completed at the very beginning of the week's discussion session. Students will have 5 minutes to complete each quiz. Any student who is unable to log on to Canvas to access the quiz should alert me in advance to arrange a makeup quiz. At the end of the semester, your two lowest quiz grades will be dropped.

ATTENDANCE AND PARTICIPATION

While there is no attendance grade in this course, you are expected to attend all discussion sessions. The exams will heavily rely on what we will discuss in class. There are more details beyond the readings and lecture material we will discuss in class and you will be responsible of those details in the exams. Therefore, I strongly encourage you to come to class. I reserve the right to make attendance mandatory if attendance at the discussions sessions is unsatisfactory.

I would like to strongly emphasize the following two points:

- **Given that some of you may be on the other side of the campus for an earlier class, you can be a few minutes late to the discussion session. However, you should not be late to class for more than a few minutes (unless there is an exceptional circumstance like an exam, which you should communicate in advance). Please do not be late and disturb the class.**
- **You are NOT allowed to leave the class early. If you must leave early this can happen only once or twice during the semester AND you must let me know in advance. You will only be allowed to leave within the last 10-15 minutes of the class.**

Class participation is different from attendance. During discussion sessions students are encouraged to raise questions and relevant topics in class, and are expected to contribute to class discussions. Students are expected to do the assigned readings *before* we discuss the topic in class, and arrive at class ready to discuss the readings.

While there is not a participation grade, I will use my personal judgment based on your in-class participation to bump your grade up if your final grade ends up very close to the higher letter grade.

Grade Appeals

Following the return of graded work, a student must wait **three (3)** days before contacting me about an appeal. After the three day waiting period, a student has **eleven (11)** business days after the return of graded work (MTWHF) to appeal a grade. Appeals must be made in writing (via email is fine) and provide evidence for the change. In total, the appeal time frame is **fourteen (14)** days from the day the graded work is returned. For example, if an exam is returned on Wednesday, appeals may not be submitted until Tuesday of the following week. Between Tuesday after the exam is returned and the following Tuesday, appeals are accepted. On Wednesday, two weeks after the exam is returned, appeals are no longer accepted. Do not contact me about your grade if fourteen business days have passed. Do not appeal a grade unless evidence presented is compelling and thoughtfully reasoned.

Calculating Course Grades:

Overall course grades are assigned according to the following scale:

93.0% - 100%	A	77.0% - 79.9%	C+
90.0% - 92.9%	A-	73.0% - 76.9%	C
87.0% - 89.9%	B+	70.0% - 72.9%	C-
83.0% - 86.9%	B	60.0% - 69.9%	D
80.0% - 82.9%	B-	0% - 59.9%	F

Final course grades are calculated based on a percentage rounded to the nearest tenth of a percent. For example, a final score of 92.95 is rounded to 93.0 and is an A, while an 82.91 is rounded to 82.9 and is a B-. This grading policy is not subject to appeal.

COURSE OUTLINE

I may need to make changes to this schedule. Any changes will be announced on Canvas.

Module 1: Constitutional Theory, Drafting, and Amendment

Week 1 (1/19 – 1/22): Course Introduction

Readings:

- US Constitution
- GOV 312L Syllabus

Week 2 (1/25 – 1/29): Introduction to Constitutional Theory and the US Constitution

Readings:

- Declaration of Independence
- Elkins et al, *Endurance of National Constitutions* (Chapter 3)

Topics: Social Contract Theory; Natural Rights; Unwritten Constitutions; Why Write a Constitution?

Week 3 (2/1 – 2/5): Drafting and Approving a Constitution

Readings:

- Elster, “The Optimal Design of a Constituent Assembly”
- Hart, “Democratic Constitution Making”

Topics: US Constitution Writing; Constituent Assemblies; Participatory Constitution Making/Referendums

Week 4 (2/8 – 2/12): Amending a Constitution

Readings:

- US Constitution, Article V
- Lijphart Ch. 12 pgs. 204 - 212
- Albert, “The Case for Presidential Illegality in Constitutional Amendment”
- Excerpts from *Kesavananda Bharati* (India)

Topics: Article V; Endurance of National Constitutions; Unamendability/Militant Democracy; Tiered design

Week 5 (2/15 – 2/19): Secession and Exam 1

Readings:

- Sunstein, “Constitutionalism and Secession”
- Nayler, “How to Succeed at Seceding” (*Optional*)
- Pattani, “Texplainer: If Brexit Can Happen, Can Texit?” (*Optional*)
- *Reference Re Secession of Quebec* (Canada)

Module 2: Political Institutions in Comparative Perspective

Weeks 6 and 7 (2/22 – 3/5): Presidential versus Parliamentary Systems

Readings:

- US Constitution, Articles I and II
- Lijphart Ch. 7
- Linz, “The Perils of Presidentialism”
- Ginsberg et al, “Do Executive Term Limits Cause Constitutional Crises?”

Topics: Differences between systems; Critiques of Presidentialism; Presidential Term Limits

Week 8 (3/8 – 3/12): Bicameralism and Federalism

Readings:

- Lijphart Ch. 10 and 11

Topics: Bicameralism; Unitary, Federal, and Confederal States; Asymmetrical Federalism

Week 9 (3/22 – 3/26): Judicial Review and Court Systems

Readings:

- US Constitution, Article III
- *Marbury v. Madison* (USA)
- Lijphart Ch. 12, pgs 212 – 225

Topics: Establishing Judicial Review; Strong v. Weak form Judicial Review; Counter-majoritarian difficulty

Week 10 (3/29 – 4/2): Electoral Systems and Exam 2

Readings

- Lijphart Ch. 8
- Issacharoff, *Fragile Democracies* (Chapter 4)

Topics: Duverger's Law, SMP versus Proportional systems; Campaign/Party Regulations

Module 3: Comparative Rights and Liberties

Week 11 (4/5 – 4/9): Negative v. Positive Rights

Readings:

- US Constitution, Bill of Rights
- Bilchitz, "Constitutionalism and Economic Justice in the Global South"
- *DeShaney v. Winnebago County* (USA)

Topics: Negative and Positive Rights; ESCRs and their Enforcement

Week 12 (4/12 – 4/16): Free Expression and Hate Speech

Readings:

- Rosenfeld, "Hate Speech in Comparative Jurisprudence: A Comparative Analysis"
- *Brandenburg v. Ohio* (USA)
- *Holocaust Denial Case* (Germany)

Week 13 (4/19 – 4/23): Institutional Approaches to Gender, Ethnic, and Religious Diversity

Readings:

- US Constitution, Amendments 13, 14, 15, and 19
- US Constitution, Proposed 28th Amendment
- Bauer and Burnet, "Gender quotas, democracy, and women's representation in Africa: Some insights from democratic Botswana and autocratic Rwanda"
- McGarry and O'Leary, "Iraq's Constitution of 2005: Liberal consociation as political prescription"

Topics: Reconstruction Amendments; 28th Amendment; Quotas; Consociationalism

Week 14 (4/26 – 4/30): Queer Rights and Abortion Rights

- Excerpts from the following cases:
 - *Griswold v. Connecticut* (USA)
 - *Roe v. Wade* (USA)
 - *Attorney General v. X* (Ireland)
 - *Abortion Case I* (Germany)
 - *Obergefell v. Hodges* (USA)
 - *Naz Foundation* (India)

Week 15 (5/3 – 5/7): Wrap Up and Exam 3

COVID Related Policies

Safety and Class Participation/Masks

We will all need to make some adjustments in order to benefit from in-person classroom interactions in a safe and healthy manner. Our best protections against spreading COVID-19 on campus are masks (defined as cloth face coverings) and staying home if you are showing symptoms. Therefore, for the benefit of everyone, this means that all students are required to follow these important rules.

- **Every student must wear a cloth face-covering properly in class and in all campus buildings at all times.**
- **Students are encouraged to participate in documented daily symptom screening.** This means that each class day in which on-campus activities occur, students must upload certification from the symptom tracking app and confirm that they completed their symptom screening for that day to Canvas. Students should not upload the results of that screening, just the certificate that they completed it. If the symptom tracking app recommends that the student isolate rather than coming to class, then students must not return to class until cleared by a medical professional.
- Information regarding [safety protocols with and without symptoms](#) can be [found here](#).

If a student is not wearing a cloth face-covering properly in the classroom (or any UT building), that student must leave the classroom (and building). If the student refuses to wear a cloth face covering, class will be dismissed for the remainder of the period, and the student will be subject to disciplinary action as set forth in the university's Institutional Rules/General Conduct 11-404(a)(3). Students who have a condition that precludes the wearing of a cloth face covering must follow the procedures for [obtaining an accommodation](#) working with [Services for Students with Disabilities](#).

Sharing of Course Materials is Prohibited

No materials used in this class, including, but not limited to, lecture hand-outs, videos, assessments (quizzes, exams, papers, projects, homework assignments), in-class materials, review sheets, and additional problem sets, may be shared online or with anyone outside of the class unless you have my explicit, written permission. Unauthorized sharing of materials promotes cheating. It is a violation of the University's Student Honor Code and an act of academic dishonesty. I am well aware of the sites used for sharing materials, and any materials found online that are associated with you, or any suspected unauthorized sharing of materials, will be reported to Student Conduct and Academic Integrity in the Office of the Dean of Students. These reports can result in sanctions, including failure in the course.

Class Recordings

Class 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. Violation of this restriction by a student could lead to Student Misconduct proceedings.

COVID Caveats

To help keep everyone at UT and in our community safe, it is critical that students report COVID-19 symptoms and testing, regardless of test results, to [University Health Services](#), and faculty and staff report to the [HealthPoint Occupational Health Program](#) (OHP) as soon as possible. Please see

this [link](#) to understand what needs to be reported. In addition, to help understand what to do if a fellow student in the class (or the instructor or TA) tests positive for COVID, see this [University Health Services link](#).

Other Class Policies:

Syllabus

You are responsible for reading this syllabus. By continuing enrollment in this course, I assume you have read this document. In this course, we will learn about the Supreme Court's power of judicial review. I maintain that I have the power of judicial review over the content of this course and this syllabus. This means that I am the final arbiter of what the language in this document means.

Academic Dishonesty

Academic dishonesty will lead to failure of the course and other University disciplinary action. See *General Information Catalog*:

Scholastic or academic dishonesty includes, but is not limited to, cheating, plagiarism, collusion, falsifying academic records, and misrepresenting facts. More information about academic dishonesty is given in Appendix C.: Sec 11. Note particularly: **(d)** "Plagiarism" includes, but is not limited to, the appropriation of, buying, receiving as a gift, or obtaining by any means material that is attributable in whole or in part to another source, including words, ideas, illustrations, structure, computer code, and other expression or media, and presenting that material as one's own academic work being offered for credit.

The U.T. Honor code is as follows: The core values of the University of Texas at Austin are learning, discovery, freedom, leadership, individual opportunity, and responsibility. Each member of the University is expected to uphold these values through integrity, honesty, trust, fairness, and respect toward peers and community.

Accommodation for Religious Holidays

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

Disabilities

The University of Texas at Austin provides upon request appropriate academic accommodations for qualified students with disabilities. For more information, contact the Division of Diversity and Community Engagement, Services for Students with Disabilities, 512-471-6259; <http://www.utexas.edu/diversity/ddce/ssd/>. If you need an accommodation, please discuss this with me at least ten (10) business days before the exam.

Emergencies

Links to information regarding emergency evacuation routes and emergency procedures can be found at: [http:// www.utexas.edu/emergency](http://www.utexas.edu/emergency) .

The following recommendations regarding emergency evacuation from the Office of Campus Safety and Security, 512-471-5767, <http://www.utexas.edu/safety/>:

Familiarize yourself with all exit doors of each classroom and building you may occupy. Remember that the nearest exit door may not be the one you used when entering the building.

Students requiring assistance in evacuation shall inform their instructor in writing during the first week of class.

In the event of an evacuation, follow the instruction of faculty or class instructors. Do not re-enter a building unless given instructions by the following: Austin Fire Department, The University of Texas at Austin Police Department, or Fire Prevention Services office.

Behavior Concerns Advice Line (BCAL): 512-232-5050

Syllabus Updates:

I reserve the right to make changes or update this syllabus document at any time. This will be highly unlikely, but all changes will be announced in class and on canvas.