**LAW 312/512**

**Comparative Constitutional Law**

**Sabancı University** (Fall 2020)

Oya Yegen Office Hours: Tuesdays and Thursdays

zoyayegen@sabanciuniv.edu 9:00-10:00

W 2: 40- 4:30

F 12: 40 – 1: 30

<https://sabanciuniv.zoom.us/j/91273513289>

**Course Description and Objectives:**

The purpose of this course is to introduce students the conceptual and theoretical foundations of constitutional law from a comparative perspective. Throughout the course, we will study similarities and differences between different constitutional systems and analyze how they address similar constitutional problems. We will begin the course with an introduction on concepts, then examine the comparative method in the study of constitutional law and discuss how constitutions work in different social, political and economic systems. We will proceed to a comparative examination of institutional arrangements and focus on how features of institutional design impact the political system and democratic performance. The third part of the course will review processes of constitution-making and constitutional change. Throughout the seminar, we will focus on how these theoretical debates operate in practical settings and study different jurisdictions to observe how law and politics interact. We will finish the course by examining cases of constitutional backsliding taking place across the world. By the end of this course, students should have a solid understanding of different constitutional systems, be able to analyze how constitutions functions in different settings, identify the role of constitutional law in effective government and have a full grasp of contemporary constitutional developments in the world today.

**Course Requirements**

Throughout the course, the main expectation is that the students come to class ready to discuss the readings and comment on the lecture. Additionally, students are expected to follow the current developments on constitutional law and politics, as we will devote the first 15 minutes of each class to discuss what is happening and how it relates to general theoretical debates.

I encourage you to keep yourself updated about current developments by following blogs on constitutional law and politics, including I-CONnect (<http://www.iconnectblog.com>), Constitutionnet (<http://constitutionnet.org>), Verfassungsblog (<https://verfassungsblog.de>) and DEM\_DEC (<https://www.democratic-decay.org>)

Additional short readings (such as newspaper articles and blog posts) may be assigned over the course of the semester.

There is no assigned textbook. However, students are encouraged to read the relevant chapters from Michel Rosenfeld and András Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law* (OUP, 2012).

Articles from book chapters and journals are available on the SuCourse + website.

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| **Undergraduate students** |  **Graduate students** |
| Class participation 20% | Class participation 20% |
| Take-Home Exam 20% | Take-Home Exam 30% |
| Reflections Paper (2) 20% | Response Papers (2) 20% |
| Short Assignments (2) 10% | Research Paper 30% |
| Final Take Exam 30% |  |

Class attendance and participation (20%): We will discuss reading assignments in class and students are expected to participate actively. You will be evaluated on contributions to class discussions, both in terms of quality and quantity. See course policies for further details.

Reflection paper (10%): You will be writing two reflections on a current event that falls within the realm of constitutional politics. Please consult me before deciding on your topic.

Response papers (10%): You will be writing two written responses of approximately 2 -3 pages in reaction to a week’s readings material. Note that you must choose a week from Part II of the course and another one from Part III.

Take Home Exams (20/30 %): The midterm and final exams will cover the readings. The exam format will include keyword identifications and short essays. The midterm exam is on Week 7 and the final exam date will be announced later in the semester.

Short Assignments (5%): You will be doing two short assignments after we finish Part II and Part III of the course.

Research paper (30%): You will be writing an original research paper of app. 15 pages on a topic of your interest. It is advised that you set up a time with the instructor to discuss your research topic and present an outline. (Optional) You may submit your draft paper by the end of Week 12 if you would like feedback before you submit the final version by the end of Week 14. All papers are due on January 8, 2021.

**Course Policies:**

For the Fall 2020-2021, the teaching mode will be synchronous lectures and class discussions. These will be recorded and shared with all students. Attendance is mandatory and unless you have a valid excuse, absences will result in point deductions from participation grade. Having said that, if you have a foreseeable valid reason for recurring absences, such as a technological issue, you should tell me at the beginning of the semester so that we can find alternative ways to make up for it.

There is not going to be an extension or make up unless truly extenuating circumstances prevent the student from completing the work on time. In case you do encounter problems, please let me know as early as you can.

Please always feel free to e-mail me at any time. I will do my best to respond to your emails within 24 hours. If you have a matter that requires extended discussion, please meet me during office hours (over Zoom). You can email me to set up a time at the designated office hours (**Tuesdays and Thursdays between 9.00-10.00**) or another convenient time that works for both of us.

I will keep you updated about the course, including additional short readings through e-mail and communicate any changes to the syllabus or deadlines through Sucourse+ announcement board.

Please be respectful of your instructors (including our TA) and your fellow classmates during class discussions. Please be mindful of zoom etiquette, meaning mute yourself if you are not speaking and do not interrupt one another when speaking.

Electronic recordings of course materials are for personal use only, do not share them outside of the class.

It is imperative that students follow the standards and provisions set by Sabancı University. Students’ cheating, plagiarism and other academic offences will not be tolerated. Cases of academic misconduct will be reported. Cheating and plagiarism will also result in failing that exam/assessment. If you have any questions about what constitutes an academic offense, you can ask the instructor in advance.

**Course Schedule**

**Week 1: Introduction to main concepts**

* Russell Hardin. 1989. “Why a Constitution?” eds. Bernard Grofman et al. in *The Federalist Papers and the New Institutionalism* (Representation Vol 2).
* Stephen Holmes. 2012. “Constitutions and Constitutionalism,” *The Oxford Handbooks of Comparative Constitutional Law*, Michel Rosenfeld and András Sajó (eds.)
* Tim Horley, Anne Meng and Mila Versteeg “The World Is Experiencing a New Form of Autocracy,” *the Atlantic*. March 1, 2020.

**Grad:**

* Barry Weingast. “The Political Foundations of Democracy and the Rule of Law.” , 1997, 91 (2): 245-263.
* Mila Versteeg et. al. 2020 “The Law And Politics Of Presidential Term Limit Evasion,” *Columbia Law Review* Vol. 120, No. 1, pp. 173-248

**Week 2: Comparative Method in Constitutional Law**

* Ran Hirschl. 2014. “How Universal is Comparative Constitutional Law,” *Comparative Matters: The Renaissance of Comparative Constitutional Law*, pp. 192-223.

**Grad:**

* Ran Hirschl. 2014. “Case Selection and Research Design in Comparative Constitutional Studies,” *Comparative Matters: The Renaissance of Comparative Constitutional Law*, pp. 224-281.
* Zachary Elkins, Tom Ginsburg and James Melton. 2009. *The Endurance of National Constitutions*, Cambridge University Press, pp. 47-64.

**II. Institutional design and variation**

**Week 3: Systems of government**

* Juan Linz, "The Perils of Presidentialism," *Journal of Democracy*, Vol. 1, no. 1 (Winter 1990), pp. 51-69.
* John M. Carey “Presidential vs Parliamentary Government” In: Ménard C., Shirley M.M. (eds) *Handbook of New Institutional Economics*. Springer, Berlin, Heidelberg
* Ergun Özbudun, “Constitutional Law”, *Introduction to Turkish Law*, Tuğrul Ansay and Don Wallace Jr., eds, *Kluwer Law International*, 6th Ed., 2011, pp. 19-50.

**Grad:**

* Arend Liphart. 2008.“Presidentialism and Majoritarian Democracy: Theoretical Observations.” In *Thinking About Democracy: Power-Sharing and Majority Rule in Theory and Practice*, Arend Liphart. Routledge.
* Matthew S. Shugart and John M. Carey. *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge University Press, 1992): Chapter 1, 2 and 3.
* Recommended: Scott Mainwaring and Matthew Shugart “Juan Linz, Presidentialism, and Democracy, A Critical Appraisal,” Comparative Politics, Vol. 29, No. 4 (Jul., 1997), pp. 449-471

**Week 4: Executive-legislative relations**

* Matthew S. Shugart and John M. Carey. *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge University Press, 1992): Chapter 8.
* Ronald J. Krotoszynski, Jr. 2011.“The separation of legislative and executive powers,”. *Comparative Constitutional Law*, Tom Ginsburg and Rosalind Dixon (eds.)
* Recommended: Bertil Emrah Oder. 2017. “Turkey’s ultimate shift to a presidential system: the most recent constitutional amendments in details”, *Constitutionnet*, January 31. http://constitutionnet.org/news/turkeys-ultimate-shift-presidential-system-most-recent-constitutional-amendments-details

**Grad:**

* José Antonio Cheibub, Zachary Elkins and Tom Ginsburg. “Beyond Presidentialism and Parliamentarism”. *British Journal of Political Science,* 44(3), 515-544.
* Petra Stykow. 2019. The devil in the details: constitutional regime types in post-Soviet Eurasia, Post-Soviet Affairs, Vol.35, no. 2, pp. 122-139

**Week 5: Territorial structures**

* Thomas O. Hueglin and Alan Fenna. 2005. *Comparative Federalism: A Systematic Inquiry*. University of Toronto Press. Chapter 2 and 3.

**Grad:**

* Barry R. Weingast. 2005. “The Performance and Stability of Federalism: An Institutional Perspective.” In *Handbook of New Institutional Economics*. Eds. Menard, Claude, and Marry M, Shirley. Dordrecht: Springer, 149-172.
* Sujit Choudhry. 2014. “Classical and post-conflict federalism: Implications for Asia,” in *Comparative Constitutional Law in Asia,* Rosalind Dixon and Tom Ginsburg (eds.) Edward Elgar Publishing.

**Week 6: Constitutional Rights**

* Juan Fernando Jaramillo Perez. 2002. “Colombia’s 1991 Constitution: A rights Revolution” in Detlef Nolte and Almut Schilling-Vacaflor (eds.) *New Constitutionalism in Latin America: Promises and Practices*. Routledge: 2002. (skim)
* Javier Couso. “The ‘economic constitutions’ of Latin America: between free markets and socioeconomic rights” in *Comparative Constitutional Law in Latin America* Rosalind Dixon and Tom Ginsburg (eds.)*.* Edward Elgar Publishing.
* Cass R. Sunstein2001.“Social and Economic Rights? Lessons from South Africa” *Designing Democracy: What Constitutions Do*, Chp.10, Oxford University Press.

**Grad:**

* Christian A. Davenport. 1996. "Constitutional Promises and Repressive Reality: A Cross- National Time- Series Investigation of Why Political and Civil Liberties are Suppressed " *Journal of Politics* 58 (3): 627-54.
* Adam S. Chilton and Mila Versteeg. 2016. “Do Constitutional Rights Make a Difference?,” *American Journal of Political Science*, Vol. 60, No. 3, pp. 575–589

**Week 7: Models of Constitutional Review and Designing the Judiciary**

* John Ferejohn, 1998. “Independent Judges, Dependent Judiciary: Explaining Judicial Independence.” *Southern California Law Review* 72.2-3: 353-384.
* Tom Ginsburg. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. Cambridge, UK: Cambridge University Press. Intro and Chapter 1

**Grad:**

* Hootan Shambayati and Esen Kirdiş. 2009. “In Pursuit of “Contemporary Civilization”: Judicial Empowerment in Turkey” *Political Research Quarterly*, Vol 62, Issue 4, pp. 767 – 780.
* Tom Ginsburg and Mila Versteeg. 2014. “Why Do Countries Adopt Constitutional Review?,” 30 *Journal of Law, Economics and Organization* 587.
* Aylin Aydın. 2013. “Judicial Independence across Democratic Regimes: Understanding the Varying Impact of Political Competition,” Law & Society Review, Volume 47, Number 1.

**Week 8: Emergency Powers**

* John Ferejohn and Pasquale Pasquino (2004) "The Law of the Exception: a Typology of Emergency Powers," 2 Int'l J. Const. L. 210.
* Mert Arslanalp & T. Deniz Erkmen (2020): Repression without Exception: A Study of Protest Bans during Turkey’s State of Emergency (2016-2018), South European Society and Politics

**Grad:**

* Giorgio Agamben-*State of Exception* (University of Chicago Press : 2005), pp. 1-41.
* Recommended: Tom Ginsburg and Mila Versteeg. 2020. “The Bound Executive: Emergency Powers During the Pandemic”. Virginia Public Law and Legal Theory Research Paper No. 2020-52, U of Chicago, Public Law Working Paper No. 747.

**III. Constitution-making: processes and actors**

**Week 9: Constitutional change: amendment vs replacement**

* Donald Lutz. 1994. “Toward a Theory of Constitutional Amendment, ”The American Political Science Review , Jun., 1994, Vol. 88, No. 2.
* Gabriel L. Negretto, “Replacing and Amending Constitutions: The Logic of Constitutional Change in Latin America.” *Law & Society Review*, vol. 46, no. 4, 2012, pp. 749–779.
* Watch: the 13th amendment

**Grad:**

* Sanford Levinson, “How Many Times Has the United States Constitution Been Amended?.” In Sanford Levinson, ed., *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, pp. 13-36.
* George Tsebelis 2020. “Constitutional Rigidity Matters: A Veto Players Approach” https://sites.lsa.umich.edu/tsebelis/wp-content/uploads/sites/246/2020/07/Constitutional-Rigidity-Matters.pdf

**Week 10: Making a Constitution**

* Gabriel L. Negretto. 2017. “Constitution-Making in Comparative Perspective,” Oxford Research Encyclopedia of Politics.
* 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
* Felix Petersen and Zeynep Yanasmayan. 2020. “Explaining the Failure of Popular Constitution Making in Turkey (2011–2013)” in The Failure of Popular Constitution-Making in Turkey, Cambridge University Press, pp. 21-56.
* Watch: The Democrats (2014).

**Grad:**

* Gabriel L. Negretto “Democratic constitution-making bodies: The perils of a partisan Convention” I•CON (2018), Vol. 16 No. 1, 254–279
* Todd A. Eisenstadt, A. Carl LeVan and Tofigh Maboudi. 2015. “When Talk Trumps Text: The Democratizing Effects of Deliberation during Constitution-Making, 1974–2011” American Political Science Review Vol. 109, No. 3

**Week 11: Post-authoritarian**

* Andrea Bonime-Blanc. 2010. Constitution Making and Democratization: The Spanish Paradigm, Miller, Laurel, and Louis Aucoin. *Framing the State in Times of Transition: Case Studies in Constitution Makin*g. Washington, D.C: United States Institute of Peace Press, 2010.
* Peter Siavelis. 2016. “Crisis of Representation in Chile? The Institutional Connection” *Journal of Politics in Latin America*, Vol. 8, 3, pp. 61–93.

**Grad:**

* Arendt Lijphart, (1992). Democratization and Constitutional Choices in Czecho-Slovakia, Hungary and Poland 1989-91. *Journal of Theoretical Politics*, 4(2), 207–223.
* Michael Albertus and Victor Menaldo. 2014. “Dealing with Dictators: Negotiated Democratization and the Fate of Outgoing Autocrats”, *International Studies Quarterly*, 58, pp. 550-565.

**Week 12: Constitutional Borrowing, External actors, and Post-conflict constitution-making**

* Sujit Chaudhry, “Introduction” in *The Migration of Constitutional Ideas*. Cambridge: Cambridge University Press: 2007.
* Andrew Arato. 2009. *Constitution Making Under Occupation The Politics of Imposed Revolution in Iraq*. Columbia University Press.
* Kristi Samuels. 2006. Post-Conflict Peace-Building and Constitution-Making Chicago Journal of International Law. Vol 6, No. 2.

**Grad:**

* Arend Lijphart, “Constitutional Design for Divided Societies,” *Journal of Democracy,* Volume 15, Number 2, April 2004, pp. 96-109.
* Jennifer Widner. “Constitution writing and conflict resolution,” *The Round Table: The Commonwealth Journal of International Affairs,* 2005, 94: 381, pp. 503-518.

**Week 13: Abusive and Authoritarian Constitutionalism**

* David Landau. 2013. “Abusive Constitutionalism” *UC Davis Law Review*.
* William Parlett. 2012. “The Dangers of Popular Constitution-Making,” *Brooklyn Journal of International Law*. Vol. 38 Issue 1.
* Tom Ginsburg and Alberto Simper. 2013. “Introduction: Constitutions in Authoritarian Regimes” and Zachary Elkins, Tom Ginsburg and James Melton “The Content of Authoritarian Constitutions” in Tom Ginsburg and Alberto Simpser (eds.) *Constitutions in Authoritarian Regimes*. Cambridge University Press.

Grad:

* Tamir Moustafa and Tom Ginsburg. 2008. “Introduction: The Functions of Courts in Authoritarian Politics” in Tom Ginsburg and Tamir Moustafa. *Rule by Law: The Politics of Courts in Authoritarian Regimes*. Cambridge University Press.
* Michael Albertus and Victor A., Menaldo “Dictators as Founding Fathers? The Role of Constitutions Under Autocracy,” *Economics & Politics*, Volume 24(3), November 2012.

**Week 14: Course wrap up**

* David Landau and Rosalinda Dixon. “Constraining Constitutional Change” *Wakeforest Law Review*, Vol 50: 859.
* Berk Esen & Şebnem Gümüşçü (2017): A Small Yes for Presidentialism: The Turkish Constitutional Referendum of April 2017, *South European Society and Politics*.
* Aziz Huq and Tom Ginsburg How to lose a constitutional democracy, Vox Feb 21. 2017, available at https://www.vox.com/the-big-idea/2017/2/21/14664568/lose-constitutional-democracy-autocracy-trump-authoritarian

**Grad:**

* Aziz Huq and Tom Ginsburg “How to Lose a Constitutional Democracy” 65 *UCLA L. Rev*. 78 (2018).