

Constitutions' Impact on Democracy in Asia

Section 1

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【Course Outline / Description】

Constitution is a fundamental legal document to assert the essence, the direction, and the identity of a state. As such, how a state goes about designing its constitution holds a significant impact on state governance. Constitutional design is a new and growing interdisciplinary field that has brought together scholars from such disciplines as political science, law, anthropology, sociology, and economics. As political scientist Walter F. Murphy once articulated, “[t]he ‘constitution’ is not merely a ‘thing,’ sitting immobile like a rock; it is also a set of ideas, as well as a continuing discussion about those ideas as they relate to a proper political order” (2009, 1304). In other words, constitutional design as an emerging field contributes to generating sets of options, recommendations, and guidelines for drafters and other stakeholders engaged in an ongoing (and evolving) constitution-making process. Areas of interests for constitutional design scholars are vast, ranging from state governing system, electoral system, constitutional review, and separation of powers to political culture, creation of citizenry, and public participation.

Through this course, students will be exposed to main areas of interests for the field of constitutional design from an Asian perspective. First of all, what is constitutional design, and what does it all entail? Why is it an important area of study? What are prominent constitutional design challenges and issues in general and in Asia? How do Asian countries cope with such challenges and issues? What are best practices from Asia in addressing the challenges and issues? How does constitutional design impact democracy and democratization in Asia? Where do Asian countries need to further improve in terms of the constitutional framework? Such are the main research/discussion questions for this course.

Section 2

【Course Objectives/Goals/Learning Outcomes】

This course is designed to help students attain the following learning outcomes:

1. To learn and understand the essence of constitutional design
2. To understand prominent constitutional design issues and challenges in general and in Asia
3. To critically analyze how to constitutionalize key concerns and challenges in Asian societies so as to solidify democratic principles
4. Link theoretical and empirical studies and apply analytical tools to countries of students' interests
5. Sharpen analytical, presentation, and writing skills on constitutional design

Section 3

【Textbooks/Reading Materials】

Readings will be assigned for each week. Students are required to keep up with a full schedule of readings. Reading assignments will be the basis for informed classroom discussions. Students are thus expected to answer questions about the readings when called upon to do so in class.

【Class Schedule/Class Environment, Literature and Materials】

NOTE 1: A more detailed syllabus will be shared with students.

NOTE 2: In each session, we will start with small presentations on constitution-related news by students.

Lesson	Topics	Readings
1	Course Introduction	- No Assigned Readings (But please make sure to read the detailed syllabus carefully before the class!)
2	Course Introduction What Is Constitutional Design? (Overview)	- Peter C. Ordeshook (1993), Some Rules of Constitutional Design - Robert Goodin (1997), On Constitutional Design - Additional Readings
3	Constitutional Design, Constitutions, and Challenges 1 What Is Constitutional Design?	- Donald L. Horowitz (2000), Constitutional Design: An Oxymoron? - Walter F. Murphy (2009), Theories of Constitutional Design: Designing a Constitution: Of Architects and Builders - Additional Readings
4	Constitutional Design, Constitutions, and Challenges 2 What Is a Constitution? And What Is It for?	- Elliot Bulmer (2017), What Is a Constitution? Principles and Concepts - Mark Tushnet (2014), Advanced Introduction to Comparative Constitutional Law (Ch. 2: Constitution-Making) - Additional Readings
5	Constitutionalism and the Rule of Law 1 Constitutionalism and the Rule of Law in General	Rule of Law - Jeremy Waldron (2020), The Rule of Law - Brian Z. Tamanaha (2004), On the Rule of Law: History, Politics, Theory (Ch. 9: Three Themes) - Additional Readings Constitutionalism - Massimo La Torre (2007), Constitutionalism and Legal Reasoning: A New Paradigm for the Concept of Law (Ch. 1: Law as Constitution) - Keith E. Whittington (2008), Constitutionalism - Additional Readings
6	Constitutionalism and the Rule of Law 2 Constitutionalism and the Rule of Law in Asia	Rule of Law - Susan Maslen (1998), Japan & the Rule of Law - Eric W. Orts (2000), The Rule of Law in China - Additional Readings Constitutionalism - Albert H.Y. Chen (2014), The Achievement of Constitutionalism in Asia: Moving Beyond 'Constitutions without Constitutionalism' - Tom Ginsburg (2014) East Asian Constitutionalism in Comparative Perspective
7	Constitutional Review System Design 1	What Is Constitutional Review? - Saikrishna B. Prakash and John C. Yoo (2003),

	Constitutional Review System Design in General	<p>The Origins of Judicial Review</p> <ul style="list-style-type: none"> - Kazuo Fukuda (2023), Towards an Institution-Independent Concept of Constitutional Review (Excerpt) - Additional Readings <p>Why Constitutional Review?</p> <ul style="list-style-type: none"> - Alexander M. Bickel (2004), Establishment and General Jurisdiction of Judicial Review - Larry Alexander and Frederick Schauer (2004), Defending Judicial Supremacy: A Reply - Additional Readings
8	Constitutional Review System Design 2 Constitutional Review System Design in General	<p>Various Review Models</p> <ul style="list-style-type: none"> - Mauro Cappelletti (1970), Judicial Review in Comparative Perspective - Kazuo Fukuda (2023), Towards an Institution-Independent Concept of Constitutional Review (Excerpt) - Kazuo Fukuda and Adam P. Liff (2022), A Fourth Model of Constitutional Review? De Facto Executive Supremacy - Additional Readings
9	Constitutional Review System Design 3 Constitutional Review System Design in Asia	<p>Asia in General</p> <ul style="list-style-type: none"> - Albert H.Y. Chen (2018), Constitutional Courts in Asia: Western Origins and Asian Practice - Cheryl Saunders (2018), Constitutional Review in Asia: A Comparative Perspective <p>Japan</p> <ul style="list-style-type: none"> - Shigenori Matsui (2011), Why Is the Japanese Supreme Court So Conservative? - David S. Law (2011), Why Has Judicial Review Failed in Japan? - Yasuo Hasebe (2018), The Supreme Court of Japan: A Judicial Court, Not Necessarily a Constitutional Court
10	Constitutional Review System Design 4 Constitutional Review System Design in Asia	<p>Republic of Korea</p> <ul style="list-style-type: none"> - Chaihard Hahm (2018), Constitutional Court of Korea: Guardian of the Constitution or Mouthpiece of the Government? <p>Mongolia</p> <ul style="list-style-type: none"> - Tom Ginsburg and Chimid Enhbaatar (2018), Avoiding Rights: The Constitutional Tsets of Mongolia <p>Thailand</p> <ul style="list-style-type: none"> - Khemthong Tonsakulrungruang (2018), The Constitutional Court of Thailand: From Activism to Arbitrariness <p>China</p> <ul style="list-style-type: none"> - Qianfan Zhang (2018), Establishing Judicial Review in China: Impediments and Prospects <p>Vietnam</p> <ul style="list-style-type: none"> - Ngoc Son Bui (2018), Why Do Countries Decide Not to Adopt Constitutional Review? The Case of Vietnam
11	Electoral System Design 1 Electoral System Design in General	<ul style="list-style-type: none"> - Arend Lijphart (2012), Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries (Ch. 8: Electoral Systems: Majority and Plurality Methods Versus Proportional Representation) - Reynolds, Reilly, and Ellis (2005), Electoral System Design: The New International IDEA Handbook
12	Electoral System Design 2 Electoral System Design in	<p>Asia</p> <ul style="list-style-type: none"> - Skim through the Data on International IDEA - Skim through Case Studies of Asian Countries in Electoral System Design: The New

	Asia	<p>International IDEA Handbook (2005)</p> <p>East Asia</p> <ul style="list-style-type: none"> - Benjamin Reilly (2007), Electoral Systems and Party Systems in East Asia <p>Southeast Asia</p> <ul style="list-style-type: none"> - Meredith L. Weiss (2014), Electoral Patterns in Southeast Asia: The Limits to Engineering <p>Japan</p> <ul style="list-style-type: none"> - Ethan Scheiner (2012), The Electoral System and Japan's Partial Transformation: Party System Consolidation without Policy Alignment - Additional Readings
13	<p>Separation of Powers Design 1</p> <p>Separation of Powers Design in General</p>	<p>Overview</p> <ul style="list-style-type: none"> - Arend Lijphart (1996), Constitutional Choices for New Democracies - Additional Readings <p>Presidentialism</p> <ul style="list-style-type: none"> - Donald H. Horowitz (1996), Comparing Democratic Systems - Additional Readings <p>Parliamentarism</p> <ul style="list-style-type: none"> - Juan J. Linz, The Virtues of Parliamentarism
14	<p>Separation of Powers Design 2</p> <p>Separation of Powers Design in Asia</p>	<p>Japan</p> <ul style="list-style-type: none"> - Harutaka Takenaka (2019), Expansion of the Prime Minister's Power in the Japanese Parliamentary System: Transformation of Japanese Politics and Institutional Reforms <p>China</p> <ul style="list-style-type: none"> - Benedict Sheehy (2006), Fundamentally Conflicting Views of the Rule of Law in China and the West & Implications for Commercial Disputes <p>Republic of Korea</p> <ul style="list-style-type: none"> - Seung-Whan Choi (2022), Democracy and South Korea's Lemon Presidency <p>Southeast Asia</p> <ul style="list-style-type: none"> - Marco Bunte and Mark R. Thompson (2018), Perilous Presidentialism in Southeast Asia?
15	<p>Constitutional Rights Design 1</p> <p>Horizontal and Vertical Application in General</p>	<ul style="list-style-type: none"> - Christopher Unsel (2017), Horizontal Application - Danwood Mzikenge Chirwa (2006), The Horizontal Application of Constitutional Rights in a Comparative Perspective - Stephen Gardbaum (2003), The "Horizontal Effect" of Constitutional Rights - Additional Readings (Interesting Court Cases)
16	<p>Constitutional Rights Design 2</p> <p>Positive Rights and Negative Rights in General</p>	<ul style="list-style-type: none"> - Cecile Fabre (2000), Social Rights under the Constitution – Government and the Decent Life (Ch. 2: Negative and Positive Rights) - Cass R. Sunstein (2002), Designing Democracy: What Constitutions Do (Ch. 10: Social and Economic Rights? Lessons from South Africa) - Additional Readings
17	<p>Constitutional Rights Design 3</p> <p>Hierarchy of Rights, Progressive Realization, and Aspirational Rights in General</p>	<p>Hierarchy of Rights</p> <ul style="list-style-type: none"> - John D. Montgomery (2002), Is There a Hierarchy of Human Rights? - Additional Readings <p>Progressive Realization</p> <ul style="list-style-type: none"> - Olivier De Schutter (2010), International Human Rights Law: Cases, Materials, Commentary (Ch. 5: The Progressive Realization of Human Rights and the Obligation to Fulfill) - Additional Readings

		<p>Examples of Aspirational Rights</p> <ul style="list-style-type: none"> - Massachusetts Constitution Article 97 - Republic of Korea Constitution Article 36 (3) - Ecuador Constitution Chapter 7
18	<p>Constitutional Rights Design 4</p> <p>Group Exercise – Constitutional Rights in Asia</p>	<p>The primary objective of this group exercise is to help students learn (1) to what extent fundamental rights are constitutionalized, (2) whether the constitution focuses on negative rights or positive rights, (3) whether there are any similarities or differences across different constitutions in Asia, and (4) what important rights may be missing in certain constitutions.</p> <p>See the detailed syllabus for more details.</p>
19	<p>Constitutional Design for Divided Societies 1</p> <p>Federalism, Consociationalism, and Centripetalism in General</p>	<ul style="list-style-type: none"> - McGarry, O'Leary, and Simeon (2008), Integration or Accommodation? The Enduring Debate in Conflict Regulation - Donald L. Horowitz (2000), Ethnic Groups in Conflict (Ch. 15: Structural Techniques to Reduce Ethnic Conflict) - Matthijs Bogaards (2019), Consociationalism and Centripetalism: Friends or Foes?
20	<p>Constitutional Design for Divided Societies 2</p> <p>Federalism, Consociationalism, and Centripetalism in Asia</p>	<p>Southeast Asia</p> <ul style="list-style-type: none"> - Benjamin Reilly (2011), Political Reform and the Demise of Consociationalism in Southeast Asia <p>Indonesia</p> <ul style="list-style-type: none"> - Jacques Bertrand (2008), Indonesia's Quasi-Federalist Approach: Accommodation amidst Strong Integrationist Tendencies <p>Malaysia</p> <ul style="list-style-type: none"> - Meredith L. Weiss (2013), The Consociational Model in Southeast Asia: Is It (Still) Relevant? <p>Myanmar</p> <ul style="list-style-type: none"> - Janelly Saffin and Nathan Willis (2014), The Need for a Constitutional Settlement to Further the Reform Process in Myanmar (Burma)
21	<p>Constitutional Design for Divided Societies 3</p> <p>Secession Design in General</p>	<ul style="list-style-type: none"> - Percy B. Lehning (1998), Theories of Secessions: An Introduction - Margaret Moore (1998), Introduction: The Self-Determination Principle and the Ethics of Secession - Additional Readings
22	<p>Constitutional Design for Divided Societies 4</p> <p>Secession Design in Asia</p>	<p>Modern Separatist Movements in Asia</p> <ul style="list-style-type: none"> - Look at this map to grasp a big picture <p>China</p> <ul style="list-style-type: none"> - Robert Barnett (2017), Language Practices and Protracted Conflict: The Tibet-China Dispute - Dru C. Gladney (2017), Separatism in China: The Case of the Xinjiang Uyghur Autonomous Region <p>Taiwan</p> <ul style="list-style-type: none"> - Jean-Pierre Cabestan (2017), The Case of Taiwan: Independence without Secession? <p>Myanmar</p> <ul style="list-style-type: none"> - Renaud Egretteau (2017), Separatism, Ethnocracy, and the Future of Ethnic Politics in Burma (Myanmar)
23	<p>Plural Legal System Design 1</p> <p>Plural Legal System Design in General</p>	<p>Overview</p> <ul style="list-style-type: none"> - Sally Engle Merry (1988), Legal Pluralism <p>What It Means in Practice</p> <ul style="list-style-type: none"> - Thomas Barfield (2008), Culture and Custom in Nation-Building: Law in Afghanistan - Ghislain Otis (2018), Individual Choice of Law for Indigenous People in Canada: Reconciling

		Legal Pluralism with Human Rights - Additional Readings
24	Plural Legal System Design 1 Plural Legal System Design in Asia	Southeast Asia - Jamila Hussain (2011), More Than One Law for All China - Qian Liu (2021), With or Without You: <i>Qing, Li, Fa</i> , and Legal Pluralism in China Indonesia - Nila Aliyan Hamida (2022), Adat Law and Legal Pluralism in Indonesia Laos - Ministry of Justice and UNDP Lao PDR (2011), Customary Law and Practice in Lao PDR
25	Civil-Military Relations Design 1 Civil-Military Relations Design in General	- Larry Diamond and Marc F. Plattner (1996), Introduction - Samuel P. Huntington (1996), Reforming Civil-Military Relations - Additional Readings
26	Civil-Military Relations Design 2 Civil-Military Relations Design in Asia	Japan - Takako Hikotani (2014), The Paradox of Antimilitarism: Civil-Military Relations in Post-World War II Japan Republic of Korea - Bruce E. Bechtol (2005), Civil-Military Relations in the Republic of Korea: Background and Implications China - Michael Kiselycznyk and Phillip C. Saunders (2010), Civil-Military Relations in China: Assessing the PLA's Role in Elite Politics
27	Group Final Paper Presentations 1	No Assigned Readings
28	Group Final Paper Presentations 2	No Assigned Readings
29	Future Constitutional Design in Japan from a Procedural Perspective (Or Final Paper Presentations)	Challenge with Constitutional Amendment Design - Rosalind Dixon (2011) Constitutional Amendment Rules: A Comparative Perspective Challenge with Public Participation Design - Erin C. Houilhan and Sumit Bisarya (2021), Practical Considerations for Public Participation in Constitution-Building: What, When, How and Why?
30	Wrap-up and Final Exam Preparation	No Assigned Readings (But Please Make Sure to Review All Areas Covered in the Semester and Bring Any Questions That You May Have)

Section 4

【Learning Assessments/Grading Rubric】

- Participation: 30%
- 2 Small Presentations on Constitutional Design-Related News: 5%
- Final Exam: 20%
- Group Final Paper: 30%
- Group Final Paper Presentation: 15%

Section 5

【Additional Information】

Syllabus

To the extent possible, we will proceed with our class in accordance with the course schedule stated above. Should the needs occur, however, the instructor reserves the right to modify the course syllabus during the semester. In such cases, the instructor will strive to inform students of any changes well in advance.

Academic Integrity

You are expected to adhere to the standards upheld by Kansai Gaidai University. Violations of academic integrity include cheating, fabrication, plagiarism, interference, violation of course rules, and facilitating academic dishonesty. When you submit an assignment with your name on it, you indicate that the work contained therein is yours, unless otherwise cited or referenced. Any ideas or materials taken from another source for either written or oral use must be fully acknowledged. If you are unsure about the expectations for completing an assignment or taking a test or exam, be sure to seek clarification from the instructor in advance.

Participation

In addition to the active participation in the classroom as mentioned below, students are expected to post (1) reflections and (2) questions for class discussion on Blackboard, based on the readings of each session. Please bear in mind that this is part of the participation grade. The main objective of this activity is not only to make sure that students keep up with the assigned readings but also to create a forum where they can exchange comments, thoughts, and questions with each other AND ensure lively debates in the classroom. As such, please post them prior to each session (at least a day before each session). Both reflections and discussion questions do NOT need to be extensive; short responses will suffice for this purpose. If you so prefer, you can simply list down your thoughts and questions.

Positive Learning Environment

As your instructor, one of my primary responsibilities in our classroom is to create a positive learning environment for all. I take this responsibility very seriously and highly encourage all students to actively take part in class debates. In fact, I have prepared sample class debate questions in the detailed syllabus. As such, any act of discrimination or harassment based on race, ethnicity, gender, gender identity, religious affiliation, sexual orientation, or disability will not be tolerated in this course. Let's show utmost respect for each other and create a positive learning environment together.