

## Guidelines to Writing Constitutions

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Your final project in this course will be a paper creating a constitutional order for a country of your choice. What should your final paper look like? Here I will describe the form your paper should take and the issues it should address. I'll begin with some general guidelines and then move on to the specific material your paper should cover.

First, you are not writing an actual constitution (e.g., We the People...), but instead a report to be delivered to the Constitutional Assembly of the country you have chosen. Thus, the paper should make recommendations on the institutions this country should choose and then enumerate your reasons for making these choices. You are making an argument that if the country chooses the institutions you have recommended, they will be better off (in a sense specified by you) than they were before. Ideally, better off means stable, democratic, liberal, effective, representative, and legitimate but in practice you will have to make tradeoffs among these and other goals. When you make these tradeoffs, make sure they are explicit and that you explain why you have made them.

I should note that a good essay will not just repeat the pro and con arguments for different institutions that we discussed in class. What it should do is relate these arguments to specific features of your country. Tell me what effect the institutions you have chosen will have on your country and why you think this choice is the best possible one. This requires detailed knowledge of the social, political, and economic structure of the country. Truly superior answers will show how the institutions you have chosen will interact with those structures to produce positive outcomes.

I thus expect you to learn a good deal about the politics and society of your individual countries. While I cannot tell you exactly what you need to know, there are some aspects that you should know. Among them are the following:

- **Social structure:** This includes the ethnic, religious, tribal, and linguistic composition of the country. It also includes any other economic, class, and social divides that will shape political relations. It is not just how many members there are of each group, but where they are located and their relations with each other. You may also have to think about things like the degree of education, experience with competitive politics, and the position of women.
- **Party system:** You should know the number, size, and type of existing parties, their professed ideologies, their relations with each other, their degree of discipline, etc. This existing party system will play an important role in many of your choices. While your new institutions will likely change it, don't assume it will disappear over night. The existing party system will give you an idea of how people will vote, who will be most successful under your new constitution, and how parties will cooperate with each other.

- Economic situation: You will probably want to know whether there is an economic crisis in the country and what sort of economic policies the country needs – whether it can get by with current policies or needs drastic reforms. You may also have to think about the allocation of wealth in the country – are there wide gaps between rich and poor that may hinder democracy?
- Military: Many countries have strong and independent militaries. You should think about whether the military is a potential threat to democracy and how you might keep it under control.
- Stateness: You should consider whether the central government has control over the country. Do some regions escape central control? How are you going to make sure that the country has a government that functions and provides basic public services?
- Existing constitution: You have already read the constitutions of your countries. You should think about the problems with the current constitution as well as its good points. If something has been tried but has not worked, this may be a reason for discarding it. The familiarity of citizens with existing forms may play a role in some of your decisions, but so will their dissatisfaction with certain forms.

A final general remark should ease your task. You are not writing a constitution that would be immediately adopted by your country's current government/dictator. If it were, then they would have already adopted it. Rather, assume that I (your benevolent professor) have used my considerable skills to arrange a constitutional convention in your country and have pulled strings to have your recommendations implemented into law. The problem for you is not to prepare a constitution that would be accepted (this is another problem), but to produce one that would work if accepted. Thus, imagine that your proposal has been adopted and then tell me why it is going to work. Don't worry about the former dictator standing in the way (I have deposed him), but do worry whether his followers will be able to sabotage your new arrangements.

Your final paper should be 4000-5000 words. There is a word count feature on Word that you can use. Formatting is up to you, though I tend to like single or 1.5 spacing with double spaces between paragraphs.

Now to the actual paper. Your paper should be easy to organize, because I will tell you more or less how to organize it. Here are the sections that should be included in any paper.

1. Diagnosis. To start, you should give a short description and analysis of the main problems facing the country. This is your diagnosis. Tell me what ills your constitution is intended to cure. This is not always straightforward. Most countries face a variety of serious problems. You need to identify those that are most dangerous and can be solved or alleviated through constitutional means. You may want to provide a rough-and-ready rank-order of these problems. Don't go overboard with your diagnosis – I am more

interested in your cures – but make sure to tell me enough about your country so that your recommendations make sense. Depending on the type of regime in your country, you may want to describe (briefly) the current constitution of the country and where it has gone wrong. This of course is less applicable to dictatorships, though even dictatorships often have meaningful constitutions.

2. Legislative-Executive Relations. This is the heart of your constitutional order. You need to choose between a presidential, semi-presidential, and parliamentary regime and justify your choice. You should also give me specifics about the type you have chosen. As we discussed in class, not all presidential and parliamentary systems are alike. If you choose a presidential system, tell me something about the powers the president and legislature will hold. If you choose a parliamentary system, talk about some of the auxiliary institutions that may be attached to parliamentarism (e.g., constructive vote of no-confidence, investiture vote, etc.). Explain why you have made these choices and how they will help your country. If you propose a change, talk about issues of moving from one type to another.

3. Electoral Laws. Another key part of your constitution is electoral laws. Again, I want to know what electoral laws you would choose and why. And here again, you need to provide some details (though not overly specific ones). If you choose PR, do you want large or small districts, open or closed lists, etc.? If you choose plurality, who gets on the ballot, how will you draw district lines, etc.? Obviously, you will want to talk about how the system you choose will interact with the social structure and what type of party system it might be expected to produce. Issues like election timing also matter. Remember that for presidential, semi-presidential, and bicameral regimes you'll need more than one set of electoral rules (one for each institution elected).

4. Federal versus Unitary. Discuss the regional arrangements of your country and why you would choose a federal or unitary regime. If you choose federalism, be specific about the type of federalism (e.g., symmetric or asymmetric), the nature of the subunits, and their powers. This might also be an appropriate place to discuss your choice of a unicameral or bicameral assembly and your reasons for preferring one over the other. If you choose bicameralism, talk briefly about the differences between the two chambers. You might also use this section to discuss special treatment of minority groups (arrangements for group autonomy, special privileges) or secession clauses, if needed.

5. Judicial Review and Rights. Are you going to choose judicial review for your country and if so why? Will review be restricted in any way? You need to justify both the decision to have it or not to have it. You should also discuss your country's bill of rights. I will assume that you will include basic civil and political rights in your constitutions. In this section you should consider whether these should be modified in any way by addition or subtraction. Would you remove any of the basic rights or would you add any additional positive rights, group rights, or even duties? Make a case for your choice. This would also be the place to consider citizenship laws if those are relevant to your country.

6. Miscellaneous. I will leave room for you to discuss any other special clauses that you consider necessary for your country, especially ones covered in class reports. You might want to consider constitutional amendment rules, emergency provisions, referenda, or civil society among others. I leave this part of the paper open for extra provisions that have caught your eye during this course. If you have chosen a full-blown consociational solution, you may want to comment more on it here (though it will also show up in individual sections).

One final note. Keep in mind as you are writing that your institutional choices may interact with each other in numerous ways. Be careful that you do not choose institutions that undermine each other or prevent other institutions from working properly. You may want to discuss these interactions within individual sections of your paper or devote space to them at the end of the paper.

7. Conclusion. At the end of your paper, you should reflect on this experience. Do you think your constitution can solve the country's problems or are other factors more important? Do you think your constitution could be adopted in this country? Who is standing in its way? Why does the country have the flawed institutions that it does? Feel free to add other reflections on the role of constitutions and the process of writing a constitution that you learned from this exercise.