

7397/26338: DEMOCRACY

Preliminary Syllabus – Spring 2026

Professor David Froomkin

How does law contribute to or undermine democratic government? This seminar will consider the import of various legal rules—some constitutional but mostly sub-constitutional—for the health of democracy in the United States. We will focus primarily on election law, which is often referred to as “the law of democracy,” but we will also consider whether there is equally important law of democracy beyond the scope of election law as traditionally conceived. We will read mostly legal scholarship, along with some political science. Topics will include voting rights, election subversion, malapportionment, redistricting and gerrymandering, electoral systems, executive aggrandizement, congressional quiescence, money in politics, and criminal penalties. Throughout we will consider the respective potential for federal legislation, state legislation, and judicial innovation to ameliorate various challenges.

Learning Objectives: By the end of this course, if you approach it diligently, you will be able to assess the contributions of legal rules to the functioning of the democratic process and to write a paper applying that skill.

The course will meet face-to-face on Mondays and Wednesdays from 1:00pm to 2:30pm. This is a discussion-based course, and you are expected to come to class having read and reflected on the assigned readings. The assigned readings for each class session are listed in the schedule of assignments below. All assigned readings will be posted on Canvas, unless otherwise indicated. Any readings marked “optional” are not assigned readings.

Grading will be based on a final paper of at least 10,000 words (80%), due May 14, and participation (20%). There are several intermediate paper deadlines (each graded only for timely completion): a one-paragraph topic description due February 13, an outline due March 13, and a first draft due April 17.

N.B. The content of this syllabus is subject to change before the start of the semester. An updated syllabus will be posted on Canvas at the beginning of the semester. Students are responsible for consulting Canvas to obtain an updated syllabus.

Schedule of Assignments

1. Wednesday, January 21 – Majority Rule

Richard H. Pildes, *Democracy, Anti-Democracy, and the Canon*, 17 CONST. COMMENT. 295 (2000)

David B. Froomkin & Ian Shapiro, *Democracy: Problems and Challenges*,
ENCYCLOPEDIA BRITANNICA (June 30, 2023),
<https://www.britannica.com/topic/democracy/The-value-of-democracy#ref357705>

2. Monday, January 26 – Minority Rule

STEVEN LEVITSKY & DANIEL ZIBLATT, TYRANNY OF THE MINORITY 133-197 (2023)
(chapters 5-6)

3. Wednesday, January 28 – Laboratories of Authoritarianism

Miriam Seifter, *Countermajoritarian Legislatures*, 121 COLUM. L. REV. 1733 (2021)

Jacob M. Grumbach, *Laboratories of Democratic Backsliding*, 117 AMER. POL. SCI. REV. 967 (2023)

4. Monday, February 2 – Voting Rights I

Richard L. Hasen, *The Stagnation, Retrogression, and Potential Pro-Voter Transformation of U.S. Election Law*, 134 YALE L.J. 1521 (2025) (N.B. focus on Part I)

Optional: Pamela Herd & Donald P. Moynihan, *The Resurgence of Burdens in Voting: Race, Burdens, and Access to Political Rights*, in ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS (2019)

5. Wednesday, February 4 – Voting Rights II

Nicholas O. Stephanopoulos, *The Sweep of the Electoral Power*, 36 CONST. COMMENT. 1 (2021)

Ruth Greenwood & Nicholas O. Stephanopoulos, *Voting Rights Federalism*, 73 EMORY L.J. 299 (2023)

6. Monday, February 9 – Election Subversion

Richard L. Hasen, *Identifying and Minimizing the Risk of Election Subversion and Stolen Elections in the Contemporary United States*, 135 HARV. L. REV. F. 265 (2021)

Jessica Bulman-Pozen & Miriam Seifter, *Countering the New Election Subversion: The Democracy Principle and the Role of State Courts*, 2022 WIS. L. REV. 1337 (2022)

Optional: Benjamin A. Goldstein, *Voter Intimidation: Forging a Judicial Standard*, 40 J.L. & POL. 1 (2025)

7. Wednesday, February 11 – Malapportionment

Pamela S. Karlan, *The New Countermajoritarian Difficulty*, 109 CALIF. L. REV. 2323 (2021)

David B. Froomkin & A. Michael Froomkin, *Saving Democracy from the Senate*, 2024 UTAH L. REV. 397 (2024), available at <https://papers.ssrn.com/abstract=3797782>

8. Monday, February 16 – Safe Seats

Alexander Kustov, Maikol Cerda, Akhil Rajan, Frances Rosenbluth & Ian Shapiro, *The Rise of Safe Seats and Party Indiscipline in the U.S. Congress*, <https://jackson.yale.edu/wp-content/uploads/2022/08/Kustov-et-al.-2021.pdf>

9. Wednesday, February 18 – Primaries

Richard H. Pildes, *Combatting Extremism*, 76 FLA. L. REV. 1583 (2024)

California Democratic Party v. Jones, 530 U.S. 567 (2001)

Optional: FRANCES ROSENBLUTH & IAN SHAPIRO, RESPONSIBLE PARTIES: SAVING DEMOCRACY FROM ITSELF 95-127 (2018) (chapter 5)

10. Monday, February 23 – Gerrymandering I

Nicholas O. Stephanopoulos, *The Causes and Consequences of Gerrymandering*, 59 WM. & MARY L. REV. 2115 (2018)

11. Wednesday, February 25 – Gerrymandering II

James Piltch, *The Neutral Criteria Myth*, 2025 WIS. L. REV. 801 (2025).

12. Monday, March 2 – Majority-Minority Districts

Lani Guinier, *The Representation of Minority Interests: The Question of Single-Member Districts*, 14 CARDOZO L. REV. 1135 (1992)

Jowei Chen & Nicholas O. Stephanopoulos, *The Race-Blind Future of Voting Rights*, 30 YALE L.J. 862 (2020)

Optional: Charles Cameron, David Epstein & Sharyn O'Halloran, *Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?*, 90 AMER. POL. SCI. REV. 794 (1996)

13. Wednesday, March 4 – Proportional Representation I

Pippa Norris, *Choosing Electoral Systems: Proportional, Majoritarian, and Mixed Systems*, 18 INT'L POL. SCI. REV. 297 (1997)

Tom van der Meer & Bastiaan Rijpkema, *Militant Democracy and the Minority to Majority Effect: on the Importance of Electoral System Design*, 18 EUR. CONST. L. REV. 511 (2022)

14. Monday, March 9 – Proportional Representation II

Lee Drutman, *Elections, Political Parties, and Multiracial, Multiethnic Democracy: How the United States Gets It Wrong*, 96 N.Y.U. L. REV. 985 (2021)

Richard H. Pildes, *Skepticism about Proportional Representation for Congress*, 2024 U. ILL. L. REV. 1529 (2024)

15. Wednesday, March 11 – Ranked-Choice Voting

Nathan Atkinson, Edward Foley & Scott C. Ganz, *Beyond the Spoiler Effect: Can Ranked-Choice Voting Solve the Problem of Political Polarization?*, 2024 U. ILL. L. REV. 1655 (2024)

[N.B. No class March 16 or March 18 due to Spring Break]

16. Monday, March 23 – The Unitary Executive

David M. Driesen, *The Unitary Executive Theory in Comparative Context*, 72 HASTINGS L.J. 1 (2020)

Eric Berger, *President Trump's First Hundred Days and the Unitary Executive Theory*, DORF ON LAW (May 6, 2025), <https://www.dorfonlaw.org/2025/05/president-trumps-first-hundred-days-and.html>

Caleb Nelson, *Must Administrative Officers Serve at the President's Pleasure?*, NYU LAW DEMOCRACY PROJECT (Sept. 29, 2025), <https://democracyproject.org/posts/must-administrative-officers-serve-at-the-presidents-pleasure>

17. Wednesday, March 25 – The Omnipotent Executive

Juan J. Linz, *The Perils of Presidentialism*, 1 J. DEMOCRACY 51 (1990)

David B. Froomkin, *Presidency Exceptionalism*, <https://papers.ssrn.com/abstract=5223409>

18. Monday, March 30 – Congressional Quiescence

Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 HARV. L. REV. 2311 (2006)

19. Wednesday, April 1 – Congressional Coordination

ERIC POSNER & ADRIAN VERMEULE, *THE EXECUTIVE UNBOUND* 18-29 (2010)

SANFORD LEVINSON, *OUR UNDEMOCRATIC CONSTITUTION* 25-77 (2006) (chapter 2)

20. Monday, April 6 – Congressional Capacity

Molly E. Reynolds, *The Decline in Congressional Capacity*, in CONGRESS OVERWHELMED 34-50 (Timothy M. LaPira, Lee Drutman & Kevin R. Kosar eds., 2020)

Alexander Bolton & Sharece Thrower, *Legislative Capacity and Executive Unilateralism*, 60 AMER. J. POL. SCI. 649 (2016)

Optional: Frank R. Baumgartner & Bryan D. Jones, *Why Congressional Capacity Is Not Enough*, <https://fbaum.unc.edu/papers/Baum-Jones-CongressionalCapacity-2018.pdf>

Optional: Richard L. Hall & Alan V. Deardorff, *Lobbying as Legislative Subsidy*, 100 AMER. POL. SCI. REV. 69 (2006)

21. Wednesday, April 8 – Money in Politics

Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705 (1999)

RICK HASEN, CHEAP SPEECH: HOW DISINFORMATION POISONS OUR POLITICS—AND HOW TO CURE IT 1-29 (2022) (chapter 1)

Optional: Stephen Ansolabehere, John M. de Figueiredo & James M. Snyder Jr., *Why Is There So Little Money in U.S. Politics?*, 17 J. ECON. PERSP. 105 (2003)

Optional: Steven Sprick Schuster, *Does Campaign Spending Affect Election Outcomes? New Evidence from Transaction-Level Disbursement Data*, 82 J. POL. 1502 (2020)

22. Monday, April 13 – Money and Politics

Thomas Christiano, *Money in Politics*, in OXFORD HANDBOOK OF POLITICAL PHILOSOPHY 241-58 (David Estlund ed., 2012)

Jeffrey Winters, *Wealth Defense and the Complicity of Liberal Democracy*, in WEALTH 158-225 (Jack Knight & Melissa Schwartzberg eds., 2017)

Optional: Allan H. Meltzer & Scott F. Richard, *A Rational Theory of the Size of Government*, 89 J. POL. ECON. 914 (1981)

Optional: John Ferejohn, *Is Inequality a Threat to Democracy?*, in THE UNSUSTAINABLE AMERICAN STATE 49-76 (Lawrence Jacobs & Desmond King eds., 2009)

23. Wednesday, April 15 – Labor

Paul Frymer, Jacob M. Grumbach & Charlotte Hill, *Right to Work or Right to Vote? Labor Policy and American Democracy*, PERSP. ON POL. (forthcoming, 2025)

Axel Honneth, *Democracy and Fair Labor Conditions*, 184 J. BUS. ETHICS 1 (2023)

24. Monday, April 20 – Election Crime

Madeline C. Alagia, *Election Law Violations*, 59 AM. CRIM. L. REV. 609 (2022)

Brennan Center, *Annotated Guide to the For the People Act of 2021*, <https://www.brennancenter.org/our-work/policy-solutions/annotated-guide-people-act-2021>

25. Wednesday, April 22 – Crime and Democracy

Christopher Lewis & Adaner Usmani, *Abolition of What?*, 114 J. CRIM. L. & CRIMINOLOGY 524 (2024)

Rebecca Goldstein, *The Politics of Decarceration*, 129 YALE L.J. 446 (2019)

Optional: William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505 (2001)

26. Monday, April 27 – Student Presentations

27. Wednesday, April 29 – Student Presentations

Additional Information

Attendance: Attendance is mandatory. If you fail to attend at least 80% of class meetings (i.e. at least 22 of our 27 meetings in spring 2025), you will be in violation of ABA and Law Center policy and may be dropped from the course. Even aside from this requirement, excessive unexplained absences may affect your participation grade. Please inform me in advance of a meeting if you will be unable to attend and why. Additionally, please be in class on time: late arrivals are disruptive to other students, and they may be treated as absences.

Office hours: My regular office hours are Mondays from 3:00-4:30pm in room 430M. You can also email me at dfroomkin@central.uh.edu to set up a different meeting time, including via Zoom if that is more convenient for you.

Computer Policy: Use of laptops or other electronic devices is permitted for class-related purposes only. Violations of this policy will be treated as unpreparedness. Audio or visual recording of class by students is prohibited.

Honor Code: The UHLC Honor Code applies to all aspects of this course. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please inquire if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations related to this course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

AI Policy: Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code not to generate or use any AI-generated text—whether from yourself or others—in relation to any assessment in this course. The term “assessment” means any graded or ungraded work product for this course that is submitted to the instructor, presented in a class session, or used in a graded written assignment for this course. However, you may generate and use AI-generated text for class preparation or for study supplements to aid with general understanding of course content, although you must disclose the full extent of that use if your professor asks. Nevertheless, you should be cautious about relying on the substance of AI-generated text: for legal analysis, in particular, it is very error-prone.

Mental Health and Wellness: The University of Houston has a number of resources to support students' mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all

students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit uh.edu/caps, call 713-743-5454, or visit a Let's Talk location in-person or virtually. Let's Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

Title IX/Sexual Misconduct: Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

Reasonable Academic Adjustments/Auxiliary Aids: The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing jdcenter@Central.UH.EDU.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.

The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

The Center for Student Advocacy and Community (CSAC) is where you can go if you need help but don't know where to start. CSAC is a “home away from home” and serves as a resource hub to help you get the resources needed to support academic and personal success. Through our Cougar Cupboard, all students can get up to 30 lbs of FREE groceries a week. Additionally, we provide 1:1 appointments to get you connected to on- and off-campus resources related to essential needs, safety and advocacy, and more. The Cougar Closet is a registered student organization advised by our office and offers free clothes to students so that all Coogs can feel good in their fit. We also host a series of cultural and community-based events that fosters social

connection and helps the cougar community come closer together. Visit the CSAC homepage or follow us on Instagram: @uh_CSAC and @uhcupbrd. YOU belong here.

Women and Gender Resource Center: The mission of the WGRC is to advance the University of Houston and promote the success of all students, faculty, and staff through educating, empowering, and supporting the UH community. The WGRC suite is open to you. Stop by the office for a study space, to take a break, grab a snack, or check out one of the WGRC programs or resources. Stop by Student Center South room B12 (Basement floor near Starbucks and down the hall from Creation Station) from 9 am to 5 pm Monday through Friday.

Recording of Class: Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use the instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Security Escorts and Cougar Ride: UHPD continually works with the University community to make the campus a safe place to learn, work, and live. The security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety, please call 713-743-3333. Arrangements may be made for special needs. Parking and Transportation Services also offers a late-night, on-demand shuttle service called "Cougar Ride" that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride/>.

Syllabus Changes: Any updates to this syllabus will be announced on Canvas. It is the responsibility of students to ensure that they have an up-to-date version of the syllabus.