

# **American, Canadian and European Perspectives on Human Rights and the Rule of Law**

**EURR 4201A/5201A / PSCI 4801B/5915B**  
**Fall 2026**

Carleton University, Institute of European, Russian and Eurasian Studies  
Class meetings: Thursdays 8:35-11:25 am  
Location: Please check location on Carleton Central

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## **Course Description**

The US, Canada and the EU consider human rights and the rule of law as belonging to their founding values, and emphasize the centrality thereof in their internal and external policies. Yet, despite their common commitment to human rights and the rule of law, and a seemingly large potential for common transatlantic approaches, especially the US and the EU have diverged considerably in their positions on the conceptualization and promotion of human rights and the rule of law. This course explores similarities and differences and the potential for transatlantic cooperation. A first part focuses on human rights. It studies the constitutional commitment of the three entities to fundamental rights, with case studies about their protection in the fight against illegal migration and terrorism, and their promotion abroad, including in multilateral fora. The second part zooms in on the rule of law in the US, Canadian, and EU context. It looks into the nexus between rule of law and democracy in the three entities, and how they promote the rule of law abroad, as well as a guiding principle of international relations. Attention will go to domestic challenges for rule of law, democracy and human rights that the respective systems face.

## **Learning Outcomes**

This course is taught jointly at the 4000 and the 5000 level. It combines legal and social-science approaches and assumes no prior training in law. By the end of the course, all students will be able to:

- explain the constitutional architecture of the United States, Canada and the European Union – their sources of constitutional law, forms of federalism, amending procedures and systems of judicial review – and account for the place each of them gives to human rights and the rule of law among its founding values;
- identify the instruments and institutions through which fundamental rights are protected at the domestic, regional and international level in the three systems (the US Bill of Rights and the federal courts; the Canadian Charter of Rights and Freedoms, section 35 of the

- Constitution Act, 1982, and federal and provincial human rights legislation; the EU Charter of Fundamental Rights, the European Convention on Human Rights and the EU Court of Justice);
- distinguish between competing conceptions of the rule of law – formal and substantive accounts, the continental European traditions of *Rechtsstaat* and *Etat de droit*, Anglo-American and Canadian common-law constitutionalism, and Article 2 TEU – and apply them to concrete legal and political controversies;
  - compare the techniques by which each system limits rights and mediates between rights and majority rule, including proportionality analysis under section 1 of the Canadian Charter and Article 52 of the EU Charter, the tiers of scrutiny in United States constitutional law, and the legislative override in section 33 of the Canadian Charter;
  - assess contemporary debates on democratic backsliding, judicial independence and executive power in the three systems, and evaluate the supranational responses developed within the EU (Article 7 TEU, budgetary conditionality, the case law on Article 19(1) TEU);
  - apply this comparative framework to concrete policy fields – migration and asylum, counter-terrorism, the rights of Indigenous peoples, trade and business and human rights, and the fight against corruption – and explain why the three actors reach different outcomes from shared premises;
  - compare how the three actors promote human rights and the rule of law beyond their borders, through multilateral fora, human rights sanctions regimes, trade instruments and development policy, and evaluate the prospects for, and the limits of, transatlantic cooperation;
  - read and use primary legal materials from a legal system other than their own – constitutional texts, treaties, statutes and judgments – alongside scholarly literature;
  - construct, defend and communicate an original comparative argument, in writing and in seminar discussion, and engage critically and respectfully with the arguments of others.

Students registered at the 5000 level are, in addition, expected to:

- engage independently with primary sources and scholarship beyond the assigned readings, and identify gaps and disagreements in the existing literature;
- take the lead in the discussion of one session, introducing the readings and framing the questions for the seminar.

### **Texts & Course Materials**

All required course materials (see details under course calendar) will be made available via the Ares Library Reserves system. If you find that a required reading is not available for a given week, please notify the instructor immediately. Students are expected to come to class having prepared all of the required readings for a particular week.

### **Cost of Education Materials**

Students are not required to purchase textbooks or other learning materials for this course.

## Course Requirements and Grading Scheme

### *Undergraduate students (registered at the 4000 level)*

| Assignment                                      | Percentage | Due Date                   |
|-------------------------------------------------|------------|----------------------------|
| Attendance                                      | 5%         | Weekly, Weeks 1-13         |
| Class participation                             | 20%        | Continuous, Weeks 1-13     |
| Reaction-to-reading paper                       | 25%        | To be determined           |
| Final essay (max. 3,500 words) – take home exam | 50%        | Wednesday 23 December 2026 |

### *Graduate students (registered at the 5000 level)*

| Assignment                                      | Percentage | Due Date                                           |
|-------------------------------------------------|------------|----------------------------------------------------|
| Attendance                                      | 5 %        | Weekly, Weeks 1-13                                 |
| Class participation                             | 20 %       | Continuous, Weeks 1-13; session assigned in Week 2 |
| Student presentation                            | 15%        | To be scheduled                                    |
| Reaction-to-reading paper                       | 20 %       | To be determined                                   |
| Final essay (max. 3,500 words) – take home exam | 40 %       | Wednesday 23 December 2026                         |

### **Attendance**

An attendance sheet will be circulated at the beginning of each session. You are responsible for ensuring you sign your name. Your grade will be proportional to the number of sessions you attend.

***Participation***

Class participation is an essential part of this course. Your participation will be graded based on its quantity and quality. Contributions to the discussion should be coherent and well-structured. They should take into account the assigned readings and previous contributions, add new aspects to the discussion and demonstrate critical and creative thinking.

***Reaction to readings paper***

In the course of the seminar, students will be asked to make a short paper not exceeding 2000 words with a critical analysis of one designated reading of the session in question. This is due one week after the session in question.

***Student presentation (graduate students only)***

Students registered at the 5000 level are, in addition, expected to take the lead in the discussion of one session, introducing the readings and framing the questions for the seminar.

***Final essay***

During the course you will receive a list of essay questions. You will be asked to choose and write an essay on one of these questions. In your essay you should demonstrate your understanding of the assigned readings and of the classroom discussions. You should also demonstrate your capacity to think independently and to present your thoughts in a clear and well-structured manner. Your answer should not exceed 3500 words.

***Assignment submission and late assignment policy***

All assignments must be submitted via Brightspace.

Penalties for late assignments will be as follows (waived with a valid medical or equivalent explanation):

- Two points (out of a 100 point scale) for each day late (including weekend days)
- No assignment will be accepted after 7-days late, unless the student has arranged for an extension for valid medical or equivalent reason with the instructor.
- Students who miss a scheduled oral presentation without providing a valid medical or equivalent excuse will receive a zero for the assignment.

Students with extenuating circumstances should also consult the university academic consideration policy.

***Course Calendar and Reading Assignments***

Please note that the instructor may make changes to the readings on the syllabus over the course of the semester.

Each session is organized around one central topic. The required readings are to be prepared before the session; the further readings are starting points for the final essay and are particularly recommended to students registered at the 5000 level. Statutes, treaties and judgments are cited so that they can be retrieved directly through CanLII, EUR-Lex, HUDOC or the Supreme Court websites. There is no class on Thursday 29 October (fall break).

**Week 1, Date: Thursday 10 September, 8:35-11:25 am (online)****Topic: Introduction: Three Constitutional Orders, One Set of Founding Values? Concepts, Comparison and Course Overview**

Presentation of the course and of the expectations for seminar participation. What do we mean by 'human rights', 'the rule of law' and 'democracy', and what is gained – and what is lost – by comparing a presidential federation, a Westminster-style parliamentary federation and a supranational union of States?

**Required readings:**

- Jeremy Waldron, 'The Rule of Law', *Stanford Encyclopedia of Philosophy* (current revision), sections 1-5.
- World Justice Project, *Rule of Law Index* (most recent edition <https://worldjusticeproject.org/rule-of-law-index/downloads/Index-Methodology-2025.pdf>): read the methodology section and compare the scores of Canada, the United States and a selection of EU Member States.
- Michael Ignatieff, 'Introduction: American Exceptionalism and Human Rights', in Michael Ignatieff (ed.), *American Exceptionalism and Human Rights* (Princeton University Press, 2005) 1-26.
- Peter H. Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?* (3rd ed., University of Toronto Press, 2004), ch. 1.

**Week 2, Date: Thursday 17 September, 8:35-11:25 am****Topic: The EU Constitutional Framework: Values, Competences, Institutions and the Court of Justice**

The EU as a constitutional order of its own kind: the Treaties as its 'constitutional charter', conferral and the division of competences, the institutional triangle, primacy and direct effect, and the place of Article 2 TEU values. How does a Union of States that is not itself a State come to have a bill of rights, and what does the Charter of Fundamental Rights actually bind?

**Required readings:**

- Klaus-Dieter Borchardt, *The ABC of EU Law* (Publications Office of the European Union, most recent edition), <https://op.europa.eu/en/publication-detail/-/publication/5d4f8cde-de25-11e7-a506-01aa75ed71a1>
- Treaty on European Union, arts. 2, 4, 6, 7, 13 and 19, [https://eur-lex.europa.eu/eli/treaty/tfeu\\_2012/oj/eng](https://eur-lex.europa.eu/eli/treaty/tfeu_2012/oj/eng); Treaty on the Functioning of the EU, arts. 258, 263 and 267; Charter of Fundamental Rights of the EU, arts. 51-53. [https://eur-lex.europa.eu/eli/treaty/tfeu\\_2016/oj/eng](https://eur-lex.europa.eu/eli/treaty/tfeu_2016/oj/eng)
- Jan Wouters and Michal Ovadek, *The European Union and Human Rights: Analysis, Cases, and Materials* (Oxford University Press, 2021), ch. 1, 'The Emergence of the EU's Commitment to Human Rights', 1-26, and ch. 2, 'Fundamental Rights in the EU Institutional Landscape', 27-69.

- European Court of Justice cases, the passages on the autonomy of EU law: Case 26/62 *Van Gend en Loos*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61962CJ0026> ; Case 6/64 *Costa v ENEL*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61964CJ0006> ; Case 11/70 *Internationale Handelsgesellschaft*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61970CJ0011> ; Opinion 2/13 on the accession of the EU to the ECHR (18 December 2014), <https://infocuria.curia.europa.eu/tabs/document?source=document&docid=160882&doclang=EN>

#### Further reading:

- Koen Lenaerts, 'New Horizons for the Rule of Law Within the EU' (2020) 21 *German Law Journal* 29-34.
- Jan Wouters, 'The EU's Engagement with its Member States on Human Rights', in Jan Wouters, Manfred Nowak, Anna-Luise Chané and Nicolas Hachez (eds.), *The European Union and Human Rights: Law and Policy* (Oxford University Press, 2020) 137.

#### Week 3, Date: Thursday 24 September, 8:35-11:25 am

#### **Topic: The US Constitutional Framework: Federalism, Separation of Powers and Judicial Review**

The oldest written constitution still in force: enumerated powers and the federal balance, the separation of powers and the presidency, the Bill of Rights and the Reconstruction Amendments, and the extraordinary position of the Supreme Court. Why is amendment so rare, and what follows from that for the way rights change in the United States?

#### Required readings:

- William Burnham, *Introduction to the Law and Legal System of the United States* (6th ed., West Academic Publishing), ch. I, 'History and Governmental Structure', 1-39, and the chapter on constitutional law, 371-457.
- Arthur T. von Mehren and Peter L. Murray, *Law in the United States* (2nd ed., Cambridge University Press, 2007), ch. 4, 'American federalism', 103-133, and ch. 5, 'American constitutional law and the role of the United States Supreme Court', 134-161.
- *Marbury v Madison*, 5 U.S. (1 Cranch) 137 (1803); *McCulloch v Maryland*, 17 U.S. 316 (1819); *Youngstown Sheet & Tube Co. v Sawyer*, 343 U.S. 579 (1952), the concurring opinion of Jackson J.
- *Trump v United States*, 603 U.S. 593 (2024), majority opinion and dissent (presidential immunity and the reach of executive power).

#### Further reading:

- Peter M. Shane, *Democracy's Chief Executive: Interpreting the Constitution and Defining the Future of the Presidency* (University of California Press, 2022), Introduction.
- Steven G. Calabresi and Christopher S. Yoo, *The Unitary Executive: Presidential Power from Washington to Bush* (Yale University Press, 2008), Introduction – to be read against Shane for the opposing position.

**Week 4, Date: Thursday 1 October, 8:35-11:25 am****Topic: The Canadian Constitutional Framework: Patriation, the Charter, Federalism and Section 35**

Canada's constitution as a composite of written texts, unwritten principles and constitutional conventions: the Constitution Act, 1867, patriation and the Constitution Act, 1982, the structure of the Charter (application, reasonable limits, remedies, override), the recognition of Aboriginal and treaty rights in section 35, and the distinctive Canadian device of 'dialogue' between courts and legislatures. What makes the Canadian model attractive to constitutional designers elsewhere – and what are its critics' objections?

**Required readings:**

- *Constitution Act, 1867*, ss. 91-92 and 96-101; *Constitution Act, 1982*, ss. 1, 24, 32, 33, 35, 38-49 and 52.
- Peter W. Hogg and Wade K. Wright, *Constitutional Law of Canada* (5th ed. supplemented, Thomson Reuters), the chapters on constitutional amendment and on the application and the limitation of Charter rights.
- *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, the passages on the four fundamental unwritten principles.
- *R v Oakes*, [1986] 1 S.C.R. 103 (the proportionality test under section 1).
- Peter W. Hogg and Allison A. Bushell, 'The Charter Dialogue Between Courts and Legislatures (Or Perhaps The Charter of Rights Isn't Such a Bad Thing After All)' (1997) 35 *Osgoode Hall Law Journal* 75-124.

**Further reading:**

- Peter H. Russell, *Constitutional Odyssey* (3rd ed., University of Toronto Press, 2004), the chapters on patriation and its aftermath.
- Kent Roach, *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue Revisited* (2nd ed., Irwin Law, 2016), Introduction.
- Sujit Choudhry, 'Does the World Need More Canada? The Politics of the Canadian Model in Constitutional Politics and Political Theory' (2007) 5 *International Journal of Constitutional Law* 606-638.

**Week 5, Date: Thursday 8 October, 8:35-11:25 am (online)****Topic: Human Rights Protection Systems Compared: Domestic, Regional and International**

How each of the three systems receives, resists or domesticates international human rights law, and what that means in practice for an individual seeking a remedy. Ratification with reservations and non-self-execution in the United States; the Canadian practice of implementation, the interpretive use of treaties, and Canada's position in the Inter-American system; the EU's layered arrangement of Charter, ECHR and national constitutions.

**Required readings:**

- Wouters and Ovadek, *The European Union and Human Rights*, ch. 3, 'Concepts and Language of Human Rights in the EU', 70-93, and ch. 5, 'International Law, the ECHR, and the EU', 212-228.
- Andrew Moravcsik, 'The Paradox of US Human Rights Policy', in Michael Ignatieff (ed.), *American Exceptionalism and Human Rights* (Princeton University Press, 2005) 147-197.
- Curtis A. Bradley, 'The United States and Human Rights Treaties: Race Relations, the Cold War, and Constitutionalism' (2010) 9 *Chinese Journal of International Law* 321-344.
- *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, on the interpretive use of unimplemented treaties; *Quebec (Attorney General) v 9147-0732 Québec inc.*, 2020 SCC 32, on the use of international and comparative sources in Charter interpretation.
- *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, ss. 2-5 and 40-53, together with the *Ontario Human Rights Code*, R.S.O. 1990, c. H.19, ss. 1-9, as an illustration of the provincial regimes.
- Gib van Ert, *Using International Law in Canadian Courts* (2nd ed., Irwin Law, 2008), ch. 1.

**Further reading:**

- Inter-American Commission on Human Rights, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, Doc. 30/14 (2014), executive summary – Canada before a regional body whose court it does not accept.
- United Nations, most recent Universal Periodic Review of Canada and of the United States: national report and summary of stakeholder submissions.

**Week 6, Date: Thursday 15 October, 8:35-11:25 am****Topic: The Rule of Law as a Constitutional Principle: *Rechtsstaat*, *Etat de droit*, Common Law Constitutionalism and Article 2 TEU**

The central conceptual session of the course. Formal (thin) and substantive (thick) accounts of the rule of law; the German *Rechtsstaat* and the French *État de droit* as against the Anglo-American tradition; the rule of law as an unwritten but justiciable constitutional principle in Canada, and the limits the Supreme Court of Canada has placed on it; the emergence of the rule of law as an operative legal norm in EU law.

**Required readings:**

- Jens Meierhenrich, 'Rechtsstaat versus the Rule of Law', in Jens Meierhenrich and Martin Loughlin (eds.), *The Cambridge Companion to the Rule of Law* (Cambridge University Press, 2021) 39-68.
- Laurent Pech, 'The Rule of Law as a Well-Established and Well-Defined Principle of EU Law' (2022) 14 *Hague Journal on the Rule of Law* 107-138.
- Mortimer N. S. Sellers, 'The Rule of Law in the United States of America' (2022) 70 *American Journal of Comparative Law* (Supplement 1) i26-i38.
- *Roncarelli v Duplessis*, [1959] S.C.R. 121, the reasons of Rand J.; *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721.

- *British Columbia v Imperial Tobacco Canada Ltd*, 2005 SCC 49, on the narrow reading of the rule of law principle; *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34, majority reasons and the dissent of Abella J. on unwritten constitutional principles.

#### Further reading:

- Mark D. Walters, 'Written Constitutions and Unwritten Constitutionalism', in Grant Huscroft (ed.), *Expounding the Constitution: Essays in Constitutional Theory* (Cambridge University Press, 2008) 245-276.
- Jeremy Waldron, 'The Rule of Law and the Importance of Procedure', in James E. Fleming (ed.), *Getting to the Rule of Law*, Nomos L (New York University Press, 2011) 3-31.
- World Justice Project, 'What is the Rule of Law?', <https://worldjusticeproject.org/about-us/overview/what-rule-law>

#### **Week 7, Date: Thursday 22 October, 8:35-11:25 am**

#### **Topic: Rule of Law Backsliding, Judicial Independence and Executive Power**

How constitutional democracies erode from within, and what defences each system has. Incremental backsliding and its diagnosis; the EU's toolbox and its record (Article 7 TEU, infringement actions based on Article 19(1) TEU, budgetary conditionality, the Rule of Law Report cycle, and the Hungarian and Polish experience, including the reform efforts under way since 2026); judicial independence as a constitutional requirement in Canada; the contemporary American debate on executive power and the courts.

#### **Required readings:**

- Aziz Z. Huq and Tom Ginsburg, 'How to Lose a Constitutional Democracy' (2018) 65 *UCLA Law Review* 78-169.
- R. Daniel Kelemen, 'The European Union's Authoritarian Equilibrium' (2020) 27 *Journal of European Public Policy* 481-499.
- European Commission, *2026 Rule of Law Report*, Communication COM(2026) 900 final (17 July 2026), together with one country chapter of your choice (the Hungarian chapter is recommended).
- European Court of Justice: Case C-64/16 *Associação Sindical dos Juizes Portugueses*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62016CJ0064> ; Case C-619/18 *Commission v Poland (Independence of the Supreme Court)*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62018CJ0619> ; Case C-156/21 *Hungary v Parliament and Council*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62021CJ0156> ; Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, <https://eur-lex.europa.eu/eli/reg/2020/2092/oj/eng>
- *Valente v The Queen*, [1985] 2 S.C.R. 673; *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3; *Reference re Supreme Court Act, ss. 5 and 6*, 2014 SCC 21.
- Robert R. Kaufman and Stephan Haggard, 'Democratic Decline in the United States: What Can We Learn from Middle-Income Backsliding?' (2019) 17 *Perspectives on Politics* 417-432.

**Further reading:**

- Kolja Raube and Francesca Costa Reis, 'The EU's Crisis Response regarding the Democratic and Rule of Law Crisis', in Marianne Riddervold, Jarle Trondal and Akasemi Newsome (eds.), *The Palgrave Handbook of EU Crises* (Palgrave Macmillan, 2020) 627-648.
- Ted Piccone, 'Rule of law continues five-year decline, but bright spots emerge' (Brookings Institution, 2022).
- For the current American debate, compare a critical assessment (for example the Brennan Center's commentary on the 2025-2026 Supreme Court terms) with a defence of expansive executive authority; come to class prepared to argue either side.

**Week 8, Date: Thursday 5 November, 8:35-11:25 am****Topic: Populism, Illiberalism and the Majoritarian Override: Section 33, Court-Curbing and Constitutional Resilience**

What happens when a democratically elected majority sets itself against rights review. The concepts of populism and illiberalism; the Canadian notwithstanding clause and its recent revival by provincial legislatures, now before the Supreme Court of Canada; court-curbing proposals in the United States; the European 'authoritarian equilibrium' and party politics at the EU level.

**Required readings:**

- Paul Blokker, 'Populism and Illiberalism', in András Sajó, Renata Uitz and Stephen Holmes (eds.), *Routledge Handbook of Illiberalism* (Routledge, 2021).
- Stephan Haggard and Robert R. Kaufman, *Backsliding: Democratic Regress in the Contemporary World* (Cambridge Elements, Cambridge University Press, 2021), chs. 2 and 4.
- *Ford v Quebec (Attorney General)*, [1988] 2 S.C.R. 712, on the requirements for invoking section 33.
- *Hak c Procureure générale du Québec*, 2021 QCCS 1466 (extracts) and *Organisation mondiale sikhe du Canada c Procureur général du Québec*, 2024 QCCA 254 (extracts), on Quebec's Bill 21; *English Montreal School Board v Attorney General of Quebec*, S.C.C. File No. 41231, heard 23-26 March 2026 – students should check before class whether judgment has been rendered and, if so, read the headnote.
- *UR Pride Centre for Sexuality and Gender Diversity v Government of Saskatchewan*, 2024 SKKB 23.
- Grégoire Webber, Eric Mendelsohn and Robert Leckey, 'The faulty received wisdom around the notwithstanding clause' (*Policy Options*, 10 May 2019).
- Yascha Mounk, 'After Trump, Is American Democracy Doomed by Populism?' (Council on Foreign Relations, In Brief).

**Further reading:**

- Dwight Newman, 'Canada's Notwithstanding Clause, Dialogue, and Constitutional Identities', in Geoffrey Sigalet, Grégoire Webber and Rosalind Dixon (eds.), *Constitutional Dialogue: Rights, Democracy, Institutions* (Cambridge University Press, 2019).
- Arthur Borriello and Nathalie Brack, "'I want my sovereignty back!' A comparative analysis of the populist discourses of Podemos, the 5 Star Movement, the FN and UKIP during the economic and migration crises' (2019) 41 *Journal of European Integration* 833-853.

**Week 9, Date: Thursday 12 November, 8:35-11:25 am****Topic: Case Study I: Migration, Asylum and the Externalisation of Border Control**

The first of four comparative case studies. Non-refoulement and its erosion; safe third country and safe country of origin devices; detention and expedited removal; the shifting of control to countries of transit. The Canada-United States Safe Third Country Agreement offers a rare instance in which one of our three systems has had to pronounce judicially on the human rights record of another.

**Required readings:**

- Wouters and Ovadek, *The European Union and Human Rights*, ch. 8, 'Human Rights in EU Migration Laws and Policies', 463 ff.
- *Hirsi Jamaa and Others v Italy* (ECtHR, Grand Chamber, 23 February 2012), [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-109231%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-109231%22]}) ; *M.S.S. v Belgium and Greece* (ECtHR, Grand Chamber, 21 January 2011), [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-103050%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-103050%22]}) ; Case C-411/10 *N.S. and Others*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62010CJ0411>
- Agreement between Canada and the United States for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries (Safe Third Country Agreement, 2002) and its Additional Protocol (in force 25 March 2023).
- *Singh v Minister of Employment and Immigration*, [1985] 1 S.C.R. 177; *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17.
- Audrey Macklin, 'Disappearing Refugees: Reflections on the Canada-US Safe Third Country Agreement' (2005) 36 *Columbia Human Rights Law Review* 365-426.
- *Department of Homeland Security v Thuraissigiam*, 140 S. Ct. 1959 (2020).

**Further reading:**

- Maybritt Jill Alpes, Sevda Tunaboyle and Ilse van Liempt, *Human Rights Violations by Design: EU-Turkey Statement Prioritises Returns from Greece over Access to Asylum* (European University Institute, 2017).
- Violeta Moreno-Lax, *EU External Migration Policy and the Protection of Human Rights: In-Depth Analysis* (European Parliament, 2020).
- Efrat Arbel and Alletta Brenner, *Bordering on Failure: Canada-US Border Policy and the Politics of Refugee Exclusion* (Harvard Immigration and Refugee Law Clinical Program, 2013).
- European Pact on Migration and Asylum (2024): overview of Regulations (EU) 2024/1348 and (EU) 2024/1351.

**Week 10, Date: Thursday 19 November, 8:35-11:25 am****Topic: Case Study II: Counter-Terrorism, National Security and the Rule of Law**

Secret evidence, listing and de-listing, deportation to torture, mass surveillance and transatlantic data transfers. Each system has produced a leading judgment testing whether security measures ordered elsewhere – in the Security Council, in Washington or in Brussels – can be reviewed at home; the EU-Canada Passenger Name Record Opinion makes the comparison unusually direct.

**Required readings:**

- Gilles de Kerchove and Christiane Höhn, 'Counter-Terrorism and International Law Since 9/11, Including in the EU-US Context' (2015) 16 *Yearbook of International Humanitarian Law* 267-295.
- Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press, 2011), Introduction and the chapter on Canada.
- *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1; *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9.
- Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar, *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (2006), executive summary and recommendations.
- Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat v Council and Commission*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62005CJ0402> ; Opinion 1/15 on the draft EU-Canada Passenger Name Record Agreement (26 July 2017), [https://infocuria.curia.europa.eu/tabs/affair?sort=AFF\\_NUM-DESC&searchTerm=1%252F15&typeproc=AVIS](https://infocuria.curia.europa.eu/tabs/affair?sort=AFF_NUM-DESC&searchTerm=1%252F15&typeproc=AVIS)
- *Boumediene v Bush*, 553 U.S. 723 (2008).

**Further reading:**

- Craig Forcece and Kent Roach, *False Security: The Radicalization of Canadian Anti-Terrorism* (Irwin Law, 2015), selected chapters.
- *National Security Act, 2017*, S.C. 2019, c. 13, establishing the National Security and Intelligence Review Agency and the Intelligence Commissioner.
- Thomas Michael McDonnell, *Preface to the Paperback Edition of United States, International Law, and the Struggle against Terrorism* (Pace University, 2011).
- Case C-311/18 *Data Protection Commissioner v Facebook Ireland and Schrems* ('Schrems II'), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62018CJ0311>

**Week 11, Date: Thursday 26 November, 8:35-11:25 am****Topic: Case Study III: Indigenous Peoples, Equality and the Constitutional Order**

The case study in which Canada, rather than the EU or the United States, sets the terms of the comparison. Aboriginal and treaty rights under section 35, the duty to consult and accommodate, and Aboriginal title; the legislative implementation of the UN Declaration; reconciliation as a constitutional project. Set against tribal sovereignty in United States federal Indian law and the

far thinner European framework, where Indigenous rights arise mainly through the Sámi and through EU external policy.

**Required readings:**

- United Nations Declaration on the Rights of Indigenous Peoples (2007), arts. 3-5, 18-19, 26-28 and 32.
- *Constitution Act, 1982*, s. 35; *R v Sparrow*, [1990] 1 S.C.R. 1075; *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73; *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.
- *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14, and the UN Declaration Act Action Plan (2023): read the Act in full and a selection of Action Plan measures.
- Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report* (2015), and the *Calls to Action*.
- *Worcester v Georgia*, 31 U.S. 515 (1832) (extracts); *McGirt v Oklahoma*, 140 S. Ct. 2452 (2020).
- UN Human Rights Committee, *Sanila-Aikio v Finland*, Communication No. 2668/2015, CCPR/C/124/D/2668/2015 (2019), on Sámi participation rights.

**Further reading:**

- Patrick Macklem, *Indigenous Difference and the Constitution of Canada* (University of Toronto Press, 2001), Introduction.
- John Borrows, *Freedom and Indigenous Constitutionalism* (University of Toronto Press, 2016), Introduction.
- National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: Final Report* (2019), executive summary.
- Council of the European Union, Conclusions on Indigenous Peoples (15 May 2017).

**Week 12, Date: Thursday 3 December, 8:35-11:25 am**

**Topic: Case Study IV: Trade, Business and Human Rights, and the Fight against Corruption**

How the three actors project rights standards through markets: labour and sustainability chapters in trade agreements, mandatory human rights due diligence, import bans on goods made with forced labour, corporate liability before domestic courts, and the criminalisation of foreign bribery. A field in which the EU has recently legislated ambitiously and then retrenched, the United States has relied on trade enforcement and import prohibitions, and Canada has moved from transparency reporting towards a stronger import regime.

**Required readings:**

- Wouters and Ovadek, *The European Union and Human Rights*, ch. 10, 'Human Rights in EU Trade Policy', 646-681.
- Bart Kerremans and Myriam Martins Gistelink, 'Interest Aggregation, Political Parties, Labour Standards and Trade: Differences in the US and EU Approaches to the Inclusion of Labour Standards in International Trade Agreements' (2009) 14 *European Foreign Affairs Review* 683-701.
- UN Guiding Principles on Business and Human Rights (2011), the three pillars.

- Directive (EU) 2024/1760 on corporate sustainability due diligence, as amended by Directive (EU) 2026/470 ('Omnibus I'); Regulation (EU) 2024/3015 on prohibiting products made with forced labour on the Union market.
- *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, S.C. 2023, c. 9; Bill C-35 (tabled 12 June 2026), strengthening Canada's forced labour import ban; *Corruption of Foreign Public Officials Act*, S.C. 1998, c. 34.
- *Nevsun Resources Ltd v Araya*, 2020 SCC 5, on customary international law claims against a Canadian corporation.
- *Uyghur Forced Labor Prevention Act*, Pub. L. 117-78 (2021); *Nestlé USA, Inc. v Doe*, 141 S. Ct. 1931 (2021), on the Alien Tort Statute.
- CETA, chs. 22-24, and Opinion 1/17 on the CETA Investment Court System (30 April 2019).

#### **Further reading:**

- Canadian Ombudsperson for Responsible Enterprise (CORE), most recent annual report.
- CUSMA/USMCA, ch. 23 (Labour) and the Facility-Specific Rapid Response Labour Mechanism.
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) and the most recent OECD Working Group evaluation of Canada.

#### **Week 13, Date: Thursday 10 December, 8:35-11:25 am**

#### **Topic: Promoting Human Rights and the Rule of Law Abroad: Multilateral Fora, Sanctions and Transatlantic Cooperation – Conclusions and Q&A**

The external dimension and the conclusion of the course. Engagement with and withdrawal from the UN Human Rights Council; the three parallel human rights sanctions regimes and their coordination; support for human rights defenders; the rule of law as a principle of international relations. The session closes with a general discussion of what the comparison has shown, and of the prospects for EU-Canada and transatlantic cooperation in a period in which their alignment can no longer be assumed. Please come with one comparative proposition you are prepared to defend.

#### **Required readings:**

- Jan Wouters and Katrien Meuwissen, 'The European Union at the UN Human Rights Council: Multilateral Human Rights Protection Coming of Age?', *European Journal of Human Rights – Journal européen des droits de l'homme*, 2-2014, 135-172.
- Sarah Joseph and Eleanor Jenkin, 'The United Nations Human Rights Council: Is the United States Right to Leave This Club?' (2019) 35 *American University International Law Review* 75-131.
- Council Regulation (EU) 2020/1998 and Council Decision (CFSP) 2020/1999 establishing the EU Global Human Rights Sanctions Regime; *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*, S.C. 2017, c. 21, and the *Special Economic Measures Act*, R.S.C. 1985, c. S-14.5; Global Magnitsky Human Rights Accountability Act (United States, 2016).
- Global Affairs Canada, *Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders*.

- EU-Canada Strategic Partnership Agreement (signed 2016, provisionally applied since 2017), arts. 2-3; EU-Canada Summit Joint Statement, 'Enduring Partnership, Ambitious Agenda' (23 June 2025); EU-Canada Security and Defence Partnership (23 June 2025).

**Further reading:**

- Council of the European Union, EU Action Plan on Human Rights and Democracy (current edition).
- Government of Canada, *Feminist International Assistance Policy* (2017), and the most recent departmental results report of Global Affairs Canada on human rights.

## Appendices

### Plagiarism and Academic Integrity

The University Academic Integrity Policy defines plagiarism as “presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.” This includes reproducing or paraphrasing portions of someone else’s published or unpublished material, regardless of the source, and presenting these as one’s own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another’s data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one’s own; and
- failing to acknowledge sources through the use of proper citations when using another’s work and/or failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course’s instructor.

The Associate Dean of the Faculty follows a rigorous [process for academic integrity allegations](#), including reviewing documents and interviewing the student, when an instructor suspects a violation has been committed. Penalties for violations may include a final grade of “F” for the course.

### Intellectual Property:

Student or professor materials created for this course (including presentations and posted notes, labs, case studies, assignments and exams) remain the intellectual property of the author(s). They are intended for personal use and may not be reproduced or redistributed without prior written consent of the author(s). Students also may not engage in audio/visual recording in the classroom without the permission of the instructor (i.e. for a PMC accommodation) and dissemination of any such recordings that are made in violation of this policy is also strictly prohibited.

### Approval of final grades:

Standing in a course is determined by the course instructor subject to the approval of the Faculty Dean. This means that grades submitted by an instructor may be subject to revision. No grades are final until they have been approved by the Dean.

**Carleton E-mail Accounts:**

All email communication to students from BGIInS will be via official Carleton university e-mail accounts and/or Brightspace. As important course and University information is distributed this way, it is the student's responsibility to monitor their Carleton and Brightspace accounts.

**Statement on Student Mental Health:**

As a University student you may experience a range of mental health challenges that significantly impact your academic success and overall well-being. If you need help, please speak to someone. There are numerous resources available both on- and off-campus to support you. For more information, please see: <https://carleton.ca/wellness/>

**Academic Accommodations**

Carleton is committed to providing academic accessibility for all individuals. You may need special arrangements to meet your academic obligations during the term. The accommodation request processes, including information about the *Academic Consideration Policy for Students in Medical and Other Extenuating Circumstances*, are outlined on the Academic Accommodations website ([students.carleton.ca/course-outline](https://students.carleton.ca/course-outline)).