

Course Outline

COURSE:	LAWS 2501 – Law, State and Constitution
TERM:	Fall 2020
PREREQUISITES:	Either LAWS 1000 [1.0] or PSCI 1000 [1.0], or the combination of PSCI 1001 and PSCI 1002, or second-year status or higher in the Bachelor of Public Affairs and Policy Management Program.
CLASS:	Day: VOD lectures from Fall 2019 on CuLLearn, Time: complemented where appropriate by new video / audio / textual material Zoom sessions will be available on Mondays between 4:00 – 5:30 PM
	Room: Delivered online
INSTRUCTOR:	Dr. Zoran Oklopčić
CONTACT:	Office: Not on campus this semester Office upon appointment Hrs: Email: zoran.oklopčić@carleton.ca

CALENDAR COURSE DESCRIPTION

Law relating to the state, society and the constitution, with a focus on the historical framework, federalism, and constitutional reform in Canada.

COURSE DESCRIPTION

Almost all modern democratic states are liberal democracies that subscribe to the principles of limited government, popular sovereignty, separation of powers, constitutionalism, and the rule of law. What those ideals mean, however, is far from clear – both in theory as well as in practice. The aim of this course is to expose students to the historical origins of these ideas, to the variety of their contemporary understandings, to their implications in the contexts of constitution-making, institutional design, and legal interpretation – as well as to contentious issues they raise in the age of globalization, migration, populist, authoritarian and ethnonational challenges to contemporary constitutional democracy. Depending on the level of your own engagement, this course will provide you with a panoramic, but in-depth grasp of the central theoretical *concepts* of modern constitutional theory, including diverse institutional *options* in constitution-making and constitutional design. Among others, the course will address some of the most important and foundational questions in modern constitutional thought: What is an adequate way to think about the constitution of a legitimate state? How

should we organize political power in a new polity? Should we embrace the idea of the separation of powers, and, if so, which one of its variants? What are the merits and demerits of federalism? Can public (constitutional) law guide the most radical of political changes – secession? Course participation is strongly encouraged, and student questions are always welcome. Still, the success of this course depends on student engagement and interaction. In order to reap maximum benefits from the course material and class discussions, students are advised to keep up with the readings, and come prepared to each class.

REQUIRED TEXTS

Required texts will be available online, on CuLearn.

EVALUATION

Students will be required to write three shorter essays, each worth 20% as well as the final essay, worth 40% of the final grade.

	Topic	Word count	Due Date
Short essay 1	Social contract and its historical relevance	600-750 words	October 19
Short essay 2	Parliamentary and presidential regimes: advantages and disadvantages	600-750 words	November 9
Short essay 3	Secession as the object of constitutional regulation: what, when, how, where, and why?	600-750 words	December 7
Final essay	TO BE ANNOUNCED BEFORE THE LAST “CLASS”	1200-1500 words	The end of the exam period

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

Unless there is an overriding concern which justifies an extension in individual cases (family emergency, illness, irreconcilable scheduling conflict at work) the failure to submit the written work (reflection pieces and final essay) the penalty for late submissions will consist in deducting 10 percentage points for each day after the agreed deadline (which will be discussed in the class).

The granting of extensions is determined by the instructor who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 7 days, please complete the form at the following link and submit it to the instructor prior to the assignment due date. https://carleton.ca/registrar/wp-content/uploads/COVID-19_Self-declaration.pdf Extensions for longer than 7 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 7 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

COURSE SCHEDULE*

1. Introduction

- The place of LAWS2501 in the grand scheme of things
- Overview of the main themes
- Course participation, mutual expectations
- Grading structure and assignment deadlines
- Planning ahead, useful advice, and things to think about

2. Political authority, social contract, and (popular) sovereignty

- David Graeber, 'Are you an anarchist? The answer may surprise you!' [full text]
- Thomas Hobbes, *Leviathan* [excerpts]
- Jean-Jacques Rousseau, *The Social Contract* [excerpts]
- Michel Foucault, *Society Must be Defended: Lectures at the College de France 1975-76* (Picador 1997) [excerpts]

3. Tyranny, resistance, revolution, and constituent power

- John Locke, *The Second Treatise of Civil Government* [excerpts]
- Emmanuel Joseph Sieyès, *What is the Third Estate?* [excerpts]
- Carl Schmitt, *Constitutional Theory* (Jeffrey Seitzer tr, Duke University Press 2007) [excerpts]

4. Limited government, social conflict and representative democracy

- Federalist Nos 9 and 10 [excerpts]
- András Sajó, *Limiting Government: An Introduction to Constitutionalism* (CEU Press 1995) [excerpts]
- Bernard Yack, 'Popular Sovereignty and Nationalism' (2001) *Political Theory* 519 [excerpts]

5. Federal states, divided loyalties, and consociational democracies

- Federalist No. 39 [excerpts]
- Johannes Althusius, 'Politics as the art of associating' in Dimitrios Karmis and Wayne Norman (eds) *Theories of Federalism: A Reader* (Palgrave 2005) [excerpts]

* The readings may change.

- Will Kymlicka, 'Federalism, Nationalism, and Multiculturalism' in Karmis and Norman [excerpts]
- Alfred Stepan, 'Federalism and Democracy: Beyond the U.S. Model' in Karmis and Norman [excerpts]
- John McGarry and Brendan O'Leary, 'Iraq's Constitution of 2005: Liberal consociation as political prescription' (2007) 5:4 ICON 670 [excerpts]

6. Separation of powers and the regimes of government.

- Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (Macmillan 1997) [excerpts]
- Federalist Nos. 47, 48, and 51 [excerpts]
- Walter Bagehot, 'English Constitution' [excerpts]
- Vincent Kazmierski, 'Draconian but Not Despotic: The Unwritten Limits of Parliamentary Sovereignty in Canada' *Ottawa L. Rev.* 41 (2009): 245 [excerpts]
- Charles De Gaulle, 'Bayeux Speech' (1946) [excerpts]

7. Legal hierarchy, constitutional supremacy, and the judiciary in a democratic society.

- Hans Kelsen, *Introduction to the Problems of Legal Theory* (Clarendon 1992) [excerpts]
- *Marbury v. Madison* [excerpts]
- Alec Stone-Sweet, 'Why Europe rejected American judicial review and why it may not matter' 101 *Michigan Law Review* 2744 [excerpts]

8. Fundamental rights, social interests and democratic decision-making

- Raymond Geuss, 'Human rights' in *History and Illusion in Politics* [excerpts]
- Bruce Ackerman and James Fishkin, 'Deliberation Day' 10:2 *Journal of Political Philosophy* (2002) 129 [excerpts]
- Jeremy Waldron, 'Accountability: Fundamental to Democracy' NYU Public Law & Legal Theory Research Paper Series (2014) 13

9. Western constitutionalism: challenges and challengers

- Karl Llewellyn, 'Constitution as an Institution' (1934) 34 *Columbia LR* 1 [excerpts]
- Carol Pateman, *The Sexual Contract* (Polity Press 1988) [excerpts]
- Karl Loewenstein, 'Constitutions and Constitutional Law in the West and in the East' (1969) 30(3) *Indian Journal of Political Science* 203 [excerpts]

10. Canadian constitution: at 'home' and 'abroad'

- John Borrows, 'Indigenous Constitutionalism Pre-existing Legal Genealogies in Canada' in Peter Oliver, Patrick Macklem, and Nathalie Des Rosiers, eds. *The Oxford Handbook of the Canadian Constitution* (Oxford University Press 2017 [excerpts])
- Sujit Choudhry, 'The Canadian Constitution and the World' in Peter Oliver, Patrick Macklem, and Nathalie Des Rosiers, eds. *The Oxford Handbook of the Canadian Constitution* (Oxford University Press 2017 [excerpts])

11. Constitutionalizing secession: Canadian experience – and beyond

- *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 [please read paras 32 to 108]
- Jean Leclair, 'Constitutional Principles in the Secession Reference' in Peter Oliver, Patrick Macklem, and Nathalie Des Rosiers, eds. *The Oxford Handbook of the Canadian Constitution* (Oxford University Press 2017 [excerpts]).

12. Wrap-up

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

Pregnancy obligation

Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

Religious obligation

Write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

Academic Accommodations for Students with Disabilities

If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) <https://carleton.ca/pmc>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism 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, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence. More information on the University's Academic Integrity Policy can be found at: <https://carleton.ca/registrar/academic-integrity/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/studentsupport/svpolicy/>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: <https://students.carleton.ca/services/accommodation/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations: <https://carleton.ca/law/current-students/>