

PSCI 3007A
Constitutional Politics In Canada
Thursdays 2:35-5:25pm
Online via Zoom

Location: zoom (link available on Brightspace)

Instructor: Dr. Lev Marder (please in emails/in person just address as Lev)

Email: levmarder@cunet.carleton.ca

Office Hours: Thursdays 1:30-2:30 through zoom

Course Description: A decade ago, the notorious American Supreme Court Justice Ruth Bader Ginsburg (Notorious RBG) suggested she would look to Canada if she was drafting a constitution. How did Canada's constitution become the beacon of aspiration in the face of growing pains and challenges that sometimes appear(ed) insurmountable? Perhaps the best answer was articulated by the Right Honourable Beverly McLachlin: "[C]anada's first and defining moment, Confederation, grounded the nation in three values that were to prove lasting – democracy, federalism, and respect for difference and diversity." In this course, we will attempt to retrace the Canadian constitutional reforms from pre-Confederation to the present day, paying particular attention to these three pillars: democracy, federalism, and respect for difference and diversity. In the first half of the course, we will search for the origins of Canada's constitution in the context of diversity (be it Indigeneity or Quebec identity) and examine its development through the early debates around democracy, federalism, equality and power. The same three pillars will support our journey in the second half of the course, but now after the introduction of the Charter of the Rights and Freedoms. We will identify the reforms affecting the parameters of democracy, federalism, and respect for difference and diversity; how the core principles have been (re)negotiated, failed to be negotiated since the introduction of the Charter; and what the current challenges mean for the pillars of Canadian constitutionalism.

Course Learning Outcomes: Upon completing this course, students will have:

- Expanded historical understanding, having situated the Canadian constitution and the reforms it underwent within a set of evolving cultural, ideological, and political demands of the time
- Identified and appreciated both the core principles underpinning the Canadian constitution and the accompanying challenges
- Developed critical and creative thinking skills through textual analysis, discussions, and the testing of theories and arguments against court cases and concrete legal conundrums in the Canadian context.

- Honed communication skills in multiple settings through weekly class and forum participation
- Fostered professional and ethical behaviour through teamwork, and the practice of collaborative and respectful questioning of various perspectives.

Course Format: The class is organized around broad questions and texts that will help us formulate our positions, and it will only be as great as our collective participation in opening up the questions, and respectfully challenging each other’s views. An interactive lecture introducing the week’s topic and main ideas in the first half of the class leads to group discussions of a case study or set of case studies in the second half. That discussion will help us apply the theories and critiques covered in the readings and lecture to real world case studies/court cases. This will prepare you for the forum participation (50%) on Brightspace during the remainder of the week. Hence you will have the optimal combination of theory and practice on a weekly basis. The cases discussed, text readings, and lectures will all be tested using the midterm (25%) and essential to succeeding in creating your own vlog and discussing the vlogs of others (25%).

Required Materials: All Readings available on Brightspace

COURSE ASSESSMENT

3 Forum “lead responses” (10% each)	Ongoing (at least one by October 9 th)	30%
4 forum “responses” (5% each)	Ongoing (at least one by October 10 th)	20%
Midterm	October 18 th	25%
<u>Constitutional Amendment Convention</u>	<u>December 5-7</u>	<u>25%</u>
Total		100%

Lead Responses (3x10%=30%)

Every week starting with Week 2, during class on Wednesday I will share the “forum question of the week” based on the case studies we cover. Your task will be to respond to the question in the form of an 800-900 word short essay by Monday in the assignment dropbox AND on the forum set up for that week. The “lead responses” should directly respond to the question as it applies to the case study(ies) discussed during the Wednesday class and use evidence from the week’s lecture and assigned reading material. Most importantly, you are supposed to use evidence, this is the critical part, use evidence from the Wednesday lecture and the readings—this is the key to success. You are to write the lead response THREE times during the semester, and at least once by October 9th (failure to do so will result in a 10% loss of your overall grade in the course). A fuller assignment description and grading rubric appear on Brightspace.

Forum Responses (4x5%=20%)

Students NOT writing a “lead response” for a given week, will participate in the discussion on the forum at least 4 times (only 4 random responses will be graded) during the weeks when they are not writing the “Lead Response” and at least once by October 10th. They are due on Tuesday in response to the Monday “Lead Responses”. The “Responses to the Lead Response” are limited to 300 words each. The “Responses to a Lead Response” are to likewise show understanding of

the week's material, so make sure to comment with substance, and properly reference course material (without that the grade will be at most 50%). Respond to the lead response raising questions, or issues, or extending the argument likewise using the week's assigned material, to make sure everything you say is supported by evidence and to show you can use what you learn in that week to engage in discussion. A rubric can be found on Brightspace.

Midterm (October 18th) 25%

The midterm will cover course material up to this point in this course (readings and lectures and case studies). The midterm will be held on midterm during class time and two hours will be allotted for the midterm. It is to be completed individually. It will consist of 20 multiple choice questions and two short essay questions (about 800-1000 words in total). The short essay questions will ask you to synthesize what you learned from the first six weeks. Examples will be

Vlog (December 5-7) 25%

During the November 1st class, we will discuss the "Mi'kmaw case". This case will serve as the basis for the Vlog which will be responding to this case. Analysis of the case will allow students to investigate what happens when the constitutional principles studied in the course are in conflict and take a position on identifying the core problem in their view and evaluating the solutions. The 10 minute recorded vlog (together with a script) will require students to use course material from at least five weeks of the course, post the vlog on the forum by December 5th, and comment (300 words each comment) on the positions of at least three classmates by December 7th. Further instructions will be distributed on November 1st.

WEEKLY SCHEDULE:

September 6 Introduction and Course Overview

September 13 Indigenous perspectives on the Canadian Constitution

- Readings: 1. John Borrows, "(Ab)Originalism and Canada's Constitution", in *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference*, Vol. 58. (2012).
2. Sébastien Grammond, "Treaties as Constitutional Agreements," in *The Oxford Handbook of the Canadian Constitution* (2017)

September 20 BNA Act and early constitutional development, responsible government

- Readings: 1. Peter J. Smith "The Ideological Origins of Canadian Confederation." *Canadian Journal of Political Science*, Vol. 20, No. 1 (Mar., 1987), pp. 3- 29.
2. Gad Horowitz "The Deep Culture of Canadian Politics." *Inroad Journal* (2017): 40.
3. Robert Vipond, "1867: Confederation," in *The Oxford Handbook of the Canadian Constitution* (2017)

September 27 Federalism and division of powers

- Readings: 1. Dara Lithwick, *A pas de deux: The Division of Federal and Provincial Legislative Powers in Sections 91 and 92 of the Constitution Act, 1867* (Library of Parliament, 8 Dec. 2015)

2. Robinson, I., Simeon, R. (2009). The dynamics of Canadian federalism. In James Bickerton and Alain-G. Gagnon (eds). Canadian Politics (5th edition)
3. Kathy L. Brock. Accords and Discord: The politics of Asymmetrical federalism and intergovernmental relations. Asymmetrical Series 2005 (16).

October 4 Quiet revolution and the struggle for unity

- Readings: 1. Eric Adams, “Constitutional Nationalism: Politics, Law and Culture on the Road to Patriation,” in Lois Harder & Steve Patten, eds., Patriation and Its Consequences (2015), pp. 49-71
2. Federal Legacy of Quebec’s Quiet Revolution Edward McWhinney (Simon Fraser University)

October 11 Introduction of the Charter and scope of right and freedoms

- Readings: 1. Carissima Mathen, “‘The question calls for an answer, and I propose to answer it’: The Patriation Reference as Constitutional Method,” Supreme Court Law Review (2011) 54: 143-66.
2. Peter H. Russell, “The Political Purposes of the Canadian Charter of Rights and Freedoms,” The Canadian Bar Review. (1983) 61: 30-54.
 3. Richard Sigurdson, “Left- and Right-Wing Charterphobia in Canada: a Critique of the Critics”, International J. of Can. Studies. (1993) 7-8 Spring-Fall: 95-116.

October 18: Midterm

October 26 BREAK: No Classes

November 1 Mi’kmaw case study

- Readings: 1. Kiera Ladner, “Up the Creek: Fishing for a New Constitutional Order,” Canadian Journal of Political Science 38:4 (2005): 923-9532.
2. “My Tribe, My Heirs and Their Heirs Forever: Living Mi’kmaw Treaties.” In Living Treaties: Narrating Mi’kmaw Treaty Relations, edited by Marie Battiste, 24-41. Cape Breton University Press.
 3. Aboriginal Peoples’ Television Network (APTN). (2020). “What’s really behind the lobster fishery tensions in Nova Scotia.” APTN InFocus.

November 8 Written/Unwritten constitutional principles

- Readings: 1. David Schneiderman, “Unwritten Constitutional Principles in Canada”, Cambridge University Press.
2. “Unwritten Constitutional Principles”. Centre For Constitutional Studies. <https://www.constitutionalstudies.ca/2019/07/unwritten-constitutional-principles/>. (2019)
 3. Robert Hawkins, “Constitutional Workarounds: Senate Reform and Other Examples,” Canadian Bar Review (2010), vol. 89, pp. 513-544

November 15 Meech Lake Accord

- Readings: 1. Charles Taylor, "Shared and Divergent Values", in Guy Laforest, (ed.), *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism*, (Montreal: McGill-Queen's University Press, 1993), pp. 155-186.
2. John Whyte, "More Than Small Change: The Meaning of Meech Lake for the Canadian Polity", *University of New Brunswick Law Journal* 38 (1989): 278-287.
3. Richard Simeon, "Meech Lake and Shifting Conceptions of Canadian Federalism", in *Canadian Public Policy*, Vol. 14, September 1988.

November 22 Charlottetown Accord

- Readings: 1. Johnston, R. (1993). *An Inverted Logroll: The Charlottetown Accord and the Referendum*. *PS: Political Science & Politics*, 26(1), 43-48. doi:10.2307/419503
2. Michael B. Stein, "Improving the Process of Constitutional Reform in Canada: Lessons from the Meech Lake and Charlottetown Constitutional Rounds", in *Canadian Journal of Political Science*, Vol. 30, No. 2, June 1997.
3. Matthew Coon Come, "Charlottetown and Aboriginal Rights: Delayed but not Relinquished", in *Policy Options*, December 2002-January 2003.
<http://policyoptions.irpp.org/wpcontent/uploads/sites/2/assets/po/kyoto/cooncome.pdf>

November 29 Challenges From the 1995 Referendum to Alberta's Independence Movement

- Readings: 1. "The Charter at 30: A Reflection," John D. Whyte, *Review of Constitutional Studies* 17, no. 1, 2012, 13,
2. Robert Schertzer, "Recognition or Imposition? Federalism, National Minorities and the Supreme Court of Canada", in *Nations and Nationalism*, Vol. 14, No. 1, 2008, pp. 105126.
3. Emmet McFarlane, "Constitutional Retconning: History in Judicial Reasoning and Changes in Constitutional Meaning" *Alberta Law Review* (forthcoming)

December 5, 6, and 7 Vlog and Discussion

Post your vlog by December 5th and respond to classmates by December 7th

Course Policies

Submission of Assignments and Late Policy:

Written assignments are due at 11:59pm in the dropbox online through Dropbox AND/OR Forum on the day indicated on the syllabus.

Late assignments, without proper documentation and prior agreement with your instructor when possible, will receive a 10% daily deduction including weekends. Forum lead responses and responses cannot be late and will be assessed a 0 if late.

If you know that you will have a few assignments due in several classes on the same day, come talk to your instructor about it early (at least two weeks before the deadline) and a short extension may be granted. Extensions are official only in written form, when confirmed through email.

Reading, Email, Office Hour and Other Rules:

Every student is responsible for all required readings. Some of the texts are more difficult than others. Students are expected to come to every class online having read the reading assigned for that class.

I will be happy to meet with you through zoom, please reach out, let me know what times work for you, and I'll be happy to chat. Come, sit, relax in the virtual office and if you want to talk about the university in general or the course in particular, I'll be glad to see you. My rule for both email communication and office hours is that you meet me half way. (For example, just asking what does Rawls think of equality doesn't give me anything to work with in order to help you out). Be prepared to tell me what you know and what you understand so that we can build on that basis to enrich your understanding and experience.

Please include the course code in your email. I will reply to emails within 24 hours (and usually much much much much quicker), so if you do not get a reply from me within 24 hours, the wires must have crossed somewhere and you should email me again to make sure your email gets through. Please don't hesitate to resend emails in those cases, as quick communication under these circumstances is paramount and I'd love to help.

University Policies

Covid-19 Pandemic Measures

It is important to remember that COVID is still present in Ottawa. The situation can change at any time and the risks of new variants and outbreaks are very real. There are [a number of actions you can take](#) to lower your risk and the risk you pose to those around you including being vaccinated, wearing a mask, staying home when you're sick, washing your hands and maintaining proper respiratory and cough etiquette.

Feeling sick? Remaining vigilant and not attending work or school when sick or with symptoms is critically important. If you feel ill or exhibit COVID-19 symptoms do not come to class or campus. If you feel ill or exhibit symptoms while on campus or in class, please leave campus immediately. In all situations, you should follow Carleton's [symptom reporting protocols](#).

Masks: Masks are no longer mandatory in university buildings and facilities. However, we continue to recommend masking when indoors, particularly if physical distancing cannot be maintained. We are aware that personal preferences regarding optional mask use will vary greatly, and we ask that we all show consideration and care for each other during this transition.

Vaccines: While proof of vaccination is no longer required to access campus or participate in in-person Carleton activities, it may become necessary for the University to bring back proof of vaccination requirements on short notice if the situation and public health advice changes. Students are strongly encouraged to get a full course of vaccination, including booster doses as soon as they are eligible and submit their booster dose information in [cuScreen](#) as soon as possible. Please note that Carleton cannot guarantee that it will be able to offer virtual or hybrid learning options for those who are unable to attend the campus.

All members of the Carleton community are required to follow requirements and guidelines regarding health and safety which may change from time to time. For the most recent information about Carleton's COVID-19 response and health and safety requirements please see the [University's COVID-19 website](#) and review the [Frequently Asked Questions \(FAQs\)](#). Should you have additional questions after reviewing, please contact covidinfo@carleton.ca.

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. Here is a list that may be helpful:

Emergency Resources (on and off campus): <https://carleton.ca/health/emergencies-and-crisis/emergency-numbers/>

- **Carleton Resources:**

- Mental Health and Wellbeing: <https://carleton.ca/wellness/>
- Health & Counselling Services: <https://carleton.ca/health/>
- Paul Menton Centre: <https://carleton.ca/pmc/>
- Academic Advising Centre (AAC): <https://carleton.ca/academicadvising/>
- Centre for Student Academic Support (CSAS): <https://carleton.ca/csas/>
- Equity & Inclusivity Communities: <https://carleton.ca/equity/>

- **Off Campus Resources:**

- Distress Centre of Ottawa and Region: (613) 238-3311 or TEXT: 343-306-5550, <https://www.dcottawa.on.ca/>
- Mental Health Crisis Service: (613) 722-6914, 1-866-996-0991, <http://www.crisisline.ca/>
- Empower Me: 1-844-741-6389, <https://students.carleton.ca/services/empower-me-counselling-services/>
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

Requests for Academic Accommodation

You may need special arrangements to meet your academic obligations during the term. For an accommodation request, the processes are as follows:

Pregnancy accommodation: 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. For accommodation regarding a formally-scheduled final exam, you must complete the Pregnancy Accommodation Form ([click here](#)).

Religious accommodation: 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. For more details [click here](#).

Accommodations for students with disabilities: If you have a documented disability requiring academic accommodations in this course, please contact the Paul Menton Centre for Students with Disabilities (PMC) at 613-520-6608 or pmc@carleton.ca for a formal evaluation or contact your PMC coordinator to send your instructor your Letter of Accommodation at the beginning of the term. You must also contact the PMC no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, reach out to your instructor as soon as possible to ensure accommodation arrangements are made. For more details, [click here](#).

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 engage in student activities 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: students.carleton.ca/course-outline.

Sexual Violence Policy

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated. 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: carleton.ca/sexual-violence-support.

Plagiarism

Carleton's [Academic Integrity Policy](#) defines plagiarism as “presenting, whether intentional 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, websites, 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, 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;
- 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 which cannot be resolved directly with the course’s instructor. The Associate Deans of the Faculty conduct a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They may include a mark of zero for the plagiarized work or a final grade of "F" for the course.

More information on the University’s Academic Integrity Policy can be found at: <https://carleton.ca/registrar/academic-integrity/>.

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).

Submission and Return of Term Work

Papers must be submitted directly to the instructor according to the instructions in the course outline. The departmental office will not accept assignments submitted in hard copy.

Grading

Standing in a course is determined by the course instructor, subject to the approval of the faculty Dean. Final standing in courses will be shown by alphabetical grades. The system of grades used, with corresponding grade points is:

Percentage	Letter grade	12-point scale	Percentage	Letter grade	12-point scale
90-100	A+	12	67-69	C+	6
85-89	A	11	63-66	C	5
80-84	A-	10	60-62	C-	4
77-79	B+	9	57-59	D+	3
73-76	B	8	53-56	D	2
70-72	B-	7	50-52	D-	1

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 the Department of Political Science 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 University email accounts and Brightspace.

Carleton Political Science Society

The Carleton Political Science Society (CPSS) has made its mission to provide a social environment for politically inclined students and faculty. By hosting social events, including Model Parliament, debates, professional development sessions and more, CPSS aims to involve all political science students at Carleton University. Our mandate is to arrange social and academic activities in order to instill a sense of belonging within the Department and the larger University community. Members can benefit through our networking opportunities, academic engagement initiatives and numerous events which aim to complement both academic and social life at Carleton University. To find out more, visit us on Facebook <https://www.facebook.com/CarletonPoliticalScienceSociety/>.

Official Course Outline

The course outline posted to the Political Science website is the official course outline.