

PSCI 4109A
The Politics of the Canadian Charter of Rights and Freedoms
Tuesdays 11:35am-2:25pm
Online

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: Fridays 2:00-4:00pm through zoom

Course Description: Most democratic constitutions attempt to balance the rights, liberties, and responsibilities of a wide range of entities. In this course, we will examine the complexity of this balancing act at multiple levels in the Canadian context, especially focusing on the Canadian Charter of Rights and Freedoms. What *should* be the Charter's purpose? How *should* it treat individuals? How *should* it treat groups? How *should* it address global concerns? These are the four questions, the four pillars, of the course gradually increasing in their scope of analysis. To properly ask "how *should* something work?" we have to understand how something was designed, functioned before, and how dys/functioning it is today. We will combine the study of theory with the analysis of supreme court cases, and concrete concerns including hate speech, gender equality, indigenous rights, and language rights. Doing so, will help us better understand how historical, political, social, economic, and global forces shape the how Canada balances its distribution of rights, liberties and responsibilities and how the Charter affects the political, social and economic arrangements in Canada.

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

- 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.
- Improved literacy skills through the writing of the constitutional amendment argument.
- Honed communication skills in multiple settings through weekly class and forum participation
- Expanded global understanding, having by the end of the course situated the Charter within a set of cultural and political concerns that lead students to reflect on the inseparability of the local and global.
- 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. Online lecture introducing the week's topic and main ideas available 11:35-1:00pm on Tuesdays will lead into the discussion from 1:00pm-2:25pm. For that latter portion, the discussion, your participation is crucial. 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 during the constitutional amendment convention (25%).

Required Materials: All Readings available on Brightspace

COURSE ASSESSMENT

3 Forum “lead responses” (10% each)	Ongoing (at least one by February 3 rd)	30%
5 forum “responses” (4% each)	Ongoing (at least one by February 6 th)	20%
Midterm	February 14	25%
Constitutional Amendment Convention	April 10-13	25%
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Total		100%

Lead Responses (3x10%=30%)

Every week starting with Week 2, during class on Tuesday 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 Sunday of that week 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 Tuesday 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 Tuesday 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 February 3rd (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 (5x4%=20%)

Students NOT writing a “lead response” for a given week, will participate in the discussion on the forum at least 5 times (only 5 random responses will be graded) during the weeks when they are not writing the “Lead Response” and at least once by February 6th. 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. 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 (February 14th) 25%

The midterm will cover material up to this point in this course (readings and lectures and case studies). It will consist of 50 multiple choice questions. You will have 80 minutes to complete the midterm.

Constitutional Amendment Convention (Apr 10-13) 25%

During the March 2nd class, when we discuss constitutional amendments, we will generate a list of possible constitutional amendments. You will then be assigned/have a preference for particular constitutional amendment to research further. For each constitutional amendment, some students will be “pro” and some will be “con”. By April 10th, you will generate your five-page argument in support of or against the amendment and post it on the Constitutional Amendment Forum (15%). Between April 10th and 13th, our class will have a constitutional amendment debate on the forum and you will respond to each other and essentially vote on the amendments (10%). Defenders of winning amendments walk away with bragging rights!

Weekly Schedule:

Week 1 (Jan 10): Charter’s Purpose (I): Introduction and nature of the Charter

Week 2 (Jan 17): Charter’s Purpose (II): Historical roots of the Charter

- Readings:*
1. Russell, Peter. 2017. “Introduction.” In *Canada’s Odyssey: A Country Based on Incomplete Conquests*. Toronto UTP. 1-19.
 2. Peter J. Smith "The Ideological Origins of Canadian Confederation." *Canadian Journal of Political Science*, Vol. 20, No. 1 (Mar., 1987), pp. 3-29.
 3. Gad Horowitz “The Deep Culture of Canadian Politics.” *Inroad Journal* (2017): 40.

Week 3 (Jan 24): Charter’s Purpose (III): What is the political purpose of the Charter?

- Readings:*
1. Peter H. Russell, “The Political Purposes of the Canadian Charter of Rights and Freedoms,” *The Canadian Bar Review*. (1983) 61: 30-54.
 2. 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.
 3. Hutchinson, Allan and Andrew Petter. “Private Rights-Public Wrongs: The Liberal Lie of the Charter,” *University of Toronto Law Journal* (1988) 38:278-297.

Week 4 (Jan 31): Charter’s Purpose (IV): Judicial review vs. Will of the people

- Readings:*
1. Christopher P. Manfredi, “Judicial Power and the Charter: Three Myths and a Political Analysis,” *Supreme Court Law Review* (2001) 14: 331-9.

2. Grant A. Huscroft, “‘Thank God We’re Here’: Judicial Exclusivity in Charter Interpretation and Its Consequences,” *Supreme Court Law Review* (2004) 25: 241-67.
3. Emmet Macfarlane, “‘You Can’t Always Get What You Want’: Regime Politics, the Supreme Court of Canada, and the Harper Government,” *Canadian Journal of Political Science* (2017): 1-21.
4. Beverley McLachlin, “Courts, Legislatures and Executives in the Post-Charter Era,” *Policy Options* (June 1999): 41-7.

Week 5 (February 7): Individual Rights (I): The Charter and Access to Justice: Supporting the disadvantaged

- Readings:*
1. Mary Jane Mossman, "The Charter and Access to Justice in Canada", in David Schneiderman and Kate Sutherland, eds., *Charting the consequences: The impact of the Charter of rights on Canadian law and politics*, (Toronto: University of Toronto Press, 1997): 271-302.
 2. Dana Phillips, “Public Interest Standing, Access to Justice, and Democracy under the Charter: *Canada (AG) v. Downtown Eastside Sex Workers United Against Violence*”, *Constitutional Forum* (2013) 22:2: 21-30.
 3. Nelligan O'Brien Payne, “At Long Last, Supreme Court of Canada Grants Unions Charter Rights”, *Labour Law Newsletter*, (2002) 11:1: 107-108.
 4. Martha Jackman, "Poor Rights: Using the Charter to Support Social Welfare Claims", *Queen's Law Journal*, (1993) 19: 65-94.

Week 7 (Feb 14): Midterm (25%)

The midterm will cover material up to this point in this course (readings and lectures and case studies). It will consist of 50 multiple choice questions. You will have 80 minutes to complete the midterm.

Week 8 (Feb 21): Reading Week! No classes.

Week 8 (Feb 28): Individual Rights (II): The Charter and the Freedom of Expression

Readings:

1. Barendt: “Why Protect Freedom of Speech?”
2. Skim: Jane Bailey: “Private Regulation and Public Policy: Towards effective restriction on internet hate propaganda”
3. Richard Moon, “The Attack on Human Rights Commissions and the Corruption of Public Discourse”

Week 9 (Mar 7): Challenges of Federalism and Constitutional Amendments

Readings:

1. Robinson, I., Simeon, R. (2009). The dynamics of Canadian federalism. In James Bickerton and Alain-G. Gagnon (eds). *Canadian Politics* (5th edition)

2. Kathy L. Brock. Accords and Discord: The politics of Asymmetrical federalism and intergovernmental relations. Asymmetrical Series 2005 (16).
3. 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.
4. Constitution Act, 1982, ss.38-49

Week 10 (Mar 14): Charter and Group Rights(I): the right to national-self determination

- Readings: 1. Kymlicka, Will "Three Forms of Group-Differentiated Citizenship in Canada." In *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib, Princeton: Princeton University Press (1996): 153-170.
2. Brosseau, Laurence and Roy Mar-Andre, “ The Notwithstanding Clause of the Charter” Background Paper, Library of Parliament, 2018.<https://bdp.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2018-17-e.pdf>.
 3. Spitzer, Aaron John. “Reconciling Shared Rule: Liberal Theory, Electoral-Districting Law and “National Group” Representation in Canada”, Canadian Journal of Political Science 51.2 (2018): 447-466.

Week 11 (Mar 21): Charter and Group Rights (II): language rights

- Readings: 1. McDougall, Andrew, “Bill 101 as god and demon: The Charter of the French language and English Canada”
2. Skim: “Discussion Guide: Consultations and Engagement on the Implementation of the Indigenous Languages Act”, Government of Canada. < <https://www.canada.ca/en/canadian-heritage/campaigns/consultation-indigenous-languages-act-implementation/discussion-guide.html>>.
 3. Fontaine, Lorena, et al. “How Canada’s proposed indigenous Languages Act fails to deliver”. Yellowhead Institute. < <https://yellowheadinstitute.org/wp-content/uploads/2019/05/bill-c-91-response-yellowhead-brief.pdf>>.

Week 11 (Mar 28): The Constitution, Reconciliation and Indigenous Rights (I)

- Readings: 1. James (Sa’ke’) Youngblood Henderson, “Constitutional Vision and Judicial Commitment: Aboriginal and Treaty Rights in Canada,” Australian Indigenous Law Review. (2010) 14(2): 24-48.
2. Kulchyski, Peter. “Aboriginal Rights Are Not Human Rights” Prairie Forum.
 3. Chadwick Cowie ,“Quebec Sovereignty and Indigenous Nationhoods: Critiquing the Quebec Secessionist Movement from ‘an Indigenous’ Lens”

Week 12 (April 4): The Constitution, Reconciliation and Indigenous Rights (II)

- Readings:* 1. Green, Joyce. "Canaries in the Mines of Citizenship: Indian Women in Canada," *Canadian Journal of Political Science* 34.4 (2001):7 15-738.
2. Kiera Ladner, "Up the Creek: Fishing for a New Constitutional Order," *Canadian Journal of Political Science* 38:4 (2005): 923-953

Week 13 (Apr 11): Constitutional Amendment Convention

Course Policies

Submission of Assignments and Late Policy:

Written assignments are due at 11:59pm in the dropbox online through Dropbox 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.