



Lakehead University  
POLI 4217 WA - Constitutional Politics in Canada (Winter 2019)  
M 2:30-5:30 – RB 3026

Instructor: Mr. Adam Schenk  
Email: awschenk@lakeheadu.ca  
Office Hours: By appointment only

### COURSE DESCRIPTION

If you happened to mention to a friend that you were enrolled in a course exploring constitutional politics in Canada, an exciting, spirited dialogue regarding what could be discussed in the course is not the most likely response. The word 'constitution' likely calls to mind old, bearded men huddled over long, wordy tomes covered in handwritten legal dogma, illuminated only by flickering candlelight; it makes you sleepy just picturing the scene. In reality, however, much of Canada's political discourse centres on constitutional politics. Issues regarding gender equality, religion, multiculturalism, Indigenous rights, and so much more are in fact questions regarding how we interpret and apply Canada's constitution. In this course we will explore the historical development and foundations of Canada's constitution, the way in which the constitution has changed (or failed to change) over time, and hypothesize as to how Canada's constitution can, or should, be modified in the future.

### COURSE REQUIREMENTS AND POLICIES

#### Required Text:

Leuprecht, Christian and Peter H. Russell, eds., *Essential Readings in Canadian Constitutional Politics* (North York: University of Toronto Press, 2011).

\* In addition to the readings from the assigned texts, some weeks also require you to read a particular legal case or an article that is available online from Lakehead University's library.

#### Grading

- Class Participation – 15%
- Multiple Choice Test – 20%
- Class Facilitation – 25%
- Comparative Research Essay and Presentation – 40%

## Expectations for Class Participation in a Seminar Course

This is seminar course, not a lecture-based course. Thus, although I may occasionally provide formal lectures, the focus of class time will be spent discussing the assigned readings, with students doing the vast majority of the talking. Students are expected to fully participate in this discussion, driving it forward by thoughtfully engaging the readings and one another.

The discussion should involve a respectful exchange of ideas that includes a willingness to entertain, and an attempt to understand, points of views that we disagree with. During discussion, students should engage one another in a respectful way, listening to one another charitably, and making room for diverse points of view. Our goal should neither be to produce (nor enforce) unanimous opinion, nor to engage in empty debate. Rather our aim should be to pursue the truth together.

Students are expected to abide by the following requirements:

1. Read assigned material carefully;
2. Be prepared to discuss the readings;
3. Bring the readings (hard copies or electronic form) to class;
4. Actively and thoughtfully engage in class discussion; and
5. Avoid excessive absences, tardies and private conversations during class.

The entirety of the above will be considered in assessing participation grades. Participation grades *are not free marks for simply attending class.*

Participation up to and including the class on February 4 will count for 5% of your participation grade. On or before class on February 11, 2018, you will receive your grade for this initial 5%; this will give you an idea of where you are at in terms of participation. The remaining 10% for participation will be assessed based on your participation in class on February 11 and following.

## Multiple Choice Test

The multiple choice test will be a closed book, closed note test that will be administered at the beginning of class on February 25. The test will cover the entirety of course content covered up to that date. The test will consist of 50 questions. You will be given one hour to complete the test, after which point we will take our mid-class break and then utilize the second half of the class in its normal format.

## Class Facilitation

Each student will be required to facilitate class discussion once over the course of the semester. This facilitation will cover specific readings that are assigned for a particular portion of one class. There is room for creativity in how you facilitate the discussion; alternatives to simply preparing questions and facilitating a class-wide discussion are certainly possible but should be discussed with me well ahead of your class to confirm feasibility and appropriateness.

Your goal as a facilitator is to guide the class through the assigned readings for which you are responsible. At the conclusion of your facilitation, the class should have not only a) identified the

important points in the assigned content, but also b) expressed thoughts and opinions regarding these key ideas. In this course we want to not only grasp what *has* happened in Canadian constitutional politics, but also explore what *can* or *should* happen in the future.

As a part of facilitation, you may choose to provide a link on the course site to a recent non-academic news article that is relevant to the readings for the class you are facilitating. Should you choose to do so the article should be posted to the course website in the “Discussions” area no later than 5:00 p.m. on the Friday before your class. Students are responsible for checking the course site ahead of class to see if content has been posted by the facilitator. The purpose of providing this type of article would be to help further our class conversation by exploring constitutional politics in our current political climate.

A sign-up sheet will be distributed during the first class and will be available in subsequent weeks for students who have not yet chosen a date.

### Comparative Research Essay

The major project for this course is a comparative research essay in which you will be required to comparatively assess Canada’s constitution, or an element of the constitution, with the constitution of another state or self-governing entity. By way of example only, your essay could compare the constitutionally-entrenched right to free speech in Canada and the United States. There is room for creativity, within reason, in choosing your research topic. All topics *should be approved by the course instructor*. It is your responsibility to seek approval for your topic before the paper is due. Due to the comparative analysis between the Canadian and American constitutions in POLI 4150 this semester, your paper topic cannot compare the Canadian and American constitutions.

As this is a formal academic essay your paper must have as its foundation a persuasive thesis statement wherein you establish a meaningful and insightful position which you support throughout the body of your essay. *If I have difficulty readily identifying your thesis statement when I read your introduction then there is a major problem!*

The word range for this essay is 3300-3600 words. This word count does *not* include your title page, footnotes, or bibliography. This is a **non-flexible range**; failure to abide by this word range may have significant negative ramifications. Your paper should note at least five secondary sources at the very minimum (this means, for instance, that while they should be cited the constitutions that you are comparing do not count towards your source total).

While I prefer papers written in accordance with the Turabian formatting style, I am flexible so long as your formatting is clear, consistent, and thorough. I do, however, expect the following: 1) a formal, standalone title page, 2) footnotes as opposed to endnotes, and 3) a complete bibliography.

On March 25 each student will have 7-9 minutes to present their paper to the class. This presentation will be worth 5% of the 40% available for this assignment. This should be a separate presentation that you have prepared and practiced; you should not be simply reading your paper aloud. The time range for these presentations are **non-flexible**; if your presentation does not conclude within the time limit there may be significant negative ramifications.

## Academic Honesty

Academic honesty is expected of all Lakehead University students. Cheating, collusion, and plagiarism will not be tolerated. Students are expected to make themselves fully familiar with Lakehead's policy in this area. Although all these policies will be enforced in full, it is worth emphasizing the following:

***Plagiarism involves presenting another's work, ideas, theories, or interpretation as one's own.***

To avoid plagiarism, writers should always:

1. Put quotation marks around any words from sources
2. Paraphrase material completely; changing (with the help of a thesaurus) or rearranging a few words or the tense of a verb is not paraphrasing.
3. Give accurate and complete citations for all material including paraphrased material.
4. Avoid borrowing entire arguments or approaches to a subject from another writer. Make it 'original' while staying faithful to the assignment parameters.

## A Quick Word on Emails

I am very happy to answer questions over email, but there are parameters to the way in which these emails should be written and sent. I expect that before you ask me a question you have consulted the course outline to see if the answer is there. I also expect that your emails to me are written with *proper spelling, grammar, and punctuation*. If I receive an email that has the appearance of a hastily typed text message, you should not expect an email in reply.

## COURSE SCHEDULE

*The theme and question(s) provided for a given week are provided only as an initial nudge in the right direction as you read and/or begin to prepare to facilitate a class. Readings are from the assigned text unless otherwise noted. The course schedule and assigned readings are potentially subject to change at the discretion of the instructor.*

Date	General Theme	Readings
January 7	<b>Foundations of the Constitution</b>  “What are the major sources that compose Canada’s constitution and why do they matter?”	“Introduction – Canada’s Constitutional Ingenuity,” Christian Leuprecht, xv-xxiv  “The Constitution,” Robert MacGregor Dawson, 4-7
January 14	<b>The Creation of the Constitution</b>  “How did the early history and political organization of Canada shape the creation of our constitution?”  “Does Canada’s constitution adequately ensure that we have a responsible government? What should a truly ‘responsible government’ look like?”	“The Pattern of the Constitution,” James Mallory, 7-21  “Responsive and Responsible Government,” James Mallory, 21-32  “The Question of Confidence in Responsible Government,” Eugene Forsey and G.C. Eglinton, 33-42
January 14	<b>Patriation and the <i>Canadian Charter of Rights and Freedoms</i></b>  “Why was the constitution patriated and the <i>Charter of Rights and Freedoms</i> enshrined in the Canadian constitution? What political motivations propelled patriation and the <i>Charter’s</i> creation?”	“Reflection on the Political Purposes of the Charter,” Alan C. Cairns, 370-372  Howard Leeson, “Four Lenses of Patriation,” <i>Constitutional Forum</i> 26 no. 2, 2017, accessible via Lakehead University Library’s online database.
January 21	<b>Federalism and the Division of Powers</b>  “How and why does Canada create a federal system of government?”  “How and why were powers divided between the federal and provincial governments? Could or should the <i>British North America Act</i> have been clearer in dividing power between the different levels of government?”  “How and why are certain aspects of trade and commerce granted to the federal and provincial governments respectively? Should the balance be modified?”	“Confederation and the Beginnings of Canadian Federalist Theory,” Samuel LaSelva, 118-129  “The Rowell-Sirois Report: An abridgement of Book 1 of the Royal Commission Report on Dominion-Provincial Relations,” 132-141 <u>only</u>  “The Division of Economic Powers at Confederation,” Donald Creighton, 106-117
January 21	<b>Intergovernmental Relations</b>  “How should political institutions be designed and utilized to improve federal-provincial relations and coordination? How does the	“The Social and Institutional Context of Federal-Provincial Diplomacy,” Richard Simeon, 146-159

	<p>Canadian constitution encourage or inhibit federal-provincial cooperation?"</p> <p>"How do the federal and provincial governments use legal decisions on constitutional law for political purposes?"</p>	<p>"The Supreme Court and Federal-Provincial Relations: The Political Use of Legal Resources," Peter H. Russell, 183-191</p>
January 28	<p style="text-align: center;"><b>Federalism, the Constitution and Quebec</b></p> <p>"How and why does Quebec enter into confederation? Was federalism the correct choice for the political organization of Canada?"</p> <p>"What insights into Quebec do Brady's observations on the <i>Tremblay Report</i> provide? How was federalism received in Quebec during the first roughly 90 years following Confederation?"</p>	<p>"Confederation and Quebec", A.I. Silver, 95-106</p> <p>"Quebec and Canadian Federalism," Alexander Brady, 322-330</p>
January 28	<p style="text-align: center;"><b>Bilingualism Outside of Quebec</b></p> <p>"How does the execution of Louis Riel and subsequent concerns over French language rights impact the debate over bilingualism?"</p> <p>"What role should governments play in supporting French minority communities outside of Quebec? How would this role fit with Canada's constitutional support of multiculturalism?"</p>	<p>"Manitoba Schools and the Rise of Bilingualism", A.I. Silver, 290-314</p> <p>"Francophone Minority Communities and Immigrant Integrations in Canada: Rethinking the Normative Foundations", Raffaele Iacovino and Remi Leger, <i>Canadian Ethnic Studies</i> 45 nos. 1-2, 2013, 95-114, accessible via Lakehead University Library's online database.</p>
February 4	<p style="text-align: center;"><b>The Charter and its Exceptions – S. 1, The Oakes Test</b></p> <p>"What is the significance of s. 1 of the <i>Canadian Charter of Rights and Freedoms</i> and the <i>Oakes</i> test? Why do we allow for exceptions to legal principles that have been deemed to be the highest law in Canada?"</p>	<p><i>R. v. Oakes</i>, as edited by the instructor, available on the course D2L site.</p>
February 4	<p style="text-align: center;"><b>The Constitution and the SCC</b></p> <p>"Why is judicial independence important? How should judicial appointments be determined, and how should judges be policed once in office?"</p> <p>"What is judicial review? Does judicial review give too much power to unelected judges?"</p> <p>"Is the SCC biased in constitutional legal cases pertaining to the division of powers?"</p>	<p>"The Independence of the Judiciary", William Lederman, 270-276</p> <p>"The Origins of Judicial Review in Canada", Jennifer Smith, 194-200</p> <p>"Is the Supreme Court of Canada Biased in Constitutional Cases?", 276-287</p>
February 11	<p style="text-align: center;"><b>Indigenous Legal Traditions</b></p> <p>*Update on Participation Marks</p> <p>"How do Canada's legal and political traditions interact with Indigenous legal and political traditions, specifically the principles underlying the Canadian constitution as stated in the decision in <i>Quebec Secession Reference</i>? How can, or should, Canadian governments reconceptualize this relationship in the future?"</p>	<p><i>Quebec Secession Reference</i>, paras 1-2 and 49-82, available on the course D2L site.</p> <p>"Recovering Canada: The Resurgence of Indigenous Law," John Borrows, 463-475</p>

February 11	<p align="center"><b>Indigenous Rights and the Canadian Constitution</b></p> <p>“What are Aboriginal rights? What are treaty rights? How are both treated under Canada’s constitution?”</p>	<p>Ss. 25 and 35, <i>Constitution Act, 1982</i>, available on the Government of Canada’s Justice Laws website.</p> <p>“Making Sense of Aboriginal and Treaty Rights,” Brian Slattery, 476-493</p>
February 18	READING WEEK	N/A
February 25	<p align="center"><b>Indigenous Peoples and the Constitution – The Latest Word from the SCC</b></p> <p>*Test to begin class</p> <p>“What does the Supreme Court’s decision mean for Aboriginal and treaty rights in the future?”</p>	<p><i>Mikisew Cree First Nation v. Canada</i>, 2018 SCC 40, as edited by the instructor, available via the course D2L site.</p>
March 4	<p align="center"><b>S. 33, the Notwithstanding Clause</b></p> <p>“Should we abolish the notwithstanding clause?”</p> <p>“Is there value in having the notwithstanding clause? What benefits have come from the existence and use of the notwithstanding clause?”</p>	<p>“On Not Standing for Notwithstanding,” John Whyte, 373-380</p> <p>“Standing Up for Notwithstanding,” Peter H. Russell, 381-392</p> <p>S. 33, <i>Constitution Act, 1982</i>, available on the Government of Canada’s Justice Laws website.</p>
March 4	<p align="center"><b>The Charter in Action – S. 2(a), Freedom of Conscience and Religion</b></p> <p>“How does the Supreme Court interpret freedom of religion in this foundational case? Should freedom of religion be reinterpreted given societal differences in Canada since this judgement was rendered?”</p>	<p><i>R. v. Big M Drug Mart</i>, as edited by the instructor, available via the course D2L site.</p>
March 4	<p align="center"><b>The Question of Positive Rights</b></p> <p>“What is the difference between positive and negative rights? Should the Canadian constitution provide positive rights to Canadians, specifically in the area of healthcare?”</p>	<p>“The Dilemma of Positive Rights: Access to Healthcare and the Canadian Charter of Rights and Freedoms”, Emmett MacFarlane, <i>Journal of Canadian Studies</i> 48, no. 3, Fall 2018, accessible via Lakehead University Library’s online database.</p>
March 11	<p align="center"><b>Multiculturalism and Conflicting Rights</b></p> <p>“How and why does Canada constitutionally support multiculturalism? What insights does this article reveal about the difficulties in balancing competing constitutional rights and interests in a multicultural society?”</p>	<p>S. 27, <i>Constitution Act, 1982</i>, available on the Government of Canada’s Justice Laws website.</p> <p>“Squaring the Circle of Multiculturalism? Religious Freedom and Gender Equality in Canada”, Ayelet Shachar, <i>Law and Ethics of Human Rights</i> 10, no. 1, June 2016, 31-69, accessible via Lakehead University Library’s online database.</p>
March 11	<p align="center"><b>Critiquing the Charter</b></p> <p>“Has the <i>Charter</i> had as positive an effect as was initially hoped? Does the <i>Charter</i>, and/or the interpretation of the <i>Charter</i>, require significant change in coming years?”</p>	<p>“The <i>Charter</i> at 30: A Reflection,” John D. Whyte, <i>Review of Constitutional Studies</i> 17, no. 1, 2012, 1-3, accessible via Lakehead University Library’s online database.</p>

	"How have commentators across the political spectrum attacked the Charter? Are any of them convincing?"	"Left- and Right-Wing Charterophobia in Canada: A Critique of the Critics," Richard Sigurdson, 392-406
March 18	<p style="text-align: center;"><b>Voices from the Past – Lord Durham</b></p> <p>"Are Laforest's observations on Lord Durham's report fair, or not critical enough? How should we view major figures in Canada's constitutional history whose perspectives turned out to contain flaws?"</p>	<p>"Lord Durham, French Canada, and Quebec: Remembering the Past, Debating the Future," Guy Laforest, 356-368</p> <p>"Lord Durham's Report and its Consequences," Chester Martin, <i>The Canadian Historical Review</i> 20, no. 2, June 1939, 178-194, accessible via Lakehead University Library's online database.</p>
March 18	<p style="text-align: center;"><b>Voices from the Past – Pierre Trudeau</b></p> <p>"Do Trudeau's views, on Quebec and the French language as well as other constitutional issues, stand the test of time?"</p>	Pierre Trudeau, "Quebec and the Constitutional Problem," 331-356
March 25	Presentations	N/A
April 1	<p style="text-align: center;"><b>Reflections on Attempted Constitutional Reform</b></p> <p>"Why did the Meech Lake and Charlottetown Accords fail? What lessons can be learned to improve future efforts at constitutional amendments?"</p>	"Improving the Process of Constitutional Reform in Canada: Lessons from the Meech Lake and Charlottetown Constitutional Rounds", Michael B. Stein, <i>Canadian Journal of Political Science</i> 30, no. 2, June 1997, 307-338, accessible via Lakehead University Library's online database.
April 1	<p style="text-align: center;"><b>The Future of the Constitution</b></p> <p>"What should Canada do with its constitution moving forward? Is change necessary, and if so, in what areas?"</p> <p>"Should there be substantial changes made to the Canadian Senate? Is constitutional amendment to make the Senate an elected body necessary?"</p>	<p>"Three Centuries of Constitution Making in Canada: Will There be a Fourth?," Roderick A. MacDonald, 429-443</p> <p>"Western Canadian Perspectives on Institutional Reform: Introduction and Context," Roger Gibbons and Loleen Berdahl, 408-413</p> <p>"Canada: A Pioneer in the Management of Constitutional Politics in a Multi-National Society," Peter H. Russell, 494-498</p> <p>"The Canadian Senate: What is to Be Done?," David E. Smith, 43-59</p>