

LAW AND DEMOCRACY WEEK

Course n°4: Fundamental Elements of Constitutional Law (Warren Newman)

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The question of what is the Constitution is of fundamental significance for a full understanding of democracy. The first way the question is to be interpreted is to examine what are the component elements of the Constitution of Canada. Part of the Constitution is written: this encompasses the *Constitution Act, 1867*, as well as the *Constitution Act, 1982* and the various amendments and additions that have been made to these. Much of the Constitution is written but unconsolidated; meaning that it is contained in other, stand-alone statutes. A significant part of the country's constitutional law framework is comprised of the decisions of courts. Even beyond that, there are constitutional principles that can generally be said to originate in the nature of Canada as a democratic state.

The exploration of this topic should also include the notion that, written or unwritten, the Constitution is the highest law of the land and therefore the most important set of rules framing democratic governing. Other laws must conform to constitutional norms. If constitutional provisions or principles are breached, it is legitimately up to the judicial branch to determine consequences and remedial actions.

In the study of democracy, it is also vital to point out that the idea of Constitution embodies a combination of the fundamental characteristics of the state, political principles and policies, and legal norms and rules, all related to the philosophy and practice of democracy as a way of governing. This class will look in particular at:

- the extent of the Constitution and of constitutional law;
- the constitutional principles applicable in the specifically Canadian context;
- mention the broad categories of modern constitutional analysis, namely federalism, *Charter* rights, aboriginals and constitutional amendment;
- the choice of political options is not a constitutional matter.