

Dalhousie University

POLI 3206

Constitutional Law and Politics in Canada

Winter 2019, 3 Credit Hours

“The relations between citizens and states, between the market and the polity, and between rights and obligations involve the classic themes of Western political philosophy and the ideological controversies of the modern era.”

Alan Cairns and Cynthia Williams, *Constitutionalism, Citizenship, and Society in Canada*, 1985.

Instructor: Dr. David Banoub

Email: David.Banoub@dal.ca

Class time: Tuesdays and Thursdays, 11:35 a.m.-12:55 p.m.

Class Room: Marion McCain Building 2116

Office: Henry Hicks 360

Office Hours: Tuesdays and Thursdays, 10:15-11:15 a.m., or by appointment

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Course Description

POLI 3206 is an overview of Canada's constitutional, legal, and political orders, highlighting the importance of federalism and the Constitution on Canadian political institutions. The course will examine the branches of government, the legal frameworks that underpin federalism, and the importance of constitutional conventions and judicial review. While largely focused on the federal level, the course will include the complicated negotiations between federal and provincial governments, treaty federalism and nation-to-nation negotiations, and the evolution of electoral and governmental systems.

Arranged thematically, the course will take a historical approach to understanding politics, emphasizing the origins and evolution of Canadian constitutional law and politics, and the interactions between politicians, the state, the Supreme Court, and the citizenry. At the same time, students are encouraged to reflect on the ongoing relevance of these issues — how contemporary issues reproduce or break from historical precedents. While the course will stress political institutions, students are encouraged to consider how politics are culturally informed, investigating how political cultures draw from and contribute to ideas about race, class, and gender.

The class is scheduled as two 80-minute lectures per week. The second class each week will include a discussion of assigned readings. Students are invited to bring their own analyses and interests regarding the assigned readings. Participation marks will be awarded, in part, based on active and constructive contribution to the discussions.

Course Objectives

Students will be able to identify and explain the roles of the different branches of the Canadian government. Students will develop a familiarity with importance of the Constitution and the Charter of Rights and Freedoms, federalism, the electoral system, judicial review, and constitutional interpretation. Students will be introduced to a wide range of literature and approaches to examine politics.

Readings

The required textbook for the course is: Andrew Heard, *Canadian Constitutional Conventions: The Marriage of Law and Politics* (Don Mills, Ontario: Oxford University Press Canada, 2014).

All other required readings will be available online, either posted on or linked from the class Brightspace

Note: Required course content and information is housed on this course's Brightspace, including supplementary readings, discussions, and media content NOT listed below. Students are required to access this content.

If you have any problems accessing the posted material, please let me know immediately.

Recommended Readings

The following may provide supplemental information on lectures and course themes. These readings may be used for the research assignment.

Ajzenstat, Janet. *The Once and Future of Canadian Democracy: An Essay in Political Thought*. Montreal: McGill-Queen's University Press, 2003.

Aucoin, Peter, Mark D. Jarvis, and Lori B. Turnbull. *Democratizing the Constitution: Reforming Responsible Government*. Toronto: Emond Montgomery Publications, 2011.

Borrows, John. *Freedom and Indigenous Constitutionalism*. Toronto: University of Toronto Press, 2016.

Cairns, Alan C. and Cynthia Williams, editors. *Constitutionalism, Citizenship and Society in Canada*. Toronto: University of Toronto Press, 1985.

Cyr, Hugo. *Canadian Federalism and Treaty Powers: Organic Constitutionalism at Work*. Bruxelles; New York: P.I.E. Peter Lang, 2009.

Johnson, David. *Thinking Government: Public Administration and Politics in Canada*, 3rd edition. Toronto: University of Toronto Press, 2011.

Kozolanka, Kirsten. *Publicity and the Canadian State: Critical Communications Perspectives*. Toronto: University of Toronto Press, 2014. (also available online)

Leuprecht, Christian and Peter H. Russell, editors. *Essential Readings in Canadian*

Constitutional Politics. Toronto: University of Toronto Press, 2011.

Macfarlane, Emmett. *Governing From the Bench: The Supreme Court of Canada and the Judicial Role*. Vancouver: UBC Press, 2013.

Randall, Stephen J. and Roger Gibbins. *Federalism and the New World Order*. Calgary: University of Calgary Press, 1994.

Trimble, Linda J. and Shannon Sampert. *Mediating Canadian Politics*. Toronto: Pearson Canada, 2010.

Whitaker, Reginald. *A Sovereign Idea: Essays on Canada As a Democratic Community*. Montreal: McGill-Queen's University Press, 1992.

Assignments and Evaluation

Participation 10%
Reading Response 15%
In-class Test 10%
Annotated Bibliography 10%
Research Essay 30%
Take-Home Exam 25%

Participation (10%)

Students are encouraged to attend the regular lectures and participate in class discussions. The participation grade will be based on a combination of active and positive contribution to the class, and the student's critical engagement with the course themes and readings. While speaking in class is one way to participate, it is not the only consideration. Emailing questions, coming to office hours, and responding to feedback on assignments are all part of actively participating in the course.

Critical Reading Response (15%) Due: January 31

This assignment (3-4 pages) is a critical response to assigned readings. Detailed instructions will be provided in class and posted on Brightspace.

In-class Test (10%) February 14

This test will be comprised of short identification questions. It will cover terms and concepts from the both the readings and the lectures.

Annotated Bibliography (10%) Due: March 7

This assignment is the first step for your research essay on a selected topic from the list provided on the course Brightspace. You will need to write a short introduction to your bibliography, identify three research questions that help you define your topic, and then provide a short annotation for each source that explains how it answers one or more of the questions you identified. Students must engage with **five scholarly sources**. Detailed instructions and the list of topics will be provided on the class Brightspace.

Research Essay (30%) Due: April 4

This assignment (10-12 pages) is a research paper on an issue in Canadian politics and government. Students must engage with at least **eight sources**, at least **five** of which must be scholarly. Detailed instructions and a list of suggested topics will be provided in

class.

Take-Home Exam (25%) **April TBA**

The term's final exam will test students' understanding of course material as a whole.

All assignments must be double-spaced and in 12pt., Times New Roman font. Sources should be cited consistently and thoroughly, following the student's preferred style guide.

Late Penalty and Deadlines

Late assignments will be deducted one letter grade per day (i.e. A to A-, A- to B+, etc.).

Students requesting special consideration for an assignment or an examination must do so in advance of the relevant deadline. Except in the case of an exceptional documented emergency, no extensions will be granted in the 24 hours before an assignment is due.

Missed or Late Academic Requirements due to Student Absence

Dalhousie students are asked to take responsibility for their own short-term absences (3 days or less) by contacting their instructor by phone or email prior to the academic requirement deadline or scheduled time and by submitting a completed Student Declaration of Absence to their instructor in case of missed or late academic requirements. Only 2 separate Student Declaration of Absence forms may be submitted per course during a term (Note: faculty, college, school, instructor or course-specific guidelines may set a lower maximum).

Read more:

[https://cdn.dal.ca/content/dam/dalhousie/pdf/dept/university_secretariat/policy-repository/StudentAbsenceRegulation\(OCT2017\)v2.pdf](https://cdn.dal.ca/content/dam/dalhousie/pdf/dept/university_secretariat/policy-repository/StudentAbsenceRegulation(OCT2017)v2.pdf)

The Student Declaration of Absence form can be found at the link below:

<https://cdn.dal.ca/content/dam/dalhousie/pdf/campuslife/Health%20and%20wellness/FINAL%20Student%20Declaration%20of%20Absence%20Form.pdf>

Other Important Dates:

February 4: Last day to withdraw from a Winter term course without a W.

March 11: Last day to withdraw from a Winter term course with a W.

http://www.dal.ca/academics/important_dates.html

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University Policies, Statements, Guidelines, and Resources for Support

This course is governed by the academic rules and regulations set forth in the University Calendar and the Senate:

<https://academiccalendar.dal.ca/~Catalog/ViewCatalog.aspx?pageid=viewcatalog&catalogid=69&topicgroupid=13908>

Academic Integrity Statement

At Dalhousie University, we are guided in all of our work by the values of academic integrity: honesty, trust, fairness, responsibility and respect (The Center for Academic Integrity, Duke University, 1999). As a student, you are required to demonstrate these values in all of the work you do. The University provides policies and procedures that every member of the university community is required to follow to ensure academic integrity.

Read more:

[https://www.dal.ca/content/dam/dalhousie/pdf/university_secretariat/Syllabus Statement \(Aug%202015\).pdf](https://www.dal.ca/content/dam/dalhousie/pdf/university_secretariat/Syllabus_Statement_(Aug%202015).pdf)

Accessibility Statement

The Advising and Access Services Centre is Dalhousie's centre of expertise for student accessibility and accommodation. The advising team works with students who request accommodation as a result of: a disability, religious obligation, or any barrier related to any other characteristic protected under Human Rights legislation (NS, NB, PEI, NFLD).

Read more:

http://www.dal.ca/campus_life/student_services/academic-support/accessibility.html

Class Conduct

Everyone at Dalhousie is expected to treat others with dignity and respect. The Code of Student Conduct allows Dalhousie to take disciplinary action if students don't follow this community expectation. When appropriate, violations of the code can be resolved in a reasonable and informal manner — perhaps through a restorative justice process. If an informal resolution can't be reached, or would be inappropriate, procedures exist for formal dispute resolution.

Students are expected to behave in a civil manner during lectures and discussion groups, though vigorous discussion and conflicting opinions are very welcome. Personal attacks, disrespectful comments, or sexist, racist, homophobic, transphobic, ableist, or other discriminatory remarks will not be tolerated. Students can be expelled from discussion groups or lectures if their behaviour is deemed to be disruptive or inhibits the ability of others to learn.

Read more:

https://www.dal.ca/campus_life/safety-respect/student-rights-and-responsibilities/student-life-policies/code-of-student-conduct.html

As a courtesy to other students and the instructor, please turn off all electronic devices other than those used for taking notes, and in all cases, please put devices on silent mode. The use of electronic devices for activities other than taking class notes is very disruptive to others. Out of respect, please save these activities for outside of class.

Diversity and Inclusion – Culture of Respect

Every person at Dalhousie has a right to be respected and safe. We believe inclusiveness is fundamental to education. We stand for equality. Dalhousie is strengthened in our diversity. We are a respectful and inclusive community. We are committed to being a place where everyone feels welcome and supported, which is why our Strategic Direction prioritizes fostering a culture of diversity and inclusiveness (Strategic Priority 5.2).

Read more:

<http://www.dal.ca/cultureofrespect.html>

Recognition of Mi'kmaq Territory

Dalhousie University would like to acknowledge that the University is on Traditional Mi'kmaq Territory. The Elders in Residence program provides students with access to First Nations elders for guidance, counsel and support. Visit the office in the McCain Building (room 3037) or contact the programs at elders@dal.ca or 902-494-6803 (leave a message).

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Learning and Support Resources

- General Academic Support - Academic Advising: **https://www.dal.ca/campus_life/academic-support/advising.html**
- Copyright and Fair Dealing: **<https://libraries.dal.ca/services/copyright-office/fair-dealing/fair-dealing-guidelines.html>**
- Libraries: **<http://libraries.dal.ca>**
- Student Health Services: **https://www.dal.ca/campus_life/health-and-wellness/health-services.html**
- Counselling and Psychological Services: **https://www.dal.ca/campus_life/health-and-wellness/counselling.html**
- Black Student Advising: **https://www.dal.ca/campus_life/communities/black-student-advising.html**
- Aboriginal Student Centre: **https://www.dal.ca/campus_life/communities/native.html**
- ELearning Website: **<https://www.dal.ca/dept/elearning.html>**
- Student Advocacy Services: **<https://www.dsu.ca/services/community-student-services/student-advocacy-service>**

- Dalhousie Ombudsperson: [https://www.dal.ca/campus life/safety-respect/student-rights-and-responsibilities/where-to-get-help/ombudsperson.html](https://www.dal.ca/campus_life/safety-respect/student-rights-and-responsibilities/where-to-get-help/ombudsperson.html)
- Writing Centre: [https://www.dal.ca/campus life/academic-support/writing-and-study-skills.html](https://www.dal.ca/campus_life/academic-support/writing-and-study-skills.html)
- Studying for Success program and tutoring: [https://www.dal.ca/campus life/academic-support/study-skills-and-tutoring.html](https://www.dal.ca/campus_life/academic-support/study-skills-and-tutoring.html)

Scent-Free Program

<http://www.dal.ca/dept/safety/programs-services/occupational-safety/scent-free.html>

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University Grading Practices: Statement of Principles and Procedures

http://www.dal.ca/dept/university_secretariat/policies/academic/grading-practices.html

Grade	Grade Point Value		Definition	
A+	4.30	90-100	Excellent	Considerable evidence of original thinking; demonstrated outstanding capacity to analyze and synthesize; outstanding grasp of subject matter; evidence of extensive knowledge base.
A	4.00	85-89		
A-	3.70	80-84		
B+	3.30	77-79	Good	Evidence of grasp of subject matter, some evidence of critical capacity and analytical ability; reasonable understanding of relevant issues; evidence of familiarity with the literature.
B	3.00	73-76		
B-	2.70	70-72		
C+	2.30	65-69	Satisfactory	Evidence of some understanding of the subject matter; ability to develop solutions to simple problems; benefitting from his/her university experience.
C	2.00	60-64		
C-	1.70	55-59		

D	1.00	50-54	Marginal Pass	Evidence of minimally acceptable familiarity with subject matter, critical and analytical skills (except in programs where a minimum grade of 'C' is required).
FM	0.00		Marginal Failure	Available only for Engineering, Health Professions and Commerce.
F	0.00	0-49	Inadequate	Insufficient evidence of understanding of the subject matter; weakness in critical and analytical skills; limited or irrelevant use of the literature.
INC	0.00		Incomplete	
W	Neutral and no credit obtained		Withdrew after deadline	
ILL	Neutral and no credit obtained		Compassionate reasons, illness	
P	Neutral		Pass	
TR	Neutral		Transfer credit on admission	
Pending	Neutral		Grade not reported	

Lecture and Readings Schedule:

This list is a guide only. The instructor may alter the schedule to accommodate guest lectures, to reflect developments with current issues, or for other logistical or academic considerations. Students will be informed of any changes to this outline in advance of alterations, as the course progresses.

January 8,10 Introduction / The Origins of Canadian Politics

Ajzenstat, Janet. "Introduction," *Canada's Founding Debates*, Janet Ajzenstat et al., eds. Toronto: University of Toronto Press, 1999: 1-10.

Pillon, Denis. "The Contested Origins of Canadian Democracy." *Studies in Political Economy* 98, no. 2 (2017): 105-123.

Slowey, Gabrielle. "Confederation comes at a cost: Indigenous Peoples and the Ongoing Reality of Colonialism in Canada." *Active History*, 8 July 2016.

Miller, J.R. "The Royal Proclamation – 'the Indians' Magna Carta'?" *Active History*, 30 September 2013.

January 15, 17 The Constitution

Heard, Chapter 1, "The Role and Nature of Conventions."

Heard, Chapter 2, "Conventions of the Governors Powers."

Adams, Eric. "Canadian Constitutional Identities." *Dalhousie Law Journal* 38, no. 2 (Fall 2015): 311-343.

Cyr, Hugo. "Conceptual Metaphors for an Unfinished Constitution." *Review of Constitutional Studies* 19, no. 1 (2014): 1-34.

January 22, 24 Federalism

Heard, Chapter 5, "Federalism."

Cairns, Allan C. "The Judicial Committee and Its Critics." *Canadian Journal of Political Science* 4, no. 3 (1971):301-345.

Jenson, Jane. "Representations in Crisis: The Roots of Canada's Permeable Fordism." *Canadian Journal of Political Science* 23, no. 4 (1990): 653-684 (only read pp.666-684).

January 29, 31 The Charter

LaSelva, Samuel V. "The Canadian Charter, the British Connection, and the Americanization Thesis: Toward a Montesquieuean Analysis of Rights and Their Protection." *Canadian Journal of Political Science* 50, no. 4 (2017): 1061-1081.

Kelly, James B. and Matthew A. Hennigar. "The Canadian Charter of Rights and the Minister of Justice: Weak-Form Review within a Constitutional Charter of Rights." *International Journal of Constitutional Law* 10 no. 11 (2012): 35–68.

*****January 31: Reading Response Assignment Due*****

February 5, 7 Fiscal Federalism and the Politics of Equalization

Blake, Raymond. "Politics and the Federal Principle in Canada: Newfoundland Offshore Oil Development and the Quest for Political Stability and Economic Justice." *Canadian Historical Review* 96, no. 1 (March 2015): 32–60.

Heaman, Elsbeth and Shirley Tillotson. "Tax and the Canadian Psyche: Elsbeth Heaman in conversation with Shirley Tillotson." *Literary Review of Canada* (November 2017).

Ouimet, Hubert. "Quebec and Canadian Fiscal Federalism: From Tremblay to Séguin and Beyond." *Canadian Journal of Political Science* 47, no. 1 (March 2014): 47-69.

February 12, 14 The Executive

Heard, Chapter 3, "Cabinet Ministers and the Civil Service."

Lagassé, Philippe. "The Crown and Prime Ministerial Power." *Canadian Parliamentary Review* 39, no. 2 (2016): 17-23.

***** February 14: In-class Test *****

February 19, 21 * Winter Study Break – No Classes *****

February 26, 28 The Executive II / The Legislature

Heard, Chapter 4, "The Legislatures."

D'Ombrain, Nicholas. "Ministerial Responsibility and the Machinery of Government." *Canadian Public Administration* 50 no. 2 (2007): 195-217.

Munroe, H.D. "Style within the centre: Pierre Trudeau, the War Measures Act, and the Nature of Prime Ministerial Power." *Canadian Public Administration* 54, no. 4 (December 2011): 531–549.

March 5, 7 The Judiciary

Heard, Chapter 6, "The Judiciary."

Macfarlane, Emmett. "Administration at the Supreme Court of Canada: Challenges and Change in the Charter Era." *Canadian Public Administration* 52 no. 1 (March 2009): 1-21.

Dawood, Yasmin. "The Senate Reference: Constitutional Change and Democracy, Federalism and Rule of Law: The Senate Reference Revisited." *McGill Law Journal* 60, no. 4 (2015): 737-761.

***** March 7: Annotated Bibliography Due*****

March 12, 14 Democratic Reforms

Schouls, Tim. "Aboriginal Peoples and Electoral Reform in Canada: Differentiated Representation versus Voter Equality." *Canadian Journal of Political Science* 29, no. 4 (December 1996): 729-749.

Morden, Michael. "Indigenizing Parliament: Time to Re-Start a Conversation." *Canadian Parliamentary Review* 39, no. 2 (2016): 24-33.

Henderson, Ailsa. "Consequences of Electoral Reform: Lessons for Canada." *Canadian Public Policy / Analyse de Politiques* 32, no. 1 (March 2006): 41-58.

March 19, 21 Federalism and Reconciliation

White, Graham. "Treaty Federalism in Northern Canada: Aboriginal-Government Land Claims Boards." *Publius: The Journal of Federalism* 32, no. 3 (January 2002): 89-114.

Blackburn, Carole. "Producing Legitimacy: Reconciliation and the Negotiation of Aboriginal Rights in Canada." *The Journal of the Royal Anthropological Institute* 13, no. 3 (September 2007): 621-638.

Borrows, John. "Challenging Historical Frameworks: Aboriginal Rights, The Trickster, and Originalism." *Canadian Historical Review* 98, no. 1 (2017): 114-135.

March 26, 28 Renewing Canadian Federalism

Blackstock, Cindy. "Toward the full and proper implementation of Jordan's Principle: An elusive goal to date." *Paediatrics & Child Health* 21, no. 5 (2016) :245-246.

Laforest, Rachel. "Rerouting political representation: is Canada's social infrastructure in crisis?" *British Journal of Canadian Studies* 25, no. 2 (2012): 181-197.

Brock, Kathy L. "The Politics of Asymmetrical Federalism: Reconsidering the Role and Responsibilities of Ottawa." *Canadian Public Policy / Analyse De Politiques* 34, no. 2 (2008): 143-61.

April 2, 4 Review

Heard, Chapter 7, "The Variety and Character of Conventions."

***** April 4: Research Essay Due *****