

Constitutional Law and Politics in Canada

POLI 3206

Fall 2019

Tuesdays and Thursdays 11:35-12:55

Studley MCCAIN ARTS & SS 2170

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On weekdays, I will generally respond to your emails within 24 hours. Substantive questions are best discussed in person during office hours. Feel free to email me or to drop by during office hours to see me with any questions you may have or simply to chat about your progress in the course. This time is for you so I hope that you will use it. I look forward to getting to know you better.

Course Description

The course offers students an introduction to the major constitutional institutions, decisions, and conventions that shape democratic life in Canada. Weekly topics include the constitution and constitutional amendment, the Charter of Rights and Freedoms, the judiciary and judicial review, federalism and equalization, Indigenous land claims and self-government, Parliament, the Senate, and the Crown. While the course explores the design, evolution, and modern functioning of these various constitutional institutions, practices, and conventions, we will also consider whether and how these institutions contribute to the so called 'democratic deficit' in Canada.

Required Texts

Russell, Peter. 2004. *Constitutional Odyssey: Can Canadians Become a Sovereign People?* Toronto: University of Toronto Press.

Smith, David E. 2013. *The Invisible Crown: The First Principle of Canadian Government.* Toronto: University of Toronto Press.

**See course schedule for additional readings

Course Learning Outcomes

1. Provide students with an understanding of the major constitutional institutions and conventions that shape political life in Canada as well as contemporary debates/critiques surrounding these institutions and practices.
2. Assist students in rooting their arguments in the relevant literature (including constitutional decisions) and expose them to the fundamental arguments of scholars in the field.
3. Help students develop and practice critical reading and writing skills.

Class Format

The class is scheduled to meet twice a week. Often, the typical weekly structure will include a lecture for the first class of the week and a class discussion of assigned readings for the second class. As student-centered discussions are an important component of the course, students are expected to attend having read the required readings for that week. Attendance and participation will be graded.

Course Assignments

Requirement/Assessment	Date	Weighting
Participation	Ongoing	10%
Tests (x2)	October 1 & November 5	20%
Essay proposal	October 8	10%
Essay	November 28	25%
Group Assignment	November 21 & 26	15%
Exam	TBA	20%

Weekly Participation (10%) and Group Assignment (15%)

An important component of this course will be student-centered discussions. Classroom participation provides students with the ability to interact with one another as well as critically engage with the course material. Attendance will be taken each week. Students are expected to attend having read the required materials for that week (see Course Schedule and Discussion Reading List).

In addition to weekly participation, students will be responsible for participating in an end of semester summit to reform/amend the Constitution (in groups of 4 or so). Groups will be formed the first week of class. Each group will be assigned a specific role (i.e., Quebec, Federal Government, etc.). On November 21, we will hold a summit in class. From the perspective of your assigned role, groups will need to make a case for how (and why!) the Constitution should be changed (or not). All groups will present their arguments (approximately 10 minutes) and submit a 2-page written brief. The following class (November 26), the various groups will negotiate and attempt to come to a consensus using the amending formula. There will be no 'makeup' or alternative dates for missing this assignment.

Tests (10% each)

Two in class tests. Each test will cover all assigned readings and lectures up to the test. They will consist of two parts: a section in which students will be asked to define and explain the significance of key terms/concepts, and a short essay question.

Essay Proposal (10%) and Essay (25%)

The topics of this paper must be chosen from a specified list of themes/questions. This list, as well as further instructions, will be discussed in class and provided on Brightspace. Essay proposals should be 2-3 pages in length and must include the research question, thesis statement, and a brief summary of the major arguments that the final paper will offer. Three academic sources are required. The purpose of the outline is to identify any potential challenges before writing your final essay (i.e., too ambitious, not enough sources, etc.). The final essay, 8-10 double-spaced pages, is expected to build on this proposal (and the feedback). Assignments must be submitted in hardcopy at the beginning of the class on the appropriate due date. Late assignments will receive a penalty of 5% per day.

Final Exam (20%)

The final exam will be held during the officially scheduled examination period. Material in readings and lectures (including any films) for the entire course will be tested in the examination. The format will be a combination of definitions, short and long-answer questions.

Course Schedule

Date	Week	Topic	Reading for the Week
September 3	1	Introduction to the course	Chapter 3. "Confederation." In <i>Constitutional Odyssey</i> .
September 5	1	Confederation and Pre-Confederation Constitutional History	Chapter 4. Provincial Rights." In <i>Constitutional Odyssey</i> . Slowey, Gabrielle. 2016. " Confederation Comes at a Cost: Indigenous Peoples and the Ongoing Reality of Colonialism in Canada. " <i>Active History</i> .
September 10	2	The Road to Patriation	Chapter 6. "Mega Constitutional Politics Round One." In <i>Constitutional Odyssey</i> .
September 12	2		Chapter 7. "Round Two: New-Constitutionalism." In <i>Constitutional Odyssey</i> . Chapter 8. "Round Three: Patriation." In <i>Constitutional Odyssey</i> .
September 17	3	Mega Constitutional Politics & Amending the Constitution	Chapter 9. "Round Four: Meech Lake." In <i>Constitutional Odyssey</i> .
September 19	3		Chapter 10. "Round Five: The Canada Round." In <i>Constitutional Odyssey</i> . Chapter 11. "The Canada Round II." In <i>Constitutional Odyssey</i> .
September 24	4	Federalism	Frances Abele and Michael Prince. 2006. "Four Pathways to Aboriginal Self- Government in Canada." <i>American Review of Canadian Studies</i> 36(4): 568-95.
September 26	4		Alan C. Cairns. 1977. "The Governments and Societies of Canadian Federalism." <i>Canadian Journal of Political Science</i> 10(4): 695-725. Robinson, Ian and Richard Simeon. 2004. "The Dynamics of Canadian Federalism," In James Bickerton and Alain-G. Gagnon (eds.) <i>Canadian Politics</i> (4rd edition). Peterborough, Ontario: Broadview Press. Sections 91 and 92 of The Constitution Act, 1867
October 1	5	TEST NUMBER 1	Strayer, Barry. 2015. "The Evolution of the Charter." In Lois Harder and Steve Patten (eds.) <i>Patriation and its Consequences</i> . Vancouver: UBC Press.
October 3	5	The Charter	

			<p>Russell, Peter H. 1983. "The Political Purposes of the Canadian Charter of Rights and Freedoms." <i>The Canadian Bar Review</i> 61: 30-54.</p> <p>Hiebert, Janet. 2018. "The Charter's Influence on Legislation: Political Strategizing about Risk." <i>Canadian Journal of Political Science</i> 51(4):727-747.</p> <p>The Charter of Rights and Freedoms</p>
October 8	6	The Judiciary	<p>Dodek, Adam. 2016. "The Supreme Court of Canada." In <i>The Canadian Constitution</i> (2nd ed.). Toronto: Dundurn Press.</p> <p>Rainer Knopff and F.L. Morton. 2000. "The Court Party." In Rainer Knopff and F.L. Morton, <i>The Charter Revolution and the Court Party</i>. Toronto: Broadview Press.</p> <p>Hogg, Peter; Bushell, Allison. 1997. "The Charter Dialogue Between Courts and Legislatures." <i>Osgoode Hall Law Journal</i> 35 (1): 75–124.</p>
October 10	6		
October 15	7	Parliament and Parliamentary Constitutional Conventions	<p>Thomas, Paul, Peter Loewen, and Michael Mackenzie. 2013. "Fair Isn't Always Equal: Constituency Population and the Quality of Representation in Canada." <i>Canadian Journal of Political Science</i> 46(2): 1-21.</p> <p>Heard, Andrew. 2010. "Conacher Missed the Mark on Constitutional Conventions and Fixed Election Dates." <i>Constitutional Forum</i> 19: 129-140.</p> <p>Sutherland, Sharon. 1991. "Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem." <i>Canadian Journal of Political Science</i> 24(1): 91-111.</p>
October 17	7		
October 22	8	The PM and Crown	<p>Chapter 1. "The Monarchical Idea." In <i>The Invisible Crown</i>.</p> <p>Chapter 2. "The Crown." In <i>The Invisible Crown</i>.</p> <p>Chapter 3. "Canadianizing the Crown." In <i>The Invisible Crown</i>.</p> <p>Lagassé, Philippe. 2016. "The Crown and Prime Ministerial Power." <i>Canadian Parliamentary Review</i> 39(2): 17-23.</p>
October 24	8		

October 29	9	The Senate in Constitutional Perspective	Sharman, Campbell. 2008. " Political Legitimacy for an Appointed Senate ," <i>Choices</i> 14(11):1-28.
October 31	9		Jennifer Smith. 2013. Abolishing the Senate: The NDP's Bad Idea. The Federal Idea, A Quebec Think Tank on Federalism. <i>The Federal Idea</i> . Gelinas, Fabien and Leonid Sirota. 2013. "Constitutional Conventions and Senate Reform," <i>Revue Quebecoise de droit Constitutionnel</i> 5: 1-17.
November 5	10	TEST NUMBER 2	Hoi, Long. 2017. "A Modest Case for Constitutional Limits on Electoral Reform in Canada." In Andrew Potter, Daniel Weinstock, and Peter Loewen (eds) <i>Should we Change How we Vote? Evaluating Canada's Electoral System</i> . McGill-Queens University Press.
November 7	10	Contemporary Constitutional Issues	Globe and Mail Editorial: Quebec's hijab ban doesn't just violate the Charter. It breaks with Quebec's history National Post: Doug Ford Threatens to Invoke Canada's Sparsely Used Notwithstanding Clause
November 12-14	11	Fall break	No Reading... Fall Break
November 19	12	Indigenous Peoples and the Constitution	James (Sa'ke'j) Youngblood Henderson. 2010. "Constitutional Vision and Judicial Commitment: Aboriginal and Treaty Rights in Canada." <i>Australian Indigenous Law Review</i> 14(2): 24-48. Ladner, Kiera. 2005. "Up the Creek: Fishing for a New Constitutional Order." <i>Canadian Journal of Political Science</i> 38(4): 923-53. Papillon, Martin. 2014. "The Rise (and Fall?) of Aboriginal Self-Government." In James Bickerton and Alain-G. Gagnon (eds.) <i>Canadian Politics</i> (6th ed). Toronto: University of Toronto Press.
November 21	12	Constitutional Summit (Part1)	No Reading... group presentations and constitutional summit
November 26	13	Constitutional Summit (Part2)	
November 28	13	Review Session	Chapter 12. "Canada Returns to Constitutional Normalcy." In <i>Constitutional Odyssey</i>

Discussion Reading List

Date	Week	Topic	Discussion Reading
September 19	3	Amending the Constitution	Does Quebec have a constitutional veto? Objection by Quebec to a Resolution to amend the Constitution
September 26	4	Federalism	Can Quebec unilaterally succeed from Canada? Reference re Secession of Quebec
October 17	7	Parliament	Does the size of boundaries matter? Reference re Prov. Electoral Boundaries (Sask.)
October 31	9	The Senate	Can Parliament amend the Senate without altering the constitution? Reference re Senate Reform
November 19	12	Indigenous Title	Calder et al. v. Attorney General of British Columbia

*In addition to the regularly assigned readings, the above listed constitutional cases will guide the discussion for the week listed in the above table.

**The decisions in these cases are often *very* long. Students are expected to understand the question at hand as well as the outcome, but are not expected to memorize the intricacies of the decision.

Additional Recommend Readings

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

Franks, C.E.S. 2009. "To Prorogue or Not to Prorogue: Did the Governor-General Make the Right Decision." In Peter H. Russell and Lorne Sossin (eds.) *Parliamentary Democracy in Crisis*. Toronto: University of Toronto Press.

Chapter 6. "The Crown in Parliament." In *The Invisible Crown*.

Rowe, Malcolm and J. Michael Collins. 2016. "What Is the Constitution of a Province?" In Christopher Dunn (ed.) *Provinces: Canadian Provincial Politics*. Toronto: University of Toronto Press.

Manfredi, Christopher P. 1990. "The Use of United States Decisions by the Supreme Court of Canada Under the Charter of Rights and Freedoms." *Canadian Journal of Political Science* 23:499-518.

Roach, Kent. 2007. "Judicial Activism in the Supreme Court of Canada." In Brice Dickson (ed.) *Judicial Activism in Common Law Supreme Courts*. Oxford: Oxford University Press.

Magnusson, Warren. 2005. "Are Municipalities Creatures of the Provinces?" *Journal of Canadian Studies* 39(2): 5-29.

University Grading Policy

Grade	Grade Point Value	Percentage	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		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	Neutral and no credit obtained reported

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, available at

<https://academiccalendar.dal.ca/Catalog/ViewCatalog.aspx?pageid=viewcatalog&catalogid=81&chapterid=4424&loadusercredits=False>

University Statements

- Territorial Acknowledgement:

Dalhousie University is located in Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq. We are all Treaty people.¹

- Academic Integrity

At Dalhousie University, we are guided in all of our work by the values of academic integrity: honesty, trust, fairness, responsibility and respect. 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/dept/university_secretariat/academic-integrity.html

- Accessibility

The Student Accessibility Centre is Dalhousie's centre of expertise for student accessibility and accommodation. The advising team works with students on the Halifax campus 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).

If there are aspects of the design, instruction, and/or experiences within this course that result in barriers to your inclusion please contact the Study Accessibility Centre:

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

Please note that your classroom may contain accessible furniture and equipment. It is important that these items remain in the classroom, undisturbed, so that students who require their use will be able to fully participate.

¹ For more information about the purpose of territorial acknowledgements, or information about alternative territorial acknowledgements if your class is offered outside of Nova Scotia, please visit <https://native-land.ca/>.

- Student Code of 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. (read more: https://www.dal.ca/dept/university_secretariat/policies/student-life/code-of-student-conduct.html)

- 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. Dalhousie is strengthened in our diversity and dedicated to achieving equity. We are committed to being a respectful and inclusive community where everyone feels welcome and supported, which is why our university prioritizes fostering a culture of diversity and inclusiveness.

(read more: <https://www.dal.ca/cultureofrespect.html>)

University Policies and Programs

- Important Dates in the Academic Year (including add/drop dates) http://www.dal.ca/academics/important_dates.html
- Dalhousie Grading Practices Policy https://www.dal.ca/dept/university_secretariat/policies/academic/grading-practices-policy.html
- Grade Appeal Process https://www.dal.ca/campus_life/academic-support/grades-and-student-records/appealing-a-grade.html
- Sexualized Violence Policy https://www.dal.ca/dept/university_secretariat/policies/human-rights---equity/sexualized-violence-policy.html
- Scent-Free Program <https://www.dal.ca/dept/safety/programs-services/occupational-safety/scent-free.html>

Learning and Support Resources

- General Academic Support – Advising https://www.dal.ca/campus_life/academic-support/advising.html
- Student Health & Wellness Centre https://www.dal.ca/campus_life/health-and-wellness.html
- On Track (helps you transition into university, and supports you through your first year at Dalhousie and beyond https://www.dal.ca/campus_life/academic-support/On-track.html)
- Indigenous Student Centre https://www.dal.ca/campus_life/communities/indigenous.html
- Elders-in-Residence (The Elders in Residence program provides students with access to First Nations elders for guidance, counsel and support. Visit the office in the Indigenous Student Centre or contact the program at elders@dal.ca or 902-494-6803.)

<https://medicine.dal.ca/departments/core-units/global-health/diversity/indigenous-health/elders-in-residence.html>

- Black Student Advising Centre: https://www.dal.ca/campus_life/communities/black-student-advising.html
- International Centre https://www.dal.ca/campus_life/international-centre.html
- South House Sexual and Gender Resource Centre <https://southhousehalifax.ca/>
- LGBTQ2SIA+ Collaborative - <https://www.dal.ca/dept/hres/education-campaigns/LGBTQ2SIA-collaborative.html>
- Library <http://libraries.dal.ca>
- Copyright Office <https://libraries.dal.ca/services/copyright-office.html>
- Dalhousie Student Advocacy Services <http://dsu.ca/dsas>
- Dalhousie Ombudsperson https://www.dal.ca/campus_life/safety-respect/student-rights-and-responsibilities/where-to-get-help/ombudsperson.html
- Human Rights and Equity Services <https://www.dal.ca/dept/hres.html>
- Writing Centre https://www.dal.ca/campus_life/academic-support/writing-and-study-skills.html
- Study Skills/Tutoring: https://www.dal.ca/campus_life/academic-support/study-skills-and-tutoring.html
- Faculty or Departmental Advising Support: See <https://www.dal.ca/faculty/arts/programs.html> for links to departmental websites and information about advising

Safety

- Biosafety <https://www.dal.ca/dept/safety/programs-services/biosafety.html>
- Chemical Safety <https://www.dal.ca/dept/safety/programs-services/chemical-safety.html>
- Radiation Safety <https://www.dal.ca/dept/safety/programs-services/radiation-safety.html>
- Laser Safety <https://www.dal.ca/dept/safety/programs-services/radiation-safety/laser-safety.html>