

POLI 2215: Canadian Indigenous Politics – An Institutional Perspective

Dalhousie University – Winter 2017
Tuesday & Thursday, 10:05 am – 11:25 am
Studley LSC, Common Area – C338

Instructor: Marcella Firmini

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Office Hours: By appointment only

Course synopsis:

There is a ‘special’ relationship between the Crown and the Indigenous peoples of Canada. What are the foundations, nature, scope, and significance of this relationship? What historical and legal realities undergird the constitutional and political interactions between Indigenous Peoples and the Crown? How crucial are the ‘politics of reconciliation’ and does the ‘special relationship’ help clarify the extent, nature, and implications of the current federal government’s call for a renewed ‘nation to nation’ relationship? This survey course aims to provide a broad analysis of the institutional and political development of the Indigenous-Crown relationship. We focus on the political evolution of the relationship between the Canadian State and Indigenous peoples by exploring its origin and foundations and by becoming familiar with some of the most salient institutional (political) developments and court (legal) cases that have shaped, characterized, and are now refocusing the interaction between Indigenous peoples and the State. We follow the introduction by examining the establishment of the *Indian Act* regime, and crucial judicial recognition of Aboriginal rights. We conclude with examining Indigenous political movements including the founding of formal and informal Indigenous organizations.

Course Aims and Objectives: It is expected that students will gain a broader understanding of the vital historical and political relationship between the state and Indigenous peoples in Canada. The course addresses some basic, but key issues in Indigenous/Crown politics in Canada and provides students with understandings that will be useful as they progress through their studies. The goal is to provide students with broad knowledge of the historical and current issues surrounding the Indigenous/Canadian state/Crown relationship and some future trends, as well as gain familiarity with the most important court cases and their impact. By the end of the course, it is expected that students will be able to recognize who the Indigenous peoples of Canada are, the historical Crown/Indigenous relationship and its evolution, and an understanding of the current status of Indigenous politics in Canada.

Required Texts & Readings:

1. **From Treaty Peoples to Treaty Nation: a roadmap for all Canadians.** Greg Poelzer & Ken S. Coates. UBC Press (2015)
2. **Revisiting the Duty to Consult Aboriginal Peoples.** Dwight G. Newman. Purich Publishing (2014)
3. **Readings posted to BrightSpace.** I reserve the right to both decrease or substitute some readings. Both or either occur with ample notice.
4. **Texts on hold at Dalhousie Killam Library.** See syllabus for titles.
5. Occasionally, ministers of the Crown, governments and/or organizations hold press conferences or issue announcements, and events in society, as they unfold, become **relevant news items.** **These will come to constitute required reading material** which will be posted to BrightSpace.

DROP COURSE DATES: please review dates on the registrar's website here
http://www.dal.ca/academics/important_dates.html

Course Evaluation:

- **Book Report** – 25%: April 10 (Revisiting the Duty to Consult Aboriginal Peoples. Dwight G. Newman. Purich Publishing , 2014)
- **Literature “Peer Debates”** – 5 % each (15%): January 26, February 16, March 28.
- **Two Literature Commentaries** – 15% each (30%): February 28, March 30.
- **Research paper** – 30%: March 16

Dalhousie Grading Scheme:

A+	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	85-89		
A-	80-84		
B+	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	73-76		
B-	70-72		
C+	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	60-64		
C-	55-59		
D	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).

F	0-49	Inadequate	Insufficient evidence of understanding of the subject matter; weakness in critical and analytical skills; limited or irrelevant use of the literature.

General Rules and Basic Policies Regarding Cell Phone and Electronics Etiquette:

1. The use of cellular phones or all other electronic gadgetry is **not permitted** during class; **neither are recording devices of ANY kind**. During regular classes, phones and other gadgetry must be stored away.
2. During peer debates in class all phones and all other electronic gadgets **must be turned off and stored away**.
3. Use of laptops for taking notes during lectures is **permitted**; **however**, should complaints arise regarding inappropriate or distracting web browsing during class, the use of laptops will be restricted. **Use them wisely**.
4. Phone calls, picture-taking, audio and video recordings, texts, Snap Chat, You Tube, Facebook, Twitter, and **ALL other forms of social media usage are NOT permitted inside the classroom**.
5. No alternative dates for quizzes/exams/due dates will be set except for serious medical conditions. Supporting documentation in these instances must be provided within a reasonable timeframe.
6. No assignments will be given for extra credit. No extensions will be given because of assignment overload.
7. Be advised that lectures will cover large portions of material that will not be posted on BrightSpace. Lecture notes and/or slides (if PowerPoint is used) are not posted to BrightSpace.
8. **DO NOT book any travel before the exam schedules are known**.
9. **Late Penalties**: Assignments must be submitted as hard copies. No electronic submissions will be accepted. For each “late day” (including weekends and holidays) a 5% deduction will be applied as penalty to the total mark. If you cannot meet assignment deadlines, but have cogent medical or ‘special circumstance’ justifications, notify me 48 hours in advance; **documentation supporting your justification will be required**. The late penalty will be calculated from the assignment submission date.
10. All assignments must be submitted in class. Late assignments should be submitted to the TA. Contact the TA for an appointment or to arrange a place to drop off the assignment.

Statement on Academic Integrity (Source: Dalhousie University):

“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.

What does academic integrity mean?

At university we advance knowledge by building on the work of other people. Academic integrity means that we are honest and accurate in creating and communicating all academic products. Acknowledgement of other people’s work must be done in a way that does not leave the reader in any

doubt as to whose work it is. Academic integrity means trustworthy conduct such as not cheating on examinations and not misrepresenting information. It is the student's responsibility to seek assistance to ensure that these standards are met.

How can you achieve academic integrity? [T]he following are some ways that you can achieve academic integrity:

- Make sure you understand Dalhousie's policies on academic integrity (<http://academicintegrity.dal.ca/Policies/>)
- Do not cheat in examinations or write an exam or test for someone else
- Be sure not to plagiarize, intentionally or unintentionally
- Clearly indicate the sources used in your written or oral work. This includes ideas, figures of speech, graphical representations, diagrams, videos, and images.
- Do not use the work of another from the Internet or any other source and submit it as your own • When you use the ideas of other people (paraphrasing), make sure to acknowledge the source
- Do not submit work that has been completed...previously [and] submitted for another assignment

Where can you turn for help?

If you are ever unsure about any aspect of your academic work, contact me (or the TA); also:

- Academic Integrity website <http://academicintegrity.dal.ca/>
- Writing Centre (http://www.dal.ca/campus_life/student_services/academic-support/writing-and-studyskills.html)

What will happen if an allegation of an academic offence is made against you?

I am required to report every suspected offence... If you are found guilty of an offence, a penalty will be assigned ranging from a warning, to failure of the assignment or failure of the class, to expulsion from the University. Penalties may also include a notation on your transcript that indicates that you have committed an academic offence. All students in this class are to read and understand the policies on academic integrity and plagiarism referenced in the Policies and Student Resources sections of the academicintegrity.dal.ca website. Ignorance of such policies is no excuse for violations”.

Plagiarism, therefore, is considered a serious academic offence. No excuse is acceptable for plagiarism and NO AMOUNT OF PLAGIARISM WILL BE TOLERATED AND THUS WILL BE REPORTED IMMEDIATELY. For more information, see:

http://www.dal.ca/dept/university_secretariat/academic-integrity.html

Requests for Student Accommodation (Source: Dalhousie University): “Students may request accommodation as a result of barriers experienced related to disability, religious obligation, or any characteristic protected under Canadian human rights legislation. Students who require academic accommodation for either classroom participation or the writing of tests and exams should make their request to the Advising and Access Services Center (AASC) prior to or at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation form. A note taker may be required as part of a student's accommodation. There is an honorarium of \$75/course/term (with some exceptions). If you are interested, please contact AASC at 902- 494-2836 for more information or send an email to notetaking@dal.ca Please note that your classroom may contain specialized accessible furniture and equipment. It is important that these items remain in the classroom, untouched, so that students who require their usage will be able to fully participate in the class”.

Class Schedule:

January 10:

- Introduction to the course and expectations: main concepts and issues that will be addressed throughout the term.
- Overview of assignments and expectations: brief discussion about the research paper and other assignments.
- Introduction of the TA (if available).

Part I: Historical Context

January 12: First Contact & Establishing the Relationship

1. **Text**: Poelzer & Coates: pp. vii-xxi, pp. 3-27 & 102-125.
 2. **Weblink on BrightSpace**: Overview of Terminology. There have been some adjustments since the writing of this document. We will discuss in class.
 3. **BrightSpace**: *Canadian Problem in Aboriginal Politics*. David Newhouse & Yale Belanger in “Visions of the Heart”, 3rd Ed, Oxford University Press, 2011.
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January 17-19: The Crown and Indigenous Peoples

- The Royal Proclamation
- The Honour of the Crown
- The Fiduciary Responsibility
- Intro to first landmark court cases (Guerin & Sparrow)

19th - ***Half-Hour Presentation: 1. How to write commentaries and book reports.***

2. Building Debate Positions

3. Further explanation of Assignments

Required reading:

1. **BrightSpace**: *The Crown’s Fiduciary Responsibility* (M. Hurley, Library of Parliament, 2002)
2. **BrightSpace**: *The Crown and Indigenous Peoples* (A Primer by N. Tindridge, 2016)
3. **BrightSpace**: *The Obsolete Theory of Crown Unity in Canada and its Relevance to Indigenous Claims*. Kent McNeil, Constitutional Studies (2015)
4. **Text**: *Revisiting the Duty to Consult*, pp.166-173
5. **Dalhousie Killam Library (on hold)**: *The Fiction of Aboriginal Sovereignty*. Tom Flanagan, ‘First Nations? Second Thoughts?’ (Kingston: McGill-Queen’s, 2000): ch. 4

Recommended Reading:

- **BrightSpace**: *The Theory of Crown Trust Toward the Aboriginal Peoples* (D. M. Johnston, Ottawa Law Review, 18.2, 1986)
 - **BrightSpace**: *The Crown and First Nations* (David Arnot, n.d – PDF)
 - **Weblink on BrightSpace**: *Royal Proclamation, 1763* (read **only** pertinent passages)
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January 24: Historic and Modern Treaties

- *Continues from previous class*
- **First landmark court cases (Guerin & Sparrow)**
- Epistemology of sovereignty
- Nation and nationhood; the State
- Treaties & Treaty-making and their Continued Relevance
- Constitution 1867 (91.24)

Required reading:

1. **BrightSpace:** *Treaties* in ‘Ways of Knowing: An introduction to Native Studies in Canada’, (Chapter 4, 2nd Edition). Yale D. Belanger
2. **Dalhousie Killam Library (on hold):** *On Being Here to Stay: Treaties and Aboriginal Rights in Canada*. Michael Asch, University of Toronto Press (2014). Chapters V, VI, and VII, pp. 73-133.
3. **Text:** Poelzer & Coates, pp. 31-45.

Recommended Reading:

- **BrightSpace:** *Setting the Stage: The Context of Modern Treaty Negotiations in Canada*. Christopher Alcantara. In “Negotiating the Deal: Comprehensive Land Claims Agreements in Canada”. Toronto: University of Toronto Press, 2013.
- **Dalhousie Killam Library (on hold):** Tom Flanagan, *First Nations? Second Thoughts* (Kingston: McGill-Queen’s, 2000): ch. 8, “Treaties, Agreements, and Land Surrenders”: 134-165

January 26 – Peer Debates (5%)

Part II: Developments

January 31 & February 2: ‘Identity’ & the Establishment of the Indian Act Regime

- *Continue from previous class (Treaties)*
- The Indian Act and beyond
- Attributing ‘Labels’ and Creating Nomenclature (Identity)

Required reading:

1. **BrightSpace:** *Beyond Blood*. Pamela Palmater. Legislated Identity: Control, Division, and Assimilation, 28-54.
2. **BrightSpace:** *Indian Status and Band membership issues*. M. Furi and J. Wherrett - Library of Parliament. Ottawa: Parliamentary (2003)
3. **Weblink on BrightSpace:** *Indian Act Colonialism: A Century Of Dishonour, 1869-1969*. John Milloy (2008) Research Paper for the National Centre for First Nations Governance.

Recommended Readings:

- **BrightSpace:** *First Nation Citizenship Research & Policy* (Series: Building Towards Change). T. Alfred, 2009 (PDF)
 - **BrightSpace:** *Beyond the Indian Act: Restoring Aboriginal Property Rights*. Tom Flanagan, Christopher Alcantara, and Andre Le Dressay. 2010. McGill-Queen’s University Press. Chapter 7: *The First Nations Land Management Act: An Alternative to the Indian Act*. Pp. 108-119
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February 7-9: – Changes to the Indian Act; the Inuit, the Métis, and ‘Urban Aboriginals’; Recent Developments

Required Readings:

1. **BrightSpace:** *Impacts of the 1985 Amendments to the Indian Act on First Nations Populations*. Stewart Clatworthy (2003). *Aboriginal Conditions: Research as a Foundation for Public Policy*, (eds) J.P. White, P.S. Maxim & D. Beavon, pp. 63-90. UBC Press
2. **BrightSpace:** *The Human Rights Committee and the Case of Sandra Lovelace*. Link in ‘Readings’
3. **BrightSpace:** *Plain Speak on the Daniels Case* – Pape, Salter & Teillet (PDF)
4. Poelzer & Coates, pp. 206-222.
5. **BrightSpace:** *Reassessing the Population Impacts of Bill C-31*. Stewart Clatworthy (2001). Ottawa: Indian and Northern Affairs Canada
6. **Text:** Poelzer & Coates, pp. 79-101.

Recommended Readings:

- **BrightSpace:** *An Empty Shell of a Treaty Promise: R v. Marshall and the Rights of Non-Status Indians*. Pamela Palmater (2002). *Dalhousie Law Journal*, pp. 100-148.
- **BrightSpace:** WAB: Chapter 5 – *Métis and Non-Status Indians and Section 91(24)*, pp. 191 – 230
- **BrightSpace:** *I’m Métis, What’s Your Excuse? : On the Optics and the Ethics of the Misrecognition of Métis in Canada*. Chris Andersen. *Aboriginal Policy Studies Journal* 1, 2 (2011): 161-165.
- **BrightSpace:** *Aboriginal Women’s Rights as ‘Existing Rights’*. Sharon D. McIvor in *First Voices: An Aboriginal Women’s Reader* (374–81)

February 14: Indigenous Rights and the Liberal State

1. **BrightSpace:** *Understanding Aboriginal Rights*. Brian Slattery. (PDF Osgoode School of Law)
2. **BrightSpace:** *The Constitutional Rights of the Aboriginal peoples of Canada* – K. McNeil (PDF)

Recommended Reading

- **BrightSpace:** *Constitutional recognition of aboriginal and treaty rights: a new framework for managing legal pluralism in Canada?* Ghislain Otis. *The Journal of Legal Pluralism and Unofficial Law*, 2014, 46, 3, 320-337

February 16: Peer Debates (5%)

**** WINTER BREAK: Feb 20-24 ****

Feb 28: Constitutional Debates – The Indian Policy Paper 1969 & Repatriation; Indigenous Reactions

- **Reprising Topic from our last class**
- An overview of the P.E. Trudeau Government White Paper and the consequent *Red Paper*.
- Indigenous Organizations AFN, NWAC, CAP, ITK and the Federal Government departments for Aboriginal affairs (INAC, etc.)

Required Readings:

1. **Text:** Poelzer & Coates, pp. 102-125
 2. **Text:** Poelzer & Coates, pp. 129-144
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3. **BrightSpace:** Indian Policy 1969 – the Government of Canada
4. **BrightSpace:** “The Red Paper” Response (PDF)
5. **BrightSpace:** *White and Red Paper Liberalism*. Dale Turner in ‘Philosophy and Aboriginal Rights’ (160–70)
6. **BrightSpace:** *The Unjust Society: The Tragedy of Canada's Indians*. Harold Cardinal (M.G. Hurtig, 1969) pp. 108-137
7. **Links to Indigenous Organizations on BrightSpace**

March 2: Royal Commission on Aboriginal Peoples; Kelowna & the following ‘Harper Era’.

Required Readings:

1. **BrightSpace:** ASG: *From Panacea to Reality: the practicalities of Canadian Aboriginal self-government agreements*, pp. 105-122
2. **BrightSpace:** *Renewing the Relationship: A Perspective on the Impact of the Royal Commission on Aboriginal Peoples*. Marlene Brant Castellano (1999) in John Hylton (ed.). *Aboriginal Self-Government in Canada. Current Trends and Issues* (2nd edition). Purich. 92-111
3. **BrightSpace:** Assembly of First Nations. 2006. *Royal Commission on Aboriginal People at 10 Years. A Report Card*. http://www.afn.ca/cmslib/general/afn_rcap.pdf (W)
4. **Text:** Poelzer & Coates, pp. 155-169 & 189-205.

Recommended Readings:

- **BrightSpace:** Courts as Allies. *Aboriginal policy studies*, Vol. 1, no. 1, 2011
- **BrightSpace:** *Beyond the Indian Problem: Aboriginal Peoples and the Transformation of Canada* (Chapter 19 in the Oxford Handbook of Canadian Politics).
- **BrightSpace:** RCAP - Book IV (excerpt)

March 7-9: Self Determination & Self Government; the United Nations; Indigenous Governance Today

Required Readings:

1. **BrightSpace:** *The Rise (and Fall?) of Aboriginal Self-Government*. Martin Papillon. In Bickerton and Gagnon (eds.) ‘*Canadian Politics*’ 6th Ed. University of Toronto Press, 2014.
2. **BrightSpace:** Aboriginal Nationhood and the Inherent Right to Self-Government. Gordon Christie. *Research Paper for the National Centre for First Nations Governance*. West Vancouver: National Centre for First Nations Governance, 2007.
3. **BrightSpace:** *Sovereignty – An Inappropriate Concept*. Taiaiake Alfred in *Peace, Power, Righteousness: An Indigenous Manifesto*, 1999. Oxford University Press, 55-69.
4. **Text:** Poelzer & Coates, pp. 223-251.

Recommended Readings:

- **Weblink on BrightSpace:** *United Nations Declaration on the Rights of Indigenous Peoples*. United Nations. 2007. New York: United Nations (Survey this document)
- **BrightSpace:** *Paying for Self-Determination: Aboriginal Peoples, Self-Government and Fiscal Relations in Canada*. Michael J. Prince and Frances Abele in “Reconfiguring Aboriginal-State Relations”. Ed Michael Murphy. McGill-Queen's University Press, 2005.
- **BrightSpace:** *Self-Determination: A Foundational Principle*. James S. Anaya in “Indigenous Peoples in International Law”. Oxford University Press, 1996

Part III: Contemporary Issues - Duty to Consult & Truth and Reconciliation

March 14: Guest Speaker (tentative)

March 16: Guest Speaker (tentative)

Research paper due

Required reading:

1. **Text:** Poelzer & Coates, pp. 46-75.
 2. **Text:** *Revisiting the Duty to Consult*, pp. 15-85.
 3. **BrightSpace:** *Treaty Federalism: An Indigenous Vision of Canadian Federalisms*. K. Ladner in “New Trends in Canadian Federalism”, 2nd ed., Broadview, 2003, pp.181-193
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March 21-23: The Duty to Consult

Required reading:

Text: *Revisiting the Duty to Consult*, pp. 86-114 & pp.115-141

March 28 – Peer Debates (5%)

March 30: Idle No More; Land & Resource Development; J. Trudeau & Nation-to-Nation

1. **BrightSpace:** *Ending Denial — Courts and Claims: Aboriginal Resource Rights*, 123-136
 2. **BrightSpace:** *What Causes Canadian Aboriginal Protest? Examining Resources, Opportunities and Identity, 1951-2000*. Howard Ramos. *The Canadian Journal of Sociology*, 31, 2, 2006, 211-234
 3. **Text:** Poelzer & Coates, pp. 252-264
 4. **BrightSpace:** *Forging Partnerships, Building Relationships: Aboriginal Canadians and Energy Development*. Douglas Eyford. Report to the Prime Minister. 2013.
 7. **Text:** Poelzer & Coates, pp. 145-154
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April 4-6: Truth & Reconciliation Commission; Missing & Murdered Aboriginal Women

Required reading:

1. **BrightSpace:** *We are all Treaty People: Conclusion*. J. R. Miller (2009). ‘Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada’. University of Toronto Press. 283-309
 2. **Text:** Poelzer & Coates, pp. 265-286 plus postscript & appendices (pp.282-304).
 3. **BrightSpace:** *Landed Citizenship: An Indigenous Declaration of Interdependence*. John Burrows (2002) in ‘Recovering Canada. The Resurgence of Indigenous Law’. University of Toronto Press. 138-158.
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Monday the 10th – Book Report Due in Class

Final Class Discussions – The Ways Forward