

Constitutional Law and Politics in Canada

POLI 3206

Winter 2017

Seminars: Tuesdays and Thursdays from 2:35 p.m.-3:55p.m.

Location: McCain Arts and Social Sciences, Room 2132

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Course Synopsis and Objectives

The Constitution and what Peter Russell calls “mega constitutional politics” have been a central preoccupation of Canadians for much of its history. This class covers the constitutional foundations of the Canadian regime as well as the politics of the constitution and of constitutional reform. The course begins by examining major questions such as the nature and purpose of a constitution and by placing Canada’s Constitution and constitutional reform debates in historical perspective. We cover the three major pillars of the Canadian constitution - responsible government, federalism and the Charter of Rights and Freedoms – raising questions about the extent to which these institutions are meeting the democratic expectations of Canadians. Among the other topics covered in this course are: Parliament, the Crown, Aboriginal self-government and rights, provincial constitutions, the role of municipalities in Canada’s constitutional order as well as electoral reform. As we move through the course material, students will discover that the various pillars of the Canadian constitution do not operate independently; rather, their underlying principles and the interactions among them must ultimately be examined as an organic whole. Such a perspective will lead us to consider constitutional reform in a cautious way, understanding that a change in one area of the system could reverberate in unintended ways throughout the entire regime.

Required Texts and Reading Materials:

Malcolmson, Patrick, Richard Myers, Gerald Baier, and Thomas M. J. Bateman. 2016. *The Canadian Regime*. Toronto: University of Toronto Press.

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.

Format

This course is offered in a seminar format and extensive involvement in class discussions will be expected. A seminar agenda and/or questions for discussion will be posted (on Brightspace) for each subunit of the course. Students should also familiarize themselves with the key terms and consider the discussion questions at the end of each chapter in *The Canadian Regime* textbook. Students are expected to arrive prepared to answer the assigned questions and to participate actively.

Course Requirements and Assessment

General participation in class discussions and attendance	10%
Test 1	15%
Test 2	15%
Invisible Crown Assignment	20%
Constitutional Odyssey Assignment	20%
Group Presentation and Report on Current Issue	20%

Participation

Active participation in seminar discussions is expected of all members of the class.

The participation grade will be assigned on the basis of the quality of students' interventions in class discussion. Essentially, it will assess students' knowledge and analysis of readings as well as their ability to express their ideas clearly and effectively through oral communication.

Attendance will be taken and a poor attendance record will result in a low grade for this aspect of the course.

Tests

There will be two tests administered on **February 16th** and **April 6th**. Tests will cover major concepts in the course asking students to define, elaborate upon and explain their significance. A good place to begin identifying such concepts is at the end of each chapter of *The Canadian Regime* where “key terms” are listed as well as by noting what is covered in the seminar questions and discussions.

Written Assignments on *The Invisible Crown* and *Constitutional Odyssey*

Students will produce two 8 page double-spaced papers (not including the title page and bibliography) that respond to a set of questions about these two important books on Canadian constitutional law and politics instead of a major research paper. The assignment on *The Invisible Crown* will be distributed on **February 16th** (deadline: March 2nd) at the latest. The assignment on *Constitutional Odyssey* will be distributed no later than **March 7th** (deadline: April 4th). Additional research will not be required for these assignments although if additional sources are consulted they should be listed in a bibliography and cited in the paper.

Group Presentation on a Current issue in Canadian Constitutional Politics

In groups of 7 students (for a total of 5 presentations), students will make a 20 minute presentation on a current issue in Canadian constitutional law and politics. Students should identify an issue related to one of the course topics, find and present strong evidence to support the fact that it is a pressing issue of contemporary importance, discuss the history of the issue including how different Prime Ministers and other important political leaders have approached the question, describe why the issue is contentious and political, outline and evaluate the different paths forward to “resolve” the issue in question. Students should identify a journalistic piece on the topic to serve as a springboard for the discussion and to highlight the fact that the issue has been given attention in recent times. A link to the article will be provided on Brightspace if copyright regulations permit. Alternatively, students should make copies for their classmates to be circulated in class.

*****Note:** In addition to the course readings, all students are expected to read and be familiar with the material covered in all of the journalistic articles discussed in class for this assignment.

Students should submit either Power Point slides or a one page outline of the presentation as well as a two page single-spaced written summary of the constitutional issue that includes a bibliography that cites **at least three reputable academic sources**. Also, please ensure that all of the material in the presentation is referenced just as a paper would be.

Policy on lateness and missed tests

I do not accept late papers and missed quizzes, tests and presentations will receive a grade of “0”. I do accommodate documented family and medical emergencies. If you think that you might need an extension due to a family emergency or have a medical emergency or condition that could influence your ability to meet deadlines then please contact me as soon as possible to discuss it.

Accessibility Services

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 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.

Important Dates

Here is a link to important dates for this academic year:
https://www.dal.ca/academics/important_dates.html

Please make particular note of the following dates:

January 20th – last day to drop winter term courses with no financial penalty

February 10th – last day to drop winter term courses without a “W”

March 17th – last day to drop winter term courses with a “W”

Grading Scale

Dalhousie University uses a common grading scale which reproduced below. It is taken from the Undergraduate Calendar 2016-2017 which is available at the following website:

<http://academiccalendar.dal.ca/Catalog/ViewCatalog.aspx?pageid=viewcatalog&catalogid=57&chapterid=2523&topicgroupid=10075&loadusercredits=False>

17.1 Grade Scale and Definitions

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;

C	2.00	60-64		ability to develop solutions to simple problems; benefitting from his/her university experience.
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' or 'C+' is required).
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	

Academic Integrity

This statement was reproduced from the following document:

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

Here's a link to student resources:

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

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?

We must all work together to prevent academic dishonesty because it is unfair to honest students. The following are some ways that you can achieve academic integrity; some may not be applicable in all circumstances.

- make sure you understand Dalhousie's policies on academic integrity (see http://www.dal.ca/dept/university_secretariat/academic-integrity/academic-policies.html)
- do not cheat in examinations or write an exam or test for someone else
- do not falsify data or lab results

Be sure not to **plagiarize**, intentionally or unintentionally, for example...

- clearly indicate the sources used in your written or oral work. This includes computer codes/ programs, artistic or architectural works, scientific projects, performances, web page designs, 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 through collaboration or previously submitted for another assignment without permission from your instructor (These examples should be considered only as a guide and not an exhaustive list.)

Where can you turn for help?

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

- Academic Integrity website (see http://www.dal.ca/dept/university_secretariat/academic-integrity.html- Links to policies, definitions, online tutorials, tips on citing and paraphrasing
- Writing Centre (see http://www.dal.ca/campus_life/student_services/academic-support/writing-and-study-skills.html- Assistance with learning to write academic documents, reviewing papers for discipline-specific writing standards, organization, argument, transitions, writing styles and citations
- Dalhousie Libraries (see http://libraries.dal.ca/writing_and_styleguides.html
 - Workshops, online tutorials, citation guides, Assignment Calculator, RefWorks
 - Dalhousie Student Advocacy Service (see <http://www.dsu.ca/services/community-student-services/student-advocacy-service>
 - Assists students with academic appeals and student discipline procedures.
 - Senate Office (www.senate.dal.ca) -List of Academic Integrity Officers, discipline flowchart, Senate Discipline Committee

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

As your instructor, I am required to report every suspected offence. The full process is outlined in the Faculty Discipline Flow Chart (see

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

and includes the following:

- Each Faculty has an Academic Integrity Officer (AIO) who receives allegations from instructors
- Based on the evidence provided, the AIO decides if there is evidence to proceed with the allegation and you will be notified of the process
- If the case proceeds, you will receive a PENDING grade until the matter is resolved
- 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.

Course Agenda

Weeks 1 and 2: January 10, 12, 17 and 19: **Introduction and Fundamental Concepts**

- a. Introduction – Class introduction, objectives and expectations
- b. What is a constitution? What is a constitution for? What are the characteristics of a good constitution? What are the pillars of Canada's constitution? What are the historical and ideational origins of Canada's constitution?

Patrick Malcolmson et al. *The Canadian Regime*, Preface, Introduction, Chapter 1 and Chapter 2

Peter Russell. 2004. *Constitutional Odyssey*. Chapters 1-5.

Read Constitutional Acts 1867 and 1982 (Appendix in *The Canadian Regime*)

The Road to Patriation: https://www.nfb.ca/film/road_to_patriation/

Week 3: January 24 and 26: **Responsible Government**

- a. Responsible government
- b. A need to democratize responsible government?

Patrick Malcolmson et al. *The Canadian Regime*, Chapter 3 (“Responsible Government”); Chapter 6 (“The Crown and Its Servants”)

Jennifer Smith. 1999. “Democracy and the Canadian House of Commons at the Millennium,” *Canadian Public Administration*. 42, 4: 398-421.

Week 4: January 31st and February 2nd – **Parliament**

- a. The Role of Parliament
- b. House of Commons Reform
- c. Senate Reform

Patrick Malcolmson et al. *The Canadian Regime*, Chapter 7 (Parliament)

Peter Aucoin, Mark D. Jarvis, and Lori Turnbull. 2011. *Democratizing the Constitution: Reforming Responsible Government*. Toronto: Emond Montgomery Publications. Chapter 6.

Jennifer Smith. 2013. *Abolishing the Senate: The NDP's Bad Idea*. The Federal Idea, A Quebec Think Tank on Federalism. November, pp. 19. Available online: [http://ideefederale.ca/documents/IF Senat ang.pdf](http://ideefederale.ca/documents/IF_Senat_ang.pdf)

February 2nd: Group presentation #1 on issues related to responsible government and Parliament.

Week 5: February 7th and 9th: - **The Charter of Rights and Freedoms**

- a. Charter itself
- b. The relationship between Parliament and the Charter
- c. Dialogue theory and Section 33

Patrick Malcolmson et al. *The Canadian Regime*, Chapter 5 (The Canadian Charter of Rights and Freedoms)

J. D. Whyte. 1990. "On Not Standing for Notwithstanding," *Alberta Law Review* 28, 2: 347-357.

Peter H. Russell. 1991. "Standing Up of Notwithstanding," *Alberta Law Review*. 29, 2: 293-309.

February 9th: Group presentation #2 – on issue related to Charter

Week 6: February 14th and 16th: **Federalism**

- a. What is federalism?
- b. Contested moral foundations of the Constitution
- c. From quasi-federal to highly decentralized

Patrick Malcolmson et al. *The Canadian Regime*, Chapter 4 ("Federalism")

Richard Simeon, Ian Robinson, and Jennifer Wallner. 2014. "The Dynamics of Canadian Federalism," (Chapter 4) in Bickerton, James and Alain-G. Gagnon. Eds. *Canadian Politics* (sixth edition). Toronto: University of Toronto Press.

February 16th – Test #1

Week 7: February 21st and 23rd – Winter Break (no classes)

Week 8: February 28th and March 2nd - **Federalism** (continued) and *The Invisible Crown*

February 28th – Presentation # 3 on issue related to federalism

March 2nd: *The Invisible Crown*

David E. Smith's *The Invisible Crown: The First Principle of Canadian Government* (2013)

Assignment on *The Invisible Crown* is due in class on March 2nd!

Week 9: March 7th and 9th: **Aboriginal Rights and Constitutional Visions**

- a. Aboriginal constitutional rights
- b. Aboriginal and non-Aboriginal constitutional visions

Frances Abele and Michael Prince. 2006. "Four Pathways to Aboriginal Self-Government in Canada," *American Review of Canadian Studies*. 36, 4: 568-95.

Kiera L. Ladner. 2005. "Up the Creek: Fishing for a New Constitutional Order," *Canadian Journal of Political Science*. 38, 4: 923-53.

Week 10: March 14th and 16th - **Provincial Constitutions, Municipal Systems as Constitutionalism and the Right to Self-Government?**

- a. The nature of provincial governments/constitutions
- b. Evaluating the case for a written constitution
- c. The constitutional-legal status of municipal governments
- d. Debate about municipal autonomy

Malcolm Rowe and J. Michael Collins. 2016. "What Is the Constitution of a Province?" in Dunn, Christopher Ed. *Provinces: Canadian Provincial Politics*. Toronto: UTP.

David M. Cameron. 1980. "Provincial Responsibilities for Municipal Government," *Canadian Journal of Public Administration* 23, 2: 222-235.

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

March 16th – Group presentation #4 on issue related to provincial constitutions and/or municipal status in the constitutional order

Week 11: March 21st and 23rd - Electoral Reform

- a. FPTP electoral system
- b. Electoral reform options and debate
- c. Effect of electoral reform on Canadian political institutions and politics?

Patrick Malcolmson et al. *The Canadian Regime*, Chapter 9 (Elections); Chapter 10 (“Political Parties”)

March 23rd – Group presentation #5 on electoral reform

Week 12: March 28th and 30th - Mega-constitutional Politics

Peter Russell’s *Constitutional Odyssey* – Chapters 6-12

Week 13: April 4th and 6th – The Future of Constitutional Reform

Discussion of *Constitutional Odyssey* in light of course themes. Review book.
Assignment on Constitutional Odyssey is due on April 4th.

April 6th: Test #2