

Course Outline

COURSE:	LAWS 2005 A – Public Law
TERM:	Fall/Winter 2009-10
PREREQUISITES:	either LAWS 1000 [1.0] or PSCI 1000 [1.0], or the combination of PSCI 1001 and PSCI 1002, or second -year status or higher in the Bachelor of Public Affairs and Policy Management Program.
CLASS:	Day & Time: Tuesday – 8:35-11:25 am Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Professor Zoran Oklopčić
CONTACT:	Office: D483 LA (Loeb) Office Hrs: Tuesday – 12:00-1:30 pm Email: Zoran_Oklopčić@carleton.ca

"Students with disabilities requiring academic accommodations in this course must contact a coordinator at the Paul Menton Centre for Students with Disabilities to complete the necessary Letters of Accommodation. After registering with the PMC, make an appointment to meet and discuss your needs with me in order to make the necessary arrangements as early in the term as possible, but no later than two weeks before the first assignment is due or the first test requiring accommodations. For further information, please see: http://www.carleton.ca/pmc/students/accom_policy.html . If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 16, 2009 for December examinations** and **March 12, 2010 for April examinations**.

For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

Public law is the backbone of every legal system. Decisions concerning the allocation of government responsibilities for social programs, procedural rights and protections in administrative contexts, and the fundamental rights of the citizens in relation to the state, are all rooted in public law.

The aim of the course is to familiarize you with the most important areas of public law, and its theoretical background. The focus of the course will be on Canadian public law, but we will approach it from a comparative perspective, drawing on the experiences of other countries, such as the United States and Great Britain.

In the first term, we will outline the evolution and framework of constitutional governance. We will look into how a constitution organizes political power through its territorial division and functional separation(s)?. In the second term, we will focus on how Canadian public law affects the lives of individuals, social groups, and society as a whole. Particular attention will be given to the *Canadian Charter of Rights and Freedoms* and the jurisprudence it has generated. Finally, we will tackle the interface of Canadian public law with public international law through the lens of the *Quebec Secession Reference*.

The experience of the course can be enhanced through student engagement and interaction. Questions and discussion on specific points as well as broader principles are welcomed and encouraged. In order to reap maximum benefits from the course material and class discussions, students will be expected to have read the required assigned material before each class.

REQUIRED TEXTS

The required readings are:

1. *The two LAWS 2005 sourcebooks:*

First term: “Elliott I” — David W. Elliott, ed., Introduction to Public Law: Sourcebook, 7th edition (North York, Captus Press, 2007) [earlier editions are outdated].

Second term: “Elliott II” — David W. Elliott, ed., Introduction to Public Law: Readings on the State, the Administrative Process and Basic Values, 6th, edition (North York, Captus Press, 2007) [earlier editions are outdated].

The sourcebooks are available at the Carleton University Bookstore.

1. *In addition to the sourcebook, there are a number of required readings available on the Web. All the connecting links are included below.*
2. *Finally, there are required readings that I have posted on WebCT as Word Documents.*
3. *Some (also required) readings will be distributed in class, and put on reserve in the library.*

Other required readings may also be assigned during the year.

SUPPLEMENTARY TEXTS

You are encouraged to explore the readings in the Sourcebooks' bibliography, sources cited in footnotes and endnotes, and the readings listed below.

Peter H. Russell, *Constitutional Odyssey: Can Canadians become a sovereign people?*, 3rd ed. (Toronto: University of Toronto Press, 2004)

Patrick Macklem, *Indigenous Difference and the Constitution of Canada*, (Toronto: University of Toronto Press, 2004)

Peter W. Hogg, *Constitutional Law of Canada* (Scarborough, Ont. : Thomson Carswell, c2006.)

For an excellent glossary of Canadian constitutional terms see: <http://www.law.ualberta.ca/centres/ccs/keywords.php>

Another excellent internet resource: The Stanford Encyclopedia of Philosophy.

See for example the entry, “Constitutionalism”, <http://plato.stanford.edu/entries/constitutionalism/>
or, “Federalism” <http://plato.stanford.edu/entries/federalism/>

EVALUATION

- **20 % First Term Midterm Exam**
- **30 % Final Exam—formally scheduled**
December 2009 – covering the first term’s material: multiple choice questions, short answer questions, and one essay
- **20 % Second Term Midterm Exam**
- **30 % Final Exam— formally scheduled**
April 2010 – covering the second term’s material: multiple choice questions, short answer questions, and one essay

Although class participation is not obligatory, it is strongly encouraged. Students who attend lectures and participate in class discussions have in the past generally received a higher overall grade, in part due to their effort to engage with the material in class.

- **As a stimulus, I will add 0.15 percentage-points per lecture (excluding attendance at the Mid-term exam and the review sessions) to the final grade for students who attended lectures.**

SCHEDULE**First Term**

1. **Sept 15: Logistics. Overview of the course. What is public law?**
Elliott, I—1(a)—Introduction, pp. 2-3
2. **Sept 22: Theoretical accounts of state-making. The state of nature and social contract. A first glance into the separation of powers**
Hobbes, Thomas, *Leviathan*, Part II, chs. XIII, XVII, XVIII
Link: <http://oregonstate.edu/instruct/phl302/texts/hobbes/leviathan-contents.html>
Jean-Jacques Rousseau, *The Social Contract and Discourses*, book I, chs. 5, 6, 7; book II, chs. 1, 2, 7, 8, 9, 10
Link: <http://www.constitution.org/jjr/socon.htm>
John Locke, *The Second Treatise of Civil Government*, chs.. XII and XIII
Link: <http://oregonstate.edu/instruct/phl302/texts/locke/locke2/2nd-contents.html>
3. **Sept 29: Organizing large political communities: American and Canadian constitutional debates.**
Federalist no. 9 http://thomas.loc.gov/home/histdox/fed_09.html
Federalist no. 10 http://thomas.loc.gov/home/histdox/fed_10.html
Federalist no. 14 http://thomas.loc.gov/home/histdox/fed_14.html

Speeches of Charles Tupper, Albert Smith and John A. MacDonald in Aizenstat et al., *Canadian Founding Debates* pp. 262—65; 271-2; 277-84 [to be distributed in class]
Elliott I, pp.41-8.
4. **Oct 6: Vertical organization of powers. Policing the boundaries between the federal centre and the provinces: POGG. A note on Canadian federalism in a comparative perspective.**
Elliott I, pp. 91-103; 117-26; 152—158
5. **Oct 13: Horizontal organization of powers. Parliamentary sovereignty and/or separation of powers. The relationship between the executive and the legislature.**
Walter Bagehot, *The English Constitution*, selected sections [available on WebCT]
Full text available at socserv.mcmaster.ca/econ/ugcm/3ll3/bagehot/constitution.pdf
MacCormick v. Lord Advocate (1953 SC 396)
http://en.wikisource.org/wiki/MacCormick_v_Lord_Advocate
Albert Venn Dicey, "The Nature of Parliamentary Sovereignty" in *Introduction to the Study of the Law of the Constitution*
http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1714&chapter=142119&layout=html&Itemid=27

Federalist no. 47 http://thomas.loc.gov/home/histdox/fed_47.html
Federalist no. 48 http://thomas.loc.gov/home/histdox/fed_48.html
Constitution of the United States, art. II, ss. 1,2 and 3.
<http://www.law.cornell.edu/constitution/constitution.articleii.html>
Elliott I, pp. 196-206
6. **OCTOBER 20: MIDTERM EXAM**
7. **Oct 27: The Canadian Legislature in comparative perspective - bicameralism v. unicameralism; Senate Reform. Legislative process.**
Federalist no. 62 http://thomas.loc.gov/home/histdox/fed_62.html
Federalist no. 63 http://thomas.loc.gov/home/histdox/fed_63.html
Federalist no. 64 http://thomas.loc.gov/home/histdox/fed_64.html
Elliott I, 180—97

8. **Nov 3: Judiciary. History, Composition and jurisdiction of the Supreme Court of Canada. Problems of judicial independence.**
Marbury v. Madison (1803) [excerpts posted on WebCT]
Elliott I, pp. 59—77
9. **Nov 10: Canadian mega-constitutional politics I: Toward patriation. A first glance at the Charter**
Elliott I, pp. 216-38; and 240-50
10. **Nov 17: Canadian mega-constitutional politics II: Dealing with patriation. Meech Lake Accord. Charlottetown Accord.**
Elliott I, pp. 250-76
11. **Nov 24: The Canadian constitutional order and the secession of Quebec**
Elliott I, pp. 281-310
Reference re Secession of Quebec, [1998] 2 S.C.R. 217
<http://csc.lexum.umontreal.ca/en/1998/1998rcs2-217/1998rcs2-217.html>
12. **Dec 1: Review Session**
N.B.: Prepare your questions in advance, and e-mail them to me a couple of days before the review session.

SECOND TERM (SUBJECT TO ADJUSTMENT)

1. **Jan. 5: Law, state and social goals and techniques**
Elliott II, Ch. 1
2. **Jan 12: Administrative law, structure and action: Non-judicial and judicial control**
Elliott II, Ch. 2 and 3 (with more focus on chapter 2)
3. **Jan 19: Administrative law, structure and action: Non-judicial and judicial control (continued)**
Elliott II, Ch. 2 and 3 (with more of a focus on chapter 3)
1. **Jan 26: Judicial review and procedural control; Substantive review**
Elliott II, Ch. 4 &5
5. **Feb 2: Theory, problems and reform**
Elliott II, Ch. 6
6. **Feb 9: Basic values and their protection. Scope and impact of the Charter**
Elliott II, Ch. 7 and Ch. 8

Feb 16 WINTER BREAK – NO CLASS SCHEDULED

7. **Feb 23: Second Term Midterm**
8. **Mar 2: Fundamental freedoms and fundamental justice**
Elliott II, Ch. 9
9. **Mar 9: Equality rights**
Elliott II, Ch. 10
10. **Mar 16: Group rights I**
Elliott II, Ch. 11.
11. **Mar 23: Public international law**
Elliott II, Ch. 12.
12. **Mar 30: Review**