

Course Outline

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<b>COURSE:</b>	LAWS 2501D – Law, State, and Constitution
<b>TERM:</b>	Winter 2016
<b>PREREQUISITES:</b>	LAWS 1000 [1.0], PAMP 1000 [1.0], PSCI 1000 [1.0 ] (No longer offered), PSCI 1001 and PSCI 1002 (no longer offered), PSCI 1100 and PSCI1200.
<b>CLASS:</b>	<b>Day &amp; Time:</b> Tuesday, 18:05-20:55pm
	<b>Room:</b> SH-306 (Southam Hall) Please check with Carleton Central for current room location.
<b>INSTRUCTOR: (CONTRACT)</b>	Darren Pacione
<b>CONTACT:</b>	<b>Office:</b> LA-B442 (Loeb Building) <b>Office Hrs:</b> By appointment, please email. <b>Email:</b> <a href="mailto:darren.pacione@carleton.ca">darren.pacione@carleton.ca</a>

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**Academic Accommodations**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

**Pregnancy obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: <http://carleton.ca/equity/>

**Religious obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: <http://carleton.ca/equity/>

**Academic Accommodations for Students with Disabilities:** The **Paul Menton Centre** for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or [pmc@carleton.ca](mailto:pmc@carleton.ca) for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your **Letter of Accommodation** at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (*if applicable*). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (*if applicable*) at <http://carleton.ca/pmc/students/dates-and-deadlines/>

You can visit the Equity Services website to view the policies and to obtain more detailed information on academic accommodation at <http://carleton.ca/equity/>

**Plagiarism**

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published

or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence. More information on the University's **Academic Integrity Policy** can be found at: <http://carleton.ca/studentaffairs/academic-integrity/>

### **Department Policy**

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>

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### **COURSE DESCRIPTION**

While the breadth of Canadian constitutional scholarship is vast, this course examines and contests law's relationship to the state, society, and the constitution. Through consideration of legal, political, and historical scholarship, documentary films, provincial and federal legislation, case law, and a comic book, students will engage with histories of colonialism, nationalism, and political uncertainty—all of which, at times, overlap and are imbricated within one another. This overlap bolsters critical reflection on the nature of law, the power of state, and the contestability constitutional principles in the Canadian context.

The two overarching themes of the course include: (1) conceptualizing sovereignty; and (2) debating dissent. Through both thematic backdrops, students will interrogate a series contexts related to national security matters, Indigenous self-government, secessionist campaigns, and the collective mobilization and constitutional activism of women, First Nations people, and workers.

### **COURSE OBJECTIVES (or, 'what I want you to get out of the course')**

By the end of the course, student should be able to:

1. **Explore** the implications of competing perspectives of 'the law', 'the state', and 'the constitution';
2. **Understand** contested concepts including: Nationalism, Rule of Law, Activism, Constitutional Documents, Violence, Reconciliation, Rights, the State, and more;
3. **Identify** key moments in Canadian constitutional development (e.g. Quebec Secession, the Charter of Rights and Freedoms, evoking war powers in peace times, Sovereignty, and more);
4. **Appreciate** the development of constitutional rights relative to the actions of particular social and political groups;
5. **Explain** key theories of 'political trial' and evaluate the court how was an agent in resolving or exacerbating legal, social, political, and constitutional disputes;
6. **Engage** with and critically assess alternative media(s) and forms of expressing the complexity of Canada's 'contested constitution';

7. **Develop** online research skills (e.g. library, Google Scholar, and LexisNexis);

### **REQUIRED TEXTS**

The course text is available at the Carleton University Bookstore:

- Gord Hill. *The 500 Years of Resistance Comic Book*. Vancouver: Arsenal Pulp Press, 2012.

### **\*\*\* READ BETWEEN WEEKS 2-5 \*\*\***

Beyond this text, this course will make use of the cuLearn learning management system. It will serve as an information hub for this course. Here you will find the course syllabus, access to the 'Ares' system (course documents), supporting materials to assist your reading and writing skills, and your grades. If you are having problems using the site, please visit the Educational Development Centre's website for support: <http://www1.carleton.ca/lmssupport/students/>

### **SUPPLEMENTARY TEXTS and RESOURCES**

- James B. Kelly and Christopher P. Manfredi, eds., *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*. Vancouver: UBC Press, 2009.
- Christian Leuprecht and Peter H. Russell, eds. *Essential Readings in Canadian Constitutional Politics*. Toronto: University of Toronto Press, 2011.
- John Borrows. *Canada's Indigenous Constitution*. University of Toronto Press, 2010.
- <https://www.nfb.ca>

### **EVALUATION\***

Consult 'Course Evaluations' in cuLearn for assignment and evaluation details. Assignments, with the exception of the final project, will usually be turned around in two weeks.

	<b>LAWS 2501D Assignments and Evaluations</b>	<b>% of Grade</b>	<b>Due Date</b>
<b>1</b>	'Current Events' Presentation	5	Ongoing Evaluations
<b>2</b>	Film Response Paper: <i>Les Ordres</i> (1974)	20	9 February 2016
<b>3</b>	Comic Book Reflection Paper	30	23 February 2016
<b>4</b>	Constitutional Activism Research Proposal	5	15 March 2016
<b>5</b>	Constitutional Activism Research Essay	40	5 April 2016

### **LATE POLICY**

Late submissions of any assignment will be accepted at the cost of three marks per day. If you require an extension due to extenuating circumstances, please come and speak to me. Depending on the situation, documentation may be required.

**GRADING**

In accordance with the Carleton University Undergraduate Calendar, the letter grades assigned in this course will have the following percentage equivalents:

A+ = 90-100	A = 85-89	A- = 80-84	
B+ = 77-79	B = 73-76	B- = 70-72	
C+ = 67-69	C = 63-66	C- = 60-62	WDN = Withdrawn from the course
D+ = 56-59	D = 53-56	D- = 50-52	F = Below 50

FND = (Failed, not Deferred) = Student could not pass the course even with 100% on final exam

\* Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

**SCHEDULE and READINGS****12 January (WEEK 1) – The Interplay of Law, the State, and the Constitution**

Guiding Questions: *What institutions, statutes, and conventions make up the Canadian State?*

Eugene A. Forsey, *How Canadians Govern Themselves*, 8<sup>th</sup> ed. Ottawa: Ministry of Public Works and Government Services Canada, 2012, pp. 1-40.  
[http://www.parl.gc.ca/about/parliament/senatoreugeneforseys/book/assets/pdf/How\\_Canadians\\_Govern\\_Themselves8.pdf](http://www.parl.gc.ca/about/parliament/senatoreugeneforseys/book/assets/pdf/How_Canadians_Govern_Themselves8.pdf)

\*\*\* OUTLINE STUDENT AND INSTRUCTOR EXPECTATIONS and EVALUATIONS \*\*\*

**19 January (WEEK 2) – Patriation and the Entrenchment of Charter of Rights and Freedoms**

*What does repatriation mean? How did Canada repatriate its Constitution in 1982?*

James B. Kelly and Christopher P. Manfredi, “Should We Cheer? Contested Constitutionalism and the Canadian Charter of Rights and Freedoms,” in James B. Kelly and Christopher P. Manfredi, eds., *Contested Constitutionalism* (Vancouver: UBC Press, 2009), pp. 3-29.

Roderick A. Macdonald, “Three Centuries of Constitution Making in Canada: Will there be a fourth?” *UBC Law Review* (1996) 30: 211-34.

**Supplemental:**

Ron Graham. *The Last Act: Pierre Trudeau: The Gang of Eight and The Fight for Canada*. Toronto: Allen Lane Canada, 2011. [Excerpts].

\*\*\* MINI-WORKSHOP: REFINING RESEARCH SKILLS \*\*\*

**Part I – Conceptualizing Sovereignty: Theories of Constitutions in Times of Crises**

**26 January (WEEK 3) – ‘States of Emergency’, Part I: Gross v. Dyzenhaus**

*Do states have the authority to suspend its own constitution?*

David Dyzenhaus, “The compulsion of legality,” in Victor Ramraj, ed. *Emergencies and the Limits of Legality*. Cambridge University Press, 2008, pp. 33-59.

Oren Gross, “Extra-legality and the ethic of political responsibility,” in Victor Ramraj, ed. *Emergencies and the Limits of Legality*. Cambridge University Press, 2008, pp. 60-93.

**Supplemental:**

David Dyzenhaus, “States of Emergency,” in Rosenfeld, Michael, and Andás Sajó, eds. (2012) *Oxford Companion of Comparative Constitutional Law*. Oxford: Oxford University Press, pp. 442-61.

**Film:** Michel Brault. *Les Ordres*. Canadian Film Development Corporation. 1974. 107 mins.

\*\*\* WATCH IN CLASS FILM TO COMPLETE FILM RESPONSE PAPER \*\*\*

**2 February (WEEK 4) – ‘States of Emergency’, Part II: Quebec and Northern Ireland**

*Are constitutional rights absolute? What is judicial deference? What about the Rule of Law?*

Laura K. Donohue, “Temporary Permanence: The Constitutional Entrenchment of Emergency Legislation,” *Stanford Journal of Legal Studies* 1.1 (1999): 35-72.

David Dyzenhaus, “States of Emergency,” in Rosenfeld, Michael, and Andás Sajó, eds. (2012) *Oxford Companion of Comparative Constitutional Law*. Oxford: Oxford University Press, p. 442-61.

Darren Pacione, “The FLQ Trials, 1969-1971: Judicial Tensions and Constitutional Questions,” *Quebec Studies* 55 (2013): 101-18.

**Supplemental:**

Kent Roach, “Ordinary laws for emergencies and democratic derogations from rights,” in V. Ramraj, ed. *Emergencies and the Limits of Legality*. (Cambridge: Cambridge University Press, 2008), p. 229-57.

**9 February (WEEK 5) – Ruptured Sovereignties? A Theory of the Indigenous Constitution**

\*\*\* DUE: FILM RESPONSE PAPER \*\*\*

*What is settler-colonialism? How does it impact is today?  
What counts as a constitutional document?*

John Borrows, “Constitutional Law from a First Nation Perspective: Self Government and the Royal Proclamation,” *University of British Columbia Law Review* 28 (1994): 1-47.

Brian Slattery, “The Aboriginal Constitution,” *The Supreme Court Law Review* 67 (2015): 319-36.

Gord Hill. *The 500 Years of Resistance Comic Book*. Vancouver: Arsenal Pulp Press, 2012.

**Supplemental:**

John Borrows, “A Genealogy of Law: Inherent Sovereignty and First Nations Self-Government,” *Osgoode Hall Law Journal* 30.2 (1992): 291-353.

**16 February (WEEK 6) – NO CLASS DUE TO THE WINTER BREAK!**

**23 February (WEEK 7) – Secession: Self-Determination, and the *Quebec Reference* (1998)**

\*\*\* FILM RESPONSE PAPER RETURNED \*\*\*

\*\*\* **DUE: COMIC BOOK REFLECTION PAPER** \*\*\*

*What Does the Supreme Court say about the Rule of Law? Can provinces unilaterally secede?*

Choudhry, Sujit, and Robert Howse. “Constitutional Theory and the Quebec Secession Reference,” *Canadian Journal of Law and Jurisprudence* 13.2 (2000): 143-69.

Case: *Reference re: Secession of Quebec*, [1998] 2 S.C.R. 217.

**Film:** Roger Boire and Jean-Pierre Roy, dir. *National Matters: Quebec, Scotland, and Catalonia*. Montreal: L’Oeil Fou Inc., 2010. 92 mins. (View: Quebec excerpt).

**Supplemental:**

Trudeau, Pierre. “Quebec and the Constitutional Problem,” in Christian Leuprecht and Peter H. Russell, eds. (2011) *Essential Readings in Canadian Constitutional Politics*. University of Toronto Press, p. 331-56.

**PART II – Debating Dissent: Constitutional Politics and Activism**

**1 March (WEEK 8) – ‘Canadian Rights Revolution’ and Constructing the ‘Other’**

*Through what social/legal/political/constitutional conditions did rights emerge in Canada?*

Dominique Clément. *Canadian Rights Revolution*. Vancouver: UBC Press, 2008, p. 17-35.

Rita Dhamoon and Yasmeen Abu-Laban, "Dangerous (Internal) Foreigners and Nation-Building: The Case of Canada," *International Political Science Review / Revue internationale de science politique* 30.2 (2009): 163-183.

**Supplemental:**

Dominique Clément, Will Silver, and Daniel Trottier. *The Evolution of Human Rights in Canada*. Canadian Human Rights Commission, 2012.

**8 March (WEEK 9) – Law, State, and Labour: The Winnipeg General Strike**

\*\*\* COMIC BOOK REFLECTION PAPER RETURNED \*\*\*

*Are labour rights constitutionally entrenched? Why, or why not?*

Harry Arthurs, "Labour and the 'Real' Constitution," *Les Cahiers de Droit* 48 (2007): 43-64.

Judy Fudge and Eric Tucker. *Labour Before the Law: The Regulation of Workers Collective Action in Canada, 1900-1948*. Toronto University Press, 2004. [Excerpts]

**Supplementary Resources:**

<http://manitobia.ca/content/en/themes/strike/6>

<http://www.cbc.ca/archives/entry/1919-remembering-the-winnipeg-general-strike>

**15 March (WEEK 10) – Women and the State: Section 28 and the Ad Hockers**

\*\*\* DUE: CONSTITUTIONAL ACTIVISM RESEARCH PROPOSAL \*\*\*

*Who were the Ad Hockers? How is the history of our constitutional gender equality rights?*

McPhedran, Marilou. "Creating Dialogue: Women's Constitutional Activism in Canada," *Canadian Woman Studies/Les Cahiers de la Femme* 25.3-4 (2007): 6-17.

McPhedran, Marilou. "The Fight for the Charter," *Canadian Woman Studies/Les Cahiers de la Femme* 26.2 (2008): 80-4.

Dobrowolsky, Alexandra. "Of 'Special Interest': Interest, Identity and Feminist Constitutional Activism in Canada," *Canadian Journal of Political Science/Revue canadienne de science politique* 31.4 (1998): 707-42.

**Film:** Susan Bazilli and Robert Rooney, dir. *Constitute! Women's Constitutional Activism*. International Women's Rights Project, 2006. 33 mins. <http://constitute.ca/the-film/>

**22 March (WEEK 11) – Women and the Law: The 'Women's Court of Canada'**

**\*\*\* CONSTITUTIONAL ACTIVISM RESEARCH PROPOSAL RETURNED \*\*\***

*Why is the Women's Court of Canada an important political project?*

Majury, Diana. "Introducing the Women's Court of Canada," *Canadian Journal of Women and the Law* 18 (2006): 1-12.

The Women's Court of Canada: *Symes v. Canada* [2006] 1 W.C.R. 31:  
<http://www.thecourt.ca/2008/06/13/womens-court-symes-v-canada-2006-1-wcr-31/>

**Supplemental:**

[http://www.law.utoronto.ca/documents/conferences/rewritingequality08\\_future.pdf](http://www.law.utoronto.ca/documents/conferences/rewritingequality08_future.pdf)

**29 March (WEEK 12) – Indigenous Activism: The Legacy of Oka**

*What is decolonization?*

Harry Swain. *Oka: A Political Crisis and its Legacy*. Vancouver: D&M Publishers Inc., 2010. [Excerpts]

Geoffrey York and Loreen Pindera. *People of the Pines: The Warrior Legacy of Oka*. Toronto: Little Brown, 1991. [Excerpts]

Elizabeth Bell, "A Historiography of Canadian Aboriginal Activism in the 20th Century," *Waterloo Historical Review* 7 (2015): 1-13.

**Film:** Alanis Obomsawin, dir. *Kanehsatake: 270 Years of Resistance*. NFB Documentary. 1993, 119 mins. [https://www.nfb.ca/film/kanehsatake\\_270\\_years\\_of\\_resistance/](https://www.nfb.ca/film/kanehsatake_270_years_of_resistance/)

**5 April (WEEK 13) – Beyond Law, The State, and The Constitution**

**\*\*\* DUE: CONSTITUTIONAL ACTIVISM RESEARCH ESSAY \*\*\***

*Why should we consider constitution(alism)s beyond the state?*

Julian Arato, "Constitutionality and constitutionalism beyond the state: Two perspectives on the material constitution of the United Nations," *International journal of constitutional law* 10.3 (2012): 627-659.

Charter of the United Nations and the Statute of the International Court of Justice  
<https://treaties.un.org/doc/publication/ctc/uncharter.pdf>