

Course Outline

COURSE:	LAWS 2501 B – Law, State and Constitution
TERM:	Fall 2010-2011
PREREQUISITES:	1.0 credit from: LAWS 1000 [1.0], PAMP 1000 [1.0], PSCI 1001, PSCI 1002
CLASS:	Day & Time: Friday: 11:35am-2:25pm
	Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Dr. Zoran Oklopčić
CONTACT:	Office: Loeb D483
	Office Hrs: TBA
	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 15, 2010 for Fall exams and March 12, 2011 for Winter exams**. For Religious and Pregnancy accommodations, please contact Equity Services, x. 5622 or their website: www.carleton.ca/equity

COURSE DESCRIPTION

This course deals with some of the most important foundational questions of public (constitutional) law: What is an adequate way of thinking about the constitution of a legitimate state? How should we organize political power in a new polity? Should we embrace the idea of the separation of powers, and if so, which one of its variants? What are the merits and demerits of federalism? Can public (constitutional) law guide the most radical of political changes—secession?

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

The success of this course depends on student engagement and interaction. Questions and discussion on specific points are welcomed and actively encouraged. In order to reap maximum benefits from the course material and class discussions, students will be expected to have read the required material before each class.

EVALUATION - All components must be completed to pass this course

- 20 % 1 hr Midterm Exam (multiple choice questions +1 essay question)
- 30 % 1 hr Pre-final exam, last class (multiple choice)
- 50 % Take home final exam: short essay answers; and one longer, problem-oriented essay

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

- As a stimulus, I will add 0.3 percentage-points per lecture (excluding the presence at the Mid-term exam and the review sessions) for those who attended the lectures. In addition, your class participation may be valued up to 4 percentage points.

SCHEDULE

- 1. Sept 10 Logistics. Overview of the course.**
- 2. Sept 17 Why do we need (public) law? The 'state of nature' and 'social contract'. A first glance into separation of powers.**

Hobbes, Thomas, *Leviathan*, Part II, chs. XIII, XVII, XVIII [excerpts]
Jean-Jacques Rousseau, *The Social Contract and Discourses*, book I, chs. 5, 6, 7; book II, chs. 1, 2, 7, 8, 9, 10 [excerpts]
John Locke, *The Second Treatise of Civil Government*, chs.. XII and XIII [excerpts]
- 3. Sept 24 Federalism, American and in theory**

Federalist Papers, nos. 9, 10, 39 [excerpts]
Ronald Watts, "Comparing forms of Federal Partnerships" in D. Karmis, and W. Norman, *Theories of Federalism: A Reader* (Palgrave Macmillan, 2005)
- 4. Oct 1 Central issues of Canadian federalism**

Anti-Inflation Reference [excerpts]
Peter W. Hogg, "Federalism", "Financial Arrangements", and "Peace, Order and Good Government" in *Constitutional Law of Canada: 2010 Student Edition* (Thomson Carswell, 2010) [excerpts]
- 5. Oct 15 Horizontal organization of powers. Parliamentary sovereignty and/or separation of powers. The relationship between the executive and the legislature.**

Federalist Papers 47, 48, 51 [excerpts]
Giovanni Sartori, "Presidential System", "Semi-Presidential System", "Parliamentary System" in *Comparative Constitutional Engineering* (New York: NYU Press, 1997)
Charles De Gaulle, "Bayeux Speech" [excerpts]
- 6. Oct 22 Separation of powers in Canada**

Peter W. Hogg, "Responsible Government" in *Constitutional Law of Canada: 2010 Student Edition* (Thomson Carswell, 2010)
- 7. Oct 29 Midterm exam**

8. Nov 5 Theoretical foundations and varieties of the judicial review

Marbury v. Madison (1803) [excerpts]
Alec Stone Sweet, “Constitutional Adjudication and Parliamentary Democracy” in *Governing With Judges* (Oxford and New York: Oxford University Press, 2000)

9. Nov 12 Judicial Review in Canada.

Roncarelli v. Duplessis [1959] S.C.R. 121 [excerpts]
BC Motor Vehicles Reference [1985] 2 S.C.R. 486 [excerpts]
Peter Hogg, “Supreme Court of Canada” in *Constitutional Law of Canada: 2010 Student Edition* (Thomson Carswell, 2010)

10. Nov 19 Constitutional conventions and the Patriation of the Constitution

Patriation Reference, [1981] 1 S.C.R. 753 [excerpts]
[movie!]

11. Nov 26 Constitutional amendment, unwritten principles and the unilateral secession of Quebec

Reference re Secession of Quebec, [1998] 2 S.C.R. 217 [select passages]
<http://csc.lexum.umontreal.ca/en/1998/1998rcs2-217/1998rcs2-217.html> [selected passages]

12. Dec 3 Multiple Choice Exam; Q&A about the take-home exam