

Course Outline

| | |
|-----------------------------------|---|
| COURSE: | LAWS 3500 A – Constitutional Law |
| TERM: | Winter 2010-11 |
| PREREQUISITES: | LAWS 2005 [1.0] (no longer offered) or LAWS 2501 or PSCI 2003 |
| CLASS: | Day & Time: Monday: 8:35 – 11:25 am Room: Please check with Carleton Central for current room location |
| INSTRUCTOR: (CONTRACT) | Gordon DiGiacomo |
| CONTACT: | Office Hrs: TBA Email: gdigiaco@connect.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:

An investigation of Canada's constitution, focusing on the sections pertaining to the division of powers, the Canadian Charter of Rights and Freedoms, and Aboriginal rights.

COURSE OBJECTIVE:

To provide students with the tools to undertake a critical analysis of Canada's constitutional law and constitutional development.

This objective will be achieved through lectures, class discussions, small group work, guest speaker(s), a simulation, and self-directed study.

REQUIRED TEXT:

Patrick J. Monahan, Constitutional Law, 3rd edition, (Toronto, ON: Irwin Law Inc. 2006).

EVALUATION: (all components must be completed in order to get a passing grade)

1. **Simulation:** students will undertake an exercise simulating a federal-provincial conference called to discuss a constitutional amendment. The simulation will last an entire class. Students will "represent" the federal and provincial governments in the country. Each government will submit a package of material one week after the last class of the course. More information on this will be provided in class and in written instructions to each government. This exercise is worth **45%** of the final grade. The members of each group will get the same mark.
2. **Final Examination:** this will consist of true/false questions, multiple choice questions, short definition-type questions, and longer essay-type questions. It will take place during the exam period and it is worth **40%** of the final grade.

3. **Participation:** all students are expected to participate fully in class discussions. Students have two alternative ways of having their participation mark determined. One is to have me determine a student's participation mark based on the student's engagement in the class. Alternatively, a student may team up with another to do a presentation on one of the readings listed below. The presentation would consist of a 15-minute talk, a 5-page document submitted on the day of the presentation, and a 1-page summary, ending with a discussion question, distributed to the class. The presentation will be marked on how well it is written, how well it captures and comments on the reading, and how well it is delivered. It is due on the day it is delivered. Participation is worth **15%** of the final grade.

High-Quality Writing:

Students are expected to make high-quality writing a top priority. This means not only that punctuation marks are used properly but also that the text is coherent and written in the academic style. Writing and research skills are highly valued in the academic setting and in many workplaces. It is in students' academic and career interest to become skilled researchers and exceptional writers. For any written assignment, if it contains ten or more spelling or grammatical errors, it will be given a zero on the writing component.

Submitting Assignments on Time

It is important that you get your assignments in on time. Assignments handed in late will be penalized on the basis of the number of days late; **5 marks** will be deducted each day. An assignment more than three days late will get zero. No extensions will be granted, unless a health matter is at issue. Neither work obligations nor computer problems nor travel-related problems will be considered an acceptable reason for a late submission.

CLASS TOPICS:

The following identifies the topics for each class and several readings for each topic. Students are NOT expected to read all of the items but should look at one or two to be prepared for each class. The readings that start with an asterisk may be considered priority readings.

Class 1 – January 3, 2011 - Introduction – Constitutions, Constitutionalism

- definitions, purposes of constitutions, federal constitutions

Readings: V. Bogdanor, Constitutions in Democratic Politics, Introduction;
 J. Magnet, Modern Constitutionalism: Identity, Equality and Democracy, (Markham, ON: LexisNexis Canada Inc., 2004), Introduction.
 M. Foley, The Silence of Constitutions, chapter 1;
 *J. Kincaid, "Comparative Observations," in J. Kincaid, G. Alan Tarr, (eds.) Constitutional Origins, Structure, and Change in Federal Countries;
 Anna Gamper, "On Loyalty and the (Federal) Constitution," Vol. 4, Issue 2, August 2010, Vienna Online Journal on International Constitutional Law, www.internationalconstitutionallaw.net

Class 2 – Jan. 10 – Analyzing The Confederation Moment

Readings: *P. Monahan, Constitutional Law, chapter 2;
 *P. Russell, Constitutional Odyssey, 3rd edition, chapter 3;
 J. Ajzenstat, Canada's Founding Debates;
 A.I. Silver, The French-Canadian Idea of Confederation;
 J.T. Saywell, The Lawmakers, chapter 1;
 *S. LaSelva, "Understanding Canada's Origins: Federalism, Multiculturalism, and the Will to Live Together," in J. Bickerton, Alain-G. Gagnon, (eds.), Canadian Politics, 5th edition, (Toronto, ON: University of Toronto Press, 2009).
 A. Smith, British Businessmen and Canadian Confederation.

Class 3 – Jan. 17 – Constitutional Evolution, Interpretation

- Readings:
- *P. Monahan, Constitutional Law, chapters 7, 8, 9, 10;
 - *H. Bakvis, G. Baier, D. Brown, Contested Federalism: Certainty and Ambiguity in the Canadian Federation, chapters 4, 5;
 - J. Saywell, The Lawmakers: Judicial Power and the Shaping of Canadian Federalism, chapters 3-9
 - G. Stevenson, Ex Uno Plures: Federal-Provincial Relations in Canada, 1867-1896
 - P. Russell, Constitutional Odyssey, 3rd edition
 - G. DiGiacomo, "The Federal Treaty Implementation Power and International Labour Agreements," Canadian Labour and Employment Law Journal, Vol. 11, 2004.
 - G. DiGiacomo, "Support for a Centralist Vision of Labour Policy in Early Canada," Journal of Canadian Studies, Vol. 38: 3;
 - B. Reesor, The Canadian Constitution in Historical Perspective;

Class 4 – Jan. 24 – Constitutional Evolution, Amendment

- Readings:
- *P. Monahan, Constitutional Law, chapters 5, 6;
 - *P. Russell, Constitutional Odyssey, 3rd ed., chapters 8, 9, 10, 11;
 - J. T. Saywell, The Lawmakers, chapters 10-11;
 - R. Jackson, D. Jackson, Politics in Canada, 7th edition, chapter 5: The Constitution;
 - J. Smith, "The Constitutional Debate and Beyond," in F. Rocher, M. Smith, (eds.), New Trends in Canadian Federalism, 2nd edition.
 - P. Russell, R. Knopff, T. Bateman, J. Hiebert, The Court and the Constitution: Leading Cases, cases 11 to 18, 45 to 48;
 - B. Reesor, The Canadian Constitution in Historical Perspective;
 - J. Klabbers, "The Right to be Taken Seriously: Self-Determination in International Law," Human Rights Quarterly, Vol. 28, 2006.

Class 5 – Jan. 31 – Canadian Federalism: Overview and Special Topics – Senate Reform, appointments to the Supreme Court of Canada, the Federal Spending Power

- Readings:
- *P. Monahan, Constitutional Law, chapter 4;
 - *F. Rocher, M. Smith, (eds.), New Trends in Canadian Federalism, 2nd edition, Introduction, chapter 1;
 - J. Bickerton, "Deconstructing the New Federalism," Canadian Political Science Review, Vol. 4, Issues, 2,3, 2010.
 - G. Baier, Courts and Federalism: Judicial Doctrine in the United States, Australia, and Canada, (Vancouver, BC: UBC Press, 2006), chapter 5.
 - G. DiGiacomo, M. Flumian, (eds.), The Case for Centralized Federalism, (Ottawa, ON: University of Ottawa Press, 2010).
 - R. Hubbard, G. Paquet, (eds.), The Case for Decentralized Federalism, (Ottawa, ON: University of Ottawa Press, 2010).
 - Alain-G. Gagnon, Contemporary Canadian Federalism: Foundations, Traditions, Institutions.
 - J. Erk, L. Anderson, "The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?," Regional and Federal Studies, Vol. 19, No. 2, May 2009.
 - J. Smith, The Democratic Dilemma: Reforming the Canadian Senate;
 - Queen's University Institute of Intergovernmental Relations, Supreme Court Working Papers – www.queensu.ca/iigr/working/SCC/SCCpapers.html. See especially the papers by Kent; Crandall; and Brouillet/Tanguay.

Class 6 – Feb. 7 – Case Study: The Constitution and the Environment

- Readings:
- M. Winfield, D. Macdonald, “The Harmonization Accord and Climate Change Policy: Two Case Studies in Federal-Provincial Environmental Policy,” in H. Bakvis, G. Skogstad, (eds.), Canadian Federalism: Performance, Effectiveness, and Legitimacy, 2nd edition.
 - *K. Harrison, “Passing the Environmental Buck,” in F. Rocher, M. Smith, (eds.), New Trends in Canadian Federalism, 2nd edition;
 - K. Harrison, “Multi-Level Governance and Carbon Pricing in Canada, the United States, and the European Union,” in T. Courchene, J.R. Allan, (eds.), Canada: The State of the Federation 2009: Carbon Pricing and Environmental Federalism, (Montreal and Kingston: McGill-Queen's University Press, 2010).
 - I. Weibust, Green Leviathan: The Case for a Federal Role in Environmental Policy, (Burlington, VT: Ashgate Publishers, 2009).
 - *N.J. Chalifour, “The Constitutional Authority to Levy Carbon Taxes,” in T. Courchene, J.R. Allan, (eds.), Canada: The State of the Federation 2009: Carbon Pricing and Environmental Federalism.
 - M. Trilsch, “European Committee of Social Rights: The Right to a Healthy Environment,” International Journal of Constitutional Law, Vol. 7, No. 3, 2009.
 - D. Shelton, “Developing Substantive Environmental Rights,” Journal of Human Rights and the Environment, Vol. 1, No. 1, March 2010;
 - S. Kravchenko, J. Bonine, Human Rights and the Environment: Cases, Law, and Policy, (Durham, NC: Carolina Academic Press, 2008).

Class 7 – Feb. 14 – Canadian Charter of Rights and Freedoms

- introduction, origins, the judicial review critique

- Readings:
- *P. Monahan, Constitutional Law, chapter 13;
 - C. Manfredi, Judicial Power and the Charter;
 - J. Kelly, Governing with the Charter: Legislative and Judicial Activism and the Framers' Intent, chapters 1-3, 5, 7;
 - H. MacLvor, Canadian Politics and Government in the Charter Era, chapters 1, 2, 4.
 - M. Charlton, P. Barker, (eds.), Crosscurrents: Contemporary Political Issues, (Scarborough, ON: Nelson, 2006), chapter 4: Is the Canadian Charter of Rights and Freedoms Antidemocratic?
 - *R. Sharpe, K. Roach, The Charter of Rights and Freedoms, chapters 1, 2, 4,5;
 - J. Hiebert, Charter Conflicts: What is Parliament's Role?
 - *S. Gardbaum, “Reassessing the New Commonwealth Model of Constitutionalism,” International Journal of Constitutional Law, Vol. 8, No. 2, 2010.

February 21, 2010 No Class – Reading Week

Class 8 – Feb. 28 – Canadian Charter of Rights and Freedoms – Cases and Criticisms

- Readings:
- P. Russell, R. Knopff, T. Bateman, J. Hiebert, The Court and the Constitution: Leading Cases.
 - as below.

Class 9 – March 7 – Canadian Charter of Rights and Freedoms – Cases and Criticisms

- Readings:
- *F.L. Morton, "The Effects of the Charter of Rights on Canadian Federalism," Publius, 25;
 - *J. Kelly, "The Courts, the Charter, and Federalism," in H. Bakvis, G. Skogstad, Canadian Federalism: Performance, Effectiveness, and Legitimacy;
 - R. Sharpe, K. Roach, The Charter of Rights and Freedoms, chapters, 12, 16
 - *W. MacKay, "Social and Economic Rights in Canada: What Are They, and Who Can Best Protect Them?," Supreme Court Law Review, Vol. 45, 2009;
 - H. Arthurs, B. Arnold, "Does the Charter Matter?," Review of Constitutional Studies, Vol. 11, No. 1, 2005;
 - Y. Hameed, "The Charter, Poverty Rights and the Space Between: Exploring Social Movements as a Forum for Advancing Social and Economic Rights in Canada," National Journal of Constitutional Law, Vol. 23, 2007;
 - J. Hendry, "Developments in Equality Rights in the Economic and Social Sphere under the Charter," National Journal of Constitutional Law, Vol. 21, 2006;
 - F. Faraday, "Access to Social Programs: Substantive Equality Under the Charter of Rights," National Journal of Constitutional Law, Vol. 21, 2006;
 - M. Mandel, The Charter of Rights and the Legalization of Politics in Canada;
 - *J. Woehrling, "The Canadian Charter of Rights and Freedoms and Its Consequences for Political and Democratic Life and the Federal System," in A.-G. Gagnon, (ed.), Contemporary Canadian Federalism, (Toronto, ON: University of Toronto Press, 2009).
 - C. Sunstein, Designing Democracy: What Constitutions Do, (New York: Oxford University Press, 2001), chapter 10: Social and Economic Rights? Lessons from South Africa.

Class 10 – March 14 – The Constitution and Aboriginal Rights

- Readings:
- *P. Monahan, Constitutional Law, chapters 14.
 - T. Isaac, Aboriginal Law: Commentary, Cases and Materials, 3rd edition.
 - P. Russell, "Indigenous Self-Determination: Is Canada as Good as It Gets?," in B.A. Hocking, (ed.), Unfinished Constitutional Business?: Rethinking Indigenous Self-Determination, (Canberra, Australia: Aboriginal Studies Press, 2005).
 - *K. Ladner, "Treaty Federalism: An Indigenous Vision of Canadian Federalism," in F. Rocher, M. Smith, (eds.), New Trends in Canadian Federalism, 2nd edition;
 - Aki-Kwe/Mary Ellen Turpel, "Aboriginal Peoples and the Canadian Charter of Rights and Freedoms," Canadian Women Studies, Vol. 10, Numbers 2,3, 1989.
 - M. Papillon, "Towards Postcolonial Federalism? The Challenges of Aboriginal Self-Determination in the Canadian Context," in A.-G. Gagnon, Contemporary Canadian Federalism.
 - M. Charlton, P. Barker, (eds.), Crosscurrents: Contemporary Political Issues, (Scarborough, ON: Nelson, 2006), chapter 2: Can Native Sovereignty Coexist with Canadian Sovereignty?
 - J. Timothy S. McCabe, The Law of Treaties Between the Crown and Aboriginal Peoples, (Markham, ON: LexisNexis Canada Inc. 2010).
 - M. Moore, "An Historical Argument for Indigenous Self-Determination," in S. Macedo, A. Buchanan, (eds.), Secession and Self-Determination, (New York: New York University Press, 2003).
 - P. Joffe, "UN Declaration on the Rights of Indigenous Peoples: Canadian Government Positions Incompatible with Genuine Reconciliation," National Journal of Constitutional Law, Vol. 26.
 - W. Allmand, "The International Recognition of Indigenous Rights," in G. MacLean, B. O'Neill, (eds.), Ideas, Interests, and Issues, 2nd edition, (Toronto, ON: Pearson Education Canada, 2009).
 - S. LaSelva, The Moral Foundations of Canadian Federalism, chapter 8;

Class 11 – March 21 – Simulation (location TBA)

Class 12 – Mar. 28 – Evaluation of Simulation; The Constitution and Aboriginal Rights cont'd

Readings: as above;

Class 13 – April 4 – Wrap Up

~~~~~

**GROUND RULES:**

1. Please try to get to class on time.
2. Class attendance will be taken, beginning with the third class. A student who misses more than one class for reasons not health-related or related to one's religion will be penalized on his/her participation mark. If a student does miss a class for a health matter, a medical certificate will have to be provided by the last class of this course. Work-related reasons and travel-related reasons will not be considered acceptable reasons for absence.
3. **Using cell phones, text messaging, browsing the web/sending e-mails/chatting online, and working on other courses during class time are strictly prohibited activities.** A student determined to be engaged in any of these activities will either be marked absent or have his/her participation mark reduced.