

The Canadian Constitution

Prerequisite: 6 Lower Division credit hours

Strongly Recommended: POL-221

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Description:

This course will explore a variety of issues relating to the Canadian constitution. The nature of constitutional conventions will be analyzed, as well as specific matters regulated by them. A review of the main components and principles of the formal Constitution will be followed by analyses of specific dilemmas of constitutional interpretation and change. Topics will include specific issues in the division of powers between the federal and provincial governments, aboriginal issues, constitutional amendment, judicial power, and the Charter of Rights.

Course Organization:

There will be a four-hour lecture per week for the first half of term. Beginning Mar 3, there will be a two-hour lecture to start and a two-hour tutorial based on student presentations in the second half.

Required Texts:

Patrick J. Monahan, *Constitutional Law* (Third Edition)

Books on Reserve:

A. Heard, *Canadian Constitutional Conventions* JL 65 1991 H4

P.W. Hogg, *Constitutional Law of Canada* JL 183 H62 2007

Course Evaluation:

Term Paper	40%	Presentation	10%
Midterm	10%	Attendance	5%
Final Exam	35%		

Essays are due April 7 in class. LATE PAPERS WILL NOT BE ACCEPTED. Students are required to submit their essays to Turnitin.com in order to get credit for the assignment.

A TWO Hour Final Exam will be held Thursday, April 14 at 12 noon.

Students must attend class. 5 points are for attendance. You may miss one class, but each subsequent absence will result in 1 point being deducted from the attendance points.

Visit the Class website: <http://www.sfu.ca/~aheard/324>

- lecture notes, web research resources and more

POL 324 Lecture Topics

History

- Territorial evolution
- Colonial development
- Independence

Rules of the Constitution:

- Constitutional documents
- Legislation
- Common law
- Judicial interpretation
- Constitutional convention

Powers of the Crown - common law royal prerogative

Lex parliamenti

Framework of *Constitution Acts* 1867 & 1982

Levels of government

Federal division of powers

Legal research & judicial reasoning

Delegation

POGG

Criminal law

Trade & Commerce

History of constitutional amendment, 1864-1982

Constitutional amendment processes

Constitutional conventions

- Reserve powers
- Responsible government
- Powers of Senate

Court structure, powers & remedies

Legislative protection of rights

Charter of Rights

Aboriginal rights

Aboriginal self-government

CLASS SCHEDULE

Jan 6	Organizational Meeting
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Readings: None

Jan 13	Constitutional History
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Readings:

Heard, "Canada's Independence" (available online) and Monahan, Chapters 1 & 2

Jan 20	Content of the Constitution & Division of Powers
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Readings:

Monahan, pages 56-128 & "The Constitution Acts, 1867-1982"

Essay topics:

The range of topics that may be covered in this class, and from which students may choose to do their papers and presentations, include:

- 1) Prerogative Powers of the Governors
- 2) Reservation and Disallowance of Provincial Legislation
- 3) Peace, Order, and Good Government
- 4) The Federal Spending Power
- 5) Provincial Competence in International Relations
- 6) International Trade (NAFTA, GATT, MAI etc.) and the Provinces
- 7) Provincial Criminal Competence
- 8) Border Collection of Provincial Sales Taxes
- 9) Jurisdiction Over Natural Resources
- 10) Jurisdiction over gambling
- 11) Parliamentary Privileges
- 12) The Prorogation and/or Dissolution of Parliament
- 13) Fixed Election Date Legislation
- 14) Problems with Implementing Senate Elections
- 15) The Constitutional Amendment Process
- 16) Appointments to the Supreme Court of Canada
- 17) Judicial Independence
- 18) The Removal of Judges - on what grounds and by whom?
- 19) Constitutional issues in the Anti-terrorism Act
- 20) Aboriginal Self-Government
- 21) Quebec Separation
- 22) Arctic Sovereignty
- 23) The Settlement of Boundaries Issues - St Pierre et Miquelon, Nfld & Nova Scotia, the waters between Canada and Greenland, the status of the Northwest Passage, etc
- 24) The Future of the Monarchy
- 25) Emergency Measures and the Constitution
- 26) Constitutional Issues with Inter-Provincial Agreements
- 27) Issues in Canadian Sovereignty (foreign laws applying to companies doing business in Canada, or foreign laws applying to Canadian businesses)
- 28) Extra-Territorial Reach of Provincial Legislation
- 29) The Power of Expropriation

- 30) The Rule of Law
- 31) National Securities Regulator to Govern Stocks etc
- 32) Problems with the constitutional division of responsibilities over: environment, transportation, health care
- 32) Citizenship – Is Dual Citizenship an Oxymoron?
- 34) Limits of the Charter's Application to Courts and Legislatures
- 35) The Debate Over the Charter's Application to Private Disputes
- 36) Examine a Specific Right in the Charter of Rights: freedom of expression, equality, etc
- 37) Section One Limitations to Charter Rights
- 38) Section 33 - The Notwithstanding Clause
- 39) Judicial Activism vs. Judicial Restraint
- 40) Constitutionality of the Current Electoral System
- 41) Choose a case before the Supreme Court of Canada or a provincial Court of Appeal and give your 'judgement'.

The body of the essay should be about 4,500 words (roughly 15 double-spaced pages of text). Essays are due in class April 7. **LATE PAPERS WILL NOT BE ACCEPTED.** A significant range of sources (10 minimum) should be used as the research basis for the essay. A paper that does not refer to the minimum number of sources in the body of the essay will FAIL.

Students are required to submit their essays to Turnitin.com in order to get credit for the assignment.

Students are reminded that proper credit must be given to other authors' work. When another author's words are used they must be identified as quotations, by using quotation marks or indented quotations. The use of another author's particular ideas must also be credited in a note. All work submitted for this class must be the student's original work done for this class.

Students are bound by the University's Code of Academic Honesty and the Academic Dishonesty and Misconduct Procedures.