

**LAWS 2094
COMPARATIVE CONSTITUTIONAL LAW**

**Thursdays 4:30-6:30PM
Room 308**

Fall 2009
3.0 Credits

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SYLLABUS & COURSE OUTLINE

Materials

Reading packages will be available from the materials room, approximately a week in advance of each class. A schedule of weekly topics and assigned readings is below.

The course will begin with an examination of issues and debates in comparative constitutional law and constitutional theory in general. In the middle section of the course we will look at high court decisions from different jurisdictions (e.g., Canada, the United States, Germany, the European Court of Human Rights, South Africa, and India) on a series of discrete constitutional issues. The last three classes will be devoted to student presentations.

Evaluation

15% class participation (oral and written)
20% class presentation (15-20 minutes)
65% research paper

Participation

The class is a seminar-based discussion, which depends on your advance reading and preparation. A good seminar -- that is, one that encourages participation, facilitates critical reflection, and cultivates skills of analysis and evaluation -- is a high-level conversation based on assigned readings in the relevant literature. Much of the seminar's time will be taken up with a close reading and analysis of scholarly commentary and judicial opinions. During discussions I will mainly facilitate your critical engagement with the concepts and issues raised in and by the materials.

In advance of each class, please identify the issues from the readings that you wish to examine more closely during class discussion, and write a one or two-page comment. These should be delivered to me well in advance of the class but at the latest the night before. These advance written comments are intended to ensure a solid basis for our discussions during class, and I will use them to some extent to structure the discussion during class. I will also use them, along with your comments and questions during class, for purposes of evaluating class participation.

Paper

The major proportion of your overall course mark is based on a research project. You will select a research topic, prepare a paper and make an oral presentation on the topic chosen.

Your topic for class presentations and the research paper must be approved in advance. **Please submit 2-3 page proposal, referencing at least 10 sources, on or before the October 29 class.**

The topic must be in the area of constitutional law and involve a comparison between two or more jurisdictions. For example, you may select a legal problem or issue, or some other constitutional concept or topic, and then explore its judicial treatment by tribunals in two or more jurisdictions. Or you may examine the light that the constitutional jurisprudence of other countries might shed on a concept or case of contemporary significance in Canadian constitutional law. Or, you may examine the uses (misuses?) a particular tribunal makes of foreign law in deciding cases under its own constitution. Still another alternative is to study closely the judicial ideas, methods, and styles used by the various courts, in order to test whether there are distinctive, identifiable styles of constitutional judging in two or more of the jurisdictions under study.

In choosing a paper topic, you are not limited to the jurisdictions covered in the seminar. Projects involving other national constitutional or supreme courts are also permissible.

Papers are to be between 25 and 35 pages in length with footnotes, plus a bibliography, and accord with the guidelines in the calendar for the major paper requirement. Papers will be evaluated on the basis of research quality, coherence, originality, depth of analysis, and literary form & style. A purely descriptive paper would be unacceptable, as would be one derived solely or primarily from the writer's own opinion or commentary.

Presentation

Each of you will assemble a reading package in support of your presentation. The package must be no more than 15 letter-size pages. Packages will be submitted to me for advance review two weeks prior to the presentation, and distributed to other class members at least a week in advance. Please be as creative as you wish, and do not feel limited to traditional legal or scholarly sociological writings *per se*. The aim is to present well-edited materials that are both interesting and intellectually stimulating.

I am available to meet at a mutually convenient time. You should at a minimum arrange to meet to discuss and confirm the paper topic, once your proposal is submitted. I recommend a further meeting as the term progresses, to discuss your progress and any issues arising with paper research and assembling your materials for the class presentation.

I will arrange a library session in the next few weeks to help with research in comparative constitutional law. I will also distribute a handout detailing the law school's resources in this area.

Plagiarism & Academic Integrity

All students in this course must read:

- the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website; and,
- the Law School policy on plagiarism, as set out in the law school regulations (available in hard copy from the Associate Dean's office and online at:

http://law.dal.ca/Current_Students/Course_Selection_Materials/Regulations_Handbook/index.php

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Students with Special Needs/Requests for Accommodation

Professor Pothier is the faculty advisor to students with disabilities. Students wishing to discuss in-class accommodation or in-class study assistance needs should see Professor Pothier.

Students seeking special accommodation with regard to any aspect of course evaluation (including exam deferrals and extensions to deadlines) must make an application to the Studies Committee. Academic regulations require such requests to be made as soon possible and, in any event, no later than the date on which the exam is to be written or the paper or other assignment is to be submitted. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information about requests for accommodation and about the Studies Committee process.

Pandemic H1N1 Influenza Advisory in relation to Academic Continuity

In the event of an escalation of the pandemic H1N1 influenza virus, the University may need to authorize Academic Units to change elements of class schedules and/or evaluation plans as outlined in course syllabi. Any change is intended to support the primary goal of reducing the risk of spreading a pandemic influenza among students, faculty and staff.

Although it is difficult to predict the severity of the pandemic, the University is committed to minimizing the impact on student's academic progress. Therefore, every effort will be made to provide students with options for continued learning and for continued fair evaluations.

Changes may include but are not limited to:

- Adjustments to course assignments;
- Changes to the dates of exams;
- Arrangements for alternative evaluations for students affected by H1N1 influenza virus;
- Adjustments to work terms;
- Modification of marks awarded for participation;
- Adjustments to attendance policies.

Any alternative plan made in individual courses may be superseded by University-wide or Government measures to reduce the spread of the pandemic H1N1 influenza virus.

SCHEDULE & MATERIALS

1- September 10 - Introduction

PART 1 - ISSUES & CONCEPTS

2 - September 17 - Comparative Constitutional Law: Theory & Practice

Mary Ann Glendon et al., *Comparative Legal Traditions* (St.Paul, Minn.: West Group, 1999) 1-17.

Vicki Jackson & Mark Tushnet, *Comparative Constitutional Law*, 2nd ed. (New York: Foundation Press, 2006) [excerpts]

Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (Oxford: Clarendon Press, 1989) Chap. 3 [excerpts]

Sujit Choudhry, "Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation," (1999) 74 *Ind. L. J.* 819 [excerpts]

David M. Beatty, "Law & Politics" (1996) 44 *Am. J. Comp. Law* 131.

3 - September 24 - Constitutions & Constitutional Theory

Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (Cambridge, Mass. : Harvard University Press, 1996) Chap. 1.

Ronald Dworkin, "The Judge's New Role: Should Personal Convictions Count?" (2003) 1 *J. Int. Crim. Just.* 4.

Patrick Monahan, "A Theory of Judicial Review Under the *Charter*" in *Politics and the constitution: the Charter, federalism, and the Supreme Court of Canada* (Agincourt, Ont.: Carswell, 1987) [excerpts]

Robert H. Bork, "Neutral Principles and some First Amendment Problems, (1971) 47 *Ind. L. J.* 1 [excerpt].

Michael Mandel, "A brief history of the New Constitutionalism, or 'How we changed everything so that everything would remain the same,'" (1998) 32 *Israel L. Rev.* 250.

4 - October 1 - Citizenship, Pluralism & Difference

Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship" in *Throwing Like a Girl and other Essays in Feminist Philosophy and Social Theory* (Bloomington, Ind.: Indiana University Press, 1990) 114-137.

Charles Taylor, "The Politics of Recognition", in A. Gutmann, ed., *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994) 25-73.

Himani Bannerji, "Charles Taylor's Politics of Recognition: A Critique" in *The Dark Side of the Nation: Essays on multiculturalism, nationalism, and gender* (Toronto: Canadian Scholars' Press, 2000) [excerpts].

Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995) Chap. 6, 8 [excerpts].

PART 2 - CASES

5 - October 8

Expression: Obscenity

6 - October 15

Religious Exercise

7 - October 22

Equality: Gender & Sexuality

8 - October 29

Life, Liberty, Security & Emergency

9 - November 5

Abortion & Reproductive Rights

10 - November 12

Social & Economic Rights

PART 3 - PRESENTATIONS

11 - November 19

Presentations

12 - November 26

Presentations

13 - December 3

Presentations