

**LAWS 2094
COMPARATIVE CONSTITUTIONAL LAW**

**Mondays 4:30-6:30PM
Room 429**

Fall 2010
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 examine issues and debates in comparative constitutional law and constitutional theory in general. 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, and scholarly commentary. 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 a 2-3 page proposal, referencing at least 10 sources, on or before November 4.**

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 fine.

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, depth of analysis, coherence, originality, 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.

Accommodation

Students seeking special accommodation with regard to course evaluation, such as exam deferral and extensions to deadlines, should consult with Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, and before an exam is scheduled to be written or an assignment is due. Requests for special accommodation for reasons such as illness or personal circumstances will require an application to the Law School Studies Committee. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes if they require more information about the Studies Committee process. Students wishing to discuss arrangements for classroom assistance should see Professor Wildeman, the law faculty advisor to students with disabilities.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require academic accommodation for the writing of tests, quizzes and exams should make their request to the Office of Student Accessibility & Accommodation (OSAA) prior to or at the outset of each academic term (with the exception of X/Y courses). Please see www.studentaccessibility.dal.ca for more information and to obtain Form A – Request for Accommodation. Students may also contact the Office of Student Accessibility & Accommodation directly at 494-2836, and they may contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information.

SCHEDULE & MATERIALS

1- September 13 - Introduction

2 - September 20 - Theory and Practice of Comparative Constitutional Law

State v. Makwanyane and Another [1995] ZACC 3

Roper v. Simmons, 543 U.S. 551 (2005)

Mark Tushnet, "Returning with Interest: Observations on Some Putative Benefits of Studying Comparative Constitutional Law," (1998) 1 *U. Penn. J. Con. L.* 325-349

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

3 - September 27 - Constitutional Theory I

Antonin Scalia, *A matter of interpretation: federal courts and the law* (Princeton, N.J.: Princeton University Press, 1997) [excerpt]

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

Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Belknap Press, 1986) [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

5 - October 4 - Expression: Obscenity

R v. Butler, [1992] 1 S.C.R. 452 (eC)

Miller v. California, 413 U.S. 15 (1973) (FindLaw)

Müller v. Switzerland, 12 E.H.R.R. 212 (EurCtHR, 24 May 1988) (HUDOC)

October 11 - Thanksgiving (no class)

6 - October 18 - Religious Exercise

Oregon v. Smith, 494 U.S. 872 (1990) (FindLaw)

Ritual Slaughter Case (2002) 1 BvR 1783/99 (Const. Ct. Germany)

Kokkinakis v. Greece, App. No. 14307/88 [1993] ECHR 20

Hutterian Brethren of Wilson Colony v. Alberta, 2009 SCC 37 (eC)

October 25 - No Class

November 1 - No Class

7 - (make up class) - Abortion & Reproductive Rights

R. v. Morgentaler, [1988] 1 S.C.R. 30

Planned Parenthood of Southeastern PA v. Casey, 505 U.S. 833 (1992)

Abortion Decision II, 88 BverfGE 203 (1993)

8 - November 8 - Equality: Gender & Sexuality

Vriend v. Alberta, (1998) 1 S.C.R. 493

Lawrence v. Texas, 539 U.S. 558 (2003)

Minister of Home Affairs v. Fourie, [2005] ZACC 19

E.B. v. France, App. No. 43546/02 (2008) (Eur. Ct. H.R.)

9 - November 15 - Social & Economic Rights

Olga Tellis v. Bombay Municipality Corporation, [1986] AIR 180 (1985)

DeShaney v. Winnebago City Social Services Dept., 489 U.S. 189 (1989)

South Africa v. Grootboom, [2000] ZACC 19

Gosselin v. Québec (Procureur général), 2002 SCC 84

PART 3 - PRESENTATIONS

11 - November 22

Presentations

12 - November 29

Presentations

13 - December 6

Presentations