POLI 371: The Challenges of Canadian Federalism
Fall 2018 CRN 24050

Class Location: Arts 150
Class Time: 8:35 am to 9:55 am TR
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McGill University is on the traditional territory of the Anishinaabeg and Haudenosaunee Nations and a place which has long served as a site of meeting and exchange amongst various Indigenous nations.

This course examines the development and operation of Canada’s federal system. It examines both the historical evolution of the Canadian federal compact and the contemporary operation of Canadian federalism in selected policy areas. The goals of the course are to impart a theoretically and historically informed understanding of how Canada’s federal system came to be, as well as to develop students’ understandings of how federalism as a constitutional structure affects the contemporary development and delivery of public policy.

Class-wide communications
When I need to communicate with the class as a whole, I will do so via the news alert function in mycourses. Please sign up for these notifications. If you do not, you will receive them when you log into the mycourses site, instead of when I send them.

Plagiarism
McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of student conduct and disciplinary procedures (see www.mcgill.ca/integrity for more information).

L'université McGill attache une haute importance à l'honnêteté académique. Il incombe par conséquent à tous les étudiants de comprendre ce que l'on entend par tricherie, plagiat et autres infractions académiques, ainsi que les conséquences que peuvent avoir de telles actions, selon le Code de conduite de l'étudiant et des procédures disciplinaires (pour de plus amples renseignements, veuillez consulter le site http://www.mcgill.ca/integrity).
Texts

Gregory J. Inwood. *Understanding Canadian Federalism: An Introduction to Theory and Practice*. Toronto: Pearson, 2013. I have ordered this at the university bookstore. This is a basic introductory textbook, and should be helpful to those in the class with a thin background in the basic history of the Canadian federation.

Every student needs to become familiar with the Constitution Acts (1867, 1982). We will be referring to various sections throughout the course, mostly from the *Constitution Act, 1867*. You can find the consolidated Acts on the Department of Justice website at http://laws.justice.gc.ca/en/const/index.html. I have also put the consolidated Acts on mycourses. You can print it off, and carry it around with you everywhere you go (#joy).

Course readings are available on mycourses.

Government Delegations

After add/drop (September 18) I will randomly assign students into government delegations. The delegations will write a group assignment, the memorandum to cabinet. The delegations will also be the basis for the first ministers’ conference (FMC) simulation. The FMC and will occur over 2 classes in November. The FMC will be on a proposal to formally amend the Constitution of Canada. The conference may or may not result in a constitutional amendment. The FMC simulation will be the subject of a class-long debrief at the end of the term.

Graded assignments

This course involves lectures, two class-based simulations, group written work, an individual analytical paper, and a final exam. Students are expected to do the readings and come to class prepared.

In accord with McGill University’s Charter of Students’ Rights, students in this course have the right to submit in English or in French any written work that is to be graded. (approved by Senate on 21 January 2009)

Written work is to be submitted both electronically and in hard copy. The electronic submission will be through the assignments or discussions functions in mycourses. The time the written work is uploaded to mycourses will be used to determine whether the student(s) met the deadline. A hard copy can be handed in to me either in class or left in my departmental mailbox (414 Leacock) a maximum of 24 hours after the electronic submission deadline. If you hand in your hardcopy after this there is no further mark deduction. However, I ask you to respect the hard copy policy as a professional courtesy. If I don’t have the hardcopy when marking begins, you risk not having your grade posted on time.

Unless otherwise specified in this syllabus, a penalty of 5% per day will be enforced on late submissions. The cut-off time is **4:00 pm**. If student(s) fail to electronically submit the written work within 3 days after the deadline, then I will assign a J grade. A J grade means the student(s) will fail the course. I highly recommend that if a student or group of students have encountered serious impediments to completing the written work, to communicate with me as
soon as possible. However, be warned that “I/we was/were too busy given all of my/our commitments” is not what I consider a serious impediment.

With respect to group work, each member of the group will receive the same mark. I reserve the right to adjust individual marks if: 1) group members collectively document and inform me of a group member’s serious failure to meet his/her responsibilities and deadlines established by the group; 2) that I am informed of this failure at least one week before the first graded group assignment is due. You do no one any favours by covering for a group member who isn’t pulling their weight. There are many possible reasons why a student may not be doing their part. Some of these reasons are really good ones. Inform me of the problem in time so that I can deal with the student directly and appropriately. In the absence of a good reason, penalties I may impose on the student may include an F grade for seriously deficient work; or a J grade for no effective participation or actual obstruction of the group’s collective enterprise.

Please note the following recommendation: I will assign groups right after the add/drop deadline. The first group written assignment (the Memorandum to Cabinet, or MC) will be due about a month after. I strongly suggest that the group meet immediately in order to go over the MC requirements and assign responsibilities and an internal timeline to complete the group assignments. I suggest that one member of the group be assigned as the “final pen”, a person whose primary responsibility is to edit and craft a final document for coherence, readability, and overall quality. In your timeline allow for the completion of all of the written elements of the MC prior to this final editing stage.

**Grading re the FMC:** I will not be grading your negotiating skill, nor your ability to reach a particular outcome at the end of the FMC. I will, however, grade your attendance. If you do not attend and participate in the FMC, I will deduct 5% from your overall course grade. Show up, play ball.

**Memorandum to Cabinet (MC) (25%): Due on November 8. This is a group assignment.**
The memo to cabinet is the primary information and strategy document that leads a government to adopt a confidential negotiating position for the FMC simulation. The format for the MC is based on the one used by the Privy Council Office. The (modified) document on how to draft an MC is available on mycourses.

**Argumentative Analysis (25%): Due on November 29. This is an individual assignment.**
The analysis will be a maximum of 10 pages long. The task of the argumentative analysis will be to select two readings on the syllabus (excluding Inwood). The student will make an argument about these authors’ approach(es) to a substantive issue or concept. An argument consists of a conclusion (the point about which you are working to convince your reader) and the reasons or premises that you call upon to support your conclusion. For instance, your conclusion may be “A’s approach to X is better than B’s approach to X”. In order to support this conclusion, you must set out precisely what these approaches are, and why one is better, ie. on what grounds. Be forewarned: “Because I think/feel/believe so” is pretty much never a compelling premise for your argument. Also, you need to deal with a serious counterargument to yours. By doing so, you show that you are able to understand and address at least one weakness to your own position. A core challenge in this short assignment is to write cleanly, efficiently, and deliberately within
relatively few words. The short length of the assignment means that every sentence and paragraph needs to move your point forward. It’s short, not easy.

**Final Exam (50%)**: Final exams will be based on all course materials and be held during the formal final exam period. According to Senate regulations, instructors are not permitted to make special arrangements for final exams. Please consult the Calendar, section 4.7.2.1, General University Information and Regulations at www.mcgill.ca. Generally (and without prejudice), the exam consists of three types of questions: 1) definitions/IDs; 2) questions on the required readings (eg. What is X’s argument? What is X arguing against?); 3) argumentative essay questions that ask you to integrate the course material. The essay questions will require you to show your understanding of both theory and policy.

**Course Outline**

**Sept 4: Introduction**

**Sept 6: Simulation I**

Students will be organized into small groups and the simulation scenario will be revealed in class. Class discussion to follow.

**Sept 11 and Sept 13: Federalism Definitions, Virtues, and Vices**

Inwood chapter 1


**Sept 18: Narratives about Confederation**

Inwood chapter 2


British North America Act, 1867
Sept 20: The Division of Powers: The Judicial Referee

Inwood chapter 6

Sections 91 to 95, Constitution Act, 1867


Sept. 25: Challenges to Centralized Federalism: Provincial Rights and the (Demise of) the Disallowance and Reservation Powers

Inwood chapter 4

Sections 55, 56, 90 Constitution Act, 1867


Sept. 27: Challenges to Decentralized Federalism: The Welfare State and the Federal Spending Power


Oct. 2: Patriation and Quebec


Re: Resolution to amend the Constitution [1981] 1 S.C.R. 753

October 4: Patriation and the West: section 92A


Oct. 9 and 11: Federalism and Climate Change


Syncrude Canada Ltd v. the Attorney General of Canada [2016] FCA 160 (on federal jurisdiction to regulate GHGs based on the criminal law power)

Factum of the Attorney General of Saskatchewan to the Saskatchewan Court of Appeal, 2018, re the Greenhouse Gas Pollution Pricing Act (the Saskatchewan Carbon Tax reference)

October 16: Amending the Constitution Post 1982: Part V

Part V of the Constitution Act, 1982


October 18: No class. This time is to be used for work on the group assignment.

October 23: Federalism and the Charter


Tristan Hopper. “Canada’s Notwithstanding Clause Explained’, *National Post*, Oct. 27, 2017 (Note: there are some things about s.33, CA1982 that the author misses, so read it as a statement of political discourse/argument, not as authoritative constitutional law).

**October 25 and 30: Fiscal Federalism and the Equalization Transfer Program**

Inwood chapter 10


**November 1: Securities Regulation**


Lawrence E. Ritchie, W. David Rankin, Robert M. Yalden. “Québec Court of Appeal finds aspects of the proposed co-operative capital markets model unconstitutional”. Document published by Osler, Hoskin and Harcourt LLP. Dated May 12, 2017

**November 6: Indigenous Peoples and the Division of Powers: The Métis**

Inwood chapter 9

Various Archival documents (mycourses)


*Daniels v. Canada (Indian Affairs and Northern Development)* [2016] 1 S.C.R. 99

**November 8: Voters and Federalism**

*Memorandum to Cabinet due*

November 13: Voters and Federal Culture

Inwood chapter 7

Rocher, Francois and Patrick Fafard, 2013, “Is There a Political Culture of Federalism in Canada?” in Skogstad et al. (eds.) The Global Promise of Federalism. Institute of IGR, Queen’s, and University of Toronto Press.

November 15 and 20: FMC simulation

Locations to be announced on mycourses.

November 22: FMC in class debrief

November 27: Review Session

Nov. 29: Analytic Paper Due. No assigned readings.