Introduction

Professor:  Christa Scholtz  
Class Location: ENGMD 280  
Class Time: 8:35 am to 9:55 am, Tuesdays and Thursdays  
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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.

Class communication: I will use the news feature on mycourses to make any announcements to the class. Please sign up for notifications on mycourses. If you do not do so, you will only receive the announcement when you log into mycourses, and not when I actually send it.

Course context with respect to other POLI courses

This course focuses on the inclusion of Aboriginal and treaty rights in the Canadian constitution, specifically through s.35 of the Constitution Act, 1982. We will address questions like: 1) what place, if any, did Aboriginal peoples and the rights they hold or claim have in the Canadian constitutional framework prior to 1982; 2) what’s the story about how s.35 came to be included in the Constitution Act, 1982, and what did constitutional drafters think they were doing by including it; 3) how have the Canadian courts interpreted this section, and 4) has the promise of s.35 been realized?

This is a 400 level course in Canadian politics. As such, I will assume that everyone in the room has both a working knowledge of Canadian political history and a reasonable familiarity with the Constitution Act, 1867 and the Constitution Act, 1982. If you do not have these two things, you will be at a decided disadvantage in this course.

Some of you in this class may have already taken POLI 372, my introduction to Aboriginal Politics and Policy in Canada. Some overlap is unavoidable, but I will deal with certain common topics differently. For instance, in POLI 372 I introduce how the numbered treaties came to be, and look to one case, but I do not in any comprehensive way get into the constitutional status of treaties and how that may have changed under s.35.

You may have already taken POLI 478 (The Canadian Constitution: Rights and Liberties), taught by Prof. Manfredi. Prof. Manfredi does not address Aboriginal and treaty rights in that course.
There is an overlap only in so far as we both address constitutionalism and the role of the judiciary and other political actors in constitutional development.

**Learning Outcomes:**

By the end of this course you should be able to:

1) Identify key political and judicial terms relating to Aboriginal rights;
2) Identify an author’s argument in a text, and answer how that author contributes to a normative debate on how Aboriginal peoples and their rights should relate to the Canadian constitution;
3) Link how authors’ arguments relate to each other;
4) Analyze judicial decisions within a political context, by;
   a. linking the political interests of the parties involved with the legal arguments they put forward in court;
   b. explaining about how judicial arguments may have political effects (by shifting bargaining power, for example, across political actors);
5) Develop critical analysis and critical writing skills through an extensive peer review process.

**Mandatory McGill Verbiage**

“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)

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 ).

**Course Evaluation**

**Peer Review (15%)**

This course will incorporate a peer review component within class time and the evaluation structure. There will be three components in class. First, I divide the class into peer groups. Each group will review a draft essay written on the content of the course, and will then submit a review of that essay. Each review will be shared to the entire class via mycourses. The goal of this component will be to model the peer review process prior to engaging with each other’s draft
written work. Second, students will come to class with their proposed thesis statement for their proposed essays. Students will have a fixed time frame to read and provide comments on the thesis statements of a number of their peers. (#thesisspeeddatingwhatcouldgowrong). I am targeting the speed date for February 22. Third, students will provide a peer review of each draft paper of the students in their peer group, in a formal peer review in-class workshop format. The formal reviews are due on mycourses at midnight on March 28. Failure to submit electronically all of the reviews that are required of a student by midnight on March 28 will receive 0% on the review component.

The formal peer review will be graded and constitute 15% of the student’s course grade. Although more than one peer review will be required, I will grade only one. I will select what I consider to be the weakest of a student’s peer reviews and grade that review.

**Term Paper (40%)**

1) The paper should be 18-20 pages long. A tight and succinct 18 pages are preferable to a wandering 20 pages. In this paper you will ask a question, provide an answer to it, provide reasons for why your answer is a good one, and deal with a serious objection to your answer. In short, you will write an argumentative paper.

2) Draft papers will be electronically submitted to me and the members of your peer group on mycourses by March 20, 4:00 pm.

3) You are responsible for reading the draft papers and providing your peer review to all of the members of your peer group. Students will submit a review of each draft paper on mycourses by midnight on March 28. On March 29, in class, the peer groups will meet and provide the review in an interactive workshop format.

4) The final draft of the term paper is to be submitted in two ways. Please submit your paper electronically on mycourses by 4:00 pm on April 12. The date and time that the paper is electronically submitted will be used for the purpose of determining late penalties. I also require a hardcopy of your paper, because that is what I will actually read. This can be submitted to me in class on April 12, or in my mailbox at 414 Leacock at most 2 days after electronic submission.

**Late penalties**

Failure to submit the draft paper on mycourses by March 20, 4:00 pm, will result in a 5% reduction of your overall course grade. I recognize that this is a significant penalty. It reflects the responsibility that you owe to your peers. Your peers will not be required to review your paper if it is submitted after 4:00 pm on March 22.

Failure to submit electronically all of the reviews that are required of a student by midnight on March 28 will receive 0% on the review component.

The term paper will be penalized 5% for each day late, for a maximum of 3 days late. The end of the day is at 4:00 pm. After 3 days late the paper will not be accepted and receive a J. In other words, you will fail the course.
Unsolicited Advice About Papers

Surprisingly often I find myself dealing with a very stressed out student whose computer has died/was stolen/hijacked by ransomware/run over by a bus, yielding the situation where the paper that is due in hours or minutes is for all intents and purposes non-existent. Right now (yes, this means you, and this means right now) think of your computer and imagine that it actually disappeared 2 minutes ago. In how much trouble and trauma are you right now? If the answer is “loads”, then it is because you have not backed up your work. You need a system. You really needed it 5 minutes ago.

If you haven’t already developed a backup system for yourself, this is mine. Borrow or modify it at will. I have an automatic backup program set up for a weekly backup to an external hard drive. So, I should at most be one week behind if my computer dies or is stolen. In addition, when I am writing a paper, I email the draft to myself at the end of the day. The email is titled “backup, paper title, date”. This makes it searchable if you have 10000 emails in your inbox.

Note that I have become entirely unsympathetic to student requests for emergency paper extensions due to the foreseeable and preventable problem that your digital paper has effectively disappeared. No extensions for that reason will be granted.

If the situation arose that your computer, your external hard drive, the McGill email server, and the McGill backup of its email server all disappeared at the same time, then I suspect we have bigger problems than POLI 436 to deal with. #postapocalyptichellscape

Summary of Important Dates

February 13: Peer review workshop I
February 22: Thesis statement speed date
March 20 at 4:00 pm: Draft papers due
March 28 at midnight: Peer reviews due
March 29: In class peer review workshop II
April 12 at 4:00 pm: Final Papers due

Final Exam (45%)

The final exam will be held during the formal examination 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
Course Outline

0. Introduction (Jan. 9)

1. Constitutionalism? (2 classes)


2. Indigenous Constitutionalism? (1 class)


3. Treaties, the Crown, and Confederation (3 classes)

The Royal Proclamation, 1763

British North America Act, 1867, 30 &31 Victoria c.3


4. Getting to Part II: Patriation and s.35 (2 classes)

Letter dated July 4, 1979, from Noel V. Starblanket (President, National Indian Brotherhood) to Her Majesty Queen Elizabeth II.

R v Secretary of State for Foreign and Commonwealth Affairs; Ex parte Indian Association of Alberta and others [1982] 1 QB 892: 598-9, 602.

“Amending the Constitution: Canada Addresses and Enshrines the Issue of Aboriginal Rights.” CBC, March 16, 1983:

5. **Formal Constitutional Amendment after 1982: FMCs, Meech, & Charlottetown (1 class)**


6. **Peer Review Class Workshop: Group-based review of one draft paper (Feb 13)**

Paper will be provided on mycourses. Title TBA.

7. **Enter the Courts: Reconciliation and the Honour of the Crown (3 classes)**


*Wewaykum Indian Band v. Canada* [2002] 4 S.C.R. 245
8. Aboriginal Rights (1 class)


9. Aboriginal Self-Government (1 class)


10. Aboriginal Title (2 classes)


11. Historic and Modern Treaty Rights (3 classes)


First Nation of Nacho Nyak Dun v. Yukon, [2017] SCC 58

12. Peer Review Workshop: Group based peer review session of student draft papers (Mar.29)

13. Course review (1 or 2 classes)