

**PSCI 3007A
Constitutional Politics in Canada**

Lecture: Tuesday 2:35-5:25
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Office Hours:
Mon. 11:45 - 2:15
Tues. 11:30 - 1:00

Canadians have spent much of the last forty years engaged in constitutional debates. This course examines those constitutional debates in historical perspective and looks at the roots of our constitutional crisis, our quest to maintain national unity and achieve constitutional peace. However, there is much more to the Canadian constitution than national unity, endless federal-provincial disputes and constitutional crisis. The constitution is also the framework that organizes political life in Canada. It structures our government, divides power, outlines the proper relationship between state and society, and so much more.

What is the source of our constitutional crisis? Why is Canadian federalism so decentralized? Why did it take so long for Canada to patriate its constitution from Britain? What formula should be used to amend the constitution? What are the powers of Parliament under the constitution? How has the Charter changed Canadian politics? These and other important questions relating to the constitution will be addressed in the course.

Books and Readings

Peter H. Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People*, Third Edition (Toronto: University of Toronto Press, 2004). This book is available at the bookstore, but it should also be available in larger bookstore chains. A copy has also been placed on reserve at the library. Ensure that you purchase the most recent edition of the book.

Coursepack. All other readings are in a coursepack available at the bookstore. All of the readings in the course pack are also on reserve at the library.

Web resources. These are not in the coursepack.

Grading

Constitution Quiz 15% (January 31)

Term Paper 35% (due March 7)

Final Exam 30% (scheduled by the University during the final exam period, April 10-29)

Class Participation and Attendance: 20 %

Essay topics, guidelines and late penalties are given in detail below.

Class format:

The first two hours will consist of a lecture by the instructor. In the last hour of class there will be small group discussions based on the readings and lecture material.

Discussion questions will be distributed to help focus the discussions. Students will be graded on both their lecture attendance and their contribution to the discussion.

Lecture overview:

January 10: Introduction to the Course

Required reading: The *formal* Canadian Constitution (available at:

<http://laws.justice.gc.ca/en/const/>). Paper copies of the *formal* constitution are also available in the back of many Canadian law and political science books. However, many are abridged versions or are out of date – make sure you read the complete up-to-date constitution.

Also: Constitutional dates and documents: <http://www.collectionscanada.ca/8/11/r11-301-e.html> These are important constitutional documents.

January 17: Constitutionalism; Canada's Constitutional Evolution to Confederation

Russell, Chapters 1,2,3

Finer, S.E., Vernon Bogdanor, and Bernard Rudden. 1995. "On Whether Constitutions Matter." In *Comparing Constitutions*. Oxford: Clarendon Press. p. 1-5.

Canada's Constitutional Evolution: http://www.collectionscanada.ca/05/051104_e.html

January 24: The Content of the Canadian Constitution; Parliament, the Executive and the Judiciary under the Constitution

Patrick Monahan, *Constitutional Law* (Toronto: Irwin Law, 2002). Chapter 1, “An Introduction to the Study of the Canadian Constitution.”

Andrew Heard, *Canadian Constitutional Conventions: The Marriage of Law and Politics* (Toronto: Oxford University Press. 1991). Chapters 1 and 7

January 31: Constitution Quiz

February 7: Federalism

Miriam Smith and Francois Rocher, “Four Dimensions of the Canadian Constitutional Debate,” in Miriam Smith and Francios Rocher, eds., *New Trends in Canadian Federalism* (Peterborough: Broadview Press. 1995).

Alain Gagnon, “The Political Uses of Federalism,” in Miriam Smith and Francios Rocher, eds., *New Trends in Canadian Federalism* (Peterborough: Broadview Press. 1995).

February 14: The Evolution of Canadian Federalism

Russell, Chap. 4

Alan C. Cairns, “The Judicial Committee and Its Critics,” *The Canadian Journal of Political Science*, December 1971.

February 21: Reading Week

February 28: Amending the Constitution/ Achieving Canadian Sovereignty

Russell, Chap. 5

Film, *The Road to Patriation* (50 min)

March 7: Mega-constitutional Politics, 1966-1982. Term Paper Due

Russell, Chapters 6, 7, 8

March 14: Mega-constitutional Politics 1982-1995

Russell, Chapters 9, 10, 11

March 21: Civil liberties and the origins of the Charter.

Peter H. Russell, "The Political Purposes of the Canadian Charter of Rights and Freedoms," *Canadian Bar Review*, Vol. 61. 1983.

March 28: Charter Debates. Term paper not accepted after this date

Richard Sigurdson, "**Left- and right-wing Charterphobia in Canada: a critique of the critics,**" *International Journal of Canadian Studies*, Spring and Fall. 1993.

Rainer Knopff and F.L. Morton, *The Charter Revolution and the Court Party* (Peterborough: Broadview Press, 2000). Chapter 2: "Judges and the Charter Revolution."

Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto : Thompson Educational Pub. 1994.)" Pages 1-5, 39-71, and the "Preface to the First Edition."

April 4: Contemporary Canadian Constitutional Issues.

Russell, chapter 12.

Thomas Courchene, "The Changing Nature of Quebec-Canada Relations: From the 1980 Referendum to the Summit of the Canadas," *IRPP Working Paper Series*, no. 2004-08. Available on-line at: <http://www.irpp.org/miscpubs/archive/wp/wp2004-08.pdf>

Term Paper Assignment

Papers are due on March 7, 2006. Submit your paper directly to the instructor, or place it in the Political Science Drop box before 4:00 on the day it is due.

Papers submitted after the March 7 lecture, but before the end of the class on March 14 will be penalized 5 percent. Papers submitted after the March 14 lecture, but before the end of class on March 21 will be penalized 10 percent in total. Papers submitted after that date will be penalized 20 percent in total. Papers will **not** be accepted after the lecture on April 1. Please refer to the university policy on plagiarism and academic dishonesty included at the end of this course outline. **Students must keep a copy of their essay until after final grades are given.**

Your paper must be between 10 and 12 double-spaced pages (2500-3000 words). Quotations longer than four lines should be indented, and separated from the rest of the text. Do not overuse quotations. Include a clear introduction and conclusion. The introduction should outline the organizational structure of the paper and your main argument.

Write a paper on one of the following topics (you may write your paper on another topic **only** with the explicit approval of the instructor):

1. Consider constitutional problems associated with the secession of Quebec? What does the Canadian constitution say about the secession of Quebec?
2. Discuss the landmark *Reference re Secession of Quebec* case ([1998] 2 S.C.R. 217). Do you agree with this ruling? Do you agree with the federal government's response? The case is available on-line at the University of Montreal Supreme Court website: <http://www.lexum.umontreal.ca/csc-scc/en/>
3. Discuss the federal controls over provincial government outlined in the Constitution of Canada (reservation, disallowance, the declaratory power). In what situation could these powers ever be used again? Should they formally be removed from the constitution?
4. How has the constitutional status of Aboriginal people change in the last 60 years? What are the current constitutional goals and challenges of Aboriginal organizations? How has section 35 of the Constitution been interpreted?
5. Assess the central arguments of the "Dialogue Theory" as proposed by Peter W. Hogg and Allison A. Bushell in "The Charter Dialogue Between Courts and Legislatures" (35 *Osgoode Hall Law Journal* 75-124. 1997). Are the authors' arguments convincing? What are some of the criticisms of the Dialogue theory?
6. Discuss the constitutionality of elections in the country. What has the Supreme Court said about the electoral system and representation?
7. Has the Charter improved or degraded politics in Canada? Assess the central political debates regarding the impact of the Charter of Rights and Freedoms on Canadian politics.
8. Pick any **one** of the following sections of the Charter of Rights. What are the major issues and cases surrounding that section. How has it impacted on Canadian politics, constitutional interpretation and/or Canadian society? Has it had a positive or a negative impact on Canadian politics?
 - a) Section 3 (Democratic Rights).

- b) Section 6 (Mobility Rights)
 - c) Section 24 (Enforcement)
 - d) Section 27 (Multiculturalism)
 - e) Section 28 (Gender equality)
9. Discuss s. 1 of the Charter of Rights and Freedoms. How has the Supreme Court interpreted that section of the Constitution? What are some of advantages and disadvantages of the inclusion of s. 1 in the Charter
 10. Section 33 is one of the most controversial sections of the Canadian Charter of Rights and Freedoms. Discuss the reasons for the inclusion of s. 33 in the Charter as well as the political issues which surround its use. Should s. 33 be removed from the Charter? Refer to specific cases in your answer.
 11. Discuss the various ways in which the Canadian constitution may be amended. Why did it take so long for a formal amending formula to be added to the Canadian constitution? Is the current amending formula too rigid to permit constitutional growth?
 12. Since 1982, there have been two attempts at mega-constitutional change. Compare the Meech Lake and Charlottetown Accords in terms of substance, process, and the reasons for their failure. Which of the two Accords would have been better for Canada?

Other possible topics (frame your own question). Remember that your paper must focus on constitutional issues:

13. The issue of boundary disputes in Canada. Consider one, some or all of the following cases: Quebec and NFLD, NFLD and Nova Scotia, Canada and France (St Pierre and Micquelon), Canada and the US, Canada and Denmark.
14. The powers of the Crown
15. The independence of the judiciary and the removal of judges.
16. Emergency power under the constitution.
17. The evolution of the judicial interpretation of the P.O.G.G. clause
18. The implied bill of rights
19. The Constitution and international trade (FTA, NAFTA, etc).
20. The Role of the Lieutenant Governors
21. Constitutional visions/ the debates over the nature of Canadian federalism.
- 22 Constitutional conventions
- 23 Asymmetrical Federalism
- 24 The Constitution and the Senate
- 25 The Constitution and the House of Commons
- 26 Provincial Constitutions

Academic Accommodations

For Students with Disabilities: Students with disabilities requiring academic accommodations in this course are encouraged to contact the Paul Menton Centre (PMC) for Students with Disabilities (500 University Centre) to complete the necessary forms. After registering with the PMC, make an appointment to meet with the instructor in order to discuss your needs **at least two weeks before the first in-class test or CUTV midterm exam**. This will allow for sufficient time to process your request. Please note the following deadlines for submitting completed forms to the PMC for formally scheduled exam accommodations: **November 7th, 2005** for fall and fall/winter term courses, and **March 10, 2006** for winter term courses.

For Religious Observance: Students requesting accommodation for religious observances should apply in writing to their instructor for alternate dates and/or means of satisfying academic requirements. Such requests should be made during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist, but no later than two weeks before the compulsory academic event. Accommodation is to be worked out directly and on an individual basis between the student and the instructor(s) involved. Instructors will make accommodations in a way that avoids academic disadvantage to the student. Instructors and students may contact an Equity Services Advisor for assistance (www.carleton.ca/equity).

For Pregnancy: Pregnant students requiring academic accommodations are encouraged to contact an Equity Advisor in Equity Services to complete a *letter of accommodation*. Then, make an appointment to discuss your needs with the instructor at least two weeks prior to the first academic event in which it is anticipated the accommodation will be required.

Plagiarism: The Undergraduate Calendar defines plagiarism as: "to use and pass off as one's own idea or product, work of another without expressly giving credit to another." The Graduate Calendar states that plagiarism has occurred when a student either: (a) directly copies another's work without acknowledgment; or (b) closely paraphrases the equivalent of a short paragraph or more without acknowledgment; or (c) borrows, without acknowledgment, any ideas in a clear and recognizable form in such a way as to present them as the student's own thought, where such ideas, if they were the student's own would contribute to the merit of his or her own work. Instructors who suspect plagiarism are required to submit the paper and supporting documentation to the Departmental Chair who will refer the case to the Dean. It is not permitted to hand in the same assignment to two or more courses. The Department's Style Guide is available at: www.carleton.ca/polisci/undergrad/styleguide.pdf

Oral Examination: At the discretion of the instructor, students may be required to pass a brief oral examination on research papers and essays.

Submission and Return of Term Work: Papers must be handed directly to the instructor and will not be date-stamped in the departmental office. Late assignments may be submitted to the drop box in the corridor outside B640 Loeb. Assignments will be retrieved every business day at 4 p.m., stamped with that day's date, and then distributed to the instructor. For essays not returned in class please attach a **stamped, self-addressed envelope** if you wish to have your assignment returned by mail. Please note that assignments sent via fax or email will not be accepted. Final exams are intended solely for the purpose of evaluation and will not be returned.

Approval of final grades: Standing in a course is determined by the course instructor, *subject to the approval of the Faculty Dean*.

Course Requirements: Students must fulfill all course requirements in order to achieve a passing grade. Failure to hand in any assignment will result in a grade of F. Failure to write the final exam

will result in a grade of ABS. FND (Failure – No Deferred) is assigned when a student's performance is so poor during the term that they cannot pass the course even with 100% on the final examination. In such cases, instructors may use this notation on the Final Grade Report to indicate that a student has already failed the course due to inadequate term work and should not be permitted access to a deferral of the examination. Deferred final exams are available ONLY if the student is in good standing in the course.

Connect Email Accounts: The Department of Political Science strongly encourages students to sign up for a campus email account. Important course and University information will be distributed via the Connect email system. See <http://connect.carleton.ca> for instructions on how to set up your account.