

**PSCI 3007A**  
**Constitutional Politics in Canada**  
**Thursday 08:35-11:25**  
**Please confirm location on Carleton Central**

**Instructor:** Dr. Rand Dyck  
**Office:** Loeb B643  
**Office Hours:** Tuesday and Thursday 11:15-12:30  
**Email:** [Rand\\_Dyck@carleton.ca](mailto:Rand_Dyck@carleton.ca)

The constitution has probably featured more prominently in the daily politics of Canada than in any other country. This course examines the political context of the many constitutional issues in Canada since 1867. In the pre-1960 period, these issues primarily involved the evolution of Canadian federalism, the search for a constitutional amending formula, and a concern with rights and freedoms. The Quiet Revolution in Quebec then broadened the constitutional agenda and led to various attempts at mega-constitutional change, which preoccupied the country for about 30 years. To some extent, these big but largely unsuccessful projects have eclipsed smaller, more productive constitutional changes. The constitutional aspects of Aboriginal politics will also be considered, as will various quasi-constitutional issues since 2000, including some controversial moves by the Harper government. This is a lecture course with ample opportunity for questions and discussion.

**Text: Peter H. Russell, *Constitutional Odyssey*, 3<sup>rd</sup> ed., Toronto; University of Toronto Press, 2004.**

You are required to read the relevant chapter in this excellent text each week as well as the other required readings listed. These required readings include several important public documents, which are available on the Internet. In particular, you must master the Constitution Acts of 1867 and 1982. They are conveniently available at: <http://laws.justice.gc.ca/en/const/index.html>. The other required

readings are on reserve, and you will also find the recommended readings very interesting. The text is available at the Carleton University Bookstore.

### **Method of Evaluation**

|                                     |            |  |
|-------------------------------------|------------|--|
| <b>Short Essay*</b>                 | <b>10%</b> | <b>Sept. 30</b>  |
| <b>Mid-term Exam</b>                | <b>25%</b> | <b>Oct. 28</b>   |
| <b>Major Essay</b>                  | <b>20%</b> | <b>Nov. 18</b>   |
| <b>Final Exam</b>                   | <b>35%</b> | <b>To be scheduled during the formal exam period (December 9-22)</b> |
| <b>Attendance and Participation</b> | <b>10%</b> |  |

**Students are expected to attend every class and risk losing two marks per absence from the 10% allotted to Attendance and Participation.**

\*As per early feedback guidelines, the short essay will be returned on or before October 21<sup>st</sup>.

The short essay is to be about seven pages long and the major essay about ten pages long, each on a topic chosen from a list assigned by the instructor. Further details on each assignment will be included with the relevant handout. Essays are to be submitted in class on the above dates; late essays deposited in the departmental drop-box will be subject to a penalty of five percent per day.

## **Class Schedule and Readings**

**Sept. 9 – Introduction**

**Sept. 16 - The Ingredients of the Canadian Constitution**

### **Required readings:**

Russell, *Constitutional Odyssey*, chs. 1 and 2.

Peter Hogg, *Constitutional Law of Canada*, 2006 Student ed. (Toronto: Carswell, 2006), ch. 1: "Sources."

### **Recommended readings:**

Andrew Heard, *Canadian Constitutional Conventions* (Toronto: Oxford University Press, 1991)

### **Sept. 23 – Confederation and the B.N.A. Act, 1867**

#### **Required readings:**

Russell, *Constitutional Odyssey*, ch. 3.

Constitution Act, 1867 (online at <http://laws.justice.gc.ca/en/const/index.html>).

Garth Stevenson, *Unfulfilled Union*, 4<sup>th</sup> ed. (Montreal: McGill-Queen's University Press, 2004), ch. 2: "Origins and Objectives of Canadian Confederation."

#### **Recommended readings:**

Donald Creighton, *The Road to Confederation: The Emergence of Canada, 1863-1867* (Toronto: Macmillan, 1964).

### **Sept. 30 – The Division of Powers and Provincial Rights**

#### **Required readings:**

Russell, *Constitutional Odyssey*, ch. 4.

Stevenson, *Unfulfilled Union*, 4<sup>th</sup> ed., 2004, ch. 3: "Judicial Interpretation of the Constitution."

#### **Recommended readings:**

Garth Stevenson, "The Division of Powers," in R.D. Olling and M.W. Westmacott, eds., *Perspectives on Canadian Federalism* (Scarborough: Prentice-Hall, 1988).

Alan C. Cairns, "The Judicial Committee and Its Critics," *CJPS* (December 1971) or in Cairns, *Constitution, Government, and Society in Canada* (Toronto: McClelland and Stewart, 1988), ch. 2.

John T. Saywell, *The Lawmakers: Judicial Power and the Shaping of Canadian Federalism* (Toronto: University of Toronto Press, 2003).

### **Oct. 7 – Constitutional Amendments and Change, 1867-1971**

#### **Required readings:**

Russell, *Constitutional Odyssey*, chs. 5 and 6.

Canadian Bill of Rights (on line: <http://laws.justice.gc.ca/en/showtdm/cs/c-1.3>).

Kenneth McRoberts, *Misconceiving Canada* (Toronto: Oxford University Press, 1997), ch. 2: "The 1960s: Coming to Terms with Duality and Quebec Nationalism."

**Recommended Reading:**

Ian Greene, *The Charter of Rights* (Toronto: Lorimer, 1989), ch. 1: "Setting the Stage: Civil Rights in Canada and the Pre-Charter Era."

Edward McWhinney, *Quebec and the Constitution, 1960-1978* (Toronto: University of Toronto Press, 1979).

J.P. Meekison, "The Amending Formula," in Olling and Westmacott, *Perspectives on Canadian Federalism* (Scarborough: Prentice-Hall, 1988) or in *Queen's Law Journal* (1982-83).

Guy Favreau, *The Amendment of the Constitution of Canada* (Ottawa: Queen's Printer, 1965), chs. I and II.

J.R. Hurley, *Amending Canada's Constitution: History, Processes, Problems and Prospects* (Ottawa: Minister of Supply and Services Canada, 1996), chs. 1 & 2.

Paul Gérin-Lajoie, *Constitutional Amendment in Canada* (Toronto: University of Toronto Press, 1950).

**Oct. 14 – Constitutional Change from 1971 to the Constitution Act, 1982**

**Required readings:**

Russell, *Constitutional Odyssey*, chs. 7 and 8.

Pierre Elliott Trudeau, "Federalism, Nationalism and Reason," in Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan 1968) or in Trudeau, *Against the Current* (Toronto: McClelland and Stewart, 1996).

Russell, "The Political Purposes of the Canadian Charter of Rights and Freedoms," (*Canadian Bar Review*, 1983).

Supreme Court: *Reference re Resolution to Amend the Constitution of Canada*, [1981] 1 S.C.R. 753.

Constitution Act, 1982 - <http://laws.justice.gc.ca/en/const/index.html>.

**Recommended readings:**

McRoberts, *Misconceiving Canada*, ch. 3: “Trudeau and the New Federal Orthodoxy: Denying the Question.”

McRoberts, *Misconceiving Canada*, ch. 6: “Federalism and the Constitution: Entrenching the Trudeau Vision,” and ch 7, “The Failure of the Trudeau Strategy.”

Peter Hogg, *Canada Act Annotated* (Toronto: Carswell, 1982).

Keith Banting and Richard Simeon, eds. *And No One Cheered: Federalism, Democracy and the Constitution Act* (Toronto: Methuen, 1983).

Roy Romanow, J. Whyte, and H. Leeson, *Canada...Notwithstanding: The Making of the Constitution 1976-1982* (Toronto: Methuen, 1984).

Edward McWhinney, *Canada and the Constitution, 1979-1982* (Toronto: University of Toronto Press, 1982).

**Oct. 21 – The Charter of Rights and Freedoms: Key Decisions and Controversies**

**Required readings:**

Dyck, *Canadian Politics: Critical Approaches*, 5<sup>th</sup> ed. (2008), ch. 19

Constitution Act, 1982 - <http://laws.justice.gc.ca/en/const/index.html>.

**Recommended readings:**

Alan C. Cairns, “The Charter and the Constitution Act, 1982,” in Cairns, *Charter versus Federalism* (Kingston: McGill-Queen’s University Press, 1992).

Thomas Bateman, et al., *The Court and the Charter: Leading Cases* (Toronto: Emond Montgomery, 2008).

Heather MacIvor, *Canadian Politics and Government in the Charter Era* (Toronto: Thomson Nelson, 2006).

**Oct. 28 – Mid-term Exam**

**Nov. 4 - Meech Lake Accord, 1987-1990**

**Required Readings:**

Russell, *Constitutional Odyssey*, ch. 9

Meech Lake Accord document (can be found on the Canadian Encyclopedia website)

Alan C. Cairns, "Citizens (Outsiders) and Governments (Insiders) in Constitution-Making: The Case of Meech Lake," in Cairns, *Disruptions; Canadian Public Policy* (1988).

McRoberts, *Misconceiving Canada*, ch. 8: "Bringing Quebec into the Constitution: Missing Two Chances," (pp. 190-207).

**Recommended Readings:**

Alan C. Cairns, "Passing Judgment on Meech Lake," in Cairns, *Disruptions*.

Peter Hogg, *Meech Lake Constitutional Accord Annotated* (Toronto: Carswell, 1988).

Trudeau's critique in Trudeau, *Against the Current*.

Guy LaForest, *Trudeau and the End of a Canadian Dream* (Montreal: McGill-Queen's University Press, 1995), Introduction and Ch. 1: "Trudeau and the Referendum."

**Nov. 11 – Charlottetown Accord, 1992****Required Readings:**

Russell, *Constitutional Odyssey*, chs. 10 & 11 and the Charlottetown Accord document in Russell's appendix.

McRoberts, *Misconceiving Canada*, ch. 8: "Bringing Quebec into the Constitution: Missing Two Chances," (pp. 207-221).

**Recommended Readings:**

Richard Johnston et al, *The Challenge of Direct Democracy: The 1992 Canadian Referendum* (Montreal: McGill-Queen's University Press, 1996).

**Nov. 18 – Mega-Constitutional Politics, 1993-2000: The Quebec Referendum, the Secession Reference, and the Clarity Act****Required Readings:**

Russell, *Constitutional Odyssey*, ch. 12 (pp. 228-248).

Supreme Court: *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.

The Clarity Act.

**Recommended Readings:**

McRoberts, *Misconceiving Canada*, ch. 9: "The 1995 Quebec Referendum: Making Sovereignty a Real Possibility."

Monahan-Ryan exchange from Mark Charlton & Paul Barker, eds., *Crosscurrents*, 5<sup>th</sup> ed. (Toronto: Nelson, 2006): "Is the Clarity Act good for Canada?"

David Schneiderman, ed., *The Quebec Decision: The Supreme Court Case and Commentary* (Toronto: Lorimer, 1999).

**Nov. 25 – The Constitution and Aboriginals: Land Claims, Self-Government, and other Aboriginal Rights**

**Required Readings:**

Russell, *Constitutional Odyssey*, ch. 12 (pp. 248-273)

Jhappan, "Inherency, three nations and collective rights: the evolution of Aboriginal constitutional discourse from 1982 to the Charlottetown Accord (*International Journal of Canadian Studies*, Spring-Fall, 1993).

*Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, [2004] 3 S.C.R. 500.

**Recommended Readings:**

Wayne Warry, *Ending Denial: Understanding Aboriginal Issues* (Toronto: University of Toronto Press, 2007).

**Dec. 2 – Single-issue Constitutional Amendments; Post-2000 Informal Constitutional Change; and Stephen Harper's Abuse of the Constitution, including the Constitutional Crisis of 2008**

**Required Readings:**

Russell and Sossin, eds. *Parliamentary Democracy in Crisis* (Toronto: University of Toronto Press, 2009), esp. ch 5: L. Weinrib, "Prime Minister Harper's Parliamentary 'Time Out': A Constitutional Revolution in the Making?"

### **Recommended Readings:**

Harvey Lazar, ed. *Canada: The State of the Federation 1997: Non-constitutional Renewal* (Kingston: Institute of Intergovernmental Relations, 1997).

Jennifer Smith, "Informal Constitutional Development: Change by Other Means," in Herman Bakvis and Grace Skogstad, eds. *Canadian Federalism: Performance, Effectiveness, and Legitimacy* (Toronto: Oxford University Press, 2002).

Peter H. Russell, *Two Cheers for Minority Government* (Toronto: Emond Montgomery, 2008).

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### **Academic Accommodations**

**For students with Disabilities:** Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (500 University Centre) for a formal evaluation of disability-related needs. Registered PMC students are required to contact the centre (613-520-6608) every term to ensure that the instructor receives your request for accommodation. 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 assignment is due or the first in-class test/midterm requiring accommodations**. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 15 2010 for December examinations**

**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](http://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 University Senate defines plagiarism as "presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own." This can include:

- reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source;



- submitting a take-home examination, essay, laboratory report or other assignment written, in whole or in part, by someone else;
- using ideas or direct, verbatim quotations, or paraphrased material, concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another's data or research findings;
- failing to acknowledge sources through the use of proper citations when using another's works and/or failing to use quotation marks;
- handing in "substantially the same piece of work for academic credit more than once without prior written permission of the course instructor in which the submission occurs.

Plagiarism is a serious offence which cannot be resolved directly with the course's instructor. The Associate Deans of the Faculty conduct a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They include a mark of zero for the plagiarized work or a final grade of "F" for the course.

**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. This means that grades submitted by an instructor may be subject to revision. No grades are final until they have been approved by the Dean.

**Course Requirements:** 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:** All email communication to students from the Department of Political Science will be via Connect. Important course and University information is also distributed via the Connect email system. It is the student's responsibility to monitor their Connect account.

**Carleton Political Science Society:** The Carleton Political Science Society (CPSS) has made its mission to provide a social environment for politically inclined students and faculty. Holding social events, debates, and panel discussions, CPSS aims to involve all political science students in the after-hours academic life at Carleton University. Our mandate is to arrange social and academic activities in order to instill a sense of belonging within the Department and the larger University community. Members can benefit through numerous opportunities which will complement both academic and social life at Carleton University. To find out more, please email [carletonpss@gmail.com](mailto:carletonpss@gmail.com), visit our website at [poliscisociety.com](http://poliscisociety.com), or come to our office in Loeb D688.

**Official Course Outline:** The course outline posted to the Political Science website is the official course outline.