

Carleton University
Winter 2021
Department of Political Science

PSCI 3007B
Constitutional Politics in Canada
Online Course
Meeting times: Fridays 8:35-11:25

Instructor: Raffaele Iacovino
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CuLearn:

On-line components of this course will be managed through CuLearn. Please visit the CuLearn site regularly to receive the most current information pertaining to important course announcements and materials.

Course Description:

Canada is one of the more stable and longstanding federations in the world yet curiously, it has failed to entrench a constitutional framework that has garnered the unanimous support of its constituent units. For long stretches of the country's political development, defining what the country stands for and which sociopolitical collective agents it recognizes as constitutional actors became entangled with day to day politics, culminating in a constitutional compromise that to many observers remains incomplete. 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, and later the mobilization of Indigenous Peoples, broadened the constitutional agenda and led to various attempts at mega-constitutional change, which preoccupied the country for about 30 years. The introduction of the Charter of Rights and Freedoms and a homegrown amending formula broadened the field of salient constitutive actors yet did little to quell fundamental concerns around competing visions of the purposes of the constitution, on both procedural and substantive grounds.

Class Format:

The class will be held online. The instructor will deliver an audio lecture with slides using BigBlueButton, a web conferencing tool which can be accessed through the course page on CuLearn. Students are encouraged to ask questions and to participate in online discussion

throughout the duration of the lecture. Following each class, the instructor will post the slides on CuLearn.

Text:

- Peter H. Russell, *Constitutional Odyssey*, 3rd ed., (Toronto: University of Toronto Press, 2004).

Suggested Reading for Reference: Bernard W. Funston and Eugene Meehan, *Canada's Constitutional Law in a Nutshell, Fourth Edition*, (Toronto: Carswell, 2013). This book is not mandatory reading.

Please ensure that you access the proper edition of the book. The book will be available online through the Carleton Reserves desk, and a link to ARES will be available to students on the CuLearn course page.

Evaluation:

15%- Attendance and participation

15%- Short Assignment (**Due on Session 4, February 5, 2021**)

5%- Research paper proposal (**Due on Session 7, March 5, 2021**)

30%- Research paper (**Due on Session 12, April 14, 2021**)

35%- Final Take-Home Exam (To be scheduled during the formal examination period. You will have a period of **9 days** to complete the exam).

- **Attendance:** Students are expected to join the online class having read the required materials for that session and be prepared to participate in class discussions. Attendance will be recorded each session.
- **Short assignment:** On **Session 2 (January 22)**, the instructor will post a list of 4-5 articles on CuLearn. Students are expected to write a short review essay (700-1000 words) that provides a critical assessment of the author's contributions to the study of the constitution in Canada. It is not necessary to do any additional research for this assignment, and the aim is simply to allow students to engage more profoundly with particular theoretical, conceptual or methodological issues in the body of literature on constitutional politics in Canada. The short assignment is due on **Session 4 (February 5)**. As per early feedback guidelines, the short assignment will be returned on **Session 5 (February 12)**.
- **Research paper proposal:** All students are required to submit a research paper proposal. These proposals are due on **Session 7 (March 5)**. The proposal is intended to allow students to develop and frame their research topic through some preliminary work, and to receive feedback. The instructor will not provide a list of research topics, but students are encouraged to discuss their intentions with the instructor prior to submitting their proposals. The proposals should be no longer than 500 words in

length, should clearly state a research question, and should provide some preliminary sources. The proposal is worth only 5% of your final grade, so it does not have to be exhaustive.

- **Research paper:** The research paper must be between 14 and 17 typed pages – double-spaced, using 12 point font. The paper must follow proper essay style and structure, and must use a recognized referencing style (which must be consistent throughout). Students are expected to undertake research using sources beyond those listed in the course outline. The papers are due on **Session 12 (April 14)**, and are to be submitted through the designated tab on CuLearn. Secondary source research is all that is required to write the paper, yet students may draw upon primary sources if they wish. The goal is to allow students to grasp the body of literature on a particular topic by providing a cogent and coherent synthesis, and to be able to articulate and defend a particular position based on the assessment of the literature. Please avoid overly drawn-out summaries in exposing what has been written on a topic – the exercise is meant to allow students to critically assess the state of research in their chosen topics.
- **Final Take-Home Exam:** The exam will be scheduled during the formal examination period. You will have a period of **9 days** to complete the exam. Students will submit the exam through the designated tab on CuLearn. The exam will consist of three sections, each containing three essay questions. Students will select one question from each section. Each answer should be about 800-1200 words. Moreover, students are expected to draw from class lectures and reading assignments in writing the essays, and students are not expected to include any research outside of class materials.

Other Information:

Submitting assignments and late policy: Due to COVID, instructors will not request or require a doctor’s note when students seek accommodation for missed term work or exams due to illness. Instead, students will be asked to complete the self-declaration form available here: https://carleton.ca/registrar/wp-content/uploads/COVID-19_Self-declaration.pdf

All assignments are to be submitted through CuLearn. Extensions will only be granted if students fill out the self-declaration form as per University policy. The penalty for late assignments is 5% per day.

Grading: Assignments and exams will be graded with a percentage grade. To convert this to a letter grade or to the university 12-point system, please refer to the following table.

Percentage	Letter grade	12-point scale	Percentage	Letter grade	12-point scale
90-100	A+	12	67-69	C+	6
85-89	A	11	63-66	C	5

80-84	A-	10	60-62	C-	4
77-79	B+	9	57-59	D+	3
73-76	B	8	53-56	D	2
70-72	B-	7	50-52	D-	1

Office Hours and E-mail: All communication will be undertaken through email. I will not hold designated office hours, but students can feel free to contact me at any time, and I will try my best to respond as quickly as possible. Students may also provide a phone number if they prefer to speak to the instructor directly. As per university regulations, I will only respond to emails that use a Carleton account.

Lecture and Reading Schedule:

***(Some of these may be omitted depending on online availability)**

-Session 1 (January 15, 2021):

Introduction and Thematic Overview of the Course

-Session 2 (January 22, 2021):

Origins and Sources

-Peter H. Russell, *Constitutional Odyssey*, 3rd ed., (Toronto: University of Toronto Press, 2004);

*Chapters 1 and 2

-Peter W. Hogg, *Constitutional Law of Canada, Student edition* (Toronto: Thomson Reuters, 2017)

*Chapter 1: Sources

-Samuel LaSelva, *Moral Foundations of Canadian Federalism: Paradoxes, Achievements and Tragedies of Nationhood*, (Montreal: MQUP, 1996)

*Chapter 2: Confederation and the Beginnings of Canadian Federalist Theory

-Session 3 (January 29, 2021):

Confederation and the B.N.A. Act, 1867

-Peter H. Russell, *Constitutional Odyssey*, 3rd ed., (Toronto: University of Toronto Press, 2004);

*Chapter 3

-Peter H. Russell et Al. (eds.), *Essential Readings in Canadian Government and Politics*, 2nd ed., (Toronto: Emond Montgomery Publishing, 2015).

*Chapters 2, 3

-Garth Stevenson, *Unfulfilled Union*, 4th ed. (Montreal: McGill-Queen's University Press, 2004),

*Chapter 2: Origins and Objectives of Canadian Confederation.

-Session 4 (February 5, 2021): *Short Assignment Due*

Early Debates on Federalism I: Quebec and Dualism

-Peter H. Russell et Al. (eds.), *Essential Readings in Canadian Government and Politics*, 2nd ed., (Toronto: Emond Montgomery Publishing, 2015).

*Chapter 4,

-Government of Quebec, *Quebec-Canada: A New Deal*

* https://www.sqrc.gouv.qc.ca/documents/positions-historiques/positions-du-qc/part3/Document11_en.pdf

-Government of Quebec, *Quebec's Political and Constitutional Status: An Overview*

* <https://www.sqrc.gouv.qc.ca/documents/institutions-constitution/statut-politique-qc-en.pdf>

-Kenneth McRoberts, *Misconceiving Canada: The Struggle for National Unity*, (Toronto: OUP, 2019).

*Chapter 1: Two Visions of Canada

-Session 5 (February 12, 2021):

Early Debates on Federalism II: Division of Powers and Provincial Rights

-Peter H. Russell, *Constitutional Odyssey*, 3rd ed., (Toronto: University of Toronto Press, 2004);

*Chapter 4

-Alan Cairns, "The Judicial Committee and Its Critics," in the *Canadian Journal of Political Science*, Vol. 4, No. 3, September 1971.

-F. R. Scott, “Centralization and Decentralization in Canadian Federalism”, in G. Stevenson, (Ed.), *Federalism in Canada*, (Toronto: McClelland and Stewart Inc., 1989).

****February 15-19, 2021. Fall Break – Classes Suspended****

-Session 6 (February 26, 2021):

Constitutional Developments and the Quiet Revolution, 1900-1971

-Peter H. Russell, *Constitutional Odyssey*, 3rd ed., (Toronto: University of Toronto Press, 2004);

*Chapters 5 and 6

-Peter H. Russell et Al. (eds.), *Essential Readings in Canadian Government and Politics*, 2nd ed., (Toronto: Emond Montgomery Publishing, 2015).

*Chapters 5, 6, 7

-Kenneth McRoberts, *Misconceiving Canada: The Struggle for National Unity*, (Toronto: OUP, 2019).

*Chapter 2: The 1960s: Coming to Terms with Duality and Quebec Nationalism

-Session 7 (March 5, 2021): *Research Proposal Due*

Towards Patriation, 1971-1982

-Peter H. Russell, *Constitutional Odyssey*, 3rd ed., (Toronto: University of Toronto Press, 2004);

*Chapters 7 and 8

-Donald Smiley, “A Dangerous Deed: The Constitution Act, 1982”, in Banting and Simeon, eds., *And No One Cheered: Federalism, Democracy and the Constitution Act*, (Toronto: Methuen Publications, 1983).

-Kenneth McRoberts, *Misconceiving Canada: The Struggle for National Unity*, (Toronto: OUP, 2019).

*Chapter 3: Trudeau and the New Federal Orthodoxy: Denying the Quebec Question

*Chapter 6: Federalism and the Constitution: Entrenching the Trudeau Vision

-Session 8 (March 12, 2021):

The Charter of Rights and Freedoms

-Peter H. Russell et Al. (eds.), *Essential Readings in Canadian Government and Politics*, 2nd ed., (Toronto: Emond Montgomery Publishing, 2015).

*Chapters 47, 48, 50

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

-Sujit Choudhry, “Bills of Rights as Instruments of Nation-Building in Multinational States: The Canadian Charter and Quebec Nationalism”, University of Toronto Legal Studies Series, Research paper Number 1006905.

*https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1006905

-Session 9 (March 19, 2021):

Meech Lake Accord

-Peter H. Russell, *Constitutional Odyssey*, 3rd ed., (Toronto: University of Toronto Press, 2004);

*Chapter 9

-Charles Taylor, “Shared and Divergent Values”, in Guy Laforest, (ed.), *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism*, (Montreal: McGill-Queen’s University Press, 1993), pp. 155-186.

-Richard Simeon, “Meech Lake and Shifting Conceptions of Canadian Federalism”, in *Canadian Public Policy*, Vol. 14, September 1988.

-Session 10 (March 26, 2021):

The Charlottetown Accord

-Peter H. Russell, *Constitutional Odyssey*, 3rd ed., (Toronto: University of Toronto Press, 2004);

*Chapters 10, 11

-Michael B. Stein, “Improving the Process of Constitutional Reform in Canada: Lessons from the Meech Lake and Charlottetown Constitutional Rounds”, in *Canadian Journal of Political Science*, Vol. 30, No. 2, June 1997.

-Matthew Coon Come, “Charlottetown and Aboriginal Rights: Delayed but not Relinquished”, in *Policy Options*, December 2002-January 2003.

*<http://policyoptions.irpp.org/wp-content/uploads/sites/2/assets/po/kyoto/cooncome.pdf>

April 2 – Good Friday – no class

-Session 11 (April 9, 2021):

The Constitution and Indigenous Peoples

-Peter H. Russell et Al. (eds.), *Essential Readings in Canadian Government and Politics*, 2nd ed., (Toronto: Emond Montgomery Publishing, 2015).

*Chapter 10,

-James Tully, “Introduction”, in Alain-G. Gagnon and James Tully, (eds.), *Multinational Democracies*, (Cambridge: Cambridge University Press, 2001).

-Radha Jhappan, “Inherency, Three Nations, and Collective Rights: The Evolution of Aboriginal Constitutional Discourse From 1982 to the Charlottetown Accord”, in *International Journal of Canadian Studies*, Vol 7-8 (Spring/Fall) pp. 225-259.

-John Borrows, “(Ab)Originalism and Canada’s Constitution”, in *The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference*, Vol. 58. (2012).

-Session 12 (Wednesday, April 14, 2021): *Research Paper Due*

The 1995 Quebec Referendum, the Secession Reference and the Clarity Act

-Peter H. Russell, *Constitutional Odyssey*, 3rd ed., (Toronto: University of Toronto Press, 2004);

*Chapter 12

-Robert Schertzer, “Recognition or Imposition? Federalism, National Minorities and the Supreme Court of Canada”, in *Nations and Nationalism*, Vol. 14, No. 1, 2008, pp. 105-126.

-François Rocher and Nadia Verrelli, “Questioning Constitutional Democracy in Canada: From the Canadian Supreme Court Reference on Quebec Secession to the Clarity Act”, in Alain-G. Gagnon, Montserrat Guibernau and François Rocher (eds.), *The Conditions of Diversity in Multinational Democracies*, Montreal: IRPP, 2003)

-Daniel Weinstock, “Constitutionalizing the Right to Secede” in *Journal of Political Philosophy* Vol. 9, No. 2, 2001, p. 182-203.
