

**Department of Political Science  
University of Victoria  
Political Science 320 A01 (CRN 22571)  
The Constitution of Canada  
(Spring 2019)**

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DTB A340

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Lectures        Tues Thurs 4:30-5:50 (COR A225)

Office Hours    Friday 2:00 – 4:00

The word “constitution” is wide-ranging in meaning. In political science, it refers to the basic institutions and structures of government of a country; the formal rules that governments and public functionaries must follow if their official actions are to be lawful; the fundamental unwritten conventions governing the making and the application of law; and the underlying principles of interpretation that determine how these aforementioned institutions, rules, and conventions are applied and understood.

If this sounds bewildering, it’s a good idea to remember that all these diverse aspects of the term, constitution, follow from the word’s core meaning in everyday English, where “constitution” means the composition, make-up, or structure of something. Thus, studying the constitution of Canada means studying the basic composition and make-up of the Canadian polity by focusing on its governing structures, rules, conventions, and principles of rule interpretation. For example, it might mean studying federalism and the division of powers; parliamentary government; the Charter of Rights and Freedoms; the confidence convention; or the role of the governor-general. But it might also mean studying treaties and Indigenous-settler relations; debates about what membership in the Canadian polity ought to entail; and long-run changes in how we understand the nature and purpose of government.

While touching on many if not all of these diverse aforementioned aspects of the “constitution of Canada,” this course will emphasize a fundamental point about constitutions in general and Canada’s constitution in particular. This point is that constitutions are always changing and that this change tends to be shaped by socio-political conflict and struggle. Accordingly, this course surveys Canadian constitutional change by focusing on the socio-political struggles that have helped to bring about key changes in Canadian governance rules, structures, conventions, and principles of constitutional interpretation.

In this way, then, the course explores some of the country's fundamental tensions and conflicts: the status of Quebec; capitalism and inequality; ethnocultural and other forms of diversity; social movements and equality; and Indigenous self-determination and land.

## Readings

The readings are available electronically via the links provided in this syllabus.

Following contemporary Canadian politics is essential to your success in this course. Please keep up to date with the news (e.g. Globe and Mail, CBC, The Tyee) by following relevant stories about constitutional issues (e.g. stories about Charter decisions, Indigenous-settler relations, the status of Quebec, federal-provincial relations, etc.). Tests and exams will assume student familiarity with relevant current events.

## Assessment

mid-term (20%)  
essay (30%)  
participation in constitutional conference (10%)  
final exam (40%)

For information on grading at UVic, see here:

<https://web.uvic.ca/calendar2018-09/undergrad/info/regulations/grading.html>

The **mid-term** (20%) will be held in class on 14 February. It will consist of several questions that ask you to identify and explain the significance of various names, terms, and concepts. **Students are required to write the mid-term as scheduled. Exceptions for travel, in particular, will not be made.**

**Essays** (30%) will be due in class on 21 March. A late penalty of 3% a day will apply, up to a maximum penalty of 15%. Papers that exceed the 15% penalty will not be accepted. Extensions will not be granted.

Students will be provided with a list of essay topics in late January. The topics will encourage the student to explore in more detail a particular theme that has been covered in the lectures. Students wishing to write on a topic not on the list must first receive written permission from the instructor. Papers must be between 11-13 pages (2750-3250 words, not counting notes and bibliography) in length. They must follow scholarly conventions regarding citation and bibliographical references. Plagiarism will not be tolerated. On plagiarism, consult UVic's Policy on Academic Integrity, at <https://web.uvic.ca/calendar2018-09/undergrad/info/regulations/academic-integrity.html>.

Students will be required to participate in a **constitutional conference** (10%), which will be held in class on 26 and 28 March. For the conference, students will form various delegations (perhaps representing Ottawa, individual provinces and territories, First Nations, social movements or nongovernmental organizations). The aim of the

conference is twofold. First, it will provide an opportunity for you to develop and propose your own alternative Canadian constitutional visions. Second, it will provide you an opportunity as groups to stake out your positions and bargain with each other in hopes of reaching a provisional constitutional settlement. In short, then, the purpose of the constitutional conference is to learn something about constitutionalism by engaging in constitution-making yourselves.

The **final exam** (40%) will be held on a date to be announced by the University. Students are required to write the final exam as scheduled.

## Course Syllabus and Readings

### 1. Constitutions and Constitutionalism: An Introduction

(J 8, 10)

Eugene A. Forsey, *How Canadians Govern Themselves*, 9<sup>th</sup> ed., 1-40

[http://www.lop.parl.gc.ca/About/Parliament/senatoreugeneforsey/book/assets/pdf/How\\_Canadians\\_Govern\\_Themselves9.pdf](http://www.lop.parl.gc.ca/About/Parliament/senatoreugeneforsey/book/assets/pdf/How_Canadians_Govern_Themselves9.pdf)

(paste link into your browser, which is always best with large PDFs)

### 2. The Canadian Constitution

(J 15, 17)

Kiera Ladner, "Up the Creek: Fishing for a New Constitutional Order," *Canadian Journal of Political Science* 38:4 (2005): 923-953

<http://www.jstor.org.ezproxy.library.uvic.ca/stable/pdf/25165886.pdf>

Peter Russell, chap. 3, "Confederation," in his *Constitutional Odyssey: Can Canadians Become a Sovereign People?*, 2d ed. (Toronto: University of Toronto Press, 1993)

<http://deslibris.ca.ezproxy.library.uvic.ca/ID/420786>

### 3. Federalism and the Origins of the Welfare State

(J 22, 24)

Peter Russell, chap. 4, "Provincial Rights," in *Constitutional Odyssey*

<http://deslibris.ca.ezproxy.library.uvic.ca/ID/420786>

Donald Smiley, "The Rowell-Sirois Report, Provincial Autonomy, and Post-war Canadian Federalism," *Canadian Journal of Economics and Political Science* 28:1 (1962): 54-69

<http://www.jstor.org.ezproxy.library.uvic.ca/stable/pdfplus/139263.pdf>

### 4. The Origins of the Charter of Rights and Freedoms

(J 29, 31)

Peter Russell, "The Political Purposes of the Canadian Charter of Rights and Freedoms,"

*Canadian Bar Review* 61:1 (1983): 30-54 [https://heinonline-](https://heinonline-org.ezproxy.library.uvic.ca/HOL/PrintRequest?collection=fjournals&handle=hei)

[org.ezproxy.library.uvic.ca/HOL/PrintRequest?collection=fjournals&handle=hei](https://heinonline-org.ezproxy.library.uvic.ca/HOL/PrintRequest?collection=fjournals&handle=hei)

[n.journals/canbarev61&id=36&print=section&div=9&ext=.pdf&format=PDFsearchable&submit=Print%2FDownload](http://heinonline.org.ezproxy.library.uvic.ca/HOL/Page?handle=hein.journals/ohlj30&collection=journals&page=627)  
F.L. Morton, "The Charter Revolution and the Court Party," *Osgoode Hall Law Journal* 30 (1992): 627-652 <https://heinonline.org.ezproxy.library.uvic.ca/HOL/Page?handle=hein.journals/ohlj30&collection=journals&page=627>

## 5. The Nature and Impact of the Charter

(F 5, 7)

Radha Jhappan, "Introduction: Feminist Adventures in Law," in *Women's Legal Strategies in Canada*, ed. Radha Jhappan (Toronto: University of Toronto Press, 2002) <http://deslibris.ca.ezproxy.library.uvic.ca/ID/418261>  
Janet Hiebert, "The Notwithstanding Clause: Why Non-use Does Not Necessarily Equate with Abiding by Judicial Norms," *The Oxford Handbook of the Canadian Constitution*, ed. Peter Oliver, Patrick Macklem, and Natalie Des Rosiers (Oxford: Oxford University Press, 2017)  
<http://www.oxfordhandbooks.com.ezproxy.library.uvic.ca/view/10.1093/law/9780190664817.001.0001/law-9780190664817-chapter-33?print=pdf>

## 6. Debating the Charter (midterm F 14)

(F 12, 14)

Miriam Smith, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995*, chapter 4, "Charter Effects I" (Toronto: University of Toronto Press, 2000)  
<https://www-deslibris-ca.ezproxy.library.uvic.ca/ID/417951>  
Lise Gotell, "Queering Law: Not by *Vriend*," *Canadian Journal of Law and Society* 17:1 (2002): 89-114  
<http://heinonline.org.ezproxy.library.uvic.ca/HOL/Page?handle=hein.journals/cjls17&id=93&collection=journals>

## 7. Reading Week (F 18-22)

## 8. Debating the Charter II

(F 26, 28)

Sharryn J. Aiken, "From Slavery to Expulsion: Racism, Canadian Immigration Law, and the Unfulfilled Promise of Modern Constitutionalism," in *Interrogating Race and Racism*, ed. Vijay Agnew (Toronto: University of Toronto Press, 2007)  
<https://poseidon01.ssrn.com/delivery.php?ID=42207310300812608609912308807100708805001305501901905411302509312311108409812612708902600602404002805601607210012000006911411206104305904402806909710110111011119015025022043091065002004093110112089075082002087108082092079085100120071106126024011022074&EXT=pdf> (paste link into browser)

## 9. Indigenous Peoples and Constitutionalism in Canada

(M 5, 7)

- Brian Slattery, "Making Sense of Aboriginal and Treaty Rights," *Canadian Bar Review* 79:2 (2000): 196-224  
<https://heinonline-org.ezproxy.library.uvic.ca/HOL/PrintRequest?collection=journals&handle=hein.journals/canbarev79&id=514&print=section&div=22&ext=.pdf&format=PDFsearchable&submit=Print%2FDownload> v (copy and paste into browser)
- Taiaiake Alfred and Jeff Corntassel, "Being Indigenous: Resurgences Against Contemporary Colonialism," *Government and Opposition* 40:4 (2005): 597-614  
<http://onlinelibrary.wiley.com.ezproxy.library.uvic.ca/doi/10.1111/j.1477-7053.2005.00166.x/pdf>

## 10. Mega-Constitutional Politics: Meech Lake and Charlottetown

(M 12, 14)

- Alan C. Cairns, "Citizens (Outsiders) and Governments (Insiders) in Constitution-Making: The Case of Meech Lake," *Canadian Public Policy* 14 (September 1988 Supplement): 121-145  
<http://www.jstor.org.ezproxy.library.uvic.ca/stable/pdfplus/3551222.pdf>
- James Tully, "Diversity's Gambit Declined," in *Constitutional Predicament: Canada after the Referendum of 1992*, ed. Curtis Cook (Montreal: McGill-Queen's University Press, 1994)  
<https://www-deslibris-ca.ezproxy.library.uvic.ca/ID/400682> (click on chapter 6, "Diversity's Gambit Declined")

## 11. Mega-Constitutional Politics: Quebec Secession (essays due M 21)

(M 19, 21)

- Supreme Court of Canada, *Reference re Secession of Quebec*  
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do> (read from "III. Reference Questions" [just above signpost 32 in the judgment] until "B. Question 2" (after signpost 108); also read "IV. Summary of Conclusions" [signposts 148-156])
- Rosemary Rayfuse, "Reference re Secession of Quebec from Canada: Breaking up is Hard to Do," *University of New South Wales Law Journal* 21:3 (1998): 834-844  
<https://heinonline-org.ezproxy.library.uvic.ca/HOL/PrintRequest?collection=journals&handle=hein.journals/swales21&id=854&print=section&div=57&ext=.pdf&format=PDFsearchable&submit=Print%2FDownload>

## 12. Constitutional Conference

(M 26, 28)

## 13. Spillover and Course Review

(A 2, 4)

***Course Experience Survey (CES)***

I value your feedback on this course. Towards the end of term, as in all other courses at UVic, you will have the opportunity to complete an anonymous survey regarding your learning experience (CES). The survey is vital to providing feedback to me regarding the course and my teaching, as well as to help the department improve the overall program for students in the future. The survey is accessed via MyPage and can be done on your laptop, tablet, or mobile device. I will remind you and provide you with more detailed information nearer the time but please be thinking about this important activity during the course.