

POLI 4217 WBO

Canadian Constitutional Politics

Lakehead University

Winter 2023

Fridays 2:30pm to 5:30pm

ZOOM

Professor: Dr. Toby Rollo

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Office Hours: On Request

1. Course Description

The course offers an examination of political issues relating to Canada's constitution. Among the issues the course examines are: historical events, political forces and legal ideals that have shaped the constitution; the roots and legacies of the Constitution Act 1867, and the Constitution Act 1982; the politics of constitutional reform; judicial interpretation of the constitution in general, and the Charter of Rights and Freedoms in particular; the socio-political impact of the constitutionalizing of rights and constitutional litigation; and the judicialization of politics in present-day Canada. Students will become familiar with fundamental aspects of Canadian constitutionalism, such as the federal/provincial division of powers and jurisdictions; the court system and the Supreme Court of Canada; constitutional change and the attempts to resolve socio-political tensions in Canada through mega" constitutional reform; Indigenous peoples and the Canadian constitution. Throughout the course, the Canadian constitution will be examined from a political perspective, emphasizing Canada's unique constitutional legacy while also covering the series of dramatic constitutional events which have taken place in Canada.

2. Course Materials

Required Text:

NONE.

3. Course Requirements:

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|-------------------------------|-----|-------------|
| Attendance and Participation | 30% | (12 x 2.5%) |
| Reflection Papers | 25% | (5 x 5%) |
| Presentation and Seminar Lead | 20% | (2 x 10%) |
| Critical Research Essay | 25% | (1 x 25%) |

Attendance and Participation (30%)

Attendance and Participation are required. It is critical in a seminar context that everyone come prepared having done the necessary readings and willing to contribute their thoughts and questions. There are two *required* readings per week. The materials listed as *recommended* are not mandatory but can be used for reflection papers, and certainly as research materials for the critical research essay.

Reflection Papers (25%)

Students are required to write 5 reflection papers (about 2 pages long, double-spaced) on one or more of the required and/or recommended readings from a given week. Students are free to select *which* five weeks they will write for, and *which* particular readings on those weeks they will engage. Quickly summarize the argument of the paper, detail which arguments you found convincing and which you did not find convincing, and why. Feel free to include any lingering thoughts, doubts, or questions that were inspired by the reading. The papers are to be uploaded to D2L on the day we discuss the materials in class.

Presentation and Seminar Lead (20%)

Each student will select two weeks on which to deliver a presentation to the class. The presentation should communicate and synthesize the main arguments of the required readings. What do they have in common? How do they differ? What are the implications of the argument for society, for politics? Students are required to lead the seminar by presenting at least 3 questions or problems. Have a strong command of the arguments made in the materials for the week you choose. The presentation can be delivered via PowerPoint or written/spoken. The presentation is to be uploaded to D2L on the day that it is delivered.

Critical Research Essay (25%) Due April 7th

Students are required to submit a research essay (about 6 pages long, double spaced) and a topic of their choosing. Please clear the topic with me beforehand. The paper is to be uploaded to D2L on the day that it is due.

4. E-mail

E-mail will be answered within three business days.

5. Accessibility

Students with diverse learning styles and needs are welcome in this course. In particular, if you have a disability/health consideration that may require accommodations, please feel free to approach me Accessibility Services. The sooner you let us know your needs the quicker we can assist you in achieving your learning goals in this course.

6. Essays

You are to complete one essay. The goal of the essay is to provide a clear, concise response (argument) to the research question backed by rational consideration of the evidence.

Summarize your response (argument) in a sentence or two – the thesis statement – and appear in the first paragraph of your essay. Be explicit. The reader should be clear on what you are arguing. Assume an educated reader. Do not spend more than a few paragraphs providing background information. Focus on providing information that advances your argument. While the balance of the paper will defend your argument, you should also acknowledge counterarguments and seek to demonstrate that your argument is superior.

7. Formatting bibliographies, references

The written assignments will all be double-spaced in 12pt Times New Roman font with standard margins. Essays should be free of spelling and grammatical errors. They must include appropriate citations and complete bibliography.

Include a title page with your name, the date, the course number, and my name. In completing the written assignments, students must cite all facts and figures that are not common knowledge and must cite all ideas that are borrowed from other authors. Students must use a recognized standard format correctly in their bibliographies, references, and footnotes. Failure to do so will result in substantial penalty in calculating your assignment grade.

The University takes instructional offences (including plagiarism) very seriously. Please make sure that you are familiar with the regulations regarding instructional offences. Also, it is not acceptable to submit the same assignment in two different courses.

8. Schedule

PART ONE: CONSTITUTIONAL POLITICS

Week 1: Introductions

Friday January 13th

Week 2: Constitutionalism and Democracy

Friday January 20th

James Tully 2008. “The Unfreedom of the moderns in comparison to their ideals of constitutional democracy,” In *Public Philosophy in a New Key*. Cambridge.

James Tully 2008. “The imperial roles of modern constitutional democracy,” In *Public Philosophy in a New Key*. Cambridge.

Week 3: 1982 Constitution Act

Friday January 27th

Peter Russell. 2017. “Patriation: Quebec’s Loss, Aboriginal Gains,” In *Constitutional Odyssey*. UofT. Press.

Peter McCormick. 2021. “Towards the Charter,” In *The End of the Charter Revolution*. UofT Press.

Recommended

Nadia Verrelli. 2016. “Searching for an Amending Formula: The 115 Year Journey,” In *Constitutional Amendment in Canada*. UofT Press.

Week 4: Indigenous Peoples and the Constitution

Friday February 3rd

John Borrows. 2017. “Indigenous Constitutionalism: Pre-existing Legal Genealogies in Canada,” In *Oxford Handbook of the Canadian Constitution*. Oxford.

Jeremy Webber. 2017. “Contending Sovereignties,” In *Oxford Handbook of the Canadian Constitution*. Oxford.

Recommended

Sébastien Grammond. 2017. “Treaties as Constitutional Agreements,” In *Oxford Handbook of the Canadian Constitution*. Oxford.

Week 5: Quebec and the Constitution

Friday February 10th

Noura Karazivan 2018. “Cooperative Federalism in Canada and Quebec’s Changing Attitudes,” In *The Canadian Constitution in Transition*. UofT Press.

Emmanuelle Richez. 2016. “The Possibilities of Provincial Constitution-Making Power: The Case of Quebec,” In *Constitutional Amendment in Canada*. UofT Press.

Week 6: Constitutional or Parliamentary Supremacy?

Friday February 17th

John Lovell. 2017. “Parliamentary Sovereignty in Canada,” In *Oxford Handbook of the Canadian Constitution*. Oxford.

W.J. Waluchow. 2017. “The Living Tree,” In *Oxford Handbook of the Canadian Constitution*. Oxford.

Recommended

Robert Schertzer. 2018. “Collaborative Federalism and the Role of the Supreme Court of Canada,” In *Policy Change, Courts, and the Canadian Constitution*. UofT Press.

Week 7: READING BREAK

Friday February 24th

PART II: THE CHARTER OF RIGHTS AND FREEDOMS

Week 8: Federalism and the Notwithstanding Clause

Friday March 3rd

Janet L. Hiebert. 2017. “The Notwithstanding Clause: Why Non-use Does Not Necessarily Equate with Abiding by Judicial Norms,” In *Oxford Handbook of the Canadian Constitution*. Oxford.

Samuel V. LaSelva. 2018. “The Notwithstanding Clause and the American Rights Model,” In *Canada and the Ethics of Constitutionalism, Identity, Destiny, and Constitutional Faith*. McGill-Queens University Press.

Recommended

Richard Albert. 2018. “The Desuetude of the Notwithstanding Clause – and How to Revive It,” In *Policy Change, Courts, and the Canadian Constitution*. UofT Press.

Week 9: Reasonable Limits and the ‘Oakes’ Test

Friday March 10th

Government of Canada. 2023. “Section 1: Reasonable Limits.”

Adam Dodek. 2018. “The Limitations Clause,” from *The Charter Debates*.

Charles-Maxime Panaccio. 2017. “The Justification of Rights Violations,” In *Oxford Handbook of the Canadian Constitution*. Oxford.

Matthew A. Hennigar. 2017. “Unreasonable Disagreement? Judicial-Executive Exchanges about Charter Reasonableness in the Harper Era,” *Osgoode Law Journal* 54(4): 1245-1274.

Week 10: Freedom of Expression

Friday March 17th

Adam Dodek. 2018. “Fundamental Freedoms,” from *The Charter Debates*.

Jamie Cameron & Nathalie Des Rosiers. 2017. “The Right to Protest, Freedom of Expression, and Freedom of Association,” In *Oxford Handbook of the Canadian Constitution*. Oxford.

Samuel V. LaSelva. 2018. “Free Speech for the Thought That we Hate?” In *Canada and the Ethics of Constitutionalism, Identity, Destiny, and Constitutional Faith*. McGill-Queens University Press.

Recommended

Adrienne Stone. 2018. “Canadian Constitutional Law of Freedom of Expression,” In *Canada in the World: Comparative Perspectives on the Canadian Constitution*. Cambridge.

Week 11: Economic Rights?

Friday March 24th

Martha Jackman and Bruce Porter. 2017. “Social and Economic Rights,” In *Oxford Handbook of the Canadian Constitution*. Oxford.

Larry Savage and Charles Smith. 2017. “The Possibilities and Limitations of Constitutional Labour Rights,” In *Unions in Court: Organized labour and the Charter of Rights and Freedoms*. UBC Press.

Recommended

Margot Young. 2017. “Section 7: The Rights to Life, Liberty, and the Security of Person,” In *Oxford Handbook of the Canadian Constitution*. Oxford.

Week 12: A Right to Healthcare?

Friday March 31st

Colleen M. Flood, William Lahey, & Bryan Thomas. 2017. "Federalism and Healthcare in Canada: A Troubled Romance?" In *Oxford Handbook of the Canadian Constitution*. Oxford.

Herman Bakvis. 2020. "Federalism and Universal Healthcare: A Question of Performance and Effectiveness," In *Canadian Federalism: Performance, Effectiveness, and Legitimacy*. UofT Press.

Recommended

Christopher P. Manfredi and Antonia Maioni. 2005. "Reversal of Fortune: Litigating Healthcare Reform in *Auton v. British Columbia*," *The Supreme Court Law Review* 29: 111-136.

Week 13: Multiculturalism

Friday April 7th

Adam Dodek. 2018. "Multiculturalism," from *The Charter Debates*.

Vrinda Narain. 2018. "Difference and Inclusion: Reframing Reasonable Accommodation," In *The Canadian Constitution in Transition*. UofT Press.

Linda Cardinal & Pierre Foucher. 2017. "Minority Languages, Education, and the Constitution," In *Oxford Handbook of the Canadian Constitution*. Oxford.