

**POLITICAL INSTITUTIONS OF THE CANADIAN STATE**  
**POLSCI 760**  
**Fall 2021, Term 1**

**Instructor:** Peter Graefe  
**Email:** graefep@mcmaster.ca  
**Lecture:** Tuesday 11:30-2:20  
**Room:** Online (Zoom link on Avenue to Learn)

**Office:** KTH-512  
**Office Hours:** Tuesday 2:30-3:30

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## **Course Description**

This course has two main objectives. First, it seeks to familiarize students with the scholarly literature and debates surrounding core institutions of the Canadian State, to the extent that they can present the major positions and take a nuanced position with respect to them. Second, it aims to problematize the a-sociological and ahistorical analysis of some strands of Canadian institutional research, by foregrounding questions of the origins of institutions, and of the manner in which institutions favour certain political actors and outcomes over others. Without eclipsing the question of how the institutions could or should change, the emphasis is on understanding why our institutions are as they are, and what effects they have.

## **Course Objectives**

By the end of the course students should be able to:

- Describe leading arguments about how particular Canadian political institutions produce outcomes
- Describe arguments about how certain institutional features reflect the influence of specific political actors or ideologies
- Assess and evaluate the relative adequacy of these arguments.

## **Required Materials and Texts**

- Many of the course materials are available on-line through the library catalogue. Required readings that are not available online will be made available on the course's Avenue to Learn page ([avenue.mcmaster.ca](https://avenue.mcmaster.ca)).

## **Class Format**

The main form of delivery of this class is through a synchronous class using Zoom. While we have a three-hour window for the course, that is a long period for online interaction, so it is likely that we will do two segments of roughly an hour each, broken up by a 20 minute break.

Students are expected to come having done all the required readings each week. They should arrive at our meeting with the ability to summarize the main arguments and points of each reading, and with questions about the strength of the arguments and their relation to other arguments.

In preparation for class, all students should contribute to the online discussion of that week on Avenue, by 10am of the Monday before class. These brief contributions should include questions of clarification about concepts and arguments, and/or points of analysis or debate. It is crucial to have the confidence to acknowledge when you do not understand things that you are reading, so that we can work together to address them. It is my hope that other class members will attempt to provide some help in sorting them

out in the discussion ahead of class. Each week, one member of the seminar will have the responsibility of combing through the contributions to group them together in an agenda for the class.

## **Course Evaluation – Overview**

1. Participation (25%)
2. Paper Outline (10%) due October 22
3. Final Paper (55%), due December 3
4. Seminar Leadership (10%)

## **Course Evaluation – Details**

### **Participation (25%)**

Participation will be graded based on performance in two places. First, are contributions made to the discussion board (see under Class Format) on-time and on a weekly basis, and is an effort made to help other students make sense of the material? Second, to what extent does a student consistently contribute thoughtful reflection and analysis drawing on course readings in class meetings?

### **Paper Outline (10%), due October 22**

As preparation for the final paper, students should submit a 1000-1500 word outline. The outline should set out the institution in question and the paper's argument, placing these within the context of existing research and arguments about that institution. It should include a bibliography that separates sources into those cited in the outline, and those sources that likely will be used for the final paper, but have not yet been consulted.

Please consider discussing your topic choice with the instructor. It is often possible to arrive at a topic close to your own research interests with some back-and-forth discussion.

### **Final Paper (55%), due December 3**

Students are expected to produce a 20-25 page paper on a Canadian political institution. The institution can be a highly visible one (e.g. the Senate, federalism), a narrower or more specific one (e.g. the franchise, the Council of the Federation, the Health Council of Canada, the Ontario Human Rights Commission), or a very specific one (e.g. Federal/Provincial/Territorial Advisory Committee on Governance and Accountability). The paper provides an opportunity for students to apply the themes and framework of the course to their own areas of interest. The paper should analyze the politics of the creation (or subsequent reform) of the institution in question OR analyze how the institution serves to favour certain actors and outcomes over others. Depending on the topic chosen, papers will have different dosages of critical literature

review and primary research, as different institutions have different amounts of existing research and debate devoted to them.

### **Seminar Leadership (10%)**

In week 2, students will sign up to lead one seminar. Seminar leaders are expected to animate/moderate the class by asking questions, including ones that were submitted by their classmates, about the contents and themes in the weekly readings. They are also expected to share two images/drawings that help illustrate concepts, ideas or arguments found in the weekly readings. Leaders must, however, refrain from providing summaries/synopses of readings, as that tends to put people to sleep.

### **Weekly Course Schedule and Required Readings**

#### **Week 1 (Sept 14) Introduction to the Course**

#### **Week 2 (Sept 21) Different Ways of Thinking About Institutions**

Readings:

Wolfgang Streeck and Kathleen Thelen, "Introduction: Institutional Change in Advanced Political Economies," in Wolfgang Streeck and Kathleen Thelen (eds) *Beyond Continuity: Institutional Change in Advanced Political Economies*. Oxford: Oxford University Press, 2005, 1-39.

Dennis Pilon, "Codifying Common Sense: The Limits of Historical Institutionalism and the Need for a Critical Institutionalism" *Studies in Political Economy* forthcoming

Walter Korpi, "The Power Resources Model," in Christopher Pierson and Francis G. Castles (eds) *The Welfare State Reader*. New York: Polity Press, 2000, 77-88.

Additional Readings:

James Mahoney and Kathleen Thelen, "A Theory of Gradual Institutional Change," in James Mahoney and Kathleen Thelen (eds) *Explaining institutional change: ambiguity, agency and power* (New York: Cambridge University Press, 2010), 1-37.

John L. Campbell, *Institutional Change and Globalization* (Princeton: Princeton University Press, 2004), esp. ch. 1-2.

Siobhan Harty, "Theorizing Institutional Change," in André Lecours (ed.) *New Institutionalism: Theory and Analysis* (Toronto: University of Toronto Press, 2008), 51-79.

Terry M. Moe, "Power and Political Institutions," *Perspectives on Politics*, 3:2 (2005) 215-231.

### **Week 3 (Sept 28) Treaties and Imperial Acts**

Read at least three of the following four:

J.R. Miller, "Canada's Historic Treaties," in Jim Aldridge and Terry Fenge (eds.) *Keeping Promises: The Royal Proclamation of 1763, Aboriginal Rights, and Treaties in Canada*. Montreal: McGill-Queen's University Press, 2015. 81-104.

Gina Starblanket, "The Numbered Treaties and the Politics of Incoherency." *Canadian Journal of Political Science* 52 (2019), 443-459.

Aaron Mills, "What is a Treaty? On Contract and Mutual Aid," in Michael Coyle and John Borrows (eds.) *The Right Relationship: Reimagining the Implementation of Historical Treaties*. Toronto: University of Toronto Press, 2017, 208-247.

Mark Walters, "Rights and Remedies Within Common Law and Indigenous Legal Traditions: Can the Covenant Chain Be Judicially Enforced Today?" in Michael Coyle and John Borrows (eds.) *The Right Relationship: Reimagining the Implementation of Historical Treaties*. Toronto: University of Toronto Press, 2017, 187-207.

Additional Readings:

Consult *The Right Relationship* (esp. Borrows, Stark) and *Keeping Promises* (esp. Slattery)

Alain-G. Gagnon & Luc Turgeon. "Managing Diversity in Eighteenth and Nineteenth Century Canada: Québec's Constitutional Development in Light of the Scottish Experience," *Commonwealth & Comparative Politics*, 41:1, 2003, 1-23.

### **Week 4 (Oct 5) Confederation**

Readings:

Peter Price, *Questions of Order: Confederation and the Making of Modern Canada*. Toronto: University of Toronto Press, 2021. Chapter 1.

Ian McKay, "The Liberal Order Framework: A Prospectus for a Reconnaissance of Canadian History," *Canadian Historical Review* 81 (2000), 617-45.

Elsbeth A. Heaman, *Tax, Order and Good Government: A New Political History of Canada, 1867-1917*. Montreal: McGill-Queen's University Press, 2017. Ch. 1.

And one of:

Marc Chevrier, "The Making of a Dominion: The Completion of a Conquest." In Eugénie Brouillet, Guy Laforest and Alain-G. Gagnon (eds.) *The Quebec Conference of 1864*:

*Understanding the Emergence of the Canadian Federation*. Montreal: McGill-Queen's University Press, 2018. 49-69.

Louis-Georges Harvey, "Confederation and Corruption: The Republican Critique of the Quebec Resolutions." In Eugénie Brouillet, Guy Laforest and Alain-G. Gagnon (eds.) *The Quebec Conference of 1864: Understanding the Emergence of the Canadian Federation*. Montreal: McGill-Queen's University Press, 2018, 220-232.

Additional Readings:

Janet Ajzenstat, *The Canadian Founding: John Locke and Parliament* (Montreal: McGill-Queen's University Press, 2007), ch. 2.

David Schneiderman, *Red, White, and Kind of Blue? The Conservatives and the Americanization of Canadian Constitutional Culture* (Toronto: University of Toronto Press, 2015), ch. 1.

Chapters by Stéphane Kelly and Robert C. Vipond, Jacqueline D. Krikorian and David R. Cameron in Eugénie Brouillet, Guy Laforest and Alain-G. Gagnon (eds.) *The Quebec Conference of 1864: Understanding the Emergence of the Canadian Federation*. Montreal: McGill-Queen's University Press, 2018

Peter H. Russell, "The Conditional Nature of Trust in Canada's Multinational Constitutional Politics" in Dimitrios Karmis and François Rocher (eds.) *Trust, distrust, and mistrust in multinational democracies: comparative perspectives* (Montréal: McGill-Queen's University Press, 2018), 113-134.

Eugénie Brouillet, "The Negation of a Nation: The Quebec Cultural Identity and Canadian Federalism." In David Cameron, Jacqueline Krikorian, Robert Vipond, Marcel Martel and Andrew McDougall (eds.) *Roads to Confederation: The Making of Canada 1867*. Toronto: University of Toronto Press, 2017. 40-67.

Stanley B. Ryerson, *Unequal Union: Roots of the Crisis in the Canadas, 1815-1873* (Toronto: Progress Books, 1973), ch. 18.

Philip Resnick, *The Masks of Proteus: Canadian Reflections on the State* (Montréal: McGill-Queen's University Press, 1990), ch. 4

Ian McKay, "Canada as a Long Liberal Revolution: On Writing the History of Actually Existing Canadian Liberalisms, 1840s-1940s" in Jean-François Constant and Michel Ducharme, *Liberalism and Hegemony: Debating the Canadian Liberal Revolution* (Toronto: University of Toronto Press, 2009), 347-452.

Peter J. Smith, "The Ideological Origins of Canadian Confederation," in Janet Ajzenstat and Peter J. Smith (eds) *Canada's Origins: Liberal, Tory or Republican?* (Ottawa: Carleton University Press, 1995), 47-78.

Elsbeth A Heaman, *A Short History of the State in Canada*. Toronto: University of Toronto Press, 2015. (esp. ch. 1-3).

Andrew Smith, *British Businessmen and Canadian Confederation* (Montreal: McGill-Queen's University Press, 2008).

Andrew Smith, "Toryism, Classical Liberalism, and Capitalism: The Politics of Taxation and the Struggle for Canadian Confederation," *Canadian Historical Review* 89 (2008), 1-24.

Reg Whitaker, *A Sovereign Idea* (Montreal: McGill-Queen's University Press, 1992), ch. 1.

### **Week 5 (Oct 12) Mid-term recess, NO CLASS**

### **Week 6 (Oct 19) Responsible Government: Parliament and Senate**

Readings:

Janet Ajzenstat, *The Canadian Founding: John Locke and Parliament*. Montreal: McGill-Queen's University Press, 2007, ch. 3

Jonathan Malloy, "More Than a Terrain of Struggle: Parliament as Ideological Instrument and Objective under Conservatism," in J.P. Lewis and Joanna Everitt (eds.) *The Blueprint: Conservative Parties and Their Impact on Canadian Politics* (Toronto: University of Toronto Press, 2017), pp. 242-263.

Emmett Macfarlane, *Constitutional Pariah*. Vancouver : UBC Press, 2021. Chapter 5.

Additional Readings:

Linda Cardinal, "Minority Group and Women's Representation in the Senate." In Johanne Poirier and Alain-G. Gagnon (eds.) *Canadian Federalism and Its Future: Actors and Institutions*. Montreal: McGill-Queen's University Press, 2020. 105-133. (In the same volume, see also the chapters by Broschek and Peach).

David Schneiderman, *Red, White, and Kind of Blue? The Conservatives and the Americanization of Canadian Constitutional Culture* (Toronto: University of Toronto Press, 2015), ch. 2-4



Peter Aucoin, Mark D. Jarvis and Lori Turnbull, *Democratizing the Constitution: Reforming Responsible Government* (Toronto: Emond Montgomery, 2011), ch. 2

Jonathan Malloy, "The Drama of Parliament Under Minority Government" in G. Bruce Doern and Christopher Stoney, (eds.), *How Ottawa Spends 2011-12* (Montreal: McGill-Queen's University Press, 2010).

Philip Resnick, *The Masks of Proteus*, ch. 5.

Peter H. Russell, "Discretion and the Reserve Powers of the Crown," *Canadian Parliamentary Review*, 34:2 (2011), 19-25.

Bruce M. Hicks, "The Westminster Approach to Prorogation, Dissolution and Fixed Election Dates," *Canadian Parliamentary Review* 35:2 (2012)

David E. Smith, *The People's House of Commons: Theories of Democracy in Contention* (Toronto: University of Toronto Press, 2007).

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

Peter H. Russell and Lorne Sossin (eds) *Parliamentary Democracy in Crisis* (Toronto: University of Toronto Press, 2009), chapters by Jean Leclair & Jean-François Goudreault-Desbiens (105-120), Peter Russell (136-149), and Graham White (150-60).

Johannes Wheeldon, "[Constitutional Peace, Political Order, or Good Government? Organizing and Assessing Scholarly Views on the 2008 Prorogation.](#)" *Canadian Political Science Review* 8:1 (2014).

Philip Resnick, *Parliament vs. People: An Essay on Democracy and Canadian Political Culture* (Vancouver: New Star Books, 1984), ch.1-4, 6.

David Smith, "The Senate of Canada and the Conundrum of Reform", and Janet Ajzenstat, "Harmonizing Regional Representation with Parliamentary Government: The Original Plan," in Jennifer Smith (ed.) *Democratic Dilemma: Reforming the Canadian Senate* (Montreal: McGill-Queen's University Press, 2009), 11-33.

Jennifer Smith, "Democracy and the Canadian House of Commons at the Millennium," *Canadian Public Administration* 42:4 (1999) 398-421.

David Docherty, *Legislatures* (Vancouver: UBC Press, 2005).

McDougall, A., Connecting power to protection: The political bases of language commissioners in Canada. *Canadian Public Administration*, 62 (2019), 77-95.  
doi:[10.1111/capa.12311](https://doi.org/10.1111/capa.12311)

Rudy B. Andeweg, "Towards a Stronger Parliament? Electoral Engineering of Executive-Legislative Relations," *Acta Politica* 41 (2006) 232-248.

Institute of Intergovernmental Relations, 2008 Working Paper Series on Senate Reform

## **Week 7 (Oct 26) Cabinet and the Executive**

Readings:

Donald J. Savoie, *Democracy in Canada: The Disintegration of our Institutions*. Montreal: McGill-Queen's University Press, 2019, chapter 10.

Mary Liston, "The Most Opaque Branch? The (Un)accountable Growth of Executive Power in Modern Canadian Government," in Richard Albert, Paul Daly and Vanessa MacDonnell (eds.) *The Canadian Constitution in Transition*. Toronto: University of Toronto Press, 2019, 19-59.

J.P. Lewis, "A Wolf in Wolf's Clothing: The Stephen Harper Ministry," in J.P. Lewis and Joanna Everitt (eds.) *The Blueprint: Conservative Parties and Their Impact on Canadian Politics*. Toronto: University of Toronto Press, 2017, 264-289.

David Good, *The Politics of Public Money* 2<sup>nd</sup> ed. Toronto: University of Toronto Press, 2014, ch. 4.

Additional readings:

Donald J. Savoie, "The Rise of Court Government in Canada," *Canadian Journal of Political Science* 32:4 (1999) 635-664.

Graham White, "The 'Centre' of the Democratic Deficit: Power and Influence in Canadian Political Executives," in Patti Tamara Lenard and Richard Simeon (ed.), *Imperfect Democracies: The Democratic Deficit in Canada and the United States* (Vancouver: UBC Press, 2012), 226-247.

Dennis Baker, *Not Quite Supreme: The Courts and Coordinate Constitutional Interpretation* (Montreal: McGill-Queen's University Press, 2010), ch. 3-4.

G. Bruce Doern, Allan M. Maslove and Michael J. Prince, *Canadian Public Budgeting in the Age of Crisis* (Montreal: McGill-Queen's University Press, 2013), ch. 4.

Herman Bakvis and Steven B. Wolinetz, "Canada: Executive Dominance and Presidentialization," in Thomas Poguntke and Paul Webb (eds) *The Presidentialization of Politics: A Comparative Study of Modern Democracies* (Oxford: Oxford University Press, 2005). (e-book, available from the library web catalogue).

Graham White, *Cabinets and First Ministers* (Vancouver: UBC Press, 2005).

## Week 8 (Nov 2) Bureaucracy

### Readings:

David Good, *The Politics of Public Money* 2<sup>nd</sup> ed. (Toronto: University of Toronto Press, 2014), ch. 1 (esp. p. 30-37), 2.

Amanda Clarke, *Opening the Government of Canada: Federal Bureaucracy in the Digital Age*. Vancouver: UBC Press, 2019, chapter 2, 4.

Jennifer Robson and R. Paul Wilson, "Political Staff and Permanent Public Servants: Still Getting Along," in Thierry Giasson, Alex Marland and Andrea Lawlor. Vancouver: UBC Press 2018, 71-88.

Donald J. Savoie, *Democracy in Canada: The Disintegration of our Institutions*. Montreal: McGill-Queen's University Press, 2019, **one of** chapters 12 and 13.

### Additional readings:

Alex Marland, J.P. Lewis and Tom Flanagan, "Governance in the Age of Digital Media and Branding," *Governance* 30:1 (2017), 125-141.

Evert A. Lindquist and Chris Eichbaum, "Remaking Government in Canada: Dares, Resilience and Civility in Westminster Systems," *Governance* 29:4 (2016), 553-571.

Stephanie Paterson, Patrick Marier and Felix Chu, "Technocracy or transformation? Mapping women's policy agencies and orienting gender (in)equality in the Canadian provinces." *Canadian Public Administration* 59:3 (2016), 405-424.

Rianne Mahon, "Canadian Public Policy: The Unequal Structure of Representation," in Leo Panitch (ed.) *The Canadian State* (Toronto: University of Toronto Press, 1977), 165-198.

Bryan Evans, "How the State Changes Its Mind? A Gramscian Account of Ontario's Managerial Culture Change," *Philosophy of Management* 5:2 (2005) 25-46.

Jonathan Craft, *Backrooms and Beyond: Partisan Advisers and the Politics of Policy Work in Canada* (Toronto: University of Toronto Press, 2016), Introduction, ch 1.

Donald Savoie, "The Canadian public service has a personality," *Canadian Public Administration* 49:3 (2006) 261-281.

J.E. Hodgetts, *Pioneer Public Service* (Toronto: University of Toronto Press, 1955), ch. XVI.

Denis Grube, "Public voices from anonymous corridors: The public face of the public service in a Westminster system," *Canadian Public Administration* 56:1 (2013) 3-25.

Donald Savoie, "Intrastate Federalism and the Civil Service," in Hans Michelmann and Christine de Clercy (eds) *Continuity and Change in Canadian Politics* (Toronto: University of Toronto Press, 2006), 64-88.

John Shields and Bryan Evans, *Shrinking the State: Globalization and Public Administration "Reform"* (Halifax: Fernwood, 1998).

Heather Whiteside, *Purchase for Profit: Public-Private Partnerships and Canada's Public Health-Care System* (Toronto: University of Toronto Press, 2015), ch. 3.

Gregory Albo, "Democratic Citizenship and the Future of Public Management," in Greg Albo, David Langille and Leo Panitch (eds.) *A different kind of state? Popular Power and Democratic Administration* (Toronto: Oxford University Press, 1993), 17-33.

Ian Brodie, "In Defense of Political Staff," *Canadian Parliamentary Review* 35:3 (2012)

## **Week 9 (Nov 9) Federalism**

Readings:

Barbara Cameron, "Social Reproduction and Canadian Federalism," in Kate Bezanson and Meg Luxton (eds) *Social Reproduction: Feminist Political Economy Challenges Neo-Liberalism* (Montréal: McGill-Queen's University Press, 2006), 45-74.

Jean-Philippe Gauvin and Martin Papillon, "Intergovernmental Relations in Canada: Still an Exclusive Club?" In Johanne Poirier and Alain-G. Gagnon (eds.) *Canadian Federalism and Its Future: Actors and Institutions*. Montreal: McGill-Queen's University Press, 2020. 336-365.

Robert Schertzer, Andrew McDougall, Grace Skogstad, "Multilateral Collaboration in Canadian Intergovernmental Relations: The Role of Procedural and Reciprocal Norms," *Publius: The Journal of Federalism* 48:4 (2018), 636-663.

Johanne Poirier and Sajeda Hedaraly, "Truth and Reconciliation Calls to Action across Intergovernmental Landscapes: Who Can and Should Do What?," *Review of Constitutional Studies* 24, no. 2 (2019-2020): 171-206.

Additional Readings:

Noura Karazivan, "Cooperative Federalism in Canada and Quebec's Changing Attitudes," in Richard Albert, Paul Daly and Vanessa MacDonnell (eds.) *The Canadian Constitution in Transition* (Toronto:University of Toronto Press, 2019), 136-166.

Jean-François Gaudreault-Desbiens and Johanne Poirier, "From Dualism to Cooperative Federalism and Back? Evolving and Competing Conceptions of Canadian Federalism." In Peter Oliver, Patrick Macklem and Nathalie Desrosiers (eds.) *The*

*Oxford Handbook of the Canadian Constitution*. Oxford: Oxford University Press, 2017. 391-413. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3475142](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475142)

Julie Simmons, "Canadian multilateral intergovernmental institutions and the limits of institutional innovation," *Regional and Federal Studies* 27:5 (2017), 573-596.

Anna Esselment, "Federal Feet and Provincial Pools: The Conservatives and Federalism in Canada," in J.P. Lewis and Joanna Everitt (eds.) *The Blueprint: Conservative Parties and Their Impact on Canadian Politics* (Toronto: University of Toronto Press, 2017), 290-313.

Robert Schertzer, "Collaborative Federalism and the Role of the Supreme Court of Canada," in Emmett Macfarlane (ed.) *Policy Change, Courts and the Canadian Constitution* (Toronto: University of Toronto Press, 2018).

Robert Schertzer, *The Judicial Role in a Diverse Federation* (Toronto: University of Toronto Press, 2016), ch. 1.

Alain Noël, "How do you limit a power that does not exist" and Andrew Petter, "The Myth of the Federal Spending Power Revisited," in John R. Allan *et al.*, *Canada: The State of the Federation 2008: Open Federalism and the Spending Power* (Kingston: Institute of Intergovernmental Relations, 2012), 167-182, 183-192.

Adam Harmes, "The Political Economy of Open Federalism," in *Canadian Journal of Political Science* 40:2 (2007) 417-437.

François Rocher and Marie-Christine Gilbert, "Re-Federalizing Canada: Refocusing the Debate on Decentralization," in Ruth Hubbard and Gilles Paquet (eds.) *The Case for Decentralized Federalism* (Ottawa: University of Ottawa Press, 2010) 116-158.

Rianne Mahon and Deborah Brennan, "Federalism and the 'New Politics' of Welfare Development: Childcare and Parental Leave in Australia and Canada," *Publius* 43:1 (2013), 90-108.

Jean-François Caron, Guy Laforest and Catherine Vallières-Roland, "Canada's Federative Deficit," in Alain-G. Gagnon, *Contemporary Canadian Federalism: Foundations, Traditions, Institutions* (Toronto: University of Toronto Press, 2009), 132-162.

Julie M. Simmons, "Democratizing Executive Federalism: The Role of Non-Governmental Actors in Intergovernmental Agreements," in Herman Bakvis and Grace Skogstad (eds) *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, 2<sup>nd</sup> ed. (Toronto: Oxford University Press, 2008), 355-379.

Eric Montpetit, "[Easing Dissatisfaction with Canadian Federalism? The Promise of the Strategy of Disjointed Incrementalism](#)," *Canadian Political Science Review* 2:3 (2008).

Guy Laforest, "The Meaning of Canadian Federalism in Québec: Critical Reflections," *Revista d'estudis autonòmics i federals* 11 (2010), 10-55. [http://www10.gencat.cat/drep/binaris/\\_reaf11\\_Laforest\\_tcm112-132308.pdf](http://www10.gencat.cat/drep/binaris/_reaf11_Laforest_tcm112-132308.pdf)

Jennifer Smith, *Federalism* (Vancouver: UBC Press, 2004).

Alain-G. Gagnon and Raffaele Iacovino, *Federalism, Citizenship, and Quebec* (Toronto: University of Toronto Press, 2007).

François Rocher, "The Quebec-Canada Dynamic or the Negation of the Ideal of Federalism," in Alain-G. Gagnon, *Contemporary Canadian Federalism: Foundations, Traditions, Institutions* (Toronto: University of Toronto Press, 2009), 81-131.

Peter Graefe, "The Spending Power and Federal Social Policy Leadership: A Prospective View," in *Defining the Federal Government's Role in Social Policy: The Spending Power and Other Instruments* (Montreal: IRPP, 2008).

Alain Noël, "Power and Purpose in Intergovernmental Relations," *Policy Matters*, 2:6 (2001).

Janet Aizenstat, *The Canadian Founding*, ch. 5.

Janet Aizenstat *et al.* (ed.) *Canada's Founding Debates*, ch. 9.

Jörg Broschek, "Historical Institutionalism and the Varieties of Federalism in Germany and Canada," *Publius*, 42: 4 (2012) 662-687.

Julie M. Simmons and Amy Nugent, "Panacea or Peril: Intergovernmental Accountability and the Auditor General" in Peter Graefe, Julie M. Simmons and Linda A. White (eds) *Overpromising and Underperforming?* (Toronto: University of Toronto Press, 2012).

Jean-François Gaudreault-Desbiens and Johanne Poirier, "From Dualism to Cooperative Federalism and Back? Evolving and Competing Conceptions of Canadian Federalism." In Peter Oliver, Patrick Macklem and Nathalie Desrosiers (eds.) *The Oxford Handbook of the Canadian Constitution*. Oxford: Oxford University Press, 2017. 391-413. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3475142](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475142)

## Week 10 (Nov 16) Courts and the Law

Readings:

Choose four of:

Janet Hiebert, "The Charter, Policy, and Political Judgment." In Emmett Macfarlane (ed.) *Policy Change, Courts, and the Canadian Constitution*. Toronto: University of Toronto Press.

Emmett McFarlane, "[You Can't Always Get What You Want": Regime Politics, the Supreme Court of Canada and the Harper Government.](#)" *Canadian Journal of Political Science* 51:1 (2018), 1-21..

John Borrows, *Freedom and Indigenous Constitutionalism*. Toronto: University of Toronto Press, 2016, ch. 4.

Peter W. Hogg and Ravi Amarnath, "Understanding Dialogue Theory." In Peter Oliver, Patrick Macklem and Nathalie Desrosiers (eds.) *The Oxford Handbook of the Canadian Constitution*. Oxford: Oxford University Press, 2017. 1053-1074.

Marc Verdussen, "The Role of the Judiciary in Federal States: Comparing the Belgian and Canadian Experiences." In Johanne Poirier and Alain-G. Gagnon (eds.) *Canadian Federalism and Its Future: Actors and Institutions*. Montreal: McGill-Queen's University Press, 2020. 135-167.

Esmeralda M.A. Thornhill, "So Seldom For Us, So Often Against Us: Blacks and Law in Canada." *Journal of Black Studies* 38:3 (2008): 321-337

Additional readings:

Samuel LaSelva, *Canada and the Ethics of Constitutionalism: Identity, Destiny and Constitutional Faith*. Montreal: McGill-Queen's University Press, 2018. Ch. 4.

James B. Kelly, "Legislative Activism and Parliamentary Bills of Rights: Institutional Lessons for Canada," in James Kelly and Christopher Manfredi (eds) *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms* (Vancouver: UBC Press, 2009), 86-105.

Andrew Petter, "Wealthcare: The Politics of the Charter Re-visited," in Colleen M. Flood et al. (eds), *Access to Care, Access to Justice: The Legal Debate Over Private Health Insurance in Canada* (Toronto: University of Toronto Press, 2005).

Robert Schertzer, *The Judicial Role in a Diverse Federation* (Toronto: University of Toronto Press, 2016), pp. 271-292.

Dennis Baker, *Not Quite Supreme: The Courts and Coordinate Constitutional Interpretation* (Montreal: McGill-Queen's University Press, 2010).

Janet Hiebert, "Wrestling with Rights: Judges, Parliament and the Making of Social Policy," in Paul Howe and Peter Russell (eds.) *Judicial Power and Canadian Democracy* (Montreal: McGill-Queen's University Press, 2001), 165-213

Erin Crandell, "DIY101: The Constitutional Entrenchment of the Supreme Court of Canada." in Emmett Macfarlane (ed.) *Constitutional Amendment in Canada* (Toronto: University of Toronto Press, 2016), ch.9.

Andrea Lawlor and Erin Crandell, "Questioning Judges with a Questionable Process: An Analysis of Committee Appearances by Supreme Court Candidates." *Canadian Journal of Political Science* 48: 4 (2015) 863-883.

Erin Crandall and Andrea Lawlor, "The Politics of Judicial Appointment: Do Party Connections Impede the Appointment of Women to Federally Appointed Courts?" *Canadian Journal of Political Science* 50:3 (2017), 823-847.

Miriam Smith, "Ghosts of the JCPC," *Canadian Journal of Political Science*, 35:1 (2002), 3-29.

Emmett Macfarlane, "Administration at the Supreme Court of Canada: Challenges and Change in the Charter Era," *Canadian Public Administration* 52:1 (2009), 1-21.

Emmett Macfarlane, *Governing from the Bench: The Supreme Court of Canada and the Judicial Role* (Vancouver: UBC Press, 2013)

Nadia Verelli (ed.), *The Democratic Dilemma: Reforming Canada's Supreme Court* (Montreal: McGill-Queen's University Press, 2013).

Robert Schertzer, "Recognition or Imposition? Federalism, national minorities, and the Supreme Court of Canada," *Nations and Nationalism* 14:1 (2008) 105-126.

Dimitrios Panagos, *Uncertain Accommodation: Aboriginal Identity and Group Rights in the Supreme Court of Canada*. Vancouver: UBC Press, 2016.

Ian Greene, *Courts* (Vancouver: UBC Press, 2005).

Institute of Intergovernmental Relations, Special Working Paper Series on the Federal Dimensions of Reforming the Supreme Court of Canada.

## **Week 11 (Nov 23) 1982 and After: The Charter and Political Community**

Readings:



Catherine Frost, *Language, Democracy and the Paradox of Constituent Power: Declarations of Independence in Comparative Perspective*. New York: Routledge, 2021. Chapter 5.

John Borrows, *Freedom and Indigenous Constitutionalism*. Toronto: University of Toronto Press, 2016, ch. 3.

Carissima Mathen, "The Federal Principle: Constitutional Amendment and Intergovernmental Relations." In Emmett Macfarlane (ed.) *Constitutional Amendment in Canada*. Toronto: University of Toronto Press, 2016. 65-84.

Guy Laforest, [\*Interpreting Quebec's Exile Within the Federation\*](#). Brussels: Peter Lang, 2014, chapter 1.

Additional Readings:

Samuel LaSelva, *Canada and the Ethics of Constitutionalism: Identity, Destiny and Constitutional Faith*. Montreal: McGill-Queen's University Press, 2018. Ch. 3.

Janet L. Hiebert, "Compromise and the Notwithstanding Clause: Why the Dominant Narrative Distorts our Understanding," in James Kelly and Christopher Manfredi (eds) *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms* (Vancouver: UBC Press, 2009), 107-125.

Frédéric Bastien, "Britain, the Charter of Rights and the spirit of the 1982 Canadian Constitution," *Commonwealth & Comparative Politics* 48:3 (2010), 320-47.

Dennis Baker and Mark D. Jarvis, "The End of Informal Constitutional Change in Canada?" In Emmett Macfarlane (ed.) *Constitutional Amendment in Canada* (Toronto: University of Toronto Press, 2016), ch.9.

Guy Laforest, "The Internal Exile of Quebecers in the Canada of the Charter," in James Kelly and Christopher Manfredi (eds) *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms* (Vancouver: UBC Press, 2009), 251-262.

Sujit Choudhry, "Bills of Rights as Instruments of Nation Building in Multinational States: The Canadian Charter and Quebec Nationalism," in James Kelly and Christopher Manfredi (eds) *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms* (Vancouver: UBC Press, 2009), 233-250.

Reg Whitaker, *A Sovereign Idea* (Montreal: McGill-Queen's University Press, 1992), ch. 7.

James Tully, "Introduction," in Alain-G. Gagnon and James Tully (eds.) *Multinational Democracies* (Cambridge: Cambridge University Press, 2001), 1-33.

Kenneth McRoberts, "Canada and the Multinational State," *Canadian Journal of Political Science* 34:4 (2001) 683-713.

Alexandra Dobrowolsky, "Of 'Special Interest': Interest, identity and Feminist Constitutional Activism in Canada," *Canadian Journal of Political Science* 31:4 (1998) 707-742.

\*Matt James, *Misrecognized Materialists: Social Movements in Canadian Constitutional Politics* (Vancouver: UBC Press, 2006).

Peter H. Russell, "Can the Canadians Be a Sovereign People?" *Canadian Journal of Political Science*, vol. 24, no. 4 (1991) 691-709.

Matt James, "The Politics of Honourable Constitutional Inclusion and the Citizens' Constitution Theory," in Gerald Kernerman and Philip Resnick (eds.) *Insiders & Outsiders* (Vancouver: UBC Press, 2005), 132-147.

Samuel V. LaSelva, "[The Canadian Charter, the British Connection, and the Americanization Thesis: Toward a Montesquieuean Analysis of Rights and Their Protection](#)," *Canadian Journal of Political Science*, vol. 50, no. 4 (2017), pp. 1061-1081

## **Week 12 (Nov 30) 1982 and After: Section 35**

Readings:

Jeremy Webber, "We Are Still in the Age of Encounter: Section 35 and a Canada beyond Sovereignty," in Patrick Macklem and Douglas Sanderson (eds.) *From Recognition to Reconciliation: Essays on the Constitutional Entrenchment of Aboriginal and Treaty Rights* (Toronto: University of Toronto Press, 2016)

Hayden King, "Treaty Making and Breaking in Settler Colonial Canada," in Janine Brodie (ed.) *Contemporary Inequalities and Social Justice in Canada* (Toronto: University of Toronto Press, 2018), 107-123.

Michael McCrossan and Kiera L. Ladner, "Eliminating Indigenous Sovereignty: Federalism, the Supreme Court of Canada, and Territorial Rationalities of Power," *Canadian Journal of Political Science* 49:3 (2016), 411-431.

Terry Lynn Poucette. "Spinning wheels: Surmounting the Indian Act's impact on traditional Indigenous governance." *Canadian Public Administration*, 61:4 (2018), 499-522.

Additional readings:

Michael Morden, "Theorizing the resilience of the Indian Act," *Canadian Public Administration* 59: 1 (2016) 113-133.

Hayden King, "New Treaties, Same Old Dispossession: A Critical Assessment of Land and Resource Management Regimes in the North." In Martin Papillon (ed.) *Canada State of the Federation 2013: Aboriginal Multilevel Governance*. (Kingston: Institute for Intergovernmental Relations, 2015), 83-98.

Graham White, G. "Issues of independence in Northern Aboriginal-state co-management boards." *Can Public Admin*, 61 (2018) 550-571. doi:[10.1111/capa.12302](https://doi.org/10.1111/capa.12302)

Joanne Heritz, "From self-determination to service delivery: Assessing Indigenous inclusion in municipal governance in Canada". *Can Public Admin* (2018) 61: 596-615. doi:[10.1111/capa.12277](https://doi.org/10.1111/capa.12277)

Ian Peach, "Who speaks for whom? Implementing the Crown's duty to consult in the case of divided Aboriginal political structures." *Canadian Public Administration* 59: 1 (2016) 95-112.

Christopher Alcantara and Adrienne Davidson, "Negotiating Aboriginal Self-Government Agreements in Canada: An Analysis of the Inuvialuit Experience." *Canadian Journal of Political Science* 48:3 (2015) 553-575.

Christa Scholtz, "Part II and Part V: Aboriginal Peoples and Constitutional Amendment." In Emmett Macfarlane (ed.) *Constitutional Amendment in Canada* (Toronto: University of Toronto Press, 2016), ch. 4.

Paul McHugh and Lisa Ford, "Settler Sovereignty and the shapeshifting Crown," in Lisa Ford, Tim Rowse and Anna Yeatman (eds.) *Between Indigenous and Settler Governance* (New York: Taylor and Francis, 2012), ch. 3.

### **Week 13 (Dec 7) The Crown, Presentation of Papers and Conclusions**

Readings:

Choose two of three:

Marcella Firmini and Jennifer Smith, "The Crown in Canada." In Peter Oliver, Patrick Macklem and Nathalie Desrosiers (eds.) *The Oxford Handbook of the Canadian Constitution*. Oxford: Oxford University Press, 2017. 129-150.

Philippe Lagassé, "Parliamentary and judicial ambivalence toward executive prerogative powers in Canada," *Canadian Public Administration*, 55:2 (2012), 157-180.

Mariana Valverde and Adriel Weaver, "'The Crown Wears Many Hats': Canadian Aboriginal Law and the Black-boxing of Empire," in Kyle McGee (ed.) *Latour and the Passage of Law* (Oxford: Oxford University Press, 2015), 93-121.

## **Course Policies**

### **Submission of Assignments**

All assignments should be submitted to the appropriate submission folder on Avenue to Learn.

Final papers received after December 3rd will be considered late, and subject to a late penalty of 2% per day. Recognizing the need to accommodate minor illnesses and the complications of life, including those giving rise to an MSAF, four days of late penalties will be forgiven.

### **Grades**

Grades will be based on the McMaster University grading scale:

<b>MARK</b>	<b>GRADE</b>
90-100	A+
85-90	A
80-84	A-
77-79	B+
73-76	B
70-72	B-
0-69	F

### **Late Assignments**

Assignments are due on the day indicated. If you are unable to do so, please contact the instructor.

### **Courses With An On-Line Element**

Some courses may use on-line elements (e.g. e-mail, Avenue to Learn (A2L), LearnLink, web pages, capa, Moodle, ThinkingCap, etc.). Students should be aware that, when they access the electronic components of a course using these elements, private information such as first and last names, user names for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in a course that uses on-line elements will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

### **Online Proctoring**

Some courses may use online proctoring software for tests and exams. This software may require students to turn on their video camera, present identification, monitor and record their computer activities, and/or lock/restrict their browser or other applications/software during tests or exams. This software may be required to be installed before the test/exam begins.

## **Authenticity / Plagiarism Detection**

Some courses may use a web-based service (Turnitin.com) to reveal authenticity and ownership of student submitted work. For courses using such software, students will be expected to submit their work electronically either directly to Turnitin.com or via an online learning platform (e.g. A2L, etc.) using plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty.

Students who do not wish their work to be submitted through the plagiarism detection software must inform the Instructor before the assignment is due. No penalty will be assigned to a student who does not submit work to the plagiarism detection software.

**All submitted work is subject to normal verification that standards of academic integrity have been upheld** (e.g., on-line search, other software, etc.). For more details about McMaster's use of Turnitin.com please go to [www.mcmaster.ca/academicintegrity](http://www.mcmaster.ca/academicintegrity).

## **Copyright and Recording**

Students are advised that lectures, demonstrations, performances, and any other course material provided by an instructor include copyright protected works. The Copyright Act and copyright law protect every original literary, dramatic, musical and artistic work, **including lectures** by University instructors

The recording of lectures, tutorials, or other methods of instruction may occur during a course. Recording may be done by either the instructor for the purpose of authorized distribution, or by a student for the purpose of personal study. Students should be aware that their voice and/or image may be recorded by others during the class. Please speak with the instructor if this is a concern for you.

## **Academic Accommodation for Religious, Indigenous or Spiritual Observances (RISO)**

Students requiring academic accommodation based on religious, indigenous or spiritual observances should follow the procedures set out in the [RISO](#) policy. Students should submit their request to their Faculty Office **normally within 10 working days** of the beginning of term in which they anticipate a need for accommodation or to the Registrar's Office prior to their examinations. Students should also contact their instructors as soon as possible to make alternative arrangements for classes, assignments, and tests.

## **Academic Integrity Statement**

You are expected to exhibit honesty and use ethical behaviour in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity. **It is your responsibility to understand what constitutes academic dishonesty.**

Academic dishonesty is to knowingly act or fail to act in a way that results or could result in unearned academic credit or advantage. This behaviour can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: “Grade of F assigned for academic dishonesty”), and/or suspension or expulsion from the university. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](#), located at <https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/>

The following illustrates only three forms of academic dishonesty:

- plagiarism, e.g., the submission of work that is not one’s own or for which other credit has been obtained.
- improper collaboration in group work.
- copying or using unauthorized aids in tests and examinations.

### **Conduct Expectations**

As a McMaster student, you have the right to experience, and the responsibility to demonstrate, respectful and dignified interactions within all of our living, learning and working communities. These expectations are described in the [Code of Student Rights & Responsibilities](#) (the “Code”). All students share the responsibility of maintaining a positive environment for the academic and personal growth of all McMaster community members, **whether in person or online**.

It is essential that students be mindful of their interactions online, as the Code remains in effect in virtual learning environments. The Code applies to any interactions that adversely affect, disrupt, or interfere with reasonable participation in University activities. Student disruptions or behaviours that interfere with university functions on online platforms (e.g. use of Avenue 2 Learn, WebEx or Zoom for delivery), will be taken very seriously and will be investigated. Outcomes may include restriction or removal of the involved students’ access to these platforms

### **Academic Accommodation of Students with Disabilities**

Students with disabilities who require academic accommodation must contact [Student Accessibility Services](#) (SAS) at 905-525-9140 ext. 28652 or [sas@mcmaster.ca](mailto:sas@mcmaster.ca) to make arrangements with a Program Coordinator. For further information, consult McMaster University’s [Academic Accommodation of Students with Disabilities](#) policy.

### **Faculty of Social Sciences E-mail Communication Policy**

Effective September 1, 2010, it is the policy of the Faculty of Social Sciences that all e-mail communication sent from students to instructors (including TAs), and from students to staff, must originate from the student’s own McMaster University e-mail account. This policy protects confidentiality and confirms the identity of the student. It is the student’s responsibility to ensure that communication is sent to the university from a McMaster

account. If an instructor becomes aware that a communication has come from an alternate address, the instructor may not reply at his or her discretion.

### **Course Modification**

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the student to check his/her McMaster email and course websites weekly during the term and to note any changes.

### **Extreme Circumstances**

The University reserves the right to change the dates and deadlines for any or all courses in extreme circumstances (e.g., severe weather, labour disruptions, etc.). Changes will be communicated through regular McMaster communication channels, such as McMaster Daily News, A2L and/or McMaster email.