

UNIVERSITY OF TORONTO
DEPARTMENT OF POLITICAL SCIENCE

POL2801H1 (FALL '23)

COMPARATIVE CONSTITUTIONALISM

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Class time: Tuesday, 5-7pm; Classroom: SSH3130

Office hours: TBD

Constitutional supremacy, a concept that has long been a major pillar of American political order, is now shared, in one form or another, by over 190 countries and several supra-national entities across the globe. Most of them have adopted a constitution or constitutional revision that contains a bill of rights and establishes some form of active judicial review, thereby empowering courts to determine the constitutionality of “ordinary” statutes and decrees. Consequently, high courts have become a central forum for dealing with core moral dilemmas, key policy-making challenges, and contentious political questions. This global trend, which Canada joined with the adoption of the Constitution Act, 1982 (including the Charter of Rights and Freedoms), is arguably one of the most significant developments in late-20th and early 21st century government. Meanwhile, in younger polities, challenges related to the drafting of constitutions and establishing the authority and legitimacy of an independent judiciary occupy the political arena. In an increasing number of settings worldwide, the constitutional order itself is facing considerable challenges by religion, ethnic rifts, economic crises, security threats and political populism. This seminar offers an examination of various legal and political aspects of these broad trends, in particular the interaction between constitutional law and the political sphere worldwide. It combines the study of relevant constitutional texts and court rulings with exploration of pertinent political science research concerning the global expansion of constitutionalism and judicial review and its impact on politics and policymaking in Canada and abroad. Throughout the course, special emphasis will be given to pertinent features of the Canadian constitution and Canada’s contribution to the world of new constitutionalism.

Course requirements

Class attendance and participation (15%): The first seminar meeting will be devoted to introductions, expectations, requirements, and so on. Thereafter, seminar meetings will be based on guided collective discussion of each week’s topic and reading materials. Students are expected to come ready for class. Class participation is essential; it includes preparation for class, regular attendance, and substantive contribution to seminar discussions.

Two comment papers and in-class presentations (25%): Each student will submit and present two comment papers during the seminar. The comment papers (maximum 1000 words each) will be a concise integrative and critical assessment of the readings for a given class. Students are expected to use the comment paper to illuminate an important question in the reading or to develop their own coherent argument based on the readings. The comment papers are due through Quercus no later than 5pm on the Monday prior to the seminar meeting. Students will present their comment

papers in class for approximately 10 minutes. Students must sign up for the submission of their comment papers before the second seminar meeting.

Final seminar paper (60%): Students may choose one of two options for the final paper (maximum 5,000 words excluding footnotes): 1) an integrative, critical book review of three books dealing with Canadian and comparative constitutional law and politics; or 2) a research note on a topic dealing with, or closely related to, one of the seminar's main themes. The seminar paper's topic or choice of reviewed books must be pre-approved by the instructor. Final papers are due by Monday, December 11th at 12 noon. Submission of the final paper must comply with pertinent Department of Political Science and Graduate School rules and regulations.

Readings

Reading materials include contemporary legal and social science scholarship as well as a few court rulings, where relevant. All materials are available on-line via the UofT Library resources (e.g. JSTORE, Lexis, Westlaw, Hein Online, licensed journal websites, licensed publisher or national high court websites); or through open online article repositories (e.g. SSRN/LSN).

Weekly Schedule

(Please note that depending on actual class size and on student interest, some minor changes may be made to the full version of the syllabus. A complete reading list will be posted to Quercus prior to the start date)

Week 1: Introduction

Week 2: Comparative constitutionalism: mapping the field

Week 3: Constitutional identity and constitutional change

Week 4: Canada's contribution to global constitutionalism

Week 5: Constitutional courts and the political process

Week 6: Constitutional retrogression, illiberal and autocratic constitutionalism

Week 7: Constitutions and religion

Week 8: Constitutions and equality

Week 9: Constitutions and restorative justice

Week 10: Constitutions and global challenges (climate change, urbanization, technology/privacy)

Week 11: Student presentations of final paper topic, ideas, and structure

Week 12: Summation and reflections