

# RETHINKING THE CONSTITUTION

Perspectives on Canadian Constitutional  
Reform, Interpretation, and Theory



Edited by

ANTHONY A. PEACOCK

# Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory

**Emmett Macfarlane**



## **Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory:**

**Constitutional Politics in Canada after the Charter** Patrick James, 2011-01-01 The Charter of Rights and Freedoms was introduced in 1982 Since then Canada has experienced more than twenty five years of constitutional politics and countless debates about whether the Canadian federation is integrating or disintegrating There has however been no systematic attempt to identify general theories about Canada s constitutional evolution Patrick James corrects this oversight by using systemism a concept drawn from the philosophy of science to identify and assess five theories that fall into the liberal or communitarian paradigms These theories are examined in the context of major issues such as the role of the courts or the status of Aboriginal peoples and debates among advocates and critics of each theory are used to work toward a greater understanding of constitutional wrangling in Canada By adding clarity to familiar debates this succinct assessment of major writings on constitutional politics sharpens our vision of the past and the future of the Canadian federation

*Rethinking the Constitution* Anthony Arthur Peacock, 1996 Contains 13 articles whose contributors believe there was a common thread linking the problems that plagued constitutional reform in the late 1980s and early 1990s and the politics of judicial review under the Charter of Rights and Freedoms The essays combine legal political historical and philosophical analysis a Canadian liberal constitutionalist perspective and critiques of the Supreme Court s Charter decisions the preoccupation with rights talk and other recent developments in constitutional law and politics Annotation copyrighted by Book News Inc Portland OR

**Forging Alberta's Constitutional Framework** Richard Connors, John M. Law, 2005-11-01 Forging Alberta s Constitutional Framework explores the nature and development of Alberta s constitution by examining a number of celebrated cases and themes that have shaped and altered legal social economic political and cultural rights and responsibilities within Alberta and Canada Contributors from across Canada include historians lawyers political scientists and politicians writing on themes that illustrate how Alberta s constitution is the product of decades even centuries of contest debate division and negotiation

**Courts, Liberalism, and Rights** Jason Pierceson, 2005 Understanding approaches to liberalism through the study of the politics of gay and lesbian rights *Questions of Order* Peter Price, 2021 Canadian Confederation has long been assessed as a political moment that created a new national entity This book breaks new ground by arguing that Confederation was an imperial event that generated new questions and ideas about the future of global political order

*Most Dangerous Branch* Robert Martin, 2005-03 One of those rare books with the potential to revive a dying society National Post

Northern Spirits Robert C. Sibley, 2008-02-08 The recovery of Watson s thought is particularly valuable Sibley shows that Watson an internationally respected philosopher in the early twentieth century discussed idealism and support for imperialism in ways that are particularly relevant in our new age of empire A consideration of Grant s relationship to Hegel illuminates what led Grant to declare that Canada was impossible in the age of technology Sibley s comparison of Grant and Trudeau is both unexpected and intriguing So too is his analysis of the illiberal

strands in Taylor's politics of recognition      *Sex, Gender, and Science* M. Hird, 2004-11-05 In *Sex Gender and Science* Myra Hird outlines the social study of science and nature specifically in relation to sex sex differences and sexuality She examines how Western understandings of sex are based less upon understanding material sex differences than on a discourse that emphasizes sex dichotomy over sex diversity and argues for a feminist engagement with scientific debate that embraces the diversity and complexity of nature      **Rebalanced and Revitalized** Mike Harris, Preston Manning, Fraser Institute (Vancouver, B.C.), Institut économique de Montréal, 2006 Examines the democratic deficit present in Confederation today and applies to it these foundational principles expanding Canadians freedom of choice challenging Canadians to accept greater personal responsibility and deepening Canada's practice of federal democracy      *Charter Conflicts* Janet L. Hiebert, 2002-04-24 Although the Canadian Charter of Rights and Freedoms is twenty years old little is known about how it affects those who wield power what influence it has on legislative decisions or to what extent the government believes it should be constrained by Charter concerns For most laws Parliament has the final word on how social policy is balanced against protected rights Thus the extent to which legislation is sensitive towards rights depends on how those who develop propose and assess policy view the Charter How influential are governmental legal advisors How risk averse or risk tolerant are government ministers when pursuing legislative goals that may result in Charter challenges How capable is Parliament in requiring government to justify and explain legislative choices that may impair rights In *Charter Conflicts* Janet Hiebert examines these questions while analyzing the Charter's influence on controversial legislative decisions such as social benefits for lesbians and gay men the regulation of tobacco advertising the rules of evidence for sexual assault trials the use of DNA for law enforcement purposes and the rules for police searches of private residences She questions the broadly held assumption that only courts are capable of respecting rights arguing that Parliament shares responsibility with the judiciary for resolving Charter conflicts She views the Charter's significance less in terms of the judiciary overruling Parliament than in the incentives and pressures it provides for public and political officials to satisfy themselves that legislation is consistent with protected rights      **Feminist Activism in the Supreme Court** Christopher P. Manfredi, 2004 Since 1980 the Canadian women's movement has been an active participant in constitutional politics and Charter litigation This book through its focus on the Women's Legal Education and Action Fund LEAF presents a compelling examination of how Canadian feminists became key actors in developing the constitutional doctrine of equality and how they mobilized that doctrine to support the movement's policy agenda The case of LEAF an organization that has as its goal the use of Charter litigation to influence legal rules and public policy provides rich ground for Christopher Manfredi's keen analysis of legal mobilization In a multitude of areas such as abortion pornography sexual assault family law and gay and lesbian rights LEAF has intervened before the Supreme Court to bring its understanding of equality to bear on legal policy development This study offers a deft examination of LEAF's arguments and seeks to understand how they affected the Court's consideration of the issues Perhaps

most important it also contemplates the long term effects of the mobilization and considers the social impact of the legal doctrine that has emerged from LEAF cases A major contribution to law and society studies Feminist Activism in the Supreme Court is unparalleled in its analysis of legal mobilization as an effective strategy for social movements It will be widely read and welcomed by legal scholars political scientists lawyers feminists and activists *Civil Rights and the Paradox of Liberal Democracy* Bradley C. S. Watson,1999-01-01 In *Civil Rights and the Paradox of Liberal Democracy* Bradley Watson demonstrates the paradox of liberal democracy that its cornerstone principles of equality and freedom are principles inherently directed toward undermining it Modernity beyond bringing definition to political equality unleashed a whirlwind of individualism which feeds the soul's basic impulse to rule without limitation including the limitation of consent Here Watson begins his analysis of the foundations of liberalism looking carefully and critically at the moral and political philosophies that justify modern civil rights litigation He goes on to examine the judicial manifestations of the paradox of liberal democracy seeking to bring a broad philosophical coherence to legal decision making in the United States and Canada Finally Watson illuminates the extent to which this decision making is in tension with liberal democracy and outlines proposals for reform *The Battle of London* Frédéric Bastien,2014-10-01 A bestseller in Quebec that describes the horse trading intrigue and unrest behind Trudeau's quest to repatriate the Constitution After the referendum in 1980 Pierre Elliott Trudeau turned his sights on repatriating the Constitution in an effort to make Canada fully independent from Britain What should have been a simple process snowballed into a complicated intrigue Quebec which thought its prerogatives would be threatened if the Constitution were repatriated mounted a charm offensive replete with fine dining and expensive wines in order to influence key British MPs Not to be outdone Canada's native leaders who felt betrayed by the British Crown decided to enter the fray determined to ensure that their cause would triumph The English Labour Party had a view on the matter as well which chiefly involved embarrassing Prime Minister Thatcher as thoroughly as possible Historian Frédéric Bastien describes with great flair how the maverick Trudeau and the uncompromising Thatcher entered into one of history's most unlikely marriages of convenience in order to repatriate the Canadian Constitution **Law, Politics and the Judicial Process in Canada** Frederick Lee Morton,2002 Since the first edition of this popular textbook appeared in 1984 the Charter of Rights and Freedoms has transformed the role of the courts in Canadian politics The book introduces students to issues raised by the new political role of Canadian judges *Law Politics and the Judicial Process in Canada* features new introductions and new readings that deal with current issues in the realm of Canadian law and politics **Constitutional Comparison** François Venter,2021-07-26 In our globalized era it has become impossible to deal effectively with constitutional law and related subjects such as fundamental rights administrative law and political science without knowledge of foreign systems A wealth of literature is available on practically all constitutional systems and the intricacies of their application This however presents the constitutionalist with a formidable problem Which foreign systems should I

explore in order to make relevant comparisons and how should I go about it This book addresses the core problems of comparability and appropriate comparative methodology in the realm of contemporary constitutionalism The outcome is however not mere theorizing Most of the text is devoted to an incisive application of the chosen comparative method to four geographically historically and culturally divergent but thoroughly comparable constitutional systems In the course of the comparative exercise contemporary constitutional dogma and constitutional mechanics are analyzed and explained in many instances in their historical contexts making the book itself a useful source of comparative and historical information

**Rights and Parliamentary Systems in Canada and Beyond** Emmett Macfarlane, 2025-08-26 Rights and Parliamentary Systems in Canada and Beyond brings together political scientists and legal scholars to explore rights and their limitations along with the governmental and legislative processes affecting them within Canada's parliamentary system It also examines how these elements shape broader institutional relationships under the Canadian Charter of Rights and Freedoms and in comparative perspective This interdisciplinary volume offers valuable in-depth analyses of timely issues cases and controversies involving rights and institutional dynamics The book employs an array of methods including legal analysis qualitative case studies content analysis legal theory research interviews and policy analysis With a forward-looking perspective Rights and Parliamentary Systems in Canada and Beyond investigates how rights-based processes influence specific policies and offers new insights into the framing of rights including administrative law and Aboriginal treaty rights during the COVID-19 pandemic It also explores how aspects of parliamentary democracy affect governments legislators and the public The book ultimately reveals how the institutional relationships at stake operate to protect or fail to protect rights in relation to government policy objectives

Governing from the Bench Emmett Macfarlane, 2013 In Governing from the Bench Emmett Macfarlane draws on interviews with current and former justices law clerks and other staff members of the court to shed light on the institution's internal environment and decision-making processes He explores the complex role of the Supreme Court as an institution exposes the rules conventions and norms that shape and constrain its justices' behavior and situates the court in its broader governmental and societal context as it relates to the elected branches of government the media and the public

The Notwithstanding Clause and the Canadian Charter Peter L. Biro, 2024-04-02 Section 33 what is commonly referred to as the notwithstanding clause NWC was written into the Canadian Charter of Rights and Freedoms to allow Parliament and the provinces to provisionally override certain Charter rights The Notwithstanding Clause and the Canadian Charter examines the NWC from all angles and perspectives considering who should have the last word on matters of rights and justice the legislatures or the unelected judiciary and what balance liberal democracy requires In the case of Quebec the use of the clause has been justified as necessary to preserve the province's culture and promote its identity as a nation Yet Quebec's preemptive and sweeping invocation of the clause also challenges the scope of judicial review and citizens' recourse to it and it tests the assumption that a dialogue between the judiciary and the legislature is

always preferable in instances in which the legislative branch decides to suspend the operation of certain Charter rights and freedoms. By virtue of its contested purposes, interpretations, operation, and applications, the NWC represents and to an extent defines both the character and the very real vulnerabilities of liberal constitutionalism in Canada. The significance, effects, and legitimacy of the NWC have been vigorously debated within scholarship and among politicians and activists since the patriation of the Canadian Constitution in 1982. In *The Notwithstanding Clause and the Canadian Charter*, leading scholars, jurists, and policy experts elucidate and prescribe reforms to the application of this consequential clause about which so much is written and around which there is relatively little consensus. **Misrecognized Materialists** Matt James, 2011-11-01

Canada's history of intense constitutional debate is often depicted as a source of national embarrassment, a diversion from more sensible endeavours. *Misrecognized Materialists* tells a different story. Beginning with the Rowell-Sirois hearings of the Great Depression and concluding with the national unity wars of the late 1980s and early 1990s, Matt James details how groups representing marginalized constituencies—women, working-class people, and ethnocultural minorities—were able to use the Canadian constitutional arena to pursue traditionally neglected aspirations and concerns. With concrete illustrations and case studies, James questions the common tendency to interpret recognition struggles as departures from traditional materialist priorities such as economic security and personal safety. Ultimately, he argues that such materialist priorities were and are in fact at the heart of the fight for recognition for many marginalized groups. A book with provocative implications for students and scholars of social movements and identity politics, *Misrecognized Materialists* offers a fresh and important perspective on Canada's constitutional struggles over civic symbolism and identity. *Women's Legal Strategies in Canada* Radha Jhappan, 2002-01-01 Have Canadian women gained from their pursuit of legal remedies to social, political, economic, and cultural inequalities? Is law a fruitful avenue for such struggles? Using liberal, feminist, postmodern, critical race, and queer theory, these essays confront the anti-rights critiques of the legal Left regarding the use of law in general and the Charter in particular. Several chapters explicitly examine the strategic limits and possibilities of the substantive equality rights approaches pursued by LEAF, The Women's Legal Education and Action Fund. Others focus on legal strategies mobilized in discreet areas of law and public policy by foreign domestic workers and racialized women, lesbians, women seeking reproductive freedom, women in the childcare movement, and anti-violence advocates. Recognizing the diversity of women across class, citizenship, race, and ethnicity, sexual identity, culture, and disability, this collection evaluates the efficacy of the wide range of legal and political strategies women have employed, particularly in this post-Charter era. *Women's Legal Strategies in Canada* is the most comprehensive account of these important issues and will surely become the standard work in the field.

## **Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory** Book Review: Unveiling the Magic of Language

In a digital era where connections and knowledge reign supreme, the enchanting power of language has been apparent than ever. Its power to stir emotions, provoke thought, and instigate transformation is actually remarkable. This extraordinary book, aptly titled "**Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory**," published by a very acclaimed author, immerses readers in a captivating exploration of the significance of language and its profound affect on our existence. Throughout this critique, we shall delve into the book's central themes, evaluate its unique writing style, and assess its overall influence on its readership.

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### **Table of Contents Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory**

1. Understanding the eBook Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
  - The Rise of Digital Reading Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
  - Advantages of eBooks Over Traditional Books
2. Identifying Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Rethinking The Constitution Perspectives On Canadian Constitutional Reform



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- User-Friendly Interface

### **4. Exploring eBook Recommendations from Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory**

- Personalized Recommendations
- Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory User Reviews and Ratings
- Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory and Bestseller Lists

### **5. Accessing Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory Free and Paid eBooks**

- Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory Public Domain eBooks
- Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory eBook Subscription Services
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### **6. Navigating Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory eBook Formats**

- ePub, PDF, MOBI, and More
- Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory Compatibility with Devices
- Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory Enhanced eBook Features

### **7. Enhancing Your Reading Experience**

- Adjustable Fonts and Text Sizes of Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
- Highlighting and Note-Taking Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
- Interactive Elements Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation

And Theory

8. Staying Engaged with Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
9. Balancing eBooks and Physical Books Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
11. Cultivating a Reading Routine Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
  - Setting Reading Goals Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
  - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
  - Fact-Checking eBook Content of Rethinking The Constitution Perspectives On Canadian Constitutional Reform Interpretation And Theory
  - Distinguishing Credible Sources
13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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