



CHAPTER 8

Key Elements of the State: Laws, Constitutions, and Federalism

The focus of this chapter is on the increasing importance of the law in the modern state. A summary of the requirements for just law are provided. The discussion then turns to constitutions in both the broad and narrow sense of the term. It is noted that constitutionalism can refer to either the “spirit” or the “letter” of the constitution. Constitutions are generally designed to outline the fundamental rights of citizens, and all states have some form of constitutional court to ensure that the constitution is upheld. When it comes to the legal adjudication of political issues, a number of approaches can be taken; the chapter outlines four in particular. While judicial review can be an effective check on executive power, it does not itself determine how power is distributed within a state. There are different ways of organizing the state and the chapter discusses federalism, consociationalism, and asymmetrical decentralization. The chapter concludes by observing the increasing role of the law in both social and political life, and notes the apparent rise of a dedicated “political class” in modern states.

Chapter Outline

- Law and Politics
- Constitutions
- Fundamental Rights
- Constitutional Courts and Judicial Review
- Legal Adjudication of Political Problems
- Federalism, Consociational Democracy, and Asymmetrical Decentralization
- Conclusion: The Legalization of Political Life

Key Terms

Anarchy	Deterrence	Monism
Authoritarian	Federalism	Political culture
Consociational democracy	Good governance	Procedural justice
Constitution	Legal positivism	Rule of law
Constitutionalism	Liberal democracy	Secularism

Discussion Questions

1. Although the Western model of the law-bounded state is commonplace, its introduction directly contradicted previous traditions in some cases. How do indigenous traditions of governance in Canada differ from the Western tradition?
2. What are the conditions for a just law? Is a law still just if it meets most, but not all of the conditions? Are certain conditions more important than others?
3. Given that the majority of modern states have signed on to the Universal Declaration of Human Rights, indicating a near universal acceptance of the principles, why is it that issues of human rights (particularly having to do with their violation) are still so prominent?
4. Why would a state choose to structure itself as a federation? Why might it choose consociationalism?
5. Constitutions are important documents that explain the procedures and obligations of the state. Why are constitutions difficult to change?
6. Judicial Review is meant to provide a check on other branches of government. Explain why judicial review is at times controversial?
7. What are fundamental rights?

Further Resources

- <http://www.scc-csc.gc.ca/>
Gateway to the Supreme Court of Canada web site—Choose either French or English
- <http://www.un.org/en/universal-declaration-human-rights/index.html>
Link to the full text of the Universal Declaration of Human Rights form the United Nations web site
- <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>
Full text of the Canadian Charter of Rights and Freedoms from the Department of Justice Canada web site

- <http://www.cba.org/cba/>
Gateway to the Canadian Bar Association home page—Choose either English or French
- <http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&page=federal>
Government of Canada Privy Council Office detailing Canadian Federalism
- <http://constitutioncenter.org/>
National Constitution Center, United States