

**Title:**  
**The Idea of Constitutional Rights and the Transformation of Canadian Constitutional Law, 1930-1960**

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**Abstract (summary):**

This dissertation argues that the idea of constitutional rights transformed Canadian constitutional law well before the entrenchment of the Canadian Charter of Rights and Freedoms. Specifically, it locates the origins of Canada's twentieth-century rights revolution in the constitutional thinking of scholars, lawyers, judges, and politicians at mid-century (1930-1960). Drawing on archival documents, personal papers, government reports, parliamentary debates, case law, and legal scholarship, this work traces the constitutional thought and culture that first propelled human rights and fundamental freedoms to the forefront of the Canadian legal imagination. As a work of legal history, it also seeks to revive the dormant spirit of constitutional history that once pervaded the discipline of Canadian constitutional law. The Introduction situates the chapters that follow within the emerging Canadian historiography of rights. Chapter Two traces the origins of Frank Scott's advocacy for constitutional rights to the newer constitutional law, an approach to constitutional scholarship sparked by the social and political upheavals of the Depression, and the influence of Roscoe Pound's sociological jurisprudence. Chapter Three explores the varied dimensions of the Second World War's influence on the nascent idea of Canadian constitutional rights. In particular, the rapid rise of the wartime administrative state produced a rights discourse that tended to reflect the interests of property while ignoring the civil liberties of unpopular minorities. Chapter Four examines the rise of a politics and scholarship of rights in the years immediately following the war. In response to international rights ideals and continuing domestic rights controversies, scholars and lawyers sought to produce a theory of Canadian constitutional law that could accommodate the addition of judicially-enforced individual rights. If not entirely successful, their efforts nonetheless further reoriented the fundamental tenets of Canadian constitutional law. Chapter Five reveals the influence of Canada's emerging constitutional culture of rights on the jurisprudence of the Supreme Court of Canada, particularly Justice Ivan Rand and his conception of an implied bill of rights. Together, these chapters demonstrate the confluence of ideology, circumstance, and personality – the constitutional history – that altered the future of Canadian constitutional law.

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The Constitution gives voice to the idea that people have basic rights and that a civilian president is also the commander in chief of the armed forces. It gives instructions as to how the various branches of government must share power and also tries to balance power between the states and the federal government. In the 1960s, the Civil Rights Act of 1964 was challenged on the ground that Congress lacked the power under the commerce clause to regulate what was otherwise fairly local conduct. States cannot constitutionally pass laws that interfere with the accomplishment of the purposes of the federal law. Suppose for example, that Congress passes a comprehensive law that sets standards for foreign vessels to enter the navigable waters and ports of the Un

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