Review of:
Laws of the Constitution Consolidated
by Donald F. Bur
(Edmonton: University of Alberta Press, 2020)

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1. FIGURING OUT WHAT THE CONSTITUTION OF CANADA IS

In 1917, William Renwick Riddell, then a Justice of the Supreme Court of Ontario, explained to an American audience the differences between two conceptions of what a "constitution" is: a political constitution in the classical and British sense versus a legal constitution in the modern and American sense of the word. He described "the constitution, in the English sense" as "the totality of the principles more or less vaguely and generally stated upon which we think the people should be governed," while the "constitution in the American sense" refers to "a written document [. . .] which authoritatively and without appeal dictates what shall and what shall not be done."[1] Riddell added that under the "constitution in the English sense," an action could be legal but unconstitutional, while in the American sense, that which is unconstitutional is also necessarily illegal.[2] The classical and British view of the constitution ultimately derives from the Ancient Greeks' idea of *nomos,* often ambiguously translated as "law." *Nomos* refers to the sum total of human conventions, customs, norms through which the citizens of a polis govern themselves, as well as to "the tradition of law", or the rule of law itself, and not merely to written statute laws.[3] In contrast, constitution in the American sense comes from the Enlightenment tradition of the late 18th century and did much to shape the word as generally understood today. Codifying a constitution as

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[1] William Renwick Riddell, "Lecture II: The Written Constitution," in *The Constitution of Canada in Its History and Practical Workings*. (New Haven, CT: Yale University Press, 1917) at 52. The "Supreme Court of Ontario" has since been reorganized and renamed the "Superior Court of Ontario."

[2] For instance, it would be unconstitutional (in the English sense), but not illegal, if the Governor were to act unilaterally and independent of any ministerial advice.

[3] Russell Kirk, *The Roots of American Order, 4th Edition* (Wilmington, Delaware: Isi Books, 2003) at 66, 83.

supreme law rejected monarchical sovereignty and allowed the United States to set up a division of powers between two orders of government and replace legislative sovereignty with a popular sovereignty from which both orders of government flow.[4] Canada formally continues to recognise sovereignty in the Crown, and, as all federations must, has a partially codified constitution that outline a division of powers between two orders of government.

A political constitution in the British sense remains uncodified and develops organically based on foundational statutes and political norms and conventions; a political constitution also by definition relies on parliamentary sovereignty: parliament can legislate on anything, and no supreme law exists over and above normal statute and outside parliament's authority to enact, amend, or repeal statutes.[5] In contrast, a legal constitution in the American sense refers to a document or collection of documents which serves as the supreme law over and above normal statute law and which can therefore only be amended through special means and not at will by a legislature alone. Political constitutions in democratic countries therefore rely exclusively on a dialectic, treat all questions as political questions, and subject all questions to parliamentary debate, since parliament alone can enact statutes on anything. In contrast, legal constitutions necessarily remove some questions from the political realm and reserve them as legal questions which courts adjudicate. The Constitution of Canada (at the federal order of government), as well as the constitutions of the provinces and territories, embody both these conceptions of a political constitution in the British sense and a legal constitution in the American sense at once. The Constitution of Canada consists of a non-exhaustive mixture of codified elements — the *Constitution Acts, 1867-1982* themselves, the 30 British and Canadian statutes and executive instruments in its schedule, and other non-enumerated statutes — and uncodified constitutional conventions and constitutional principles.[6]

The Supreme Court of Canada recognised the dual or hybrid nature of the Constitution of Canada in the *Patriation Reference* in 1981:

> the phrases 'Constitution of Canada' and 'Canadian Constitution' [. . .] embrace the global system of rules and principles which govern the exercise of constitutional authority in the whole and every part of the Canadian state.[7] [. . .] [C]onstitutional conventions plus constitutional law equal the total constitution of the country.[8]

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4 Martin A. Rogoff, "A Comparison of Constitutionalism in France and the United States" (1997) 49:21 Maine Law Review, at 22-83.

5 Graham Gee and Gregoire C.N. Webber, "What Is a Political Constitution?" (Summer 2010) 30:2 Oxford Journal of Legal Studies at 273-299.

6 *Re: Resolution to Amend the Constitution* [1981] 1 S.C.R., at paras. 883-884; *Re: Reference re Secession of Quebec,* [1998] 2 S.C.R. 217, at para. 148; *Reference re Senate Reform*, 2014 SCC 32 at para. 23; Adam Dodek, *The Canadian Constitution* (Toronto: Dundurn, 2013) at 17-18.

7 *Re: Resolution to Amend the Constitution* [1981] 1 S.C.R., at para 874.

8 *Ibid.,* at paras. 883-884.

The court broke down the "Constitution of Canada" into two separate categories: the "law of the constitution," the justiciable aspect which corresponds with the legal constitution in the American sense of the word, and the "rules of the constitution" or "requirements of the constitution," the politically enforceable aspect that corresponds with the political constitution in the British sense of the word. The courts should therefore, at least in theory, only acknowledge the existence of a constitutional convention, but they could not attempt to enforce a judicial remedy in response to the violation of a constitutional convention. The Supreme Court classified the constitutional conventions associated with Responsible Government — such as the confidence convention — under the latter, non-justiciable category of "rules of the constitution."[9] The Supreme Court thus seems to have established two orders of the Constitution of Canada in which the "law of the constitution" ultimately trumps the "essential rules of the constitution" — if only because the courts cannot enforce the latter category.

2. DESCRIPTION OF THE BOOK

Donald F. Bur, a barrister based in Toronto, has tried to make sense of our paradoxical and nearly inexhaustible constitution through his *Laws of the Constitution Consolidated,* which the University of Alberta Press published in November 2020. The title presumably alludes to the wording in the *Patriation* Reference, wherein "laws of the constitution" refers to the codified portions of the Constitution of Canada. Bur acknowledges the importance of the "rules of the constitution", the uncodified politically enforceable constitutional conventions of our constitution in the British and classical senses of the word, but he reasonably notes that this part of the Constitution of Canada, and of the provinces and territories, lies outside the scope of his edited volume.

Other consolidations have compiled the Constitution of Canada, at the federal order of government. But Bur has gone much further in his consolidation and aims to answer the eternal question of what the provincial and territorial constitutions are: "Now, in part 8, Canadian and provincial laws can be seen side by side, with their similarity in function earning the provincial constitutions equality of status."[10] He does likewise for the territories in part 10. Unlike Australia and the United States, the federal constitutions of which pertain primarily or exclusively to the federal order of government, the Constitution of Canada contain provisions for both the federal and provincial orders of government. Part V of the *Constitution Act, 1867* contains part of the "Provincial Constitutions" for Ontario, Quebec, New Brunswick, and Nova Scotia. This dual nature of the *Constitution Act, 1867* necessitated establishing a *series* of amending formulas, given that some provisions pertain only to the provincial order of government, others only to the federal order of government, and others still engage matters common to

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[9] *Ibid.,* at paras. 876-878.

[10] Donald F. Bur, *Laws of the Constitution Consolidated* (Edmonton: University of Alberta Press, 2020) at xiv.

both. Part V of the *Constitution Act, 1982* therefore outlines the five classes of amending formulas, the subject-matter and constitutional provisions to which each applies, and two methods (resolution and proclamation on the one hand or statute on the other) by which these amendments are made;[11] together, these amending formulas together cover any and all amendments to the text of the Constitution of Canada.[12]

Bur rearranged, the *Constitution Acts, 1867 to 1982* and paired them with the various organic federal, provincial, and territorial statutes by jurisdiction and by subject to create what the codified constitutions of Canada (at the federal order in Ottawa), each of the ten provinces, and each of the three territories would look like, if we had ever formally attempted to consolidate and entrench them. The codified constitutions of the provinces consist of both a series of organic statutes as well as either certain provisions in Part V ("Provincial Constitutions") of the *Constitution Act, 1867* (for Ontario, Quebec, New Brunswick, and Nova Scotia), Imperial Orders-in-Council containing Terms of Union (for British Columbia and Prince Edward Island), or federal statutes (for Manitoba, Saskatchewan, Alberta, and Newfoundland & Labrador) — all of which remain within the exclusive jurisdiction of the provincial legislatures themselves and therefore subject to the Section 45 Amending Procedure. The constitutions of the provinces therefore more closely correspond in most respects to "constitution" in the British and classical sense of the word because they remain subject to legislatures alone. In other words, no province has thus far attempted to entrench a constitution as supreme law subject to an extraordinary authority above and beyond the legislature (the Lieutenant Governor and Legislative Assembly). British Columbia has renamed its equivalent of what most other provinces call the *Legislative Assembly and Executive Council Act* the *Constitution Act,* but it remains a normal statute subject to the simple authority of the Legislature of British Columbia. The constitutions of the territories similarly consist of their foundational federal statutes, as well as territorial organic statutes similar to those of the provinces.

Bur's consolidation of the laws of the constitution either draws from the text of or cites 377 "constitutional documents" in chronological order from 1215 to 2013, including 227 "laws," 124 "current laws" (the organic provincial statutes which make up the constitutions of the provinces, the organic territorial statutes of the constitutions of the territories, and various organic

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[11] Warren Newman, "Constitutional Amendment by Legislation," chapter 5 in *Constitutional Amendment in Canada,* edited by Emmett Macfarlane, 105-125 (Toronto: University of Toronto Press, 2016) at 105.

[12] Section 52(3) of the *Constitution Act, 1982* says, "Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada"; *Objection by Quebec to a Resolution to amend the Constitution*, [1982] 2 S.C.R. 793, at 806; *Hogan v. Newfoundland (Attorney General)*, 2000 NFCA 12 at paras. 64, 73. If the five amending formulas were not exhaustive, then they would be absurd, render moot fifty years of Canadian constitutional wrangling from 1931 to 1981, and undermine the Supremacy Clause of the *Constitution Act, 1982*.

federal statutes that the Constitution of Canada includes), 13 cases of British and Canadian courts, 9 "texts" (various official documents like commissions, parliamentary proceedings, and treaties), and 4 "other constitutional laws" (Imperial statutes cited in the footnotes but not transcribed). Bur transcribed directly from the constitutional documents with a corresponding page number printed in bold but merely cited or mentioned in a footnote for those with page numbers printed in regular typeface. For instance, Bur transcribed directly section 9 of the *Constitution Act, 1867* under part 7 "Executive Authority" but only mentioned the *Succession to the Throne Act, 1937* and the *Succession to the Throne Act, 2013* in the footnote providing context for aforesaid section 9 but did not quote from these federal Canadian statutes directly. These 377 constitutional documents take up 886 pages all told.

Bur mixes and mashes the various constitutional documents, re-organises them into the federal, provincial, and territorial constitutions, and rearranges them into one cohesive whole broken down into 14 themes under the following headings and sub-headings:

1. General Principles
2. Acquisition of Territory
3. Creation of Government
4. Acquisition of Property
5. Union, Transition to Union and Conditions of Union
    a. Union
    b. Transition to Union
    c. Conditions of Union
6. Distribution of Powers
    a. Canada
    b. Provinces
    c. Shared
7. Executive Authority
    a. Canada
    b. Provinces
    c. Territories
8. Parliamentary Structure and Procedures
    a. Canada
    b. Provinces
        i. Ontario
        ii. Quebec
        iii. Nova Scotia
        iv. New Brunswick
        v. Manitoba
        vi. British Columbia
        vii. Prince Edward Island
        viii. Alberta
        ix. Saskatchewan
        x. Newfoundland and Labrador
9. Distribution of Property

10. Territories, Parliamentary Structures and Procedures
    a. Yukon
    b. Northwest Territories
    c. Nunavut
11. Protection of Rights
12. Aboriginal Rights
13. Boundaries
    a. Canada
    b. Provinces
    c. Territories
    d. International Boundaries
14. Amendment of the Constitutions

These fourteen themes do not contain prefaces or introductions of their own and instead launch directly into the content. Bur has compiled various Imperial statutes and executive instruments, and Canadian, provincial, and territorial statutes in rough chronological order and under these fourteen themes into what the constitutions of Canada, the provinces, and territories would say if they had been designed and planned from the outset instead of having evolved organically as the British Empire gained new territory in North America and accreted autonomy to these territories in stages over the centuries.

For example, under ''General Principles,'' Bur starts off with a marginal note on ''no taxation without representation'' and cites section 1 of the Imperial statute from 1778 through which the Imperial Parliament reasserted its authority to levy tax on its colonies for ''the regulation of commerce.'' He follows this with sections 2 through 7 of the *Statute of Westminster,* which established that the Parliament of Canada can modify any Imperial statutes that applied to Canada and enact statutes of extra-territorial application, and that the Imperial Parliament would no longer legislate for Canada unless at the request and with the consent of Canada. Next he lists section 2 of the *Canada Act, 1982* through which the Imperial Parliament renounced any claim to legislate for Canada, and then sections 52 to 57 of the *Constitution Act, 1982*, which define the Constitution of Canada as supreme law and states what it includes. Bur then concludes ''General Principles'' with the *Schedule to the Constitution Act, 1982*, which lists the Imperial statutes and executive instruments and Canadian statutes that form part of the Constitution of Canada. Part 2, ''Acquisition of Territory,'' compiles the various Imperial executive instruments and statutes that grouped what are now the Maritime Provinces, British Columbia, and Vancouver Island into British North America from the 17th to the 19th centuries. But this Part deals only with the territories or landmasses themselves and not the legislatures or governments which administer these polities. Part 3, ''Creation of Government,'' then lists the Imperial executive instruments and statutes which established the executive councils and legislatures of Nova Scotia, Quebec (as of the *Royal Proclamation* of 1763 and Commission to James Murray of the same year), Prince Edward Island, New Brunswick, Ontario (as

of the *Constitutional Act, 1791*), Newfoundland, British Columbia, and Canada (upon Confederation) in the 18th and 19th centuries, as well as the Canadian federal statutes which established Manitoba, Saskatchewan, and Alberta.

Part 4, "Acquisition of Property," breaks down into "Acquisition by Treaty," "Acquisition by Crown Authority," and "Acquisition by Agreement" — in other words, the manner in which the Crown originally acquired territory in British North America and how various Imperial executive instruments from the 18th and 19th centuries granted settlers land. Part 5, "Union, Transition to Union and Conditions of Union," groups together the relevant sections of the *British North America Act, 1867* which combined the Province of Canada, New Brunswick, and Nova Scotia into the Dominion of Canada along with the Imperial executive instruments which brought British Columbia and Prince Edward Island into Confederation, the federal Canadian statutes which created Manitoba, Saskatchewan, and Alberta out of the former Rupert's Land and Northwestern Territory, and the concurring Canadian and Imperial statutes which brought Newfoundland into the Union. Part 6, the "Distribution of Powers," takes the relevant sections from the *Constitution Act, 1867* that outline the heads of legislative power of the federal and provincial orders of government.

Part 7, "Executive Authority," compiles the sources of authority of the Governor General, the Lieutenant Governors of the ten provinces, and the Commissioners of the three territories. The executive authority of Canada groups sections 9 through 16, 55 to 57, and 105 of the *Constitution Act, 1867,* the *Governor General's Act,* and the *Letters Patent Constituting the Office of Governor General and Commander-in-Chief* of 1947, and the general form of the Commission of the Governor General of Canada. For each of the ten provinces, Bur then provides the analogous provisions of the *Constitution Act, 1867*, or Terms of Union or foundational federal statute, plus the *Lieutenant Governors Acts, Executive Council Acts,* and commissions of the Lieutenant Governors. Part 8, "Parliamentary Structures and Procedures," does likewise for the legislative authorities of Canada and the provinces. Bur groups sections 17 through 54, and sections 102, 103, 106, 128, and 133 of the *Constitution Act, 1867* as the sources of the Parliament of Canada's authority, along with various sections of the *Parliament of Canada Act*. Sections 90 and 128 of the *Constitution Act, 1867* apply to all the provincial legislatures. Bur then offers the other analogous constitutional and statutory provisions underpinning each of the ten provincial legislatures. For instance, sections 69, 70, and 81 to 89 of the *Constitution Act, 1867* pertain to the Legislature of Ontario, along with Ontario's own *Legislative Assembly Act*. The Parliament of Canada created Manitoba in 1870, so Manitoba's provincial constitution as it pertains to its legislature consists of sections 9 to 21 of the *Manitoba Act* as well as Manitoba's own *Legislative Assembly Act*. British Columbia's consists of its *Terms of Union* (an Imperial Order-in-Council), and its provincial *Constitution Act,* which is essentially a renamed *Legislative Assembly and Executive Council Act*. Part 10, "Territories, Parliamentary Structure and Procedures", replicates

for the territories what part 8 does for the provinces. These consist of parts of the *Constitution Act, 1871* (through which the Imperial Parliament confirmed that the Parliament of Canada can legislate for the territories), the foundational federal statutes creating Yukon, the Northwest Territories, and Nunavut and their executives and legislatures, and the *Legislative Assembly and Executive Council Acts* of the three territories themselves.

Part 9, the "Distribution of Property," relates to how the *Constitution Act, 1867* assigned various assets between the two orders of government upon Confederation in 1867. The distribution of property in the provinces (for the original four) flows mainly from sections 108 to 110, 113, and 117 of the *Constitution Act, 1867,* various provisions of the *Constitution Act, 1930,* and their terms of union (British Columbia and Prince Edward Island) or foundational federal statutes (in the cases of Manitoba, Saskatchewan, Alberta, and Newfoundland and Labrador).

The "Protection of Rights" in Part 11 brings together a collection of executive instruments that first guaranteed religious toleration in Newfoundland and the Maritimes in the 18th century, separate schools in various jurisdictions, Diefenbaker's *Bill of Rights*, and the majority of the *Canadian Charter of Rights and Freedoms*. "Aboriginal Rights" in Part 12 likewise assembles elements of the *Treaty of Utrecht* of 1713 and the *Royal Proclamation of 1763,* various provisions of the boundary extensions statutes for Quebec, Ontario, and Manitoba that pertained to aboriginal rights, and the portions of the *Charter* that outline the rights of aboriginal peoples. Part 13 compiles all the parts of the Constitution of Canada and various federal statutes that define the borders of Canada as a whole and of the provinces and territories. Finally, Part 14, "Amendment to the Constitution", groups together the entirety of Part V of the *Constitution Act, 1982* along with the *Clarity Act*.

3. CONCLUSION

Bur acknowledged the work of previous compilations or consolidations of the *Constitution Acts* and the other statutes which make up the Constitution of Canada, including Shortt and Doughty's *Documents Relating to the Constitutional History of Canada*, W.P.M. Kennedy's *Statutes, Treaties, and Documents of the Canadian Constitution, 1713-1929*, and Maurice Ollivier's various editions of *British North America Acts and Selected Statutes* from the 1960s. He argues that these "simple compilations" present "a number of disadvantages" and opted instead for a new approach. For instance, Shortt and Doughty's majesterial three-volume work includes many documents which would not fall under any definition of the "laws of the constitution", or our legal constitution in the American sense of the word, but which relate more instead to or provide historical background for the "rules of the constitution," our political constitution in the British sense of the word. In addition, Shortt and Doughty, Kennedy, and Ollivier all focused on the Constitution of Canada (the federal order of government) and excluded the constitutions of the provinces and territories from their reference books.

Bur also touches upon another problem with the Department of Justice's consolidations of the *Constitution Acts* and the true ''difficulty in comprehending what is in fact current law." Bur explains:

> "For some unknown reason, constitutional laws are often drafted differently from normal legislation. Normally, if a parliament or legislature seeks to repeal or amend an earlier law and replace it with a new one, it will specifically state what law is repealed or amended and how the new law reads. With constitutional laws, in most instances, the amendment or repeal of an earlier constitutional law is only implied. Even when a constitutional law specifically amends an earlier provision, it will generally not provide a revised wording in the new law. A compilation that keeps intact all the earlier documents provides to the reader provisions that may have been expressly, or impliedly, repealed or amended. This not only adds to the size of the compilation but also to the difficulty in comprehending what are the current constitutional rules."[13]

In this passage, he alludes to the practice of ''indirect amendment" that Elmer Driedger first introduced to the Department of Justice's consolidations of the *Constitution Acts* in 1957 — but which the Department of Justice has not applied consistently.[14] The federal Department of Justice has been compiling regular consolidations of the *British North America Acts* and, later, the *Constitution Acts*, since the early 20th century. Consolidations date from 1913, 1935, 1948, 1952, 1957, 1958, 1964, 1965, 1967, 1976, 1989, 1996, 1998, 1999, 2001, and 2013. The consolidations from 1935 and 1948 included not merely the *British North America Act, 1867*, but all the other amending *British North America Acts* up to the time of their publication. But, a significant shift in methodology occurred in 1957 when Elmer Driedger, then Assistant Deputy Minister and Parliamentary Counsel in the Department of Justice, became responsible for the periodic consolidations of the *British North America Acts*.[15] Under Driedger's direction, the federal Department of Justice discontinued the practice of compiling all the *British North America Acts* and instead included only the *British North America Act, 1867* and either incorporated the various amending *British North America Acts* into its text or listed them as footnotes outside the text of the statute itself. Driedger openly acknowledges his new practice of ''indirect amendment" in an updated foreword to the consolidations of the *British North America Acts*. He defines "indirect amendment" as instances whereby the Westminster Parliament, Parliament of Canada, and provincial legislatures have altered certain provisions by

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[13] Donald F. Bur, *Laws of the Constitution Consolidated* (Edmonton: University of Alberta Press, 2020) at xi-xii.

[14] James W.J. Bowden, "'Indirect Amendment: How the Federal Department of Justice Unilaterally Alters the Text of the Constitution of Canada" (2019) 44:1 Commonwealth Law Bulletin, at 41-65; J.W.J. Bowden, "What's In a Name? Newfoundland & Labrador and the *Constitution Amendment, 2001*" (2022) 16:1 Journal of Parliamentary and Political Law, at 243-259.

[15] Canada, Department of Justice, *A Consolidation of the British North America Acts, 1867 to 1952* (Ottawa: Her Majesty the Queen in Right of Canada, 1 January 1957).

necessary implication, and he includes these indirect amendments in the text of the provisions of the *British North America Act, 1867*, thereby updating these sections to what they should say.[16]

For example, neither the Imperial Parliament nor the Parliament of Canada has ever amended the text of section 37 of the *Constitution Act, 1867*, which lists the number of MPs per province and the total number of MPs in the House of Commons upon Confederation in 1867; however, admitting new provinces into Confederation and applying the Representation Formula under section 51(1) of the *Constitution Act, 1867* after each decennial census have steadily increased these totals. The Department of Justice began altering the text of section 37 under Driedger's doctrine of "indirect amendment" in 1957 but failed to do so consistently. The Department of Justice's most recent consolidation from 1 January 2021, for instance, says that the House of Commons consists of 308 members when, in fact, the *Representation Order* from 2013 issued under the *Electoral Boundaries Readjustment Act* increased the size of the House of Commons to 338 MPs and entered into force in 2014, fully seven years before this edition of the consolidation appeared.[17] Similarly, the Department of Justice never "indirectly amended" references to "Newfoundland" into "Newfoundland and Labrador" after the *Constitution Amendment, 2001 (Newfoundland and Labrador)* entered into force in December 2001; as such, sections 22 and 37 of the *Constitution Act, 1867* (which list the number of Senators and Members of the House of Commons, respectively) still say "Newfoundland" instead of "Newfoundland and Labrador" in the consolidations from 2013 and 2021.[18] Bur has solved this problem in his compilation by applying the Department of Justice's methods more rigorously than the Department of Justice itself: for example, he updated sections 22 and 37 of the *Constitution Act, 1867* to say "Newfoundland and Labrador," citing the *Constitution Amendment, 2001* as justification for his indirect amendment, and he updated the figures in section 37 in light of the most recent *Representation Order*.[19]

As Bur himself readily acknowledges in the preface of his work, consolidating constitutional statutes always depends upon the considered judgement of those who consolidate them: "In the absence of express wording that an earlier provision had been amended or repealed, I exercised my judgement and removed the affected provision from the body of the text."[20]

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16 Canada, Department of Justice, *A Consolidation of the Constitution Acts, 1867 to 1982* (Ottawa: Her Majesty the Queen in Right of Canada, 1 January 2001) at ii.

17 Canada, Department of Justice, *A Consolidation of the Constitution Acts, 1867 to 1982* (Ottawa: Her Majesty the Queen in Right of Canada, 1 January 2021) at s. 37 and p. 8.

18 Canada, Department of Justice, *A Consolidation of the Constitution Acts, 1867 to 1982* (Ottawa: Her Majesty the Queen in Right of Canada, 1 January 2013) at ss. 22 and 37, at p. 6 and 10-11; Canada, Department of Justice, *A Consolidation of the Constitution Acts, 1867 to 1982* (Ottawa: Her Majesty the Queen in Right of Canada, 1 January 2021) at ss. 22 and 37, at p. 5 and 8.

19 Bur, *Laws of the Constitution Consolidated,* at 212 and 216.

20 Bur, *Laws of the Constitution Consolidated,* at xiii.

Different consolidations might therefore look different, even to the point where the text of the provisions of the *Constitution Acts* themselves differ from one consolidation to another.

The Government of Quebec also released its own "Administrative Consolidation of the *Constitution Act, 1867* and the *Canada Act, 1982*" in 2021, and it differs from both the Department of Justice's consolidation of January 2021 as well as Bur's *Laws of the Constitution* of November 2020. Quebec, for instance, rejected the doctrine of indirect amendment entirely and preserved the original wording of sections 22 and 37 and all other sections of the *Constitution Act, 1867*.[21] The Legislature of Quebec recently amended the *Constitution Act, 1867* directly by adding two new sections into Quebec's provincial constitution under the Section 45 Amending Procedure.[22] The *Official and Common Language of Quebec Act* inserted sections 90.1 and 90.2 into the *Constitution Act, 1867* declaring that "Quebeckers form a nation" and that "French is the only official language of Quebec and the common language of the Quebec nation." Quebec asserted the legitimacy of these new provisions as sections 90.1 and 90.2 of the *Constitution Act, 1867* by issuing the second edition of its Administrative Codification of the *Constitution Acts* the very same day that this Section 45 Constitutional Amendment received Royal Assent, on 1 June 2022.[23]

It will be interesting to see whether the federal Department of Justice regards the Legislature of Quebec's constitutional amendment as legitimate direct amendments to the text of the *Constitution Act, 1867* and therefore whether it will include these new sections 90.1 and 90.2 in its next consolidation, and whether Bur would include these provisions if he produces a 2nd edition of the present *Laws of the Constitution*. All these considerations point to a startling conclusion: no one seems to maintain, or there does not seem to exist, an official, authoritative version of the *Constitution Acts,* the Constitution of Canada, or the constitutions of the provinces. But Bur's *Laws of the Constitution Consolidated* at least provides a good point of reference.

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[21] Quebec. Secrétariat du Québec aux relations canadiennes, *Codification administrative de la Loi constitutionnelle de 1867 et de la Canada Act 1982* : Lois codifiées au 1er janvier 2021 (Gouvernement du Québec, 2021), 14 and 19. Indeed, it is telling that the Government of Quebec refuses to use the term *Constitution Act, 1982*, given that the Government of Canada patriated the *Constitution Acts* over Quebec's objections.

[22] *Loi sur la langue officielle et commune du Québec, le francais,* LQ 2022, c 14.

[23] Quebec. Secrétariat du Québec aux relations canadiennes, *Codification administrative de la Loi constitutionnelle de 1867 et de la Canada Act 1982* : Lois codifiées au 1er juin 2022, 2e édition (Gouvernement du Québec, 2021), 35.