# Peter Russell. “The Political Purposes of the Charter”. *CBR*: 61:1, 1983.

***Thesis and Summary:***

In this well-known article, Peter Russell suggests that the creators of the Charter were motivated by two overriding political goals: national unity and the protection of basic rights and freedoms.

Russell discusses those sections of the Charter which were most clearly intended to promote national unity (especially section six and the minority language provisions), but he argues that the most powerful nationalizing effects of the Charter will occur because (1) Charter debates, even when very contentious, will be national rather than regional debates and (2) the Charter will be interpreted by a federal institution – the Supreme Court of Canada – and will subject the entire country to the same national standards.

As for rights and freedoms, Russell argues that we must recognize the fallacious nature of any zero-sum conception of rights (i.e. “either my rights are protected or they are not!”) and accept that the real debates will concern how, in what ways, and which rights will be limited. Once we accept this fact, we will come to see that the legislative override provisions in the Charter are not such a bad thing. Russell concludes by arguing that the great danger posed by the charter is the judicialization of politics, and the subsequent withdrawal of those citizens (i.e. the great majority) who are not trained to discuss such debates in technical and legal language.

***Methodology and Theoretical Perspective***

Russell’s methodology here is historical and then predictive: he’s trying to draw on his knowledge of Canadian politics and the Canadian constitution in order to predict what the effects of the Charter will be.

***Comparison with Other Readings and Contribution to the Literature***

Russell’s arguments provide a nice foundation for thinking about two important aspects of the Charter: first, the relationship between the Charter and national unity (and thus also federalism), and second, the relationship between the Charter and the protection of basic rights and freedoms (and thus the effect of the Charter on Canadian legislatures). Many of those who have written about the Charter have followed up on this second issue (e.g. Morton/Knopff, Manfredi, Hogg and Bushell, and so on), arguing that Canadian politics have indeed become excessively judicialized. Above all, however, Russell’s article is just a useful, brief introduction to the major political issues raised by the Charter.

***Relevant Exam Questions***

This article is especially useful for any questions about the Charter’s effect on Parliament and the post-Charter relationship between Parliament and the courts. It is also relevant for questions about the relationship between the Charter and federalism (Russell’s introductory remarks about Trudeau’s intentions for the Charter are particularly useful here).

***Detailed Notes:***

31 The Charter of Rights and Freedoms had two political purposes: national unity and the protection of rights

*National Unity*

31-32 In the mid-1960s through to the Confederation of Tomorrow Conference organized by John Robarts in 1967, the Liberal Government was not interested in constitutional reform; earlier, in 1964, patriation had nearly been achieved, but as long as Quebec’s demands were at the forefront, constitutional change was not in Ottawa’s interest

34 In 1965, writing as a legal scholar on Quebec, Trudeau advocated a Bill of Rights and suggested that abolition of disallowance and reservation would be a logical *quid pro quo*; the obvious implication is that the Bill of Rights would strengthen national standards on the provinces; in a 1967 speech to the Canadian Bar Association, he referred to a Bill of Rights as way to “test and hopefully establish the unity of Canada”; and in his final parliamentary speech on Charter, Trudeau said “lest the forces of self-interest tear us apart, we must now define the common thread that binds us together”

36 Will the Charter fulfill this national unity goal? The thirst for power in Quebec and the West has not obviously been quenched by the Charter; the mobility rights in section six aim to overcome the “balkanization” of Canada and the language clauses attempt to establish language rights for both official languages; note that section 33 does not apply to these rights, and they express the pan-Canadian nationalism which was a rival program to the nation-building of the Quebec independentistes

40-41 The nationalizing effect of the Charter will not be felt through those provisions, however; the strongest centripetal effect of the Charter will be felt through the process of judicial review; the decisions are bound to be controversial, but the debates they produce will be national and will transcend the regional cleavages which feature so prominently in Canada, and in interpreting the Charter, the Supreme Court of Canada will set uniform national standards

*Protecting Rights and Freedoms*

44-45 The Charter was pitched to the public in such a way that it could hardly be debated: after all, who *doesn’t* support the protection of basic human rights? But the fact is that things are much more complicated, and the way the Charter will deal with questions of rights will have an important political effect.

Once you recognize the fallaciousness of a zero-sum conception of rights (either your rights are being violated or they are not), the hard issues about limits of rights appear, and the wisdom of the legislative override (s.33) becomes clearer

52 The principal impact of the Charter on the process of government: it will judicialize politics and politicize the judiciary; excessive reliance on litigation and the judicial process can weaken the sinews of democracy; the danger is not so much a judicial takeover as the problem that questions of social and political justice will be transformed into technical legal questions and most citizens will therefore withdraw from the debate