

Politics 3P18: Law and Politics ~ Rights Protection in Canada
Brock University
Winter 2018

Instructor: Matthew Hennigar

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Lecture Times: W F 11:00-11:50am

Lecture Room: AS 216

Office Hours: Th 4-5pm,
and by appointment

Course Description

This course considers both the historical and contemporary interplay between law and politics in Canada. In particular, it considers the various political and constitutional arrangements designed to protect rights and freedoms in Canada and the success of such mechanisms in advancing this objective, particularly the Charter of Rights and Freedoms that Canada adopted in 1982. Themes that will be explored in this course include the legitimacy of judicial review, the relationship between judicial and democratic actors in a constitutional democracy, and the potential for rights to clash with one another. To this end, the students will read important works that consider these questions, as well as significant civil liberties cases in Canadian constitutional law.

Course Learning Objectives

At the end of this course, students should be able to:

- identify the concepts of law, rights, and judicial review
- explain the sources of law and rights protection in Canada, and the political origins of the Charter of Rights and Freedoms
- understand and critically assess the political and legal roles of the Canadian judiciary, in particular judicial review of laws to ensure that they comply with the constitution, and in the criminal process
- know how to find and read a court case
- understand several key rights in Canada and how the courts have interpreted them over time in leading cases
- demonstrate familiarity with core political concepts like equality, liberty, and the rule of law, and an appreciation of their contested nature

In the process, students will be given opportunities to develop their analytical and argumentation skills through written assignments, exams, and class discussions. The term paper will require students to develop a research project based on their interests and to carry it out with academic integrity.

Required Texts (available in Brock bookstore)

Tom Bateman, Janet Hiebert, Rainer Knopff and Peter Russell. *The Court and the Charter: Leading Cases* (2nd ed). Emond Montgomery, 2017.

Heather MacIvor, *Canadian Politics and Government in the Charter Era* (2nd ed). OUP, 2013

Please see the course Isaak page at <https://lms.brocku.ca> for resources and some readings.

<i>Course Requirements</i>

Seminar Participation	15%	
Mid-term Examination	20%	(Friday, February 16, 2018)
Research Paper	30%	(Friday, March 21, 2018)
Final Examination	35%	

Requests for extra work will not be granted (ex., seminars missed without an acceptable explanation).

Seminar Participation:

Although seminars provide an opportunity to review reading and lecture material, that is not their main purpose. Instead, they give us a chance to explore the ideas and issues of the material more fully, interactively, as a group, using specific readings to focus our discussions. As such, you should complete assigned readings before your seminar, and be prepared to contribute consistently and meaningfully to class discussion, being sure to incorporate course readings in your comments. Attendance at weekly seminars is mandatory. Failure to attend or to contribute constructively to discussions will result in a lower participation grade. Please see seminar schedule on page 6.

NOTE: Smart phone use is not permitted in seminar; they are a distraction and texting during a discussion shows disrespect for other students. As several seminar readings are in electronic format laptops and tablets can be used, but please don't let them become a distraction.

Research Paper Requirements: [See Isaak for more instructions]

You must submit a research paper of 3000-3500 words (10-12 double-spaced pages, 1" margins, 12 pt font) by **Mar. 21, 2018, in class**. Make sure that the paper is not simply a description of court cases or laws—this is a political science course and, as such, we are interested in explaining (and perhaps critiquing) decisions and law, their evolution, impact, or some other analysis. See 'Research Paper Guidelines' on Isaak for more information on this assignment.

In addition to the hard copy you submit, you need to upload an electronic copy to the "Assignment" tool in Isaak. Please note that this course uses the electronic plagiarism detection service Turnitin.com, which is integrated into Isaak. If you object to uploading your assignments to Turnitin.com for any reason, please notify the instructor to discuss alternatives.

The penalty for late submission is **-3% per day**; time management problems are not grounds for extensions. **The late penalty is based on when we receive your hard copy with the Turnitin receipt attached.**

<i>Course Communications</i>

- All official announcements and communications for this course will be through your Brock email address or Isaak.
- To contact the instructor, email or a visit during office hours is preferred. Emails will normally be answered within 24 hours.
- Record your teaching assistant's name and contact information at your first seminar.

<i>Brock University Academic Policies</i>
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- The last day to withdraw without academic penalty is **Friday, March 9, 2018**. You will receive at least 15% of your final grade by March 2, 2018.
- If you require academic accommodations related to a documented disability to participate in this course, please contact Student Accessibility Services in the Student Development Centre (4th floor Schmon Tower, ext. 3240). You are also encouraged to discuss any accommodations with the instructor well in advance of due dates and scheduled assessments.
- Brock University acknowledges the pluralistic nature of the undergraduate and graduate communities such that accommodations will be made for students who, by reason of religious obligation, must miss an examination, test, assignment deadline, laboratory or other compulsory academic event. Students requesting academic accommodation on the basis of religious obligation should make a formal, written request to their instructor(s) for alternative dates and/or means of satisfying requirements as soon as possible.
- The University will accommodate students whose studies become interrupted, or who may be unable to complete academic work, due to an incapacitating medical condition. In these situations, the student must complete the [Brock University Student Medical Certificate](#) and include any relevant medical documentation to support his/her request for academic accommodation based on medical grounds. The University may, at its discretion, request more detailed documentation in certain cases.
- **Intellectual Property Notice:** All slides, presentations, handouts, tests, exams, and other course materials created by the instructor in this course are the intellectual property of the instructor. A student who publicly posts or sells an instructor's work, without the instructor's express consent, may be charged with misconduct under Brock's Academic Integrity Policy and/or Code of Conduct, and may also face adverse legal consequences for infringement of intellectual property rights.

<i>Tentative Schedule and Readings</i>

– Please Note: ALL readings are required –

Jan 10: ***Introduction***

Jan 12-17: ***Judicial Review in Canada***

SEMINARS START JAN 17,
SEE SCHEDULE PG. 6

MacIvor, preface and chpts. 2 & 3

FOR SEMINAR [both on Isaak]: Beverley McLachlin, "The Judiciary's Distinctive Role in our Constitutional Democracy," *Policy Options*, vol. 24, no. 8 (September 2003), 5-8

Rory Leishman, "Judicial Leaps of Logic," *Policy Options*, vol. 24, no. 9 (October 2003), 73

Jan 19-24 ***Constitutional Interpretation***

MacIvor, chpts. 1, 4 (74-82 only), 5 (100-116 only)

Joseph Heath, "Why Have a Constitution at All?" *Policy Options* 24, no. 9 (Oct 2003), 42 **[Isaak]**

B.C. Motor Vehicle Act Reference, [1985] 2 S.C.R. 486 (Bateman #20)

R. v. Oakes, [1986] 1 S.C.R. 103 (Bateman #14)

Jan 26-31: *Fundamental Freedoms I: Freedom of Religion*

MacIvor, chpt. 10

Bateman et al., 47-55; 111-121

(seminar 3) *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 [Isaak]

Feb 2-7: *Fundamental Freedoms II: Freedom of Expression, Association*

Bateman et al., 90-101; 122-142

R v. Keegstra [1990] (in Bateman et al., 1st edition) [Isaak]

(seminar 4) *Saskatchewan (Human Rights Commission) v. Whatcott* (Bateman #10)

Feb 9-14: *Equality Rights*

MacIvor, chpt. 13

Bateman et al., 319-368

Newfoundland (Treasury Board) v. N.A.P.E., [2004] (in Bateman et al., 1st edition) [Isaak]

Friday, Feb 16: **MIDTERM EXAM (on material up to and including Feb. 7, 2018)****READING WEEK: Feb 19-23****Feb 28-Mar 2: *Indigenous Rights***

Peter Russell et al., "R. v. Sparrow," "Delgamuukw," "R. v. Marshall 1," "R. v. Marshall 2," "Haida Nation," *The Court and the Constitution: Leading Cases* (Toronto: Emond Montgomery, 2008), 411-470 [all of these are on Isaak, under the case names]

Kiera Ladner and Michael McCrossan, "The Road Not Taken: Aboriginal Rights after the Re-imagining of the Canadian Constitutional Order," *Contested Constitutionalism*, ed. J. Kelly and C. Manfredi (Vancouver: UBC Press, 2009), 263-283. [Isaak]

Mar 7-16: *The Right to Life, Liberty and Security of the Person*

Mar 7-9 lectures:

MacIvor, 267-278

Bateman et al., 187-201; 241-289; 213-236; 280-324

Mar 14-16 lectures:

Bateman et al., 290-318 325-345

Department of Justice Canada, "Legislative Background: Medical Assistance in Dying (Bill C-14) – Addendum." <http://www.justice.gc.ca/eng/rp-pr/other-autre/addend/index.html> [Isaak]

(seminar 8) *Carter v. Canada (Attorney General)*, [2015] SCC 5 (Bateman #26)

Mar 21-23: *Legal Rights: Fair Trial and Sexual Assault*

MacIvor, 278-301

Bateman et al., 173-186

R. v. Seaboyer, [1991] and *R. v. Daviault*, [1994] (in Bateman et al., 1st edition) **[both on Isaak]**

Sean Fine, “Chief Justice Defends Need for Balance in Sex-Assault Trials,” *Globe and Mail* (30 October 2017), A.1. **[Isaak]**

Laura Wright, “Sexual Assault Trials: Experts call for alternatives to Canada's current court system,” *CBC News* (20 February 2016) **[link on Isaak]**

Mar 28-Apr 6: *Judicial Remedies: Sections 23, 24(1) and 24(2)* **[no classes Friday, Mar 30]**

Bateman et al., 369-428

MacIvor, 82-99

(seminar 10) *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353 (Bateman #35)

(seminar 11) *Doucet-Boudreau v. Nova Scotia*, [2003] 3 S.C.R. 3 (Bateman #32)

Apr 9 (fake Friday!): *Courts and Democracy: Dialogue and Rights Discourse* (evaluations today)

MacIvor, 122-127; chpt. 6; 339-344

Bateman et al., 18-21; 143-155

Grant Huscroft, “Rationalizing Judicial Power: the Mischief of Dialogue Theory,” *Contested Constitutionalism*, ed. J. Kelly and C. Manfredi (Van.: UBC Press, 2009), 50-65 **[Isaak]**

SEMINAR SCHEDULE, POLI 3P18

These are some questions to think about when doing the readings, and to help frame our discussions.

Seminar 1 (Week of Jan. 14): *Organizational Seminar / Judicial Review in Canada*

- Who do you find more persuasive: McLachlin or Leishman?

Seminar 2 (Week of Jan. 21): *Constitutional Interpretation*

- What's the difference between "procedural" and "substantive" judicial review?
- What are the pros and cons of the "framers' intent" and "living tree" approaches?

Seminar 3 (Week of Jan. 28): *Fundamental Freedoms I (Freedom of Religion)*

- Should parents be permitted to deny their children medical care on religious grounds?

Seminar 4 (Week of Feb. 4): *Fundamental Freedoms II (Freedom of Expression)*

- Should free speech be limited in cases of "hate speech"?

Seminar 5 (Week of Feb. 11): *Equality Rights*

- Does equality require treating everyone identically, or "treating likes alike"?
- Should equality rights trump freedom of religion or of expression?

Seminar 6 (Week of Feb. 25): *Indigenous Rights*

- How do aboriginal rights under s.35 differ from Charter rights, and what is the significance?
- Should Canadian courts be involved in the interpretation of s. 35?

Seminar 7 (Week of Mar. 4): *The Right to Life, Liberty and Security of the Person I*

- Should s.7 provide positive rights, like to health care or housing?

Seminar 8 (Week of Mar. 11): *The Right to Life, Liberty and Security of the Person II*

- What should a medically-assisted dying policy look like? Who should have access?

Seminar 9 (Week of Mar. 18) *Legal Rights: Fair Trial and Sexual Assault*

- Is it possible to respect the right to fair trial and encourage complainants to come forward? Is there a better way to handle sexual assault cases than the current system?

Seminar 10 (Week of Mar. 25*): *Judicial Remedies I*

- Should we have an "automatic" exclusionary rule?

Seminar 12 (Week of Apr. 1*): *Judicial Remedies II/Courts and Democracy*

- Are the courts too activist, or too involved in policy-making?

* Due to Good Friday, the Friday seminar group will be one week behind at this point. You **will** have a seminar on Monday, Apr. 9 to catch up.

DEPARTMENT OF POLITICAL SCIENCE

STATEMENT ON ACADEMIC MISCONDUCT

Academic misconduct is a serious offence. The principle of academic integrity, particularly of doing one's own work, documenting properly (including use of quotation marks, appropriate paraphrasing and referencing/citation), collaborating appropriately, and avoiding misrepresentation, is a core principle in university study. Students should consult Section VII, "Academic Misconduct", in the "Academic Regulations and University Policies" entry in the Undergraduate Calendar, available at <http://brocku.ca/webcal> to view a fuller description of prohibited actions, and the procedures and penalties.

This course may use Turnitin.com, phrase-matching software. If you object to uploading your assignments to Turnitin.com for any reason, please notify the instructor to discuss alternative submissions.

POLICY ON LATE ESSAYS

The policy of the Department is that essays received by the instructor or deposited in the Political Science Department essay box after 4:00 p.m. or at a time designated by the instructor, of the date on which they were due will be penalized two per cent for each day late from Monday through Friday and five per cent for the period from Friday 4:00 p.m. to Monday 8:30 a.m., and that no paper will be accepted two weeks after the due date. Papers are last collected from the essay box each weekday at 4:00. **Instructors may establish more restrictive deadlines or more severe penalties in particular courses – check the course outline.** Extensions of due dates are granted only in circumstances that are beyond the student's control, such as health problems that are supported by a medical certificate, or other, clearly equivalent situations.

An essay is considered received when the original hard copy (printed-not disk) of the paper is in the hands of the instructor or in the box outside the Political Science Department's office. (ALL ESSAYS MUST INCLUDE A TITLE PAGE WITH THE FOLLOWING INFORMATION CLEARLY MARKED: STUDENT NUMBER, TA and INSTRUCTOR'S NAME, COURSE NAME and NUMBER).

Having an essay date-stamped by security, or the library, or anyone else does not constitute receipt of the essay by the Political Science Department. Instructors may require that essays be submitted electronically through turnitin.com. In this case, students must consult with the Instructor on what constitutes a late essay.

Time management problems are not grounds for extensions. You are strongly urged to avoid these penalties by beginning to work on essays early in the term; by setting your own target dates for completion that are several days before the due date; and by carefully budgeting your time.

POLICY ON RETURNING MARKED ESSAYS

Marked essays will normally be returned during class meetings or at the final examination. Students who are not in class to receive their essays or do not receive them at the final examination can obtain them in two ways:

- directly from the instructor during his/her office hours (unless the instructor specifies in the course outline or by notice on his/her office door that this option is not available), and/or
- directly from the instructor on specific days and at specific times announced in class or posted on his/her office door.

Note: Essays that are not picked up within six months after the end of term will be shredded.