Politics 1P91 – *Courts and Politics:*

Great Cases in Constitutional Law

Brock University
Winter 2010

Instructor: Matthew Hennigar
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Class Time: M W 11:00-noon

Office Hours: Tue 1-1:45; W 12-1pm and by appointment

Course Description and Objectives

This course uses leading court cases from Canada and the United States to introduce foundational concepts and issues in political science. In the process, it illustrates the growing importance of both countries' Supreme Courts in fundamental political debates, such as abortion, same-sex marriage, Quebec separatism, aboriginal rights, voting rights, racial discrimination in the Southern U.S., and religious discrimination in Canada. Students will be given opportunities to develop their analytical and argumentation skills through written assignments, exams, and class discussions.

Required Texts

Christopher Manfredi and Mark Rush, *Judging Democracy* (Peterborough: Broadview Press, 2008)

POLI 1P91 Coursepack, Brock University bookstore

Brock University Library Reserves (search under course number, POLI 1P91)

Course Requirements

Mid-term Examination:	20%	(February 17, 2010)
Term Paper:	25%	(March 24, 2010)
Seminar Participation:	15%	
Final Examination:	40%	

Please note:

- The last day to withdraw without academic penalty is **Friday, Mar. 5, 2010**
- Requests for extra work will not be granted (for example, if seminars are missed)
- If you have any special needs regarding lectures or testing, please contact me and the Services for Students with disABILITIES (Schmon Tower 400) as soon as possible.

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 the readings to focus our discussions. As such, you should

complete assigned readings before your seminar, and be prepared to take part in class discussion. 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 4.

Term Paper Requirements:
[See additional Term Paper link on Sakai for more instructions later this term]
The length of the term paper is 1500-2000 words, or roughly 5-6 pages. The term paper must be double-spaced with standard margins using a 12 point font. The term paper is due IN CLASS **March 24, 2010**. Extensions 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—time management problems are not grounds for extensions. A **FIVE (5) PER CENT PER DAY** penalty will be assigned for late papers. More information on term paper topics will be provided later in the term. Please note that this course uses the electronic plagiarism detection service turnitin.com. More instructions will be provided later in the term, including alternate arrangements for students who wish to opt out.

Tentative Schedule and Readings

Please Note: All readings are mandatory, and in the bookstore, on reserve at the library, or on Sakai

January 11-13: ***Comparing Canadian and US Politics: An Introduction***

Stephen Phillips, "The Political Executive and Bureaucracy: On Top and on Tap," in Rand Dyck, ed., *Studying Politics: An Introduction to Political Science* (2nd ed.), Toronto: Thomson Nelson, p. 155-173 (COURSEPACK)

Andrew Heard, "Legislatures: Centre Stage but not Top Billing," in Rand Dyck, ed., *Studying Politics* (2nd ed.), p. 185-210. (COURSEPACK)

Michael Adams, "Canada and the United States – Separated at Birth," in Mark Charleton and Paul Barker, *Crosscurrents: Contemporary Political Issues* (6th ed.), Toronto: Nelson Education, p. 22-31. (COURSEPACK)

January 18-20: ***Courts and the Judicialization of Politics in Canada and the US***

Andrew Heard, "The Judiciary: Politics, Law, and the Courts," in Rand Dyck, ed., *Studying Politics* (2nd ed.) (2006), p. 211-223; 232-233. (COURSEPACK)

Robert P. George, ed. (2000), *Great Cases in Constitutional Law*, Princeton, NJ: Princeton University Press. (RESERVE), 3-15.

Hugh Mellon, "Introduction: Appreciating the Supreme Court's National Significance," in Hugh Mellon and Martin Westmacott, eds., *Political Dispute and Judicial Review* (Scarborough: Nelson-Thomson Learning, 2000), 2-30 (COURSEPACK)

Alpheus Thomas Mason and Donald Grier Stephenson, eds., *American Constitutional Law: Introductory Essays and Selected Cases* (15th ed.), p.1-3; 24-55 (RESERVE)

Karen O'Connor, *American Government: Readings and Cases* (1995), Reading #6. (RESERVE)

<u>Jan 25-Feb 1:</u> ***Slavery and Racial Discrimination in Education in the U.S.***

Karen O'Connor, Readings # 21, 22, 25 and 26 (RESERVE)

Alpheus Thomas Mason and Donald Grier Stephenson, eds., *American Constitutional Law: Introductory Essays and Selected Cases* (15th ed.), p. 67-70; 616-633; 665-674 (RESERVE)

G. Alan Tarr, *Judicial Process and Judicial Policymaking* (4th ed., Toronto: Thomson Nelson, 2006), p.304-315 (COURSEPACK)

George, *Great Cases in Constitutional Law*, 64-93; 136-174 (RESERVE)

<u>February 3-8:</u> ***The Supreme Court and Quebec Secession***

Mellon and Westmacott, *Political Dispute and Judicial Review* (Scarborough: Nelson Thomson Learning, 2000), 83-101. (RESERVE)

Mary Dawson, "Reflections on the Opinion of the Supreme Court of Canada in the *Quebec Secession Reference*," *National Journal of Constitutional Law* 11 (1999), 5-48. (SAKAI)

<u>February 10; Mar. 1-3:</u> ***Voting Rights and the Electoral Process***

Christopher Manfredi and Mark Rush, *Judging Democracy* (Peterborough: Broadview Press, 2008), whole book.

Jeffrey Toobin, "The Great Election Grab: When Does Gerrymandering Become a Threat to Democracy?" *The New Yorker* (Dec. 8, 2003), 63-80 (SAKAI)

<u>February 15:</u> **FAMILY DAY – no class this Monday**

<u>February 17:</u> **MIDTERM EXAM – no seminars this week**

<u>February 22-26:</u> **READING WEEK – no classes or seminars**

<u>March 8-10:</u> ***Religious, Sexual and Racial Discrimination in Canada***

History's Courtroom, "Charting the Charter" (video documentary, viewed in class)

Dominique Clément, *Canada's Rights Revolution: Social Movements and Social Change, 1937-82* (Vancouver: UBC Press, 2008), 17-35. (COURSEPACK)

Peter Russell, Rainer Knopff, Thomas M.J. Bateman and Janet L. Hiebert, *The Court and the Constitution: Leading Cases* (Toronto: Emond Montgomery, 2008), p. 473-477; 167-169; 181-193. (RESERVE)

Claire L'Heureux-Dubé, "The Legacy of the 'Persons Case': Cultivating the Living Tree's Equality Leaves," *Saskatchewan Law Review* 63 (2000), p. 389-401. (SAKAI)

<u>March 15-17:</u> ***Canadian vs. US Approaches to the 'Culture Wars': Abortion***

Karen O'Connor, Reading #13 (RESERVE) [cont'd↓]

G. Alan Tarr, *Judicial Process and Judicial Policymaking* (4th Edition, Toronto: Thomson Nelson, 2006), 315-336. (COURSEPACK)

Great Cases in Constitutional Law, 192-200. (RESERVE)

Raymond Tatalovich, *The Politics of Abortion in the United States and Canada: A Comparative Study* (New York: M. E. Sharpe, 1997), 52-82. (COURSEPACK)

Craig Ducat, *Constitutional Interpretation* (9th ed., Belmont, CA: Thomson Wadsworth, 2009), 741-745. (COURSEPACK)

March 22-24: ***'Culture Wars' II: 'Gay Rights' / Sexual Orientation***

Mason & Stephenson, 589; 611-615; 637-640 (RESERVE)

Campbell D. Barrett, "The Present Status of the Law of Marriage in the United States and Abroad," in Donald J. Cantor, et al., *Same-Sex Marriage: The Legal and Psychological Evolution in America* (Middletown, CT: Wesleyan University Press, 2006), 115-133. (COURSEPACK)

Brenda Cossman, "Lesbians, Gay Men, and the Canadian Charter of Rights and Freedoms," *Osgoode Hall Law Journal* 40 (2002), 223-249. (SAKAI)

March 29-April 7: ***Aboriginal Rights***

Political Dispute and Judicial Review, 102-122. (RESERVE)

Michael Murphy, "Culture and Courts: A New Direction in Canadian Jurisprudence on Aboriginal Rights?" *Canadian Journal of Political Science* 34 (2001), pp. 109-129. (SAKAI)

Peter Russell, et al., *The Court and the Constitution: Leading Cases*, p. 439-441; 453-454; 461-463. (RESERVE)

Kathy Brock, "Rhetoric, Reality, and Rights: Comparing Canadian and American Aboriginal Policy," in David M. Thomas and Barbara Boyle Torrey, eds., *Canada and the United States: Differences that Count* (3rd ed., Peterborough: Broadview Press, 2008), p. 271-290 (COURSEPACK)

April 12: **TBA**

SEMINAR SCHEDULE:

(week of)

January 11:	introductions, overview
January 18:	judicialization in Canada and US
January 25:	Slavery in the U.S. (Dred Scott case)
February 1:	Equality and affirmation action
February 8:	Quebec secession
February 15:	NO SEMINARS (midterm exam week)
February 22:	NO SEMINARS (Reading Week)
February 29:	Voting rights
March 8:	Discrimination in Canada
March 15:	Abortion
March 22:	Same-sex marriage
March 29:	Aboriginal Rights
April 5:	Review(?)

DEPARTMENT OF POLITICAL SCIENCE

STATEMENT ON ACADEMIC MISCONDUCT

Because academic integrity is vital to the well-being of the university community, Brock University takes academic misconduct very seriously. Academic misconduct includes plagiarism, which involves presenting the words and ideas of another person as if they were your own, and other forms of cheating, such as using crib notes during a test or fabricating data for a lab assignment. The penalties for academic misconduct can be very severe. A grade of zero may be given for the assignment or even for the course, and a second offense may result in suspension from the University. Students are urged to read the section of the Brock University Undergraduate Calendar that pertains to academic misconduct. Students are also reminded that the Student Development Centre (Schmon Tower, Room 400) offers free workshops on writing and study skills and on avoiding plagiarism.

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. 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.

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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. 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.

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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.

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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.