

REVISED VERSION
(Please disregard previous course outline)

PSCI 4109A
THE POLITICS OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS
Wednesday 18h05 – 20h55
Please confirm location on Carleton Central

Instructor: Richard Albert
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COURSE DESCRIPTION

The *Canadian Charter of Rights and Freedoms* has blurred the boundary separating law from politics. Its adoption has reshaped Canadian politics and political discourse, and has forever changed the institutional relationship among the judicial, legislative and executive branches of government.

This seminar will survey, assess and probe the impact of the *Charter* on Canadian politics. The course will begin with an introduction to constitutionalism and the meaning of constitutional rights. This will lay a theoretical foundation for subsequent seminars on the birth of the *Charter*, the judicial function, institutional dialogue, constitutional amendments and the future of *Charter*. Students will also examine how the *Charter* has shaped laws on abortion, elections and campaign finance, sexual orientation, freedom of religion and freedom of expression. When it is useful to draw comparisons, foreign constitutional regimes will be considered.

EVALUATION

This course will consist of the following graded components:

1. Final Take-Home Examination: 35%

To be distributed on the final day of class. Each student will then have until 5:00pm on Wednesday, December 17th to submit your answers to me directly. If you choose to submit your take-home exam via the Department of Political Science drop box, please note that it is cleared at 4 pm every weekday and all items collected at that time are stamped with that day's date. The examination will consist of questions to be answered in essay format. There will be no multiple-choice or short-answer questions. Students who complete the required work and regularly attend, prepare for, and participate in seminars should be well prepared for the examination.

2. Response Papers: 35%

Each student will write five response papers over the course of the term. This assignment requires each student to: (1) select five seminar topics; (2) write a 1000-word response paper to the readings for each of those five seminar topics; (3) post each paper on WebCT by 20h00 EST on the Monday prior to the seminar meeting for which the paper is written; and (4) submit a hard copy of each paper to the instructor at the beginning of the seminar meeting for which the paper is written. Papers not posted on WebCT before the

weekly deadline on Monday 20h00 EST will not receive graded credit. Papers not submitted in hard copy to the instructor at the beginning of the seminar meeting will not receive graded credit. Papers must not be descriptive. They must make an argument about the readings, for instance by arguing for or against a particular perspective, developing a point that an author(s) did not adequately address or advancing a novel argument that the readings fail to make. Students are invited, but not required, to conduct supplemental research and consult outside sources to write their papers. Papers will be evaluated on their structure, style and substance. Please respect the departmental instructions for written work; those instructions are available at this website: <http://www.carleton.ca/polisci/undergrad/Essay%20Style%20Guide.html>. Paper topics need not be pre-approved by the instructor. Students will select their five seminar topics at the first seminar on September 10. Papers will be graded within one week.

3. Law & Politics Presentation: 20%

Each student will make a 15-minute presentation on a *Charter* topic that is not covered on the syllabus. This assignment requires each student to: (1) select a recent *Charter* case; (2) give a brief synopsis of the case and its history; (3) situate the case in its political context; (4) advance a thesis defending or opposing the outcome of the case; (5) deliver a 15-minute presentation in class; and (6) lead a brief and interesting class discussion at the conclusion of the presentation. Please note that the *Charter* topic and case must be pre-approved by the instructor. Presentations will be evaluated on their clarity, coherence, persuasiveness. Presentations will begin on September 24. Presentation dates will be assigned at the first seminar on September 10. Presentations will be graded within one week.

4. Participation: 10%

Each student is expected to be an active participant in the course. This requires careful preparation for each seminar and a demonstrated interest in engaging with classmates and the instructor at each seminar meeting. Attendance is required but may be excused with prior notice by email or telephone if there are extenuating circumstances. Students are invited to ask the instructor for feedback about the quality of their participation as early as the end of the third seminar meeting on September 24.

GRADING STANDARD

A+	90-100
A	85-89
A-	80-84
B+	77-79
B	73-76
B-	70-72
C+	67-69
C	63-66
C-	60-62
D+	57-59
D	53-56
D-	50-52
F	0-49

SEMINAR TOPICS AND READINGS

All readings will be posted on WebCT or circulated by email prior to the seminar meeting. There are no books to buy for this course. Students who wish to purchase or consult a relevant book for helpful context may find one or more of the following books useful:

1. JANET L. HIEBERT, *CHARTER CONFLICTS: WHAT IS PARLIAMENT'S ROLE?* (2002)
2. HEATHER MACIVOR, *CANADIAN POLITICS AND GOVERNMENT IN THE CHARTER ERA* (2006)
3. MICHAEL MANDEL, *THE CHARTER OF RIGHTS AND THE LEGALIZATION OF POLITICS IN CANADA* (REVISED EDITION 1994)

Seminar 1 (10 September 2008): Introduction

1. General introduction to course
2. Introductory lecture and discussion
3. Administrative matters, including scheduling of student presentations and response papers

Seminar 2 (17 September 2008): What is a Charter of Rights?

1. Canadian Charter of Rights and Freedoms
2. United States Bill of Rights
3. French Declaration of the Rights of Man
4. Constitution of Poland
5. Constitution of Ireland
6. Report of the Justice Constitution Committee, House of Commons, *A BRITISH BILL OF RIGHTS: INFORMING THE DEBATE* (2007)
7. David A. Strauss, *The Role of a Bill of Rights*, 52 *UNIVERSITY OF CHICAGO LAW REVIEW* 539 (1992)
8. Richard Albert, *Counterconstitutionalism*, *DALHOUSIE LAW JOURNAL* (forthcoming 2008)
9. Student Response Papers

Seminar 3 (24 September 2008): The Birth of the Charter

1. *Reference re A Resolution to Amend the Constitution*, [1981] 1 S.C.R. 753
2. *Reference re Objection by Quebec to a Resolution to Amend the Constitution*, [1982] 2 S.C.R. 793
3. Michael B. Stein, *Canadian Constitutional Reform, 1927-1982: A Comparative Case Analysis Over Time*, *THE JOURNAL OF FEDERALISM* 14 (Winter 1984)
4. Lorraine E. Weinrib, *The Charter's Transformative Aspirations*, 19 *SUPREME COURT LAW REVIEW* (2d) 17 (2003)
5. Student Response Papers

Recommended

1. William C. Hodge, *Patriation of the Canadian Constitution: Comparative Federalism in a New Context*, 60 *WASHINGTON LAW REVIEW* 585 (1985)

Seminar 4 (1 October 2008): The Judicial Function and the Political Question Doctrine

1. James B. Kelly, *The Charter of Rights and Freedoms and the Rebalancing of Liberal Constitutionalism in Canada, 1982-1997*, 37 *OSGOODE HALL LAW JOURNAL* 625 (1999)
2. The Hon. Claire L'Heureux-Dubé, *Making a Difference : The Pursuit of a Compassionate Justice*, 31 *UNIVERSITY OF BRITISH COLUMBIA LAW REVIEW* 1 (1997)

3. Andrew Heard, *The Charter in the Supreme Court of Canada: the Importance of which Judges Hear an Appeal*, XXIV CANADIAN JOURNAL OF POLITICAL SCIENCE 289 (June 1991)
4. *Operation Dismantle v. The Queen*, [1985] 1 S.C.R. 441
5. Lorne Sossin & Geoffrey Cowper, *Does Canada Need a Political Questions Doctrine?*, 16 SUPREME COURT LAW REVIEW (2d) 343 (2002)
6. Student Response Papers

Recommended

1. Jeremy Waldron, *The Core of the Case Against Judicial Review*, 115 YALE LAW JOURNAL 1346 (2006)
2. Richard H. Fallon, Jr., *The Core of an Uneasy Case for Judicial Review*, 121 HARVARD LAW REVIEW 1693 (2008)

Seminar 5 (8 October 2008): Institutional Dialogue and the Notwithstanding Clause

1. Peter W. Hogg & Allison A. Bushell, *The Charter Dialogue between Courts and Legislatures (or Perhaps the Charter Isn't Such a Bad Thing After All)*, 35 OSGOODE HALL LAW JOURNAL 75 (1997)
2. Paul Weiler, *Rights and Judges in a Democracy: A New Canadian Version*, 18 MICHIGAN REVIEW OF LAW REFORM 70 (1984)
3. Peter Loughheed, *WHY A NOTWITHSTANDING CLAUSE?*, Centre for Constitutional Studies, Points of View, No. 6 (1998)
4. F. L. Morton, *Dialogue or Monologue?*, POLICY OPTIONS (April 1999).
5. Tsvi Kahana, *Understanding the Notwithstanding Mechanism*, 52 UNIVERSITY OF TORONTO LAW JOURNAL 221 (2002)
6. Richard Albert, *Advisory Review*, ALBERTA LAW REVIEW (forthcoming 2008)
7. Student Response Papers

Seminar 6 (15 October 2008): Abortion

1. *R. v. Morgentaler*, [1988] 1 S.C.R. 30
2. Shelley Gavigan, *Beyond Morgentaler: The Legal Regulation of Reproduction*, in Shelley Gavigan, Jane Jenson & Janine Brodie, *THE POLITICS OF ABORTION: REPRESENTATIONS OF WOMEN IN CANADA* (1992)
3. *Ontario (Attorney General) v. Dieleman*, [1994] 20 O.R.3d 229
4. *R. v. Lewis*, [1996] 39 C.R.R. (2d) 26
5. *Madsen v. Women's Health Center*, 512 U.S. 753 (1994)
6. Rainer Knopff, *Courts Don't Make Good Compromises*, POLICY OPTIONS (April 1999).
7. Richard Albert, *Protest, Proportionality and the Politics of Privacy*, 27 LOYOLA OF LOS ANGELES INTERNATIONAL AND COMPARATIVE LAW REVIEW 1 (2005)
8. Student Response Papers

Seminar 7 (22 October 2008): Freedom of Religion

1. *Adler v. Ontario*, [1996] 3 S.C.R. 609
2. *Reference re Bill 30, An Act to Amend the Education Act (Ontario)*, [1987] 1 S.C.R. 1148
3. *Waldman v. Canada*, Communication No. 694/1996, UNITED NATIONS HUMAN RIGHTS COMMITTEE, 67th Session (1999)
4. David M. Brown, *Freedom From or Freedom For? Religion as a Case Study in Defining the Content of Charter Rights*, 33 UNIVERSITY OF BRITISH COLUMBIA LAW REVIEW 551 (2000)

5. Richard Albert, *American Separationism and Liberal Democracy*, 88 MARQUETTE LAW REVIEW 867 (2005)
6. Student Response Papers

Recommended

1. Shannon Ishiyama Smithey, *Religious Freedom and Equality Concerns under the Canadian Charter of Rights and Freedoms*, XXXIV CANADIAN JOURNAL OF POLITICAL SCIENCE 85 (2001)
2. Canadian Civil Liberties Association, Submission to the Hon. Kathleen O. Wynne, Minister of Education, THE PUBLIC FUNDING OF RELIGIOUS SCHOOLS (September 21, 2007)

Seminar 8 (29 October 2008): Freedom of Expression

1. *R. v. Keegstra*, [1990] 3 S.C.R. 697
2. *R. v. Zundel*, [1992] 2 S.C.R. 731
3. Mark Walker, *Censorship, Logocracy and Democracy*, 21 CANADIAN JOURNAL OF LAW & JURISPRUDENCE 1999 (2008)
4. Ian B. McKenna, *Canada's Hate Propaganda Laws—A Critique*, 26 OTTAWA LAW REVIEW 159 (1994)
5. Jamie Cameron, *The Past, Present, and Future of Expressive Freedom under the Charter*, 35 OSGOODE HALL LAW JOURNAL 1-74 (1997)
6. Student Response Papers

Recommended

1. Bruce P. Elman, *Combating Racist Speech: The Canadian Experience*, 32 ALBERTA LAW REVIEW 623 (1994)
2. Evelyn Kallen, *Never Again: Target Group Responses to the Debate Concerning Anti-Hate Propaganda Legislation*, 11 WINDSOR YEARBOOK ON ACCESS TO JUSTICE 46 (1991)

Seminar 9 (5 November 2008): Elections and Campaign Finance

1. *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827
2. *Libman v. Quebec (Attorney General)*, [1997] 3 S.C.R. 569
3. *Figuroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912
4. Andrew Geddis, *Liberté, Égalité, Argent: Third Party Election Spending and the Charter*, 42 ALBERTA LAW REVIEW 429 (2004)
5. Student Response Papers

Recommended

1. Christopher Manfredi & Mark Rush, *Electoral Jurisprudence in the Canadian and U.S. Supreme Courts: Evolution and Convergence*, 52 MCGILL L.J. 457 (2007)

Seminar 10 (12 November 2008): Sexual Orientation

1. *Reference re Same-Sex Marriage*, [2004] 3 S.C.R. 698
2. Carl F. Stychin, *Essential Rights and Contested Identities: Sexual Orientation and Equality Rights Jurisprudence in Canada*, 8 CANADIAN JOURNAL OF LAW & JURISPRUDENCE 49 (1995)

3. Miriam Smith, *Political Activism, Litigation and Public Policy: The Charter Revolution and Lesbian and Gay Rights in Canada, 1985-1999*, 21 INTERNATIONAL JOURNAL OF CANADIAN STUDIES 81(Spring 2000)
4. F.C. DeCoste, *Courting Leviathan: Limited Government and Social Freedom in Reference re Same-Sex Marriage*, 42 ALBERTA LAW REVIEW 1099 (2005)
5. Student Response Papers

Seminar 11 (19 November 2008): Amending the Charter

1. Mollie Dunsmuir, *Constitutional Activity from Patriation to Charlottetown (1980-1992)*, Parliamentary Research Branch, LIBRARY OF PARLIAMENT (November 1995)
2. Peter Oliver, *Canada, Quebec, and Constitutional Amendments*, 49 UNIVERSITY OF TORONTO LAW JOURNAL 519 (1999)
3. Barbara Darby, *Amending Authors and Constitutional Discourse*, 25 DALHOUSIE LAW JOURNAL 215 (2002)
4. Richard Albert, *Nonconstitutional Amendments*, CANADIAN JOURNAL OF LAW & JURISPRUDENCE (forthcoming 2009)
5. Student Response Papers

Seminar 12 (26 November 2008): The Future of the Charter

1. The Rt. Hon. Beverley McLachlin, *The Charter 25 Years Later: The Good, the Bad, and the Challenges*, 45 OSGOODE HALL LAW JOURNAL 365 (2007)
2. F.L. Morton, Mel Smith Memorial Lecture, OUR TURN: A NEW COURSE FOR THE WEST (2003)
3. Richard Devlin, A. Wayne MacKay and Natasha Kim, *Reducing the Democratic Deficit: Representation, Diversity and the Canadian Judiciary, or Toward a "Triple P" Judiciary*, 38 ALBERTA LAW REVIEW 734 (2000)
4. Graeme Hamilton, *At 25, Charter is Misunderstood*, NATIONAL POST (February 8, 2007)
5. Student Response Papers

Academic Accommodations

For students with Disabilities: Students with disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (500 University Centre) for a formal evaluation of disability-related needs. Registered PMC students are required to contact the centre (613-520-6608) every term to ensure that the instructor receives your letter of accommodation. After registering with the PMC, make an appointment to meet with the instructor in order to discuss your needs **at least two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations**. If you require accommodation for your formally scheduled exam(s) in this course, please submit your request for accommodation to PMC by **November 7, 2008 for December examinations**, and **March 6, 2009 for April examinations**.

For Religious Observance: Students requesting accommodation for religious observances should apply in writing to their instructor for alternate dates and/or means of satisfying academic requirements. Such requests should be made during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist, but no later than two weeks before the compulsory academic event. Accommodation is to be worked out directly and on an individual basis between the student and the instructor(s) involved. Instructors will make accommodations in a way that avoids academic disadvantage to the student. Instructors and students may contact an Equity Services Advisor for assistance (www.carleton.ca/equity).

For Pregnancy: Pregnant students requiring academic accommodations are encouraged to contact an Equity Advisor in Equity Services to complete a *letter of accommodation*. Then, make an appointment to discuss your needs with the instructor at least two weeks prior to the first academic event in which it is anticipated the accommodation will be required.

Plagiarism: The Undergraduate Calendar defines plagiarism as: "to use and pass off as one's own idea or product, work of another without expressly giving credit to another." The Graduate Calendar states that plagiarism has occurred when a student either: (a) directly copies another's work without acknowledgment; or (b) closely paraphrases the equivalent of a short paragraph or more without acknowledgment; or (c) borrows, without acknowledgment, any ideas in a clear and recognizable form in such a way as to present them as the student's own thought, where such ideas, if they were the student's own would contribute to the merit of his or her own work. Instructors who suspect plagiarism are required to submit the paper and supporting documentation to the Departmental Chair who will refer the case to the Dean. It is not permitted to hand in the same assignment to two or more courses. The Department's Style Guide is available at: <http://www.carleton.ca/polisci/undergrad/Essay%20Style%20Guide.html>

Oral Examination: At the discretion of the instructor, students may be required to pass a brief oral examination on research papers and essays.

Submission and Return of Term Work: Papers must be handed directly to the instructor and will not be date-stamped in the departmental office. Late assignments may be submitted to the drop box in the corridor outside B640 Loeb. Assignments will be retrieved every business day at **4 p.m.**, stamped with that day's date, and then distributed to the instructor. For essays not returned in class please attach a **stamped, self-addressed envelope** if you wish to have your assignment returned by mail. Please note that assignments sent via fax or email will not be accepted. Final exams are intended solely for the purpose of evaluation and will not be returned.

Approval of final grades: Standing in a course is determined by the course instructor subject to the approval of the Faculty Dean. This means that grades submitted by an instructor may be subject to revision. No grades are final until they have been approved by the Dean.

Course Requirements: Students must fulfill all course requirements in order to achieve a passing grade. Failure to hand in any assignment will result in a grade of F. Failure to write the final exam will result in a grade of ABS. FND (Failure No Deferred) is assigned when a student's performance is so poor during the term that they cannot pass the course even with 100% on the final examination. In such cases, instructors may use this notation on the Final Grade Report to indicate that a student has already failed the course due to inadequate term work and should not be permitted access to a deferral of the examination. Deferred final exams are available **ONLY** if the student is in good standing in the course.

Connect Email Accounts: The Department of Political Science strongly encourages students to sign up for a campus email account. Important course and University information will be distributed via the Connect email system. See <http://connect.carleton.ca> for instructions on how to set up your account.

Carleton Political Science Society: The Carleton Political Science Society (CPSS) has made its mission to provide a social environment for politically inclined students and faculty. Holding social events, debates, and panel discussions, CPSS aims to involve all political science students in the after-hours academic life at Carleton University. Our mandate is to arrange social and academic activities in order to instill a sense of belonging within the Department and the larger University community. Members can benefit through numerous opportunities which will complement both academic and social life at Carleton University. To find out more, please email carletonpss@gmail.com, visit our website at poliscisociety.com, or come to our office in Loeb D688.