

RESEARCH ON LAW AND COURTS

Winter 2019

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Seminar: Tues 11:30–2:20, ETB 228

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Course Description

The increasing judicialization of policy making and politics and the increasing politicization of the judiciary in many countries around the world has been attributed to a number of causes and has demonstrated (or not) particular effects and/or outcomes. The ongoing academic debate around the reasons underlying judicialization and its future directions warrant ongoing academic research into the topic(s). Through a series of seminars, this course will examine different ways (or methodologies) to research and investigate the potential causes of this increased legalization or judicialization and consider the impact that these developments have had on the policy-making process and politics more generally and on the judiciary.

Course Objectives

By the end of the course students should:

- Approach the research of judicial studies questions from a variety of methodological approaches and understand the advantages and disadvantages of these different approaches;
- Have a deeper understanding of and engage with on a critical level the various theoretical approaches to understanding the impact of judicial institutions on politics and public policy as set out in the judicial studies literature;
- Have enhanced written and oral communication skills of; and
- Further developed presentation and participation skills.

Required Materials and Texts

- Various readings (as listed below) available through the McMaster University libraries or Google Scholar.

Class Format

The class is scheduled for one three-hour seminar session per week.

As a fourth year seminar, students are expected to play an active role in the teaching and learning process. One of the goals of the course is to prepare students for further study or to be able to work on their presentation skills if they decide to enter the workforce. The role of the instructor will be to help provide the broader context for the material being reviewed and to facilitate the class discussion when it falters. During the semester, discussions will take place on the theoretical and methodological foundations of the judicial studies literature and students are expected to participate in the discussions on a weekly basis. The instructor will contribute to the discussion by adding insights and posing or reframing questions. To have a thoughtful and intellectual discussion, students are required to read the readings each week. All students must be prepared for and attentive in class.

As broad participation in the discussions is essential for deeper learning of course materials, the instructor reserves the right to use the Socratic method of calling on individual students without warning for contributions to the discussions.

In addition to formal class time, students are invited to meet with the instructor during regular office hours or by appointment to discuss course content or any other concerns.

Course Evaluation – Overview

1. Seminar Participation - 20%, weekly beginning January 15, 2019
2. Methods Summaries - 20%, dates to be assigned
3. Research Design - 10%, February 26, 2019.
4. Take Home Exam - 50%, April 09, 2019.

Course Evaluation – Details

Seminar Participation (20%) – Weekly beginning January 15, 2019

Given the course format, it is anticipated that students will actively participate in the discussions each week. Students should complete the assigned readings before class and be prepared to contribute meaningfully to in-class discussions. Students will be assessed on their ability to make original points, express their own thoughts on the topic, ask meaningful questions, engage with other students' comments and incorporate the readings into their own comments. In this regard, students should, at a minimum, attend class having attempted to answer the following questions in relation to each reading:

1. What is the author's primary purpose in writing the article?
2. What are the main arguments being advanced by the author?
3. What methodology and evidence has been employed in support of the argument?
4. What are the shortcomings or logical contradictions in the arguments advanced, if any, and in particular with respect to the methodology and evidence used to support the arguments?
5. How does the argument relate to specific theoretical arguments or approaches in understanding the broader topic of judicialization?

If you are having trouble interpreting the material, it is a good idea to see the instructor for extra help early in the semester. Telling the instructor at the end of the course that you either have difficulty interpreting the material and/or that you are too timid to speak is not an acceptable reason for failing to participate; your mark will reflect negatively as a result. You need to be proactive about the need to complete this task effectively in order to receive a good mark.

Please note that signing an attendance sheet on behalf of someone who is not present in a tutorial session constitutes an offence under the academic integrity policy of McMaster University.

Methods Summaries (Two assignments at 10% each), dates to be assigned.

Students will submit a two to three page summary of the methodological approach(es) used in the set of articles for two different weeks in the course.

Students will be assigned specific weeks for which they are responsible to complete the summaries.

While students may collaborate with each other in the completion of the assignments, each student should submit their own individual assignment.

The focus of the paper should be on the methodological approach(es) that are common or complimentary among the different articles. The paper should not be a simple description of each article, but rather attempt to synthesize the different articles on the methodological commonalities.

Summaries will be assessed on their identification and description of the methodological approach(es) and the evidence to support the arguments advanced as well as consideration of the strengths/advantages and weaknesses/disadvantages and/or a critical assessment of the methodological approaches in providing a better understanding of judicialization.

Research Design Paper (10%), due February 26, 2019.

Students will submit a relatively short description of the manner in which they intend to research their chosen topic for the major research paper.

The purpose of the research design is to briefly describe the methodological approach to be used, identify and define the relevant factors/variables to be incorporated into the research, establish the sources of **PRIMARY** evidence and highlight the strengths and weaknesses of both the method and evidentiary sources.

Major Research Paper (50%), due April 09, 2019.

Students will write a major research paper of a minimum of five thousand (5000) words or between twenty and twenty five pages (exclusive of bibliography) concerning a policy issue or problem that has involved some form of litigation or judicial consideration or involves the judiciary as an institution of the state.

The paper should be analytical in nature and will be supported by both empirical and academic research, including empirical research of a **PRIMARY** nature. While there is no minimum number of sources that a student should include in their papers, the grade assigned will be dependent on the scope and depth of the research and how it is used in the paper. A good rule of thumb in all academic papers is at least one new academic

source for each page of the paper. At the fourth year level, you can expect that this standard would be a bare minimum of acceptable theoretical research to support the evidentiary argument made based on the primary research. The scope of evidentiary research will depend entirely on the research methodology chosen to address the research question.

In addition to the primary research, the paper will also be graded on the basis of its understanding of at least one of the theoretical frameworks and/or conceptual issues raised in the first semester in the judicial studies literature, its comprehensiveness and comprehensibility in dealing with the policy issue/problem/field in question, and the contribution it makes to the understanding of the role and/or impact of the courts in democratic states more generally.

In support of the final paper, students will have an opportunity to present a research design and/or a summary of their research findings to the class for comment and discussion by their colleagues and the instructor. In support of their presentation, students should assign a journal article for their colleagues and the instructor to read in preparation for their discussion. The reading can be of either a theoretical or methodological (or both) basis and should be used to provide a foundation for the class to assist the student with their overall research paper through the class discussion.

Students can opt (but do not have to) to have the presentation count for 10% of the final grade in the course should they wish to do so.

Weekly Course Schedule and Required Readings

Week 1 – January 08, 2019 – Introduction and Organization

Readings:

None Assigned.

Week 2 – January 15, 2019 – Causes of Judicialization

January 14, 2019 – Culture

Readings:

Wetstein, M.E., Ostberg, C.L., Songer, D.R. and Johnson, S.W., 2009.
“Ideological Consistency and Attitudinal Conflict: A Comparative Analysis of the US and Canadian Supreme Courts.” *Comparative Political Studies* vol. 42(6), 763-792.

Radmilovic, Vuk. 2013. Governmental interventions and judicial decision making: The Supreme Court of Canada in the age of the charter. *Canadian Journal of Political Science* vol. 46(2), 323-344.

Riddell, T., 2016. Measuring Activism and Restraint: An Alternative Perspective on the Supreme Court of Canada's Exclusion of Evidence Decisions under Section 24 (2) of the Charter. *Canadian Journal of Criminology and Criminal Justice* vol. 58(1), 87-111.

Week 3 – January 22, 2019 – Judicial Reasons and Legal Factors

Readings:

Friedman, Barry. 2006. "Taking law seriously" *Perspectives on Politics* vol. 4(2), 261-276.

Choundhry, Sujit, and Clare E. Hunter. 2003. "Measuring judicial activism on the Supreme Court of Canada: A comment on Newfoundland (Treasury Board) v. NAPE" *McGill Law Journal* vol. 48, 525.

Cross, Frank and Emerson Tiller. 1998. "Judicial partisanship and obedience to legal doctrine: Whistleblowing on the federal courts of appeals" *The Yale Law Journal* vol. 107(7), 2155-2176.

Larue, Patrick. 2017. "Judicial Responses to Counter-Terrorism Law after September 11" *Democracy and Security* vol. 13(1), 71-95.

Week 4 – January 29, 2019 – Litigant and Judicial Discourse

Readings:

Hennigar, Matthew. 2017. "Unreasonable Disagreement?: Judicial-Executive Exchanges about Charter Reasonableness in the Harper Era" *Osgoode Hall Law Journal* vol. 54(4), forthcoming.

Schertzer, Robert. 2016. "Quebec Justices as Quebec Representatives: National Minority Representation and the Supreme Court of Canada's Federalism Jurisprudence" *Publius: The Journal of Federalism* vol. 46(4), 539-567.

Vanhala, Lisa. 2009. "Disability rights activists in the Supreme Court of Canada: Legal mobilization theory and accommodating social movements" *Canadian Journal of Political Science* vol. 42(4), 981-1002.

Week 5 – February 05, 2019 – Precedent Tracing

Readings:

Banfield, Andrew and Greg Flynn. 2015. "Activism or Democracy? Judicial Review of Prerogative Powers and Executive Action" *Parliamentary Affairs* vol. 68(1).

Flynn, Greg and Tanya Kuzman. 2013. "Meaningful Participation? The Judicialization of Electoral Reform in Canada Post-Figueroa v. Canada" *Canadian Political Science Review* vol. 7(1), 37-46.

Week 6 – February 12, 2019 – Dialogue Theory and Parliament

Readings:

Roach, Kent. 2006. "Dialogue or defiance: Legislative reversals of Supreme Court decisions in Canada and the United States" *International Journal of Constitutional Law* vol. 4(2), 347-370.

Macfarlane, Emmett. 2013. "Dialogue or compliance? Measuring legislatures' policy responses to court rulings on rights." *International Political Science Review* vol. 34(1), 39-56.

Knopff, Rainer, Rhonda Evans, Dennis Baker and David Snow. 2016. "Dialogue: Clarified and Reconsidered" *Osgoode Hall Law Journal* vol. 54,609.

Week 7 – February 19, 2019 - Reading Week

Readings: None Assigned

Week 8 – February 26, 2019 - Neo-Institutionalism and Policy Impacts

Readings:

Smith, Miriam. 2007. "The impact of the charter: Untangling the effects of institutional change" *International Journal of Canadian Studies* vol. 36, 17-40.

Flynn, Greg. 2011. "Court Decisions, NIMBY Claims, and the Siting of Unwanted Facilities: Policy Frames and the Impact of Judicialization in Locating a Landfill for Toronto's Solid Waste." *Canadian Public Policy* vol. 37(3), 381-393.

Pralle, Sarah. 2006. "The "mouse that roared": Agenda setting in Canadian pesticides politics" *Policy Studies Journal* vol. 34(2), 171-194.

Week 9 – March 05, 2019 – Student Presentations

Readings:

To be determined by presenting students, if any.

Week 10 – March 12, 2019 – Student Presentations

Readings:

To be determined by presenting students, if any.

Week 11 – March 19, 2019 – Student Presentations

Readings:

To be determined by presenting students, if any.

Week 12 – March 26, 2019 – Student Presentations

Readings:

To be determined by presenting students, if any.

Week 13 – April 02, 2019 – Student Presentations

Readings:

To be determined by presenting students, if any.

Week 14 – April 09, 2019 – Final Paper due

Course Policies

Submission of Assignments

Written assignments should be provided to the instructor, either at the beginning of class or during office hours prior to class. As a last resort, assignments can be submitted to the box outside of the political science office after hours (date-stamped for the following day) or to the Department of Political Science Office during regular

business hours. Assignments will not be accepted that are slipped under the instructor's or any other door.

Papers received by e-mail or fax will not be accepted without the prior express permission of the instructor on each assignment.

Grades

Grades will be based on the McMaster University grading scale:

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

Late Assignments

Students should make all reasonable attempts to submit papers on the due date. In the event that a legitimate extension is required, students should speak to the instructor ***in advance*** of the due date to make the appropriate arrangements for such an extension. Requests for an extension submitted by e-mail will not be considered – you must speak to the instructor in person.

Examinations and/or assignments related to this and other courses do not constitute or qualify as exceptional circumstances or legitimate excuses.

Late papers may be penalized at the rate of five percentage points per working day for each day of delay, up to a maximum of one week. After one week, the instructor may refuse to accept any late assignments in the absence of proper medical certification justifying an inability to fulfill academic requirements on a prolonged basis. Papers accepted after one week of lateness, in addition to the daily deduction, will be subject to a further deduction of one full letter grade (ie. A to B, B to C) per each week of lateness.

The instructor reserves the right to not provide any comments or feedback on papers submitted after the original deadline, whether an extension is granted or not and whether any other late penalties are applied.

Absences, Missed Work, Illness

Students should make all reasonable efforts to attend and are responsible for the material covered in each and every scheduled class. However, it is understood that some absences are unavoidable and students should make every effort to catch up on missed materials and the instructor will provide reasonable assistance to assist a student. In this regard, students should attempt to obtain lecture notes or other class materials from their colleagues in the class before seeking assistance from the instructor concerning missed lecture and/or class content.

Requests for the instructor to repeat a lecture or seminar discussion (either during office hours or at any other time) or provide access to the instructor's lecture notes are not reasonable requests for assistance.

In the event that students are unable to attend class or tutorials or complete required assignments, they should avail themselves of the MSAF policy or submit the appropriate medical or other documentation to their faculty office to support an accommodation request based on a prolonged absence. In the absence of either an MSAF or a faculty approved accommodation request, the instructor reserves the sole right to not accept any outstanding work in accordance with the late assignments policy.

If a student has submitted the appropriate documentation to their faculty and been granted an allowance for outstanding work or has received the approval of the instructor for the incomplete work, the instructor reserves the sole right to re-allocate the missed grades to other assignments.

Please note that an MSAF submission, where permitted, provides a three day extension for any assignment. In the event that students require a further period of time to submit their outstanding work, they must discuss any further extension with the instructor prior to the end of the three day MSAF extension. In the absence of a further approved extension, an assignment subject to an MSAF becomes a late submission after three days.

The filing of an MSAF does not relieve a student of the obligation to complete the outstanding assignment.

Avenue to Learn

In this course we will be using Avenue to Learn. Students should be aware that, when they access the electronic components of this course, private information such as first and last names, user names for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in this course will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

University Policies

Academic Integrity Statement

You are expected to exhibit honesty and use ethical behavior in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity.

Academic dishonesty is to knowingly act or fail to act in a way that results or could result in unearned academic credit or advantage. This behavior can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: "Grade of F assigned for academic dishonesty"), and/or suspension or expulsion from the university.

It is your responsibility to understand what constitutes academic dishonesty. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](#).

The following illustrates only three forms of academic dishonesty:

1. Plagiarism, e.g. the submission of work that is not one's own or for which credit has been obtained.
2. Improper collaboration in group work.
3. Copying or using unauthorized aids in tests and examinations.

Academic Accommodation of Students with Disabilities

Students who require academic accommodation must contact Student Accessibility Services (SAS) to make arrangements with a Program Coordinator. Academic accommodations must be arranged for each term of study. Student Accessibility Services can be contacted by phone 905-525-9140 ext. 28652 or e-mail sas@mcmaster.ca. For further information, consult McMaster University's Policy for [Academic Accommodation of Students with Disabilities](#).

Faculty of Social Sciences E-mail Communication Policy

Effective January 1, 2010, it is the policy of the Faculty of Social Sciences that all e-mail communication sent from students to instructors (including TAs), and from students to staff, must originate from the student's own McMaster University e-mail account. This policy protects confidentiality and confirms the identity of the student. It is the student's responsibility to ensure that communication is sent to the university from a McMaster account. If an instructor becomes aware that a communication has come from an alternate address, the instructor may not reply at his or her discretion.

Course Modification

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable

notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the student to check his/her McMaster email and course websites weekly during the term and to note any changes.