

RESEARCH ON LAW AND COURTS

Winter 2021

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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; and
- Have enhanced primary research and written and oral communication skills;

Required Materials and Texts

- Various readings (as listed below) available through the McMaster University libraries or Google Scholar and as posted on Avenue to Learn.

Class Format

The class is scheduled for one three-hour on-line or virtual session every week.

To assist with ease of communication and discussion through online sessions, the class will be divided in half and is expected to virtually attend their assigned session of one and a half hours every week.

As a fourth year seminar, students are expected to play an active role in their own learning and learning processes. The challenges presented by the shift to an on-line or virtual learning format means that the course will function, in part, as a group based independent study course. In this regard, the purpose of the weekly online sessions will be to help clarify and answer questions about the weekly readings.

In support of this approach, the instructor will provide a lecture based approach to assist in the understanding of the course content on a weekly basis. This content is intended to help provide a broader context for the material being reviewed and to help clarify or provide questions about the theoretical, methodological and empirical content where need be.

These sessions, however, are not a substitute for conducting the readings on a weekly basis and thinking critically about the theoretical, methodological and empirical content of each article. At the very least, students are expected to have completed the readings and watched the instructor posted content **PRIOR TO** the weekly seminar sessions.

As the normal group dynamic associated with seminars has been disrupted by the shift to online learning, the course will also attempt to replicate the benefits of group discussions through the course assignments. While the use of the Avenue to Learn discussion forum is strongly encouraged, it cannot replace the stronger learning associated with discussion and interaction with others. As such, the course will require significant group work as part of the learning and assessing processes.

As indicated above, the class will be divided into four different groups for the online sessions and students will be assigned by the instructor to specific groups. The course is also broken down into three distinct sections and each group will meet with each of the other groups for one of those sections. This is being done to provide the ability for everyone in the course to interact with all of the other students in the course.

Course Evaluation – Overview

1. Methods Summary Group Papers - 20% each
 - a. Intramural Methods - Feb 04,2021
 - b. Extramural Methods - Mar 04, 2021
2. Research Design - 20%, Mar 04, 2021.
3. Major Research Paper - 40%, Apr 08, 2021.

Course Evaluation – Details

Methods Summary Group Papers (20% each)

Intramural Methods – February 04, 2021

Extramural Methods – March 04, 2021

Students will work with up to three other students in the class and submit two twelve to fifteen page papers for each section of the course.

The focus of the paper should be on the methodological approach(es) that are common, complimentary or competing among the different articles and as clarified during the lecture and class discussions. The paper should not be a simple description of each of the articles, but rather attempt to synthesize the different articles on the methodological commonalities and/or differences.

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.

Due to the group nature of the papers, no MSAFs will be accepted or accommodated for these assignments.

Unless agreed to in advance by all students in the group and the instructor, students will both receive the same grade for the assignment and both are responsible for ensuring that the assignment conforms to the Academic Integrity Policy.

Research Design Paper (20%), due by March 04, 2021.

Students will submit a reasonably brief description of the manner in which they intend to research their chosen topic for the major research paper and a consideration as to why the method they have chosen is likely to produce a better outcome than other methodological options discussed in the course content.

There are two purposes underlying the research design paper. The first purpose is to briefly describe (and receive feedback on) 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.

The second purpose of the paper is to demonstrate an understanding of the different methodological approaches discussed in the course content and the relevance (or lack thereof) of each to the proposed research topic. In short, the second purpose of the paper takes the place of a take home exam on the course content.

Students are encouraged to submit the research design paper as early as possible to receive feedback on their approach to their research for the major research paper. Given that the purpose of the project is to receive feedback before doing the primary research, papers **WILL NOT** be accepted after March 05, 2021.

PLEASE ALSO NOTE THAT THE RESEARCH DESIGN PAPER AND THE SECOND METHODS SUMMARY ARE DUE ON THE SAME DAY. EXTENSIONS ARE NOT LIKELY TO BE GRANTED SO PLEASE TAKE THIS INTO CONSIDERATION WHEN PLANNING YOUR COURSEWORK.

Major Research Paper (50%), due April 08, 2021.

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 either as political/policy actors or 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.

Weekly Course Schedule and Required Readings

Week 1 – January 14, 2021 – Introduction and Organization

No readings assigned.

I. Intramural Research Methods

Week 2 – January 21, 2021 – Activism versus Legal Models

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.

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.

See also:

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.

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.

Week 3 – January 28, 2021 – The Law and Judicial Discourse

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

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

See also:

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 4 – February 04, 2021 – Slack Week

No Readings Assigned

METHODS SUMMARY GROUP PAPER I DUE IN AVENUE TO LEARN DROP BOX.

II. Extramural Research Methods

Week 5 – February 11, 2021 – Litigants and Policy Frames

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.

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

See also:

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

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.

Week 6 – February 18, 2021 – Reading Week

No Readings Assigned.

Week 7 – February 25, 2021 – Institutional Impacts

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

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

See also:

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.

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

Week 8 – March 04, 2021 – Slack Week

No Readings Assigned.

METHODS SUMMARY GROUP PAPER II DUE IN AVENUE DROP BOX.

INDIVIDUAL RESEARCH DESIGN PAPERS DUE IN AVENUE DROP BOX.

Week 9 – March 11, 2021 – Research Progress Update and Feedback

No Readings Assigned.

Class time will be set aside this week for students to meet with their colleagues and/or the instructor to discuss the methodological approach being used in their paper.

Week 10 – March 18, 2021 – Slack Week

No Readings Assigned

Week 11 – March 25, 2021 – Research Progress Update and Feedback

No Readings Assigned

Class time will be set aside this week for students to meet with their colleagues and/or the instructor to discuss their research findings and/or any difficulties in pursuing their primary research evidence.

Week 12 – April 01, 2021 – Slack Week

No Readings Assigned

Week 13 – April 08, 2021 – Final Class

No Readings Assigned

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.

Courses with an On-Line Element

Some courses may use on-line elements (e.g. e-mail, Avenue to Learn (A2L), LearnLink, web pages, capa, Moodle, ThinkingCap, etc.). Students should be aware that, when they access the electronic components of a course using these elements, 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 a course that uses on-line elements will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

Online Proctoring

Some courses may use online proctoring software for tests and exams. This software may require students to turn on their video camera, present identification, monitor and record their computer activities, and/or lock/restrict their browser or other applications/software during tests or exams. This software may be required to be installed before the test/exam begins.

Authenticity / Plagiarism Detection

Some courses may use a web-based service (Turnitin.com) to reveal authenticity and ownership of student submitted work. For courses using such software, students will be expected to submit their work electronically either directly to Turnitin.com or via an online learning platform (e.g. A2L, etc.) using plagiarism detection (a service supported by Turnitin.com) so it can be checked for academic dishonesty.

Students who do not wish their work to be submitted through the plagiarism detection software must inform the Instructor before the assignment is due. No penalty will be assigned to a student who does not submit work to the plagiarism detection software.

All submitted work is subject to normal verification that standards of academic integrity have been upheld (e.g., on-line search, other software, etc.). For more details about [McMaster's use of Turnitin.com](http://www.mcmaster.ca/academicintegrity) please go to www.mcmaster.ca/academicintegrity.

Copyright and Recording

Students are advised that lectures, demonstrations, performances, and any other course material provided by an instructor include copyright protected works. The Copyright Act and copyright law protect every original literary, dramatic, musical and artistic work, **including lectures** by University instructors

The recording of lectures, tutorials, or other methods of instruction may occur during a course. Recording may be done by either the instructor for the purpose of authorized distribution, or by a student for the purpose of personal study. Students should be aware that their voice and/or image may be recorded by others during the class. Please speak with the instructor if this is a concern for you.

Academic Accommodation for Religious, Indigenous or Spiritual Observances (RISO)

Students requiring academic accommodation based on religious, indigenous or spiritual observances should follow the procedures set out in the [RISO](#) policy. Students should submit their request to their Faculty Office **normally within 10 working days** of the beginning of term in which they anticipate a need for accommodation or to the Registrar's Office prior to their examinations. Students should also contact their instructors as soon as possible to make alternative arrangements for classes, assignments, and tests.

Academic Integrity Statement

You are expected to exhibit honesty and use ethical behaviour in all aspects of the learning process. Academic credentials you earn are rooted in principles of honesty and academic integrity. **It is your responsibility to understand what constitutes academic dishonesty.**

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 behaviour 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. For information on the various types of academic dishonesty please refer to the [Academic Integrity Policy](#), located at <https://secretariat.mcmaster.ca/university-policies-procedures-guidelines/>

The following illustrates only three forms of academic dishonesty:

- plagiarism, e.g. the submission of work that is not one's own or for which other credit has been obtained.
- improper collaboration in group work.
- copying or using unauthorized aids in tests and examinations.

Conduct Expectations

As a McMaster student, you have the right to experience, and the responsibility to demonstrate, respectful and dignified interactions within all of our living, learning and working communities. These expectations are described in the [Code of Student Rights & Responsibilities](#) (the "Code"). All students share the responsibility of maintaining a positive environment for the academic and personal growth of all McMaster community members, **whether in person or online.**

It is essential that students be mindful of their interactions online, as the Code remains in effect in virtual learning environments. The Code applies to any interactions that adversely affect, disrupt, or interfere with reasonable participation in University activities. Student disruptions or behaviours that interfere with university functions on online platforms (e.g. use of Avenue 2 Learn, WebEx or Zoom for delivery), will be

taken very seriously and will be investigated. Outcomes may include restriction or removal of the involved students' access to these platforms

Academic Accommodation of Students with Disabilities

Students with disabilities who require academic accommodation must contact [Student Accessibility Services](#) (SAS) at 905-525-9140 ext. 28652 or sas@mcmaster.ca to make arrangements with a Program Coordinator. For further information, consult McMaster University's [Academic Accommodation of Students with Disabilities](#) policy.

Faculty of Social Sciences E-mail Communication Policy

Effective September 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.

Extreme Circumstances

The University reserves the right to change the dates and deadlines for any or all courses in extreme circumstances (e.g., severe weather, labour disruptions, etc.). Changes will be communicated through regular McMaster communication channels, such as McMaster Daily News, A2L and/or McMaster email.