Comparative Bills of Rights

POLI432
Department of Political Science, McGill University
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DRAFT: This syllabus is subject to changes at the instructor’s discretion.

Course overview

This course will offer a comparative analysis of bills of rights in common law jurisdictions, with a special focus on the Canadian, U.K., New Zealand, Australian, and U.S. models of rights protection. We will also review both historical and contemporary evaluative debates about bills of rights.

Course objectives

This course seeks to introduce students to evaluative and empirical debates about bills of rights, and to understand their origins in Anglo-American constitutional history. The primary aim of this course is for students to develop their understanding of bills of rights in different constitutional contexts, but also to learn to think comparatively about what differences exist between them and why they matter. Students with a background in Canadian constitutional law will learn to think critically about the Canadian model of rights protection as it relates to other contexts.

Course materials

TBD

Evaluation (Provisional Outline of Criteria)

The course is evaluated by the following two components:

- Participation (30%). Seminar participation will be evaluated qualitatively, including by reference to the seriousness of preparation for discussion, participation in discussion, and the quality of the interventions.

Term paper (70%). The term paper should be between 6,000 and 8,000 words, inclusive of footnotes. Economy of expression is encouraged. Details TBD.

Class schedule TBD

Office hours TBD
Policy Statements on Academic Integrity and Language McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see www.mcgill.ca/integrity for more information). In accord with McGill University’s Charter of Students’ Rights, students in this course have the right to submit in English or in French any written work that is to be graded. L'Université McGill attache une haute importance à l’honnêteté académique. Il incombe par conséquent à tous les étudiants de comprendre ce que l'on entend par tricherie, plagiat et autres infractions académiques, ainsi que les conséquences que peuvent avoir de telles actions, selon le Code de conduite de l'étudiant et des procédures disciplinaires (pour de plus amples renseignements, veuillez consulter le site http://www.mcgill.ca/integrity). Conformément à la Charte des droits de l’étudiant de l’Université McGill, chaque étudiant a le droit de soumettre en français ou en anglais tout travail écrit devant être noté (sauf dans le cas des cours dont l’un des objets est la maîtrise d’une langue)

Outline of the Readings

Part I: Introduction

A. The English Origins of Bills of Rights


The English Bill of Rights 1689 in English Historical Documents: Volume VIII 1660-1714 122-128


B. The U.S. Bill of Rights

The Constitution of the United States (read it twice, with special attention to amendments 1-10 and 13-15).

Alexander Hamilton “No.78” and “No.84” in The Federalist Papers G. Carey and J. McClellan eds. (Liberty Fund, 2001) pp.401-408 and 442-451


C. Democratic Theory, Bills of Rights, and Judicial Review


D. Commonwealth Bills of Rights
Part II: The Canadian Charter of Rights and Freedoms

A. Structure and History

*Canadian Charter of Rights and Freedoms*


B. Section 1 “Limitations Clause”

*R v Oakes* [1986] 1 SCR 103

*R v Sharpe* [2001] 1 SCR 45


Recommended Reading:

Janet Hiebert *Limiting Rights* (McGill-Queens UP, 1996) Chapter 4 “The Supreme Court on Section 1” pp. 52-88

C. Fundamental Rights

*Frank v Canada (A.G.)* [2019] SCC 1

*Bedford v. Canada* [2013] 3 SCR 1101

D. Section 33 “Notwithstanding Clause”


E. Dialogue Theory and the Charter


A. **Structure and History**

*Human Rights Act, 1998*


B. **Section 3**

*Ghaidan v Godin-Mendoza [2004] 2 AC 557*

James Allan, ‘Portia, Bassano or Dick the Butcher? Constraining judges in the Twenty-First Century’ (2006) 17 King’s College Law Journal 1

Aileen Kavanagh Constitutional Review Under the Human Rights Act (Cambridge UP, 2009) Chapter 3 “Section 3(1) after Ghaidan v. Mendoza” and Chapter 4 “Section 3(1) as a strong presumption of statutory interpretation” pp. 49-114

C. **Section 4 and Parliament’s Joint Committee on Human Rights**

Janet Hiebert and James Kelly Parliamentary Bills of Rights (Cambridge UP, 2016) Chapter 7 “Pre-Legislative Compatibility Assessments Under the HRA” pp.262-303

Scott Stephenson From Dialogue to Disagreement (The Federation Press, 2016) Chapter 8 “The United Kingdom” pp.144-147

D. **Dialogue and Evaluating the HRA**


**Part IV: The New Zealand Bill of Rights Act 1990**

**A. Structure and History**

*New Zealand Bill of Rights Act 1990*


**B. Sections 4 and 6**

*Hansen v. R. [2007] NZSC 7*


James Allan, ‘Speaking with the tongues of angels: the Bill of Rights, Simpson and the Court of Appeal’ (1994) Bill of Rights Bulletin 2 (issue no. 1, September)

**C. Political Rights Review and the Attorney General**


**D. Dialogue and Evaluating the NZBORA**

*Taylor v. A.G. [2017] NZCA 215* (see paras.147-162)


**Part V: Australia**
A. Overview

*Charter of Rights and Responsibilities Act 2006* (Victoria)

*Human Rights Act 2004* (Australian Capital Territory)


B. Dialogue and Evaluating the Australian Bills of Rights

*Momcilovic v The Queen [2011] HCA*


Jeffrey Goldsworthy, ‘*Kable, Kirk* and judicial statesmanship’ (2014) 40 *Monash University Law Review* 75

**Part VI: The U.S. Bill of Rights**

A. Overview

*The U.S. ‘Bill of Rights’* (Amendments 1-10)

Mark Graber *A New Introduction to American Constitutionalism* (Oxford: Oxford UP, 2013); Chapter 1 “Introduction to American Constitutionalism” pp. 1-13; Chapter 7 “American Constitutionalism in the Global Perspective” pp. 174-211


B. Comparing the U.S. to the Commonwealth


