The Judicialization of Politics in Canada and the United States

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Judicialization of Politics in the United States and Canada

The judicialization of politics is a rising phenomenon in both the United States and Canada. The judicialization of politics is defined as “the ever-accelerating reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies”. ¹ High courts are now asked to use judicial review procedures to resolve a varying range of issues, including freedom of religion, right to privacy, immigration, and many others. These courts not only make decisions about rights issues, but have now begun expanding to politics. The courts now encompass matters that include electoral outcomes as well as collective identity issues; all of which have been framed as constitutional issues. These issues have been framed so that they need to be resolved by the courts, not the politicians or the people. In Canada, as well as the United States, there has been an increase in the reliance on the judicial system as evident through various court cases. The judicialization of politics is prominent in Canada and the United States where the judiciary is frequently producing landmark court rulings concerning varying contested issues.

One example of judicialization of politics in Canada is the involvement of the courts in deciding the future of Quebec and the Canadian federation, including the *Quebec Secession Reference*. The *Quebec Secession Reference* \(^2\) is an opinion of the Supreme Court of Canada regarding the legality of secession of Quebec from Canada, under both Canadian and international law. Quebec, a province of Canada, is known for their French language and culture. Beginning with the Quiet Revolution there has been a rise in Quebec nationalism. After a referendum in Quebec, regarding secession in 1995, the outcome was “50.6% to 49.4% loss by the Quebecois secessionist movement.” \(^3\) The Supreme Court of Canada became the decision making body regarding Quebec’s demands for cultural and linguistic autonomy in the case *Reference re Secession of Quebec*. In 1998 the Supreme Court of Canada decided on whether or not Quebec may separate from the rest of Canada. In their decision, they chose to appease both sides. The Court stated that there needed to be a clear vote on an unambiguous question for Quebec to secede. Federalists emphasized that the rule of the court said Quebec has no constitutional rights to secede, and that if separatists were to win a referendum it would only be “considered an expression of the democratic will of Quebeckers” if there was a clear majority on an unambiguous question. \(^4\) Separatists note that the Court “agreed that the democratically expressed will of Quebeckers had to be taken into account in determining whether unilateral secession was constitutional” and that if Quebec expresses a clear support

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\(^2\) [1998] 2 S.C.R. 217


for secession that terms of secession would need to be drafted. The Supreme Court of Canada said Quebeckers are not denied right to self-determination as construed in international law because they are not “denied the ability to pursue their political, economic, social and cultural development within the framework of an existing state.” The Canadian Parliament passed the Clarity Act of 2000 stating that for any province to leave Canada, they must have clear referendum language for independence and must have a super-majority (more than 50%+1). This law allows Parliament to “refuse to enter into negotiations on separatism with Quebec if it determined that one or both of these conditions were not met.” Over the past several years, the Supreme Court of Canada “has become one of the most important public fora (if not the most important one) for dealing with the highly contentious issue of Quebec and its future relationship with the rest of Canada.” The Supreme Court of Canada is the first democratic body who has used their authority to state the fundamental pillars of the Canadian polity. The Court stated that the Canadian Constitution is based on “federalism, democracy, constitutionalism, rule of law, and the protection of minorities.” Even if Quebec were to achieve a majority vote in referendum, this “would not entitle Quebec to secede unilaterally.”

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The Supreme Court of Canada has taken over the question of whether Quebec may succeed from Canada, transforming Quebec’s political status into a judicial question in which they became the central deciding body.

A second example of judicialization of politics in Canada is the debate whether rights and freedoms are federal or provincial. The Constitution Act of 1867 does not contain many rights and freedoms of Canadians, but it does include a specific list of rights of government. The Supreme Court was hesitant to override the authority of the elected legislatures because they were faithful to the notion of parliamentary supremacy in Canada. Issues that arose involving rights and freedoms were brought to the court as federalism questions. One reference that explores the debate between provincial vs. federal rights was the Reference re Alberta Statutes in 1938. This is a landmark reference by the Supreme Court of Canada where the Supreme Court struck down several provincial laws restricting the press. This case overturned Alberta censorship laws. These laws were passed by the Alberta legislature, which believed that the press was being unfairly critical of their politics. This was struck down on the grounds of federalism. The courts “suggested that the federal government possessed the authority to impose restrictions on freedom of press.” The existence of an implied bill of rights protecting civil liberties, such as freedom of press, began to be proposed after this

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landmark case. A second case would be *Switzman v. Elbling* in 1957 concerning a law that shut down a house being used for the propagation of communism. The Court said doing so made propagating communism a crime, and only the federal government can pass criminal laws based on the Canadian Constitution. A third case would be *Dupond v. Montreal* in 1978. This case upheld provincial law banning demonstrations as being within the purview of the provinces, because such a law was related to a local or private matter. These three cases are all examples of how the Supreme Court of Canada became the manner of deciding whether a law was allowed in the scope of provincial powers; or if it was considered ultra vires, outside the provinces’ jurisdiction.

The Supreme Court of Canada “has compromised provincial autonomy by establishing Canada-wide standards in provincial areas of jurisdiction.” The relationship between federalism and rights, as defined by the Supreme Court of Canada, “has reduced federal diversity by applying national standards in provincial areas during charter review.” During this pre-charter era, Canadians began to seek a constitutional list of protected rights to prevent their rights being violated, as in the cases previously mentioned. Before the Charter there were only two rights entrenched within the Constitution. These included religious freedom and

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14 1978] 2 S.C.R. 770


bilingualism and neither proved too effective in protecting minority rights. The Charter of Rights and Freedoms changed things dramatically. With now more than 1,000 Charter cases a year heard by Canadian courts. People who “opposed entrenched rights argued that the rights and freedoms are better protected by elected legislatures, accountable to the electorate for their actions, than by unelected judges.” 17 The judicialization of politics in Canada has given judges more power and has increased their role in government and that “over the past two decades the constitutionalization of rights, the establishment of judicial review have achieved a worldwide expansion of judicial power.” 18 In Canada it is becoming more apparent that politicians are stepping aside when tackling fundamental issues and that “the process of conscious judicial empowerment in relatively open, rule-of-law politics is likely to occur when the judiciary’s public reputation for political impartiality and rectitude is very high, and when the courts are likely to rule, by and large, in accordance with the cultural propensities of the hegemonic community.” 19 Derived from these cases came the Canadian Charter of Rights and Freedoms, in which judges ultimately became the “key decision making body on core political questions.” 20

A third example of judicialization of politics in Canada is what is known as “Charter Cases.” Charter Cases are cases brought to the Supreme Court of Canada regarding the Charter of Rights and Freedoms. In 1982 Canada adopted the Canadian Charter of Rights and

Freedoms, which is essentially a constitutional bill of rights. With this adoption came a strong judicial review of legislation as well as executive acts. This has “undoubtedly expanded the Canadian judiciary’s sphere of activity, and in that sense has increased the judiciary’s power.”

One example of a court case, following the adoption of the Canadian Charter of Rights and Freedoms in 1982, was the landmark case *Operation Dismantle v. The Queen* in 1985. In this case a disarmament group argued that under the constitutional “right to life and security of the person,” the Canadian federal government should not allow the United States to test cruise missiles over Canadian property. They felt this violated their right to life and security of the person because this made nuclear war more probable. The question before the court became whether or not an act by the cabinet and foreign policy defense issue can be reviewed by the courts. The court held unanimously that “if a case raises the question of whether executive or legislative action violated the Constitution, then the question has to be answered by the Court, regardless of the political character of the controversy...disputes of a political or foreign policy nature may be properly cognizable by the courts.” This allows the Supreme Court of Canada to make decisions regarding the Crown prerogatives because section 32 of the *Charter of Rights and Freedoms* “should be interpreted to apply to all government actions.” This decision has led to an increase in the judicialization of core prerogatives of legislatures and executives in areas such as foreign affairs and national security.

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22 [1985] 1 S.C.R. 441
A second example of a court case is *RWDSU v. Dolphin Delivery* 25 in 1986. This restricted the scope of the Charter of Rights and Freedoms. In this case The Retail, Wholesale and Department Store Union wanted to have Dolphin Delivery declared as allies of Purolator, an employer of union members. This would allow the union to picket Dolphin. Dolphin obtained an injunction against secondary picketing on their premise because common law does not permit secondary picketing. The union introduced this case because they felt their rights to freedom of expression and freedom of association were violated under section two of the Charter of Rights and Freedoms. In this case the Supreme Court of Canada “narrowed the realm of state action to which the Charter applied by removing from that realm judicial decisions applying common law (in this case a common law rule against secondary picketing) in actions involving private parties.” 26 Through this case the Supreme Court of Canada made it clear that the Charter of Rights and Freedoms only applies to the government and individual relationships, not to individuals and individual relationships. As there are provincial human rights codes enforced by commissions to do that. This means that the Charter cannot be used by someone who believes that they have been discriminated in hiring or firing in their job because “forms of discrimination like these are pervasive throughout society, but they are not inequalities that can be overcome using the Charter.” 27

A third example of a court case is the Alberta Labour Reference of 1987. 28 The issue in this case is whether section two of the Charter of Rights and Freedoms includes a right to strike. In the 1970’s and 1980’s there were several strikes in Alberta by nurses and public servants. In 1983, the Alberta Labour Act was amended to prohibit strikes and lockouts by public servants, hospital employees, firefighters, and nurses (the police were already prohibited). The Supreme Court of Canada denied that “the right to strike and other collective bargaining rights could be included within the Charter’s guarantee of freedom of association.” 29 The Courts decided that “the rights to bargain collectively and to strike are not fundamental rights or freedoms that deserve the constitutional protection of freedom of association under the Charter. They are the creation of legislation, involving a balance of competing interest and their scope and limitations are appropriately determined by legislatures.” 30 These three Supreme Court of Canada cases are prime examples of how Supreme Court rulings, regarding the Canadian Charter of Rights and Freedoms, are used to define the scope and authority of judicial review of the Supreme Court to strike down laws.

A final example of judicialization of politics in Canada is the reasonable limits clause in the Canada Charter of Rights and Freedoms. This states that rights are “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic

28 [1987] 1 S.C.R. 313
society.” 31 Under the Charter of Rights and Freedoms reasonable limits clause “the Court can defer to legislative judgment on the balance to strike between constitutional equality rights and other important societal interests.” 32 There are limits on the reasonable limits clause. One example of this is the court case The Queen v. Oakes 33 in 1986. In this case the court was to determine whether a provision in the Narcotic Control Act violated the Charter of Rights and Freedoms. They believed it violated the presumption of innocence from section 11 of the Charter. Under the Act, a person who was found possessing drugs was seen as automatically guilty of being a drug trafficker. A person would need to provide evidence to prove his innocence on the more serious charge of drug trafficking. From this landmark case, the Court created the Oakes test. The Oakes test first asks is the “objective behind limiting a right sufficiently important to justify limiting rights,” next it asks if “the limitation of rights is proportionate to the importance of the governments objective.” 34 Underneath the second question, the Oakes test has three conditions that a limitation must meet. The first one is that it is “rationally connected to governments objective, second that it “impairs the right as little as necessary” and third the “harm done must not exceed good done.” 35 One example of a case involving the reasonable limits clause is when the Court dismissed a case from university

31 The Canadian Charter of Rights and Freedoms
33 [1986] 1 SCR 103
professors in *McKinney v. University of Guelph* 36 in 1990. These university professors rejected the universities’ policies requiring retirement at the age of 65 years old. A second example is the Supreme Court of Canada when they ruled that “a social welfare law is found to be unconstitutional because of its under-inclusiveness the courts must not extend the law’s coverage if doing so would have major budgetary consequences.” 37 These two cases are examples of how the Supreme Court of Canada can use the reasonable limits clause to violate people’s rights and freedoms. The “reasonable limits clause allows the government to justify infringements on rights and freedoms as reasonable in a free and democratic society.” 38

Similarly to Canada, the United States has also experienced a judicialization of politics. The United States Supreme Court is frequently asked to decide on matters that “raise serious questions about the boundaries of democracy.” 39 This has been a common practice in the United States since the beginning of the nineteenth century. Alexis de Tocqueville observed that “scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.” 40 American politics has been Constitution centered and the Constitution creates three separate and equal branches of government. Since we have a federal

36 [1990] 3 S.C.R. 229
constitutional system it is inevitable that the Supreme Court would become the mediator is
many of the controversial political issues and issues that arise between the state and national
government. The Supreme Court asserted judicial power in *Marbury v. Madison* \(^{41}\) when they
made a decision about the powers of the federal government. They found that the Supreme
Court has the authority to review acts of Congress and determine whether they are
unconstitutional. This established the precedent of judicial review. Chief Justice Marshall’s
ruling interpreted the Constitution to mean that the Supreme Court had the power of judicial
review. This means that the Supreme Court had the right to review acts of Congress and actions
of the President. Marshall argued that the Constitution is the “supreme law of the land” and
that if the Court found a law unconstitutional they could overrule the law. Marshall wrote that
“It is emphatically the province and duty of the judicial department to say what the law is.” \(^{42}\)
This phenomenon has been prevalent since the United States Supreme Court Decision in *Brown
v Board of Education* \(^{43}\) in 1954. Before *Brown v. Board of Education*, the United States
Supreme Court was conservative with judicial activism. Brown “transformed judicial review
from an impediment to social progress into an effective tool for implementing a progressive
policy agenda that powerful state and federal legislators resisted.” \(^{44}\) The Supreme Court
became an active participant in shaping and administrating policies in a variety of areas as
evident through, “the change in the annual rate of Supreme Court decisions to overturn acts of

\(^{41}\) 5 U.S. 137 (1803)
\(^{42}\) 5 U.S. 137 (1803)
\(^{43}\) 347 US 483 (1954)
\(^{44}\) Keith Banting, George Hoberg, and Richard Simeon, *Degrees of Freedom: Canada and the United States in a
Congress, state laws, and municipal ordinances.” 45 Since Brown, the rates of acts overturned has nearly tripled and the “judicialization of politics evident in this data has been facilitated by the development of a distinctive litigation process.” 46 Judicialization in the United States is associated with the movement toward judicial protection of human rights. This was initiated by the landmark desegregation decision in Brown v. Board of Education in 1954 and they used this court case to correct a process and create a national norm.

After establishing judicial review in 1803, the United States Supreme Court began to nullify federal statutes. One example of this is when the United States Supreme Court “struck down Congress’s attempt to probity the expansion of slavery into federally controlled territory.” 47 This is the landmark case Dred Scott v. Sandford. 48 It held that the federal government did not have the power to regulate slavery in the territories and that people of African descent (free and slave) were not protected by the United States Constitution and they were not United States citizens (this was prior to the 14th Amendment.) The opinion of the court, written by Chief Justice Roger B. Taney, stirred debate. The decision was 7–2, and every Justice besides Taney wrote a separate concurrence or dissent. For the first time since Marbury v. Madison, the Court held an Act of Congress to be unconstitutional. A second example is when the Supreme Court established reform on working conditions by limiting the power of

48 60 U.S. 393 (1857)
both the federal and state government. In *West Coast Hotel Co v. Parrish*\(^{49}\) the United States Supreme Court upheld the constitutionality of minimum wage legislation by the State of Washington. This overturned an earlier decision in *Adkins v. Children’s Hospital*. \(^{50}\) This decision ended the Lochner era which was a period in the United States during which the Supreme Court tended to invalidate legislation aimed at regulating business. *West Coast Hotel Co v. Parrish* established a standard for maximum working hours as well as a minimum wage. Amendments to the Constitution also are reviewed by the courts.

The United States has a history of courts’ determining constitutional limits for the legislature. This results not only in legislation being made in courts, but also subjecting legislation made in the House and Senate to judicial regulation. Because of this the appointments to the Supreme Court have become partisan and political issues have been on the forefront. The Supreme Court is successfully blocking legislation on the grounds that it infringes on fundamental rights. One example of this is *Planned Parenthood v. Casey* \(^{51}\) in which the court refused to permit certain legislative restrictions on access to abortions. The Supreme Court also makes laws and acts when the legislature refrains from doing so. There are many famous instances of this including extension of constitutional protections to those accused of crimes in *Miranda v. Arizona* \(^{52}\) and *Mapp v. Ohio*. \(^{53}\) There is also the rights to

\(^{49}\) 300 U.S. 379 (1937)  
\(^{50}\) 261 U.S. 525 (1923)  
\(^{51}\) 505 U.S. 833 (1992)  
\(^{52}\) 384 U.S. 436 (1966)  
\(^{53}\) 367 U.S. 643 (1961)
abortion in *Roe v. Wade*,\(^{54}\) establishing busing plans in school districts in *Swann v. Charlotte-Mecklenburg Board of Education*\(^ {55}\) and development on rules governing prayer in public schools in *Santa Fe Independent School District v. Doe, Lee v. Weisman*, and *Wallace v. Jaffree*.\(^ {56}\) “In each of these cases, courts developed policies that had far-reaching and quite direct political ramifications. Politicians sometimes responded by organizing campaigns to impeach sitting justices, and some have tried to develop new legislation aimed at testing and narrowing the reach of judicial doctrines, as in *Casey*, where the Pennsylvania legislature tried to erode the protections granted in *Roe*. Most frequently, the political response has been to try to influence the composition of the courts in the appointment process.”\(^ {57}\)

Court made policies have become a major topic in electoral campaigns. Republicans tend to be against the Supreme Court because of decisions about abortion. Democrats tend to protect the court because they stand for rights to abortion and family planning services. Reactions to court developed policies in civil rights has shaped the development of American politics and congressional decisions.

The amendments to the Constitution, including the first 10 amendments known as the Bill of Rights have been involved in numerous landmark court cases challenging their meaning over the years. “Under the cruel and unusual punishment clause, courts have similarly involved themselves in prison administration, sometimes to the point of determining the water

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\(^{54}\) 410 U.S. 113 (1973)
\(^{55}\) 402 U.S. 1 (1971)
\(^{56}\) 530 U.S. 290 (2000)
temperature of showers and the weekly rate of intake and release of prisoners. Cases involving racial discrimination in public housing also generate these kinds of institutional remedies.” 58

The Court is asked to say what the government can and cannot do, this is often called their blocking function. This is an important tool of the court and is used in a variety of areas, especially in social reform legislation. One of the landmark cases that the United States Supreme Court handled was the blocking of government regulations of abortion in Roe v. Wade 59 in 1973. Roe v. Wade rule 7-2 that a right to privacy under the due process clause of the 14th Amendment extended to a woman’s decision to have an abortion. It was decided that a person has right to abortion until viability. The Roe decision defined "viable" as being "potentially able to live outside the mother's womb, albeit with artificial aid" and that "is usually placed at about seven months (28 weeks) but may occur earlier, even at 24 weeks. A second landmark case is Citizens United v. FEC 60 in 2010 which removed restrictions on political campaign spending. In Citizens United v. Federal Election Commission the Supreme Court held that the First Amendment prohibited the government from restricting independent political expenditures by corporations and unions. The nonprofit group Citizens United wanted to show a critical movie on Hillary Clinton and to advertise this movie on television as commercials. This was a violation of the 2002 Bipartisan Campaign Reform Act (commonly known as the McCain–Feingold Act or "BCRA"). In a 5–4 decision, the Court held that portions of BCRA violated the

59 410 U.S. 113 (1973)
60 558 U.S. 310 (2010),
First Amendment. A third landmark case is *Kelo v. City of New London* \(^{61}\) in 2005 which sanctioned the use of eminent domain by local governments in order to seize property from one set of private owners and turn it over to others. *Kelo v. City of New London* decided that you could use eminent domain to transfer land from one private owner to another to further economic development. In a 5-4 decision, the Court held that the general benefits that a community would enjoy from economic growth qualifies private redevelopment plans as “public use” under the Takings Clause of the Fifth Amendment to the United States Constitution. This case involved the condemning of houses in the city of New London, Connecticut. It was privately owned property that was being taken for a comprehensive redevelopment plan by the nonprofit New London Development Corporation which was formed to help the city plan for economic development. They were going to have a Pfizer plant which would create jobs, increase taxes and other revenues, increase use of the city’s waterfront, and revitalize the rest of the city including the downtown area. The court ultimately decided that the city’s taking of private property to sell for private development qualified as a “public use” within the takings cause of the 5th amendment. The city of New London was not taking the land to benefit a private individual or group but to use it to follow an economic development plan that would benefit the entire community. A third case is *West Virginia v. Barnette* \(^{62}\) in 1943 which relied upon the first amendment and free speech to decide upon religious liberty and the second flag salute case. These examples of landmark court cases show

\(^{61}\) 545 U.S. 469 (2005)

\(^{62}\) 319 U.S. 624 (1943)
that the Supreme Court handles cases that deal with the amendments to the Constitution by interpreting their meanings.

The Supreme Court also tells the government what it must do as well. This is known as their command function and it means that “policy advocates might be able to achieve their goals by relying upon judicial arguments and orders rather than working thorough the ordinary political process of bargaining, persuasion, negotiation, and elections. Various policy advocates, ranging from those seeking to improve prison conditions to those pressing for policies that would ameliorate poverty turned away from the political process and came to rely increasingly on a judicial strategy to press their claims and causes.” 63 One example of this is *Monroe v. Pape* 64 in 1961. The U.S. Supreme Court ruled that citizens could bring The Civil Rights Act of 1871 Section 1983 suits against state officials in federal courts. Section 1983 of the Civil Rights Act of 1871 imposes civil liability on any person who deprives another of constitutional rights. This became a way inmates could challenge the constitutionality of the conditions of their life in prison. This led to prison condition reform. In another case, *Robinson v. California* 65 in 1962 the Court extended the Eighth Amendment's prohibition against cruel and unusual punishment to the states. A second example is *Hills v. Gautreaux* 66 and this was a decision of the United States Supreme Court. In this case, a number of Chicago families living in housing projects were

64 365 U.S. 167 (1961)
65 370 U.S. 660 (1962)
66 425 U.S. 284 (1976)
awarded Section 8 vouchers allowing them to move to the suburbs in compensation for the housing project's substandard conditions. Carla Anderson Hills was the United States Secretary of Housing and Urban Development at the time and the court ruled that the department had violated the Fifth Amendment and the Civil Rights Act of 1964.

There are two landmark court cases that deal with civil rights regarding the constitutionality of laws limiting racial discrimination and they were based on the commerce clause. This happened in *Heart of Atlanta Motel v. United States* and *Katzenback v. McClurg* in 1964. In *Heart of Atlanta Motel v. United States*, Title II of the Civil Rights Act of 1964 forbade racial discrimination by places of public accommodation if their operations affected commerce. The Heart of Atlanta Motel in Atlanta, Georgia, refused to accept Black Americans and was charged with violating Title II. The Court held that the Commerce Clause allowed Congress to regulate local incidents of commerce, and that the Civil Right Act of 1964 passed constitutional muster. The Court thus concluded that places of public accommodation had no "right" to select guests as they saw fit, free from governmental regulation. In *Katzenback v. McClurg*, The Civil Rights Act of 1964 prohibited restaurants that obtained food through interstate commerce from discriminating against customers based on race. McClung owned Ollie’s Barbecue in Birmingham, Alabama, which provided take out service to black customers but allowed only white customers to dine on the premises. While the clientele was local, a substantial portion of the food served by the restaurant moved in interstate commerce. McClung and other plaintiffs

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67 379 U.S. 241 (1964)
68 379 U.S. 294 (1964)
brought this lawsuit to enjoin United States Attorney General Nicholas Katzenbach from enforcing Title II of the Act against his restaurant on the grounds that it was unconstitutional. The Supreme Court held that the Commerce Clause grants Congress the power to regulate local business activity if any part of it affects interstate commerce, if the aggregate of activity of that industry has a substantial effect on interstate commerce. These cases caused Justice Goldberg to be distressed because they were testing the Civil Rights Act of 1964 and this was not built in the constitution through the equal protection clause but through the commerce clause. She worried that the Court was focusing on products and not people who were being denied service. Cases like the two described above caused many to worry that civil liberties were being framed as commerce and Justice Goldberg said that “It sounds like hamburgers are more important than human rights.” 69 Since these cases, civil rights have been heavily dependent on the expansion of the commerce clause.

The United States Supreme Court has been asked to determine the political future of leaders by becoming the decision maker in national elections. Clearly, the national dispute in Bush v. Gore 70 over the American presidency is an example of this. Those critical of the United States Supreme Court’s role in determining the 2000 Presidential election think that Bush v. Gore is the most prominent example of judicialization of politics in the United States.

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70 531 U.S. 98 (2000)
This is considered to be the most “momentous decision on behalf of the American populace. Although reliance on courts and adjudicative means to resolve contentious moral and political questions is by no means a new phenomenon in the United States, never before had a presidential election hung on the judgment of the United States Supreme Court, let alone on a decision that split the country into bitterly opposed camps, and which was ultimately settled by a single vote.”  

The political fate of George Bush and Al Gore in the 2000 Presidential election was ultimately determined by the United States Supreme Court. This is an example of how political agendas and policies are now being intruded by the judiciary.

The judicialization of politics is prominent in both Canada and the United States where the Supreme Court is becoming more willing to interfere with policies and is frequently producing landmark court cases that are changing political agendas. High courts in each country are now asked to use judicial review to make decisions on a varying range of issues including freedom questions, rights questions, as well as political questions. The Courts now are looked to as the deciding body in political issues; such as electoral outcomes and federal powers. These have been framed as constitutional issues that the courts need to resolve, not the elected politicians or the general public. There has been a tremendous increase in the reliance on courts for dealing with the law. Chief Justice of the Israeli Supreme Court has stated that “the world is filled with law; anything and everything is justiciable!” and this has “become a

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widely accepted motto among many courts and judges worldwide.” 72 All over the globe, especially in Canada and the United States, the legislature has been increasingly deferring to the judiciary and the judiciary is intruding “into the prerogatives of legislatures and executives, and a corresponding acceleration of the process whereby political agenda have been judicialized.” 73 The judicialization of politics is a rising phenomenon in the United States and Canada where there has been an increase in the reliance on the judicial system as evident through various court cases.