HIS 262S: #20 From Meech to Charlottetown and beyond:

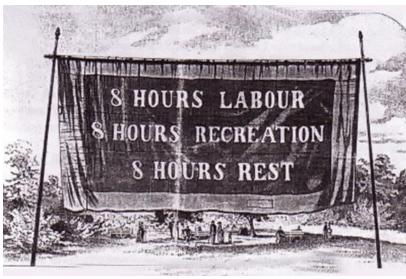
The Constitution in Action and the Role of the Courts

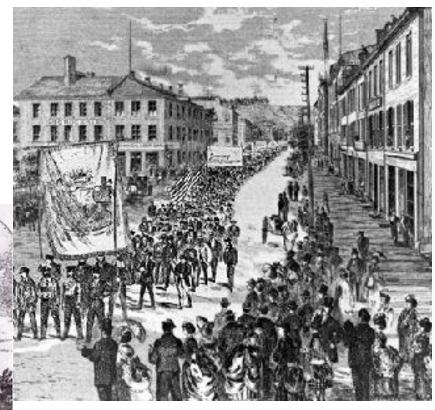
Professor Heidi Bohaker Teaching Assistants Simon Vickers and Sheyfali Saujani Working for Change Before the Charter

Nine Hour Movement

Canadian Labor Union (CLU), formed in April 1873.

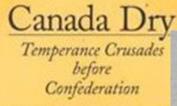
Kings of Labour





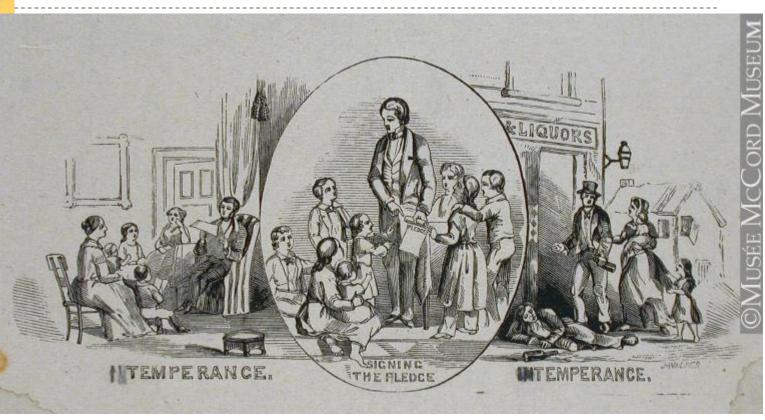
On 15 May 1872, Hamilton's "nine-hour pioneers" defied opposition with a procession of 1500 workers (*Canadian Illustrated News*, courtesy Library and Archives Canada/

Temperance Before Confederation









Temperance advertisement

John Henry Walker (1831-1899)

1859, 19th century

Ink on paper on supporting paper - Wood engraving, McCord Museum



Prohibition After Confederation

- Dominion Alliance for the Total Suppression of Liquor Traffic (1876)
- Canada Temperance Act (1878)
- War-time prohibition (WWI)



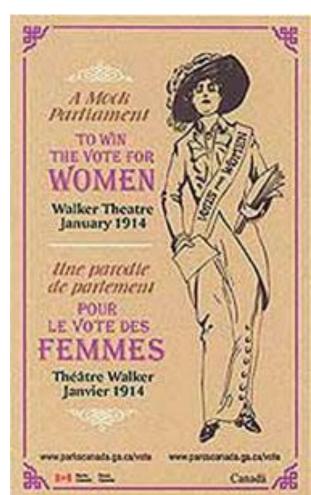


8 March (above "1/2 mile of barmen") and 16 March 1916. Prohibition Parade in Toronto, John Boyd fonds, LAC

Women's Suffrage



National Council of Women At Rideau Hall, Ottawa, Ontario, October 1898.



The Eugenics Movement

Alberta Sexual Sterilization Act, 1928-1972

Classification Terms, 1900s

TERM

Idiot below 20 or 25

Imbecile 20-25

Moron/ Half-Moron 50-70 or 75

Dull Normal 80-90

(Average IQ on Stanford-Binet Scale: 100)

Note: The term "feeble-minded" and "mentally defective" were general terms that had different meanings in various countries in the early twentieth century.

Canadians and British tended to use it to denote those with a higher level of intelligence, IQ in the 70 range on the Binet Scales of Intelligence or a mental age of twelve years.

Americans used the word to denote all mental defectives generally.

"Retarded" was another general term in use.



Helen MacMurchy

The Charter, Meech and Charlottetown

1982, Canada Act



- Canada now able to amend its own constitution without going to Britain's parliament.
- Change of tradition of Parliamentary Supremacy from the UK
- Charter of Rights and Freedoms now supreme over Parliament.

Reimagining Confederation, Including Quebec

1987 Meech Lake Accord

- 2 parts
 - 1. Quebec as distinct society
 - ▶ 2. Increase provincial powers broadly, including letting provinces nominate for Senate and Supreme Court.

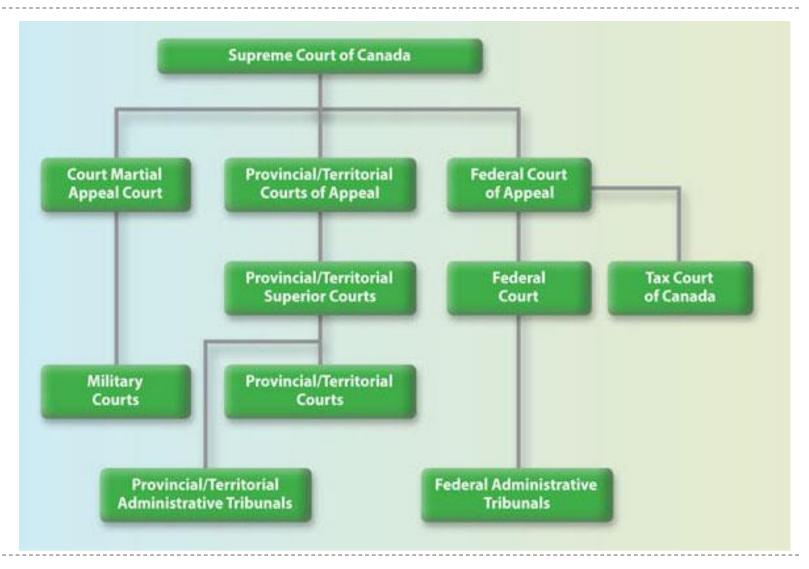
1992 Charlottetown Accord

- Widespread consultation.
- More powers to provinces.
- End of disallowance and declaratory provisions

The Supreme Court

An activist court?

The Canadian Judicial System



Canada/US Comparison

Canada

- Supreme Court nominees appointment by PM
- Charter of Rights
- Indictable Offenses/ Summary Offences
- All wear robes (no wigs)
- Courts officially bilingual
- Judges appointed at all levels

United States

- Supreme Court confirmed by Senate
- Bill of Rights
- Felonies/Misdemeanours
- Only judges robe
- Judges/ Attorneys elected (most but not all)

Constitution Act, 1982

- Charter of Rights and Freedoms "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law"
 - Fundamental Freedoms
 - Democratic Rights
 - Mobility Rights
 - Legal Rights
 - Equality Rights
 - Official Languages of Canada: English and French
 - Minority Language Education Rights
 - Section 25: Aboriginal Rights and Freedoms not affected by Charter
 - Rights and Freedoms recognized in Royal Proclamation of 1763
 - Rights and Freedoms that exist through land claims agreements or that may be acquired
 - Section 35: Aboriginal = Indian + Inuit + Métis
 - Quebec not a signatory, but still subject to.

Charter of Rights and Freedoms



CHARTE CANADIENNE DES DROITS ET LIBERTÉS

APPRACTA





Garantie des droits et libertés

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Libertés fondamentales

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Droits démocratiques

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Garanties juridiques.

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Langues officielles du Canada

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Droits à l'instruction dans la langue de la minorité

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At Subscript.

Landmark Decisions about Big Questions

Abortion
Same-Sex Marriage
The Right to Die

R. v Morgentaler (1988)

 On grounds that abortion law (Section 251 of the Criminal Code) violated Section 7 of the Charter



LGBTQ Rights

- ▶ Trudeau, 1967 amendment to Criminal Code
- Supreme Court Cases
 - ▶ 1995 Egan v. Canada (Social Security for Partner)
 - 2000 James Deva & Little Sisters Bookstore (Banned Books/Canada Customs)
 - ▶ 2002 Chamberlain v. Surrey School District No. 36
 - ▶ 2005 Marriage legal across the country

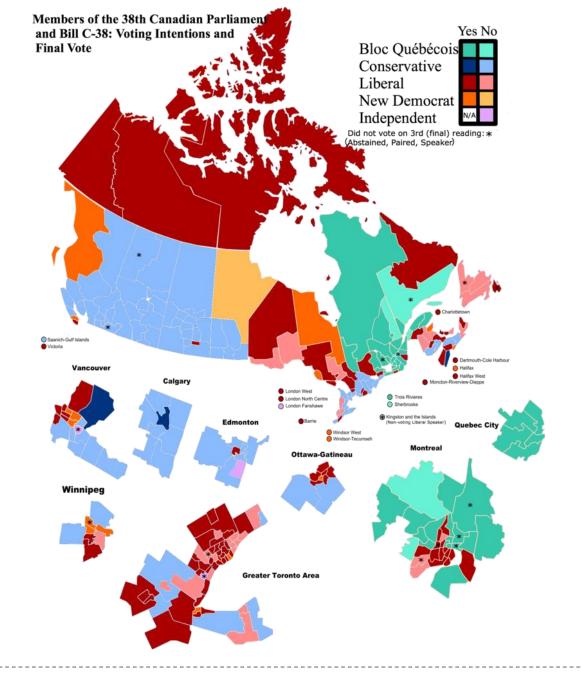
2004: Re: Marriage The Act Respecting Certain Aspects of Legal Capacity for Marriage

Free vote in the House



▶ Civil Marriage Act, 2005.





Carter v. Canada (2015)

section 14 and paragraph 241(b) of the *Criminal Code* are unconstitutional because they prohibit physicians from assisting in the consensual death of another person.



Indigenous Rights and Treaty Cases

- Calder (1973)
 - Recognized Indigenous title
- Sparrow (1990)
 - Aboriginal rights such as fishing are protected under the charter.
- Delgamuukw v British Columbia (1997)
 - Oral tradition as evidence
- Powley (2003)
 - Defining Metis rights
- Tsilhqot'in Nation v. British Columbia (2014)
 - ▶ Duty to consult on traditional territory, provinces can't do clearcut logging on lands protected by Aboriginal title.
- Daniels (2016)
 - Recognition of non-status Indians as Indians.

THAT'S ALL!

SEE YOU Monday!

Professor Heidi Bohaker (heidi.bohaker@utoronto.ca)