J. Hiebert, “Wrestling with Rights: Judges, Parliament and the Making of Social Policy,” *IRPP Choices* 5:3 (June 1999)

**Overview**

Charter fundamentally changed the roles and responsibilities of Cdn courts. Scope of their constitutional judicial role no longer confined to arbitrating jurisdictional conflicts, thus ending the reluctance of judges to enter into the explicitly political sphere. This new judicialization of policy is not the only constraint on governments (interest groups, govt lawyers, political concerns) all play into it. Nonetheless, the long and short of it is that the Charter has changed the political environment and climate of legislating, and is influencing legislative choices at all stages of the policy process.

**Background**

* Paper notes two divergent views re: Charter’s likely influence on political will to pursue policies that attract rights-based criticisms:

1. Charter offers convenient refuge for politicians to avoid or delay difficult political and moral decisions (pessimistic view)
2. Parliament will not be treated or consider itself as an inferior partner in constitutional interpretations (optimistic view) – Parliament instead becomes part of a dialogue on how the Charter should be interpreted

* Policy stages at which Charter can influence policymaking include:
  + Internal scrutiny of proposed legislation (evaluating bills in the Dept of Justice) – Charter effects how policies are assessed and analyzed before they are introduced to Parliament
  + Affects legislative responses to judicial decisions – decisions on subsequent legislation
  + Affects political responses to Charter conflicts