R. Hirschl, “Constitutional Rights Jurisprudence in Canada and the United States: Significant Convergence or Enduring Divergence?” in S.L. Newman, ed. *Constitutional Politics in Canada and the United States* (Albany SUNY Press, 2004)\*\*\*

**Overview**

Hirschl makes 3 points: (1) over the past two decades, the rights jurisprudence of the two countries has converged rapidly in matters dealing with negative rights; (2) a more moderate (albeit significant) convergence has developed over past few years with respect to the two countries judicial interpretation of positive entitlements (SCC has excluded positive social welfare rights from ambit of Charter, though to a lesser degree than US counterpart); and (3) in spite of powerful centripetal forces of convergence, there remains a significant differences btw two countries’ constitutional rights adjudication with respect to group rights. Certain group rights – minority language and education rights, aboriginal peoples’ rights, and affirmative action guarantees – have been awarded wider constitutional recognition and a more generous judicial interpretation in Canada.

**Background**

* Few would disagree that Charter marked dramatic change in de jure status of rights and liberties in Canada, and provided SCC with necessary institutional framework to become more effective in its efforts to protect the basic rights of disadvantaged groups and individuals
* Political theorists draw lines between negative rights (freedom from), positive rights (freedom for/to, basic social rights), and collective rights
* Analysis really focuses on post-Charter convergence/divergence trends

**Conclusion**

* Cdn constitutional rights revolution still in its formative stages (esp. when compared to US). Yet a few conclusions can be drawn from the chapter:
  + Given the rapid ‘Americanization’ of Cdn politics, society, and mass culture – NAFTA, neoliberalization, and (most importantly) the 1982 constitutionalization of rights and fortification of judicial review in Canada – the gradual convergence of rights discourses in US and Canada is inevitable
  + Brief analysis of 2 countries’ records on constitutional rights jurisprudence reveals common tendency to adopt a narrow conception of rights – such that as far as negative rights are concerned, the judicial interpretation of rights is inclined to be more generous and thus plant the seeds of social change
  + In spite of broad and rapid convergence of US and Cdn rights discourses, deeply entrenched differences btw the 2 countries’ social, cultural, and political legacies continue to promote divergence in the 2 countries’ constitutional recognition and judicial interpretation of group rights.