


Constraining the Court: Judicial Power and Policy Implementation in the Charter Era

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James Kelly's *Constraining the Court: Judicial Power and Policy Implementation in the Charter Era* provides a novel approach to understanding the inter-institutional relationship between the judiciary and legislatures in Canada. Kelly argues that the Supreme Court of Canada functions in an "implementer-dependent institution," where the Court depends on the implementation of its decisions by federal and provincial legislatures (Kelly, 2024). While the judiciary retains the power to invalidate legislation which does not adhere to the *Canadian Charter of Rights and Freedoms*, the jurisdiction of provinces allows them to differ from Court decisions. Moreover, Kelly suggests that the Court's power is constrained by negative rights outlined in the *Charter*, which afford the government greater discretion in implementing judicial decisions. Negative rights do not require the government to provide a service but instead prohibit it from interfering with the rights of the individual (Kelly, 2024, p. 11). These factors help explain the policy and political constraints which lead to non-compliance with judicial invalidations, as well as broader implications for judicial impact. Kelly argues that the Court's invalidation power is constrained by legislatures' ability and willingness to implement decisions. Kelly relies on Linda White's (2024) identification of the implementation gap of equality rights cases, in which the division of powers in a federation leads to an implementation gap of judicial decisions (Kelly, 2024, p. 22). Specifically, the Court is reliant on legislatures to not only introduce legislation that responds to its decision, but for provincial governments to correctly and consistently implement a policy response in areas under provincial jurisdiction. The result is an examination of judicial impact through a federalist lens, while drawing on the role of advocacy groups and case salience to explain why legislative outcomes differ from the Court ruling.

The primary strength of this book is a nuanced approach to the understanding of judicial impact and use of case evidence to support the complex dynamics of provincial policy implementation. Chapter 1 provides a comprehensive overview of the inter-institutional dialogue between the judiciary and legislatures and how it has dominated the field of judicial studies in Canada since its inception (Hogg & Bushell, 1997; Baker, 2010; Knopff et al., 2017; Macfarlane, 2013). This book goes beyond the dialogue debate by focussing on the more interesting questions surrounding the political incentives of governments implementing, or not implementing, Court decisions. This research updates the literature by providing a holistic approach to the question of why judicial-legislative disagreement occurs despite the judiciary's power of invalidation. Kelly's approach reorients the understanding of the power of the courts to include the various constraints and incentives in the policy environment outside of those imposed by the judiciary.

This book successfully mobilizes evidence from high salient issues such as medical assistance in dying, safe injection sites, and official languages protections in support of the argument. In chapters 2 to 5, Kelly focusses on judicial invalidations of Quebec statutes which resulted in provincial non-compliance. The cases highlighted in these chapters focus on the distinctiveness of Quebec politics and French language protections. Chapters 6 to 8 move beyond Quebec to provide case studies of federally introduced policies in areas of provincial jurisdictions. Issues in supervised consumption sites (chapters 6-7) and medical assistance in dying (chapter 8) provide examples of the implementation gap of Supreme Court decisions provincially. The cases used

provide a clear federalist component to support Kelly's central thesis: that federalist divisions of power are crucial in explaining why policies do not implement Court decisions.

This book relies heavily on a discussion of Quebec politics, which highlights the novelty of this particular federal-provincial relationship, but it may limit the generalizability of how the inter-institutional relationship functions outside of the unique Quebec case study. Further, although federalism is a key component in explaining the implementer-dependent relationship, the policy environment is complex, and this book provides what might be considered a first step in exploring these dynamics. Future research should continue to explore the implementer-dependent environment in salient and non-salient policy cases while continuing to investigate other relevant variables in the policy process (e.g. media framing, public opinion, and party discipline). This notwithstanding, the book fills an important theoretical gap in understanding the legislative-judicial relationship, by considering the political and institutional structures which limit the impact of Supreme Court of Canada decisions. Kelly provides a refreshing approach to understanding the potential impact of judicial decisions on policymaking and moves away from a judicial-centric understanding of Canadian institutions. This book is critical for scholars engaged in judicial politics, as it serves the important purpose of bridging the gap between a judicial decision and its subsequent policy impact. In particular, this book advances the scholarship of judicial impact while providing a greater institutional understanding for Canadian politics scholars broadly.


Competing interests. The author declares none

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L'éthique et le génie québécois : Entre perfectionnisme institutionnel et délibération éthique

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L'ouvrage de Marc-Kevin Daoust et Thomas Mekhaël constitue une contribution majeure à la réflexion sur les enjeux éthiques dans le domaine de l'ingénierie au Québec. Il offre des perspectives novatrices et illustre, à certains égards, l'évolution sociohistorique et politique