The Charter of Rights and the Legalization of Politics in Canada

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Description
In 1982 Canada put a Charter of Rights and Freedoms in its constitution and dramatically changed the nature of Canadian politics by giving the courts, and especially the Supreme Court, a general superintendence over all aspects of government and by making debates about the constitution a dominant theme of Canadian political life. In this thoroughly revised and updated edition of his original 1989 work, Michael Mandel, Professor at York University’s Osgoode Hall Law School, critically examines the history and philosophy of the phenomenon of "legal politics" and the way it has transformed the politics of language, crime, immigration, labour, business, race and gender. A case-by-case study of the important constitutional decisions of the eighties and nineties is joined by a detailed analysis of such major constitutional events as the Meech Lake Accord and the Charlottetown Accord and referendum.

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Mandel's complex and detailed book, The Charter of Rights and the Legalization of Politics in Canada advances the thesis that the judicial process has superseded the political process, increasing the centrality and power of the legal system in Canada. Exploring the history, philosophic rationale and implications of the Charter, Osgoode Hall law professor Mandel charts the judgements of the court through the Parti Quebecois, Operation Dismantle, Meech Lake, and cases involving class struggle and disadvantaged groups. Equally important assertions are that the Charter is undemocratic and that when the Canadian Charter of Rights and Freedoms was proclaimed into law on 17 April 1982, it was an occasion of much rejoicing. Across the country, politicians, judges, civil servants, academics, lawyers, and earnest civil libertarians gathered together to celebrate the advent of the new Charter. It is not surprising that in Canada, as in the United States, questions regarding the legitimacy of judicial review under the Constitution would arise in relation to the interpretation of the 'due process clause.'¹ Section 7 is the most broadly framed and potentially expansive guarantee in the Canadian Charter of Rights and Freedoms. Positioned under the heading 'Legal Rights,' it provides