

## THE ROLE OF THE COURTS IN ENVIRONMENTAL POLICY MAKING IN CANADA AND THE UNITED STATES

Canada and the United States are two of the world's most important democracies. They share many political features. Each polity places a high value on the principles of majority rule, individual rights, liberty, order and equality. By world standards, they are rich nations, with high standards of living. As highly developed industrial democracies, they face similar problems in striking a balance between economic growth, on the one hand, and protecting the environment, on the other. Each has adopted similar policies with regard to air, water, and ground pollution and conservation of natural resources. A glaring difference between them, however, is the role of the judiciary in the making and enforcing of environmental policies. Courts in Canada play a much less significant role in this policy field than do judges in the United States. Canadian policy making is marked, in general, by judicial deference to government on environmental issues.

Through case studies, this paper illustrates the different levels of judicial activity with regard to environmental issues and offers explanations for the varying roles of the courts in the two federations. The hypothesis is that the existence of the parliamentary system in Canada diminishes the capacity and the will of judges to challenge the government's environmental policies. By contrast, the presidential system characteristic of the United States provides structural incentives for the federal courts to resolve conflicts over the nature and direction of environmental policy. This hypothesis emphasizes institutional differences as the principal explanatory variables. This theoretical model, sometimes referred to as "new institutionalism" (see Weaver and Rockman 1993), stands in contrast to earlier psychological, sociological and economic theories which purported to account for differences in nations' political behavior by