

Constitutionalism in Crisis: Multiple Dimensions

Joint Israeli-Canadian Research Workshop

1-4 June, 2015

Workshop Summary

The workshop offered a framework for academic analysis and exchange of ideas over the challenges and risks to constitutionalism today, ranging from the philosophical to the political.

Participants were:

From Canada:

- Professor Lorne Sossin, Dean, Osgoode Hall Law School
- Professor Joel Bakan, University of British Columbia
- Professor Benjamin Berger, Osgoode Hall Law School
- Dr Jacob Weinrib, PhD awarded 2013, University of Toronto, currently Global Research Fellow, New York University School of Law Center for Constitutional Transitions.

- Israel:
- Professor Margit Cohn, Vice-Dean for Academic Affairs, Faculty of Law, Hebrew University of Jerusalem.
 - Professor Alon Harel, Philip P. Mizock and Estelle Mizock Chair in Administrative and Criminal Law, Faculty of Law, Hebrew University of Jerusalem.
 - Mr Shay Levi, doctoral student, Faculty of Law, Hebrew University of Jerusalem.
 - Dr Rivka Weill, Senior Lecturer, Interdisciplinary Center Herzeliyah.

- UK:
- Nicholas Barber, University Lecturer on Constitutional Law, Oxford University.
 - Professor Adam Tomkins, John Millar Chair of Public Law, University of Glasgow School of Law.

This combination of well-established and younger scholars contributed to a highly inspiring and active series of panels and talks (the British scholars were not funded by the Halbert Centre).

A good number of participants joined us on Monday the 1st of June for an informal dinner that set the tone for the following two days.

The first formal day, Tuesday the 2nd of June, was dedicated to four separate panels. An additional panel and a closing roundtable discussion were held on the second day. Each panel hosted two speakers. The papers were discussed in the following debate time, and also served as anchors for further debate over linked aspects.

The first panel was theoretical and introductory. The papers addressed the nature of constitutionalism, as comprising both "negative" and "positive" aspects, and considered, as a matter of constitutional theory, the role of judges and judicial review.

The next panel was dedicated to external threats to constitutionalism, ranging from the challenge of private ordering and self regulation to the rule of law, to social changes that challenge the principle of secularism.

This was followed by a panel that challenged the very idea of "crisis", by asking whether constitutionalism is essentially a complex web of internal tensions, focusing on executive powers and judicial review. The last session of the first day addressed the problem arising from unchangeable, fully entrenched constitutional clauses, eternity clauses and rules concerning secession. In the first panel of the second day, implications of constitutionalism to administrative law were addressed through papers concerning administrative discretion and judicial review of administrative powers.

We held two formal dinners on the evenings of the 2nd and 3rd of June, during which that day's discussions were followed up. On the 3rd of June, participants were invited to an excellent tour of Mount Scopus, courtesy of the university. A group of participants joined the 4th of June tour of Jerusalem.

We consider our original aim, to bring together a small group of experts in constitutional law and theory in the aim of developing a rounded understanding of the crises besetting constitutionalism in current political and social climates, to have been achieved successfully. The participants illustrated different facets of the crisis inflicting constitutional law. Some focused their attention on the perceived sectarian image of constitutional courts. Others focused their attention on the frustration from the indeterminacy of constitutional law, in particular the indeterminacy of fundamental values. Others were concerned with conceptual issues; challenges to the very concept of "crisis" were raised as well. The two-day debate thus enabled tracing the links and interaction between the areas of the philosophy of law, constitutional law and administrative law.

All workshop participants agreed that the workshop contributed to the tightening of links between them and between their respective research topics. The final roundtable session more than proved that this meeting of minds had inspired the participants to further develop their view on constitutionalism. Issues that arose included the nature of constitutionalism, the roles of government and other bodies designed to uphold constitutionalism, and the tensions, from within and externally. In all, workshop participants agreed that the conference was a very successful event, promising further development and study of the topics discussed and interlinked.