

Guest Editorial Preface

Symposium on ‘What Can Central and Eastern Europe Learn from the Development of Canada’s Constitutional System?’

As a result of the development of technology, transport, and the increase in political, economic, cultural and legal connections, by the 21st century the world had become more integrated than ever before. This also affects constitutional law, which today is not merely a national issue for states but rather a global field with many interrelations.

Comparative constitutional law is applied during the processes of constitution-making and legislation, where best practices are sought. Judges in domestic courts have a judicial dialogue with their colleagues abroad and look at foreign judgements to improve their legal reasoning. To help these developments, constitutional scholars use often a comparative approach in their works and, to better understand their own constitutional system, they compare it with other states’ solutions.

Alongside dealing with single constitutional law questions from a comparative point of view, it is essential to study the constitutional system of a country also in its entirety, analyzing its historical roots, rules and practice. The international conference entitled ‘What can Central and Eastern Europe learn from the development of Canada’s constitutional system?’ was one of the events where we tried to make a step in this direction.

The conference, held at the ELTE Faculty of Law on 28 June 2017, with the kind support of the Embassy of Canada to Hungary, convened a group of scholars to reflect on the history and evolution of the Constitution of Canada, on its written and unwritten dimensions and on its influence abroad. The occasion of the conference was Canada’s 150th anniversary of Confederation. The Constitution Act of 1867, which is still forming part of the Constitution of Canada, was ratified that year on 1 July.

This special volume of the ELTE Law Journal contains the written versions of some of the presentations.

After the words of greeting from Isabelle Poupart, Canada’s Ambassador to Hungary and Attila Menyhárd, Dean of the ELTE Faculty of Law, the two Canadian keynote speakers give their overview on the history and current state of the Canadian constitutionalism. Jeremy Webber’s standpoint is that Canada has an agonistic constitution, based on the co-existence

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of different languages, different legal systems, and even different modes of life. Richard Albert deals with the challenges of Canadian constitutionalism, showing that even a country with a constitutional system regarded as model by several nations around the world needs reflection – its constitution is always an unfinished and unfinishable document.

Each of the next papers analyses one element of the constitutional system of Canada, always raising the question of what the Central and Eastern European region should learn from Canada.

Balázs Rigó gives an overview of the revolutionary importance of 1867 in view of the changes in constitutional systems. Zoltán Pozsár-Szentmiklósy discusses the particularities of the methods of constitutional interpretation and the proportionality test developed by the Supreme Court of Canada in 1986, also evaluating the influence of these.

János Mécs addresses the problems of possible electoral reforms in Canada and Hungary, analysing not only the possible changes towards more proportionate systems but also the practical and theoretical obstacles of their amendment. Eszter Bodnár compares the selection systems of several European countries with the very transparent appointment process of the justices of the Supreme Court of Canada, looking for models which would help in selecting more independent, competent and experienced justices.

Dragan Dakić's paper on the new challenges of reproductive choice with a view to technological improvements raises questions about what protection shall be provided for the foetus growing in an artificial womb – if protection shall be provided at all –, and why such situations are different from the conflicts we all know when abortion or in vitro fertilization is the subject for discussion. Marcin Górski's paper concerns the notion of artistic expression, which he examines through a fascinating case-law analysis.

One of the most important conclusions of the Symposium was that the main export products of Canada, such as diversity, openness and transparency, are precisely the values which the domestic market for constitutional ideas is in need of in Central and Eastern Europe. As we speak a common language, the discussion can and should be continued.

We would like to express our thanks to the speakers, discussants and chairs of the event, and for the generous support of the ELTE Scientific Council and the Embassy of Canada to Hungary.