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Comparative Constitutionalism and Rights: Global Perspectives

*Penelope Andrews**

In September 2005, the University of Saskatchewan, College of Law hosted an international conference entitled “Comparative Constitutionalism and Rights: Global Perspectives.” As the visiting Ariel F. Sallows Professor of Human Rights Law at the College, I was mandated to plan and co-ordinate the event.

The Conference took place at a celebratory moment for human rights advocacy. In 2006, Canada would be celebrating the twenty-fifth anniversary of the *Canadian Charter of Rights and Freedoms*.¹ Similarly, in 2006, South Africa would be celebrating the tenth anniversary of the final *Constitution of the Republic of South Africa*.² In addition, the Conference occurred a year after the United States remembered fifty years of its seminal “civil rights” moment, that is, the judgment of the United States Supreme Court in *Brown v. Board of Education*³ in 1954. This global Conference was therefore not only important, but also timely.

The purpose of the Conference was to allow constitutional scholars, judges, human rights advocates, and law students to explore the local and global themes of constitutionalism and rights. The comparable experiences of various jurisdictions as well as different judicial approaches were analyzed from the perspectives of participants from Canada, the United States, South Africa, Vanuatu, Japan, and the United Kingdom.

Participants to the Conference explored the increasing primacy of human rights as the “language of progressive politics” and the concomitant proliferation of programs around the world dedicated to democratic governance, the rule of law, and rights enforcement. They appreciated the transformative possibilities of human rights language as a liberatory discourse, but also questioned the efficacy of legal rights in the face of extra-legal processes that continue to undermine rights.

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1 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

2 April 27, 1994, amended by Act No. 200 of 1995.

3 347 U.S. 483, 98 L. Ed. 873 (1954) (S. Ct.).

The several panels at the Conference focused on various themes. These included broad theoretical questions regarding the apparent paradox in contemporary global law and politics, namely, the supremacy of human rights discourses on the one hand, and the dominant economic paradigm of the free market and the increasing limitation of governmental power, particularly regarding social and economic justice, on the other. Participants pondered the possibilities and limitations of pursuing social and economic rights in a constitutional framework, and specifically the issue of the justiciability of rights. They examined the emergencies emanating from the so-called “war on terror” and their implication for the protection of civil and political rights.

The participants interrogated the thorny questions around the separation of powers and the particular tensions that constitutional frameworks generate as between the executive and legislature on the one hand, and the judiciary on the other. In a similar vein, they examined the use of international law in the domestic context, particularly in the interpretive function of judges, and they also explored the appointments processes of judges. They examined the meaning of citizenship in a globalized economy and highlighted the peculiar conditions of national racial and ethnic minorities, Indigenous communities, women, and other marginalized groups, to assess the possibilities generated by a constitutional framework that promises human rights to all citizens.

Particular attention was focused on the *Canadian Charter of Rights and Freedoms*, providing ample opportunity for praise and critique. In an impassioned lunch time address, the then Federal Minister of Justice, the Honourable Irwin Cottler, outlined Canada’s impressive but unfinished business of human rights, detailing the gains made thus far, but also the many steps still to be taken, including reconciliation with the Indigenous peoples of Canada and economic justice for those marginalized in the increasingly privatized economy.

The articles in this volume demonstrate how rich and stimulating the Conference proceedings were. Representing the geographical and substantive range of questions explored, these articles will continue the discussion highlighted during the September 2005 Conference, reiterating the points raised then, but also generating fresh questions.

The faculty at the University of Saskatchewan, College of Law were especially gracious hosts; so too were the staff. The Board of the *Saskatchewan Law Review* and other law students were exemplary in the way that they welcomed and hosted the participants to the Conference. A special thanks has to go to Dean Brent Cotter who provided the resources to make the Conference the success it was, and for his unending support.

I hope that this volume elicits as much discussion and enthusiasm as the Conference did and that its many contributions will inspire continued analysis of the important issues raised.