

Introduction

This Special Issue of the *Forum* is a compilation of articles presented at a Symposium held at the University of Toronto in February 2016 on “The State of Canada’s Constitutional Democracy”. The Symposium was organized by Cheryl Milne (Asper Centre for Constitutional Rights) Professor Lorraine Weinrib (University of Toronto), and they were later joined by Patricia Paradis (Centre for Constitutional Studies, University of Alberta). Its purpose was to examine the extent to which current Canadian governance is complying with modern constitutional principles.

Symposium planning began about eight months before the federal election in October 2015 when it was not clear whether the voting would produce a minority or majority government or if there would be a change in government. It was decided that time was ripe for Canadian experts in constitutional law and politics to engage in a discussion on the state of Canada’s constitutional democracy.

The sessions at the Symposium did not aim to formulate proposals for constitutional amendment to Canada’s written Constitution. Rather, they examined topics such as the separation of powers between the executive, the legislature, and the judiciary; democracy as it relates to the conduct of elections; vibrant debate in legislative and public fora based on a full factual foundation, rational deliberation, transparency, and accountability; deliberative and co-operative federalism; the independence of the judiciary; and the duty to respect and protect the fundamental rights and freedoms of all residents and citizens of Canada.

We were very fortunate to have as our special guest Robert Hazell, Professor of Government and the Constitution at University College

London. His participation in and commentary on the transformation of the Westminster model of governance — its process, substantive commitments, and implementation — provided a useful model for Canada in our discussions and helped to demonstrate the importance, urgent need for, and feasibility of extensive constitutional modernization in Canada.

The Honourable Irwin Cotler, Emeritus Professor at the McGill Faculty of Law and former Minister of Justice and Attorney General of Canada, brought invaluable wisdom and experience to our discussions.

This Special Issue of the *Forum* includes many of the excellent papers presented at the Symposium. The papers focus on key elements in the Canadian constitutional order that stand in need of modernization.

From the Democratic Processes panel, constitutional lawyer Josh Hunter examines the various electoral systems that have been adopted or proposed in comparable Commonwealth jurisdictions and at the provincial level in Canada, then explores whether constitutional amendment would be required to implement them. He also explores whether there is a constitutional convention requiring a referendum before significant changes can be made to the electoral system.

On the subject of constitutionalism, administration of justice, and the rule of law, Professor Mark Walters takes a critical look at ministerial advice to the Crown within our constitutional system and critically asks whether such advice, which has significant power, is beyond the reach of law. This is a subject, he argues, that should not be left ‘wholly undisciplined by law’ or operating in a ‘legal black hole’.

Cara Zwibel of the Canadian Civil Liberties Association argues that the Committee stage in the legislative process should provide individuals and organizations with a myriad of key opportunities for meaningful participation and dialogue that can significantly improve legislation, rather than simply being a forum for the political and partisan dramas that are currently being played out.

Professor Vincent Kazmierski draws a clever analogy between the Triceratops of the Cretaceous period and the *Access to Information Act* noting that, although access to information is fundamental to our democracy, the *Act* is in desperate need of modernization given changing times. He leaves us wondering whether our democratic institutions will adapt or ‘stagger toward oblivion’ as we face significant threats such as technological changes and terrorist attacks.

Jennifer Raso, SJD Candidate from the University of Toronto, also tackles the topic of accessible information. She argues that the libertarian populist discourse which is at the heart of the collection, production, and distribution of data, has restricted who counts in Canada. Information-producing institutions must, she argues, incorporate the pluralistic nature of Canada if they are not to further marginalize and devalue the very Canadians they are there to serve.

McGill University’s Charlie Feldman analyzes the legislative vehicles in place for *Charter* review of proposed legislation. His analysis shows that gaps exist in this process, and a more formal *Charter* review of all legislation should be undertaken to examine how new laws may be considered by the courts if faced with constitutional challenges.

From the Democratic Function panel, Professor Emeritus Peter Russell suggests that a “Canadian Cabinet Manual” that codifies unwritten constitutional principles may be the answer to increasing the constitutional literacy of Canadians. It is essential, he posits, that Canadians know how their government and democracy work. Using Manuals from other jurisdictions for comparison, he notes that while codification of constitutional conventions can have its limita-

tions, Manuals are key to providing guidelines as to how the executive in a democracy intends to govern and how the public can expect it to govern.

On the subject of constitutional governance and litigation, Professor Carissima Mathen reviews and analyzes the Conservative government’s track record in litigation on constitutional issues. Despite critiques of some of that government’s approaches, she urges a temperate approach to expectations for the new Liberal government.

Lastly, on the topic of public appointments, Professor Emeritus John Whyte proposes a thorough, transparent, and tough process for reviewing individuals appointed to the Supreme Court of Canada — one that is commensurate with the impact these Justices will inevitably have on our nation’s constitutional matters.

We are grateful to the authors for their participation and engagement with the process of preparing their papers for publication.

In addition to these papers, this Special Issue includes a thorough summary of the discussions following each of the panel sessions at the Symposium. Based on questions posed to Symposium participants, the ‘Summary of Proceedings’ includes astute commentary on specific constitutional reforms.

It is the organizers’ hope that the publication of these conference proceedings will broaden and deepen our understanding of the reform projects discussed at the “State of Canada’s Constitutional Democracy” Symposium that lie ahead.

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