

INTRODUCTION

This issue of the *Israel Law Review* features two sets of articles. The first set is the second and final instalment in a collection of articles based on presentations given at an international workshop on ‘The Scope of Judicial Review and the Dilemma of the Administrative Record in Comparative Perspective’, held jointly by the Faculty of Law and the Halbert Centre for Canadian Studies at the Hebrew University of Jerusalem in December 2014. The two articles presented here focus on the roles of attorneys general.

In ‘Hired Guns and Ministers of Justice: The Role of Government Attorneys in the United States and Israel’, Michael Asimow and Yoav Dotan examine the role of a government attorney who represents a government agency in judicial review proceedings. They contrast the prevalent view in US academic literature, which advocates the ‘hired gun’ model in which the role of the government lawyer is no different from that of a lawyer representing a private client, with the prevailing view in Israel that government lawyers are ‘ministers of justice’ who owe a primary obligation to the public interest rather than to the client agency. Asimow and Dotan suggest that this difference is attributable both to fundamental differences in legal culture between the US and Israel and to unique features of the Israeli system of judicial review.

In ‘The “Unique Role” of Government Lawyers in Canada’, Adam Dodek sheds light on the role of government lawyers in Canada as derived from the historic and legislative responsibilities of the Attorney General, whose client is ‘the Crown’, an abstract emanation of the state. He then addresses questions that arise for government lawyers in Canada in public law litigation. One such question is the extent to which government lawyers engage with the examination of the constitutionality of legislation. Another is how they manage the tension between the rhetoric of zealous advocacy and the reality of the commitment to the public interest.

This issue also includes a mini-symposium on the override clause. The term refers to a constitutional mechanism which allows a state’s parliament to override a judicial ruling on the unconstitutionality of a law. One formulation of such a clause can be found in Israel’s Basic Law: Freedom of Occupation of 1994. In late 2014, the Supreme Court struck down, for the second time, an amendment to the Law Against Infiltration (Offences and Jurisdiction), 1954, on the ground that it contradicted Basic Law: Human Dignity and Freedom. Subsequently calls were heard for enacting an override clause in that Basic Law. In the short public debate that followed, proponents of the law invoked the Canadian constitutional model as one that Israel should follow. The mini-symposium seeks to enrich the debate by offering three views of this potential transplantation. Adam Dodek and Lorraine Weinrib each expand on the Canadian experience, while Rivka Weill examines the matter from the perspective of Israeli constitutional law.

Adam Dodek’s ‘The Canadian Override: Constitutional Model or *Bête Noire* of Constitutional Politics?’ argues that in order to evaluate both the value of adopting the

Canadian override and the likelihood of success of its transplantation into the Israeli system, one must acquire a deep understanding of its operation in Canada. The article describes the Canadian override clause and analyses its positive attraction as a constitutional model. It then argues that in Canada the clause has come to be viewed in such negative terms as ‘the *bête noire* of Canadian constitutional politics’ because of the manner in which it was adopted and the circumstances in which it was first used. Against this background the article discusses legal transplants, legitimacy and lessons for Israel from the Canadian experience.

In ‘The Canadian Charter’s Override Clause: Lessons for Israel’, Lorraine Weinrib provides another account of the adoption of the override clause (also referred to as the ‘notwithstanding’ clause) in the Canadian Charter of Rights and Freedoms, as a compromise between legislative supremacy and final judicial review. She then analyses the distinctive and unexpected political dynamics generated by this compromise, including its effect on the exercise of public power and elections. She holds that although the legislative override was adopted to appease political leaders who opposed the Charter on substantive and institutional grounds, it has to date worked to legitimate judicial review and bring Canada further into the model of the modern constitutional state. The article then considers the implications of this analysis for Israel.

In ‘Juxtaposing Constitution-Making and Constitutional-Infringement Mechanisms in Israel and Canada: On the Interplay between Common Law Override and Sunset Override’, Rivka Weill distinguishes the ‘common law override’, which is not uniquely Canadian, from the ‘sunset override’, which sets a temporal limit to the legal effect of the override, and is unique. The article shows that Israel has vast experience with the common law override, which may shed light on its future possible exploitation of the sunset override. Weill then examines the political context of Israel’s adoption of the sunset override clause in Basic Law: Freedom of Occupation, following the Canadian example. She argues that it is not the circumstances of its adoption which explain the lack of use of the override clause, but its incompatibility with the Israeli constitution-making process. She suggests that Israel might more freely deploy the sunset override were it to become a general mechanism embodied in the Basic Laws, while the sunset override has fallen into disuse in Canada.

Finally, Tally Kritzman-Amir, in ‘International Migration Law in the Current Legal and Political Reality’, reviews *Research Handbook on International Law and Migration*, edited by Vincent Chetail and Céline Bauloz (2014).

Before closing, we are pleased to announce that the 2015 *Israel Law Review* Prize for best unsolicited article has been awarded to Peter Cane for his article ‘Records, Reasons and Rationality in Judicial Control of Administrative Power: England, the US and Australia’, published in issue 48(3).

Professor Sir Nigel Rodley and Professor Yuval Shany
Editors-in-Chief
Professor Yaël Ronen
Academic Editor