

HKU CCPL Talk

Polarization and Courts - Lessons from Brazil, India and Israel

23 January 2024 (Tuesday) 4:00-5:00 PM

Room 723, 7/F Cheng Yu Tung Tower, HKU (in-person only)

This article aims to find some general insights into a question that vexes many countries today, and may affect more in the future - how courts should deal with political polarization. The article aims to do so through a comparative case study of three countries - Brazil, India and Israel - canvassing the challenges that polarization has posed for their supreme courts, and the way each of these supreme courts chose to respond to them. Among the findings of the comparative study are striking similarities in the trajectories of political polarization, and of court reactions, in the three countries. One important difference, however, comes out of the analysis - the difference between a judicial path of wide versus narrow support. India's Supreme Court chose to retain its popularity during polarization on what I call "wide public support", by being careful not to vex the BJP government on the most sensitive issue for its voters - its campaigns against Muslims and Muslim's rights. Israel, on the other hand, chose a path of what I call "narrow public support" by promoting a liberal conception of human rights across the board, including in hot button issues, such as security, Arab and Palestinian rights, law and religion, and immigration policy, thus losing the support of the right-wing, conservative, and religious parts of the population while solidifying the support of its liberal base. Brazil's Supreme Court had also lost support among hardline right-wing Bolsonaro supporters, and became a major contention point in the fight between left and right, but this is a more recent phenomenon than in Israel, and it remains to be seen whether it would be able to regain general support after the age of Bolsonaro.

SPEAKER

**Professor Iddo Porat**

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Iddo Porat is an Associate Professor of constitutional law at the College of Law and Business, Israel. He is an expert in constitutional law and legal theory. His publications include "Proportionality and Constitutional Culture" (CUP, 2013, with Moshe Cohen-Eliya), "Towering Judges: A Comparative Study of Constitutional Judges" (CUP, 2021, co-edited with Rehan Abeyratne), and articles in the American Journal of Comparative Law, Cardozo Law Review, International Journal of Constitutional Law and Oxford Journal of Legal Studies.

CHAIR

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For inquiries, please contact Flora Leung at ccpl@hku.hk.