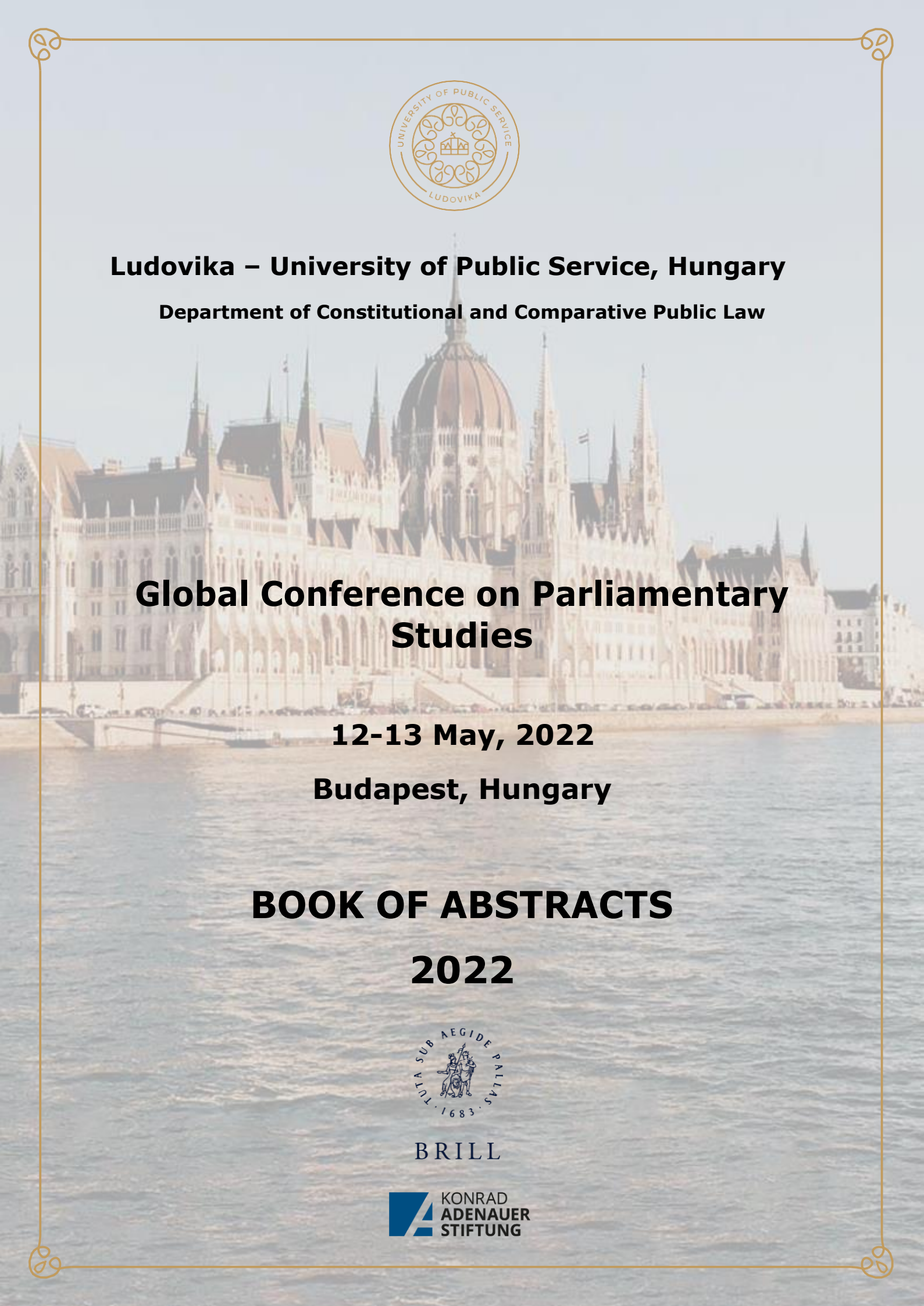

Ludovika – University of Public Service, Hungary

Department of Constitutional and Comparative Public Law

Global Conference on Parliamentary Studies

12-13 May, 2022

Budapest, Hungary

BOOK OF ABSTRACTS

2022

BRILL

KONRAD ADENAUER STIFTUNG

Ludovika – University of Public Service, Hungary
Department of Constitutional and Comparative Public Law

Global Conference on Parliamentary Studies

12-13 May 2022
Budapest, Hungary

BOOK OF ABSTRACTS 2022

The conference is organized by:
Ludovika – University of Public Service, Hungary
Faculty of Public Governance and International Studies
Department of Constitutional and Comparative Public Law

Publisher:
Ludovika – University of Public Service, Hungary

Editors:
Zsolt Szabó
Zoltán Szente
Attila Horváth
Ágnes M. Balázs
Rebeka Kiss

Cover photo:
pexels.com/nora

ISBN 978-963-531-760-8

Conference Orgainsing Commitee:

Zsolt Szabó
(Senior Research Fellow, University of Public Service Department of Constitutional and Comparative Law, Ludovika – University of Public Service, Hungary; Editor-in-Chief, International Journal of Parliamentary Studies)

Zoltán Szente
(Professor of Law, Department of Constitutional and Comparative Law, Ludovika – University of Public Service, Hungary; Research Professor, Institute for Legal Studies, Centre for Social Sciences)

Attila Horváth
(Adjunct Professor, University of Public Service Department of Constitutional and Comparative Law, Ludovika – University of Public Service, Hungary; Senior research fellow, Ferenc Mádl Institute of Comparative Law)

Ágnes M. Balázs
(Assistant Lecturer, University of Public Service Department of Constitutional and Comparative Law, Ludovika – University of Public Service, Hungary)

Rebeka Kiss
(Junior Research Fellow, Institute for Political Science, Centre for Social Sciences; PhD student, Doctoral School of Public Administration Sciences, Ludovika – University of Public Service, Hungary)

Contents

Foreword

Even if democracy is not, at least the number of legislatures – together with their members and budgets – is constantly growing worldwide. Devolution, federalization, secession, regionalization, integration and internationalization – all these lead to new parliamentary institutions at various levels of government. As a result, there is more and more for scholars of various disciplines to discover, analyse and evaluate.

This expanding universe of parliaments is what brought both the International Journal of Parliamentary Studies and the Global Conference on Parliamentary Studies to life. Both aim to tear down the clearly existing walls between political science and law, scholarship and practice, national and international approaches.

The speakers of this years initial conference are truly global: they represent 15 countries from 4 continents. The issues of the contributions show a wide range of the most recent results of parliamentary research. It is planned that each year scholars of parliamentary studies, an emerging interdisciplinary field of scholarship, come together to share ideas, viewpoints and findings on parliamentary and legislative issues.

We hope that this scholarly initiative will contribute to enhancing a global network of scholars, the emerging of parliamentary research, and fostering democracy.

Zsolt Szabó
Editor-in-chief of the International Journal of Parliamentary Studies
Organizer of the Global Conference on Parliamentary Studies

Limits of legislative power I.: Direct democracy and judiciary

Session: Limits of legislative power I.: Direct democracy and judiciary

István Stumpf

Institution: Institute for American Studies, Ludovika – University of Public Service, Budapest, Hungary
Email: stumpf57(©)gmail.com

Public law invalidity as a measure of legislative quality

The Constitutional Court which was born in the Hungarian parliamentary democracy after the change of regime, played an important role in the establishment of the constitutional rule of law state. It has often played an activist role in defending constitutional values and has contributed to the building of the rule of law institutions. The role of the Constitutional Court in the regime change, in particular its unbridled activism and its torpedoing of the Parliament's judicial acts, has been strongly criticized from the beginning. Its philosophy of constitutional protection has been characterized by a greater scope for activism in its decisions on fundamental rights protection, while it has been self-limiting in its approach to matters of state power. Nonetheless, the character of the Constitutional Court has been significantly shaped in recent decades by the constitutional review of acts of the legislature. In a constitutional democracy, it is a fundamental requirement that no law or other legislative act should be enacted in the legislative process without respect for constitutional rules. A norm that has been created in the course of an unconstitutional procedure is "invalid under public law". The adoption of the Fundamental Law and the subsequent constitutional debates surrounding its amendments can be regarded as a watershed in the assessment of public law invalidity. The Fourth Amendment to the Fundamental Law explicitly prohibited the Constitutional Court from reviewing the substance of the amendments to the Fundamental Law, while at the same time normatively allowing for a procedural review. In my presentation, I will present the post-change history of the Constitutional Court's decision on the invalidity of public law as a means of assessing the quality of legislation in a few cases. First, I will analyze the constitutional problems of the proposed amendments before a final vote, and then, related to this, the debates surrounding the amendment of the Church Act. In the second half of my presentation, I will discuss the dilemmas related to the Fourth Amendment to the Fundamental Law from the perspective of public invalidity.

Session: Limits of legislative power I.: Direct democracy and judiciary

Enrico Albanesi

Institution: University of Genoa, Genoa, Italy
Email: enrico.albanesi(©)unige.it

The Equilibrium Point between the Autonomy of Parliament and Other Constitutional Principles, as Viewed through the Theoretical Framework of a System of Constitutional Justice

Scholarly debate concerning judicial review of parliamentary proceedings has mainly focused on constitutional principles in light of which such a review should be excluded, e.g. in the U.K. (Dicey 1885) and the U.S. (Choper 2005); or, on the contrary, such a review should be grounded and at the most limited, e.g. in the U.S. (Bar-Siman-Tov 2009; 2011), Italy (Manetti 1990; Manzella 2003) and other jurisdictions (Navot 2006; Wintr, Chmel and Askari 2021). However, the equilibrium point between these principles is still an issue.
The presentation does not attempt to solve it. Solutions can differ substantially from one legal order to another. E.g., distinctions can depend on the stature of the Constitutional Court (Navot 2006); on the rooting of the principle of sovereignty of Parliament or the sovereignty of the Constitution within a legal order/the establishment of external or internal remedies/the establishment of legal remedies available to external persons or to parliamentarians (Szabó 2019). Moreover, this equilibrium being a matter of balance, a solution cannot be given once for all, even domestically (Manetti 1990).
The presentation aims at enriching existing studies, suggesting a methodology that might help in viewing (and critically analysing) each equilibrium point that is set domestically. First hypothesis: also, supranational/international constitutional principles should be considered. After all, a kind of parliamentary 'ius gentium' is evolving (Szabó 2019; 2021). Some examples of case-law of the European Court of Justice and the European Court of Human Rights will be given. Second hypothesis: such a balance should be viewed through the theoretical framework of the system of constitutional justice established domestically (i.e., types of standards, acts to be reviewed, jurisdictional disputes, subjects that can initiate disputes, violations of the Constitution). The case-study will be Italy, especially in light of the very important order No. 17/2019 of the Italian Constitutional Court.

Session: Limits of legislative power I.: Direct democracy and judiciary

Konstantinos Margaritis

Institution: Hellenic Open University Patras, Greece
Email: konstantinos_margaritis(©)yahoo.com

Citizens' Legislative Initiative in the Constitution of Greece: a Political Right in Embryonic Phase

The latest constitutional amendment in Greece was concluded in November 2019, when the relevant special parliamentary resolution was published at the Government Gazette. Among the provisions revised, a new paragraph was added on article 73 of the Constitution, regarding the privilege to introduce bills, granting this right to citizens. More specifically, article 73, para. 6 states: "Signed by five hundred thousand citizens who have the right to vote, up to two law proposals per parliamentary term may be submitted to the Parliament, which by decision of its President are referred to the relevant parliamentary committee for elaboration and then compulsorily introduced for discussion and voting in the plenary session. The aforementioned law proposals cannot concern matters of fiscal policy, foreign policy and national defence. The terms and conditions of application of this paragraph are specified by Law".
The aim of this presentation is to examine this newly established institution of participatory democracy from a human rights perspective since it theoretically introduces a new political right to the Greek legal order. This examination will focus on the constitutionally set requirements for its application.
In the end, useful conclusions will be drawn on the quality of the institution as inserted in the Constitution of Greece, underlying the problems that need to be addressed and considered for the future.

Session: Limits of legislative power I.: Direct democracy and judiciary

Raunak Chaturvedi

Institution: University of Calcutta, Kolkata, India
Email: raunakchaturvedi(©)rocketmail.com

Absence of Referendum a Perplexing Blow upon Parliamentary Democracy in Perspective of the Indian Legislature

Every sovereign nation has its Constitution which in principle aims at the welfare and the rights of its citizens. Several countries in the world have the provisions of referenda which entitle the citizens to register their protest against the inconsistent laws of the country being enacted or in existence already, through a formal, democratic instrument.
India, although, being the largest democracy in the world, does not have the provisions of referendum in its Constitution, or any other law. The public has to register protest through movements like processions, sitting in protest and much more.
The protest against the inconsistent Citizenship (Amendment) Act, or the Farm Laws are current examples and the Salt Act protest being famous as 'Dandi March' during the British Regime in India is a historical example.
The public gets exposed to the risk of legal and medical complications when they resort to the protests through sit-in campaigns and processions.
Very recently, protest against the three Farm Laws claimed more than 700 lives among the protesting farmers in addition to the legal harassment being caused to more than 6000 protestors with confiscation of their vehicles, tractors and much more.
The parliamentary polity of the country fails when the ruling party sits with an absolute majority and ignores the dissents of the opposing elected representatives of the country and subjects the citizens to the utmost inconvenience through its inconsistent laws passed through legislation of new Acts or amendments of the existing one, unilaterally.
Hence, provisions of referendum in Indian parliamentary democracy are the need of the hour enabling citizens to register their formal protest before the highest Executive of the country for withdrawal or amendment of the existing inconsistent laws or laws in the process of being enacted, thereby truly establishing the representation of the will of the people.

Session: Limits of legislative power I.: Direct democracy and judiciary

Ricardo Cunha

Institution: University of Minho School of Law, Braga, Portugal
Email: ricardoscunha(©)direito.uminho.pt

The methodological challenge of Comparative Law in legislative reform

Two contemporary movements as they intercept in the legislative processes - on the one hand, the growing influence of comparative law in the decision-making procedures of a global arena, on the other hand, the growing need to ensure the legitimacy of legal decisions by referring to the rigorous argumentative standards, in the case of legislation under the suggestions of Legisprudence. The interception of these two movements has been facilitated by the consideration of a comparative law argument in the legislative processes, which begs the question as to how seriously comparative law is to be taken by Legisprudence. The growing importance of Comparative Law in the argumentative reasoning of legislative decision-making of Legisprudence highlights the importance of the efforts carried out for legislative reform.
The comparative legal argument is especially decisive in constitutional interpretation, as PETER HÄBERLE has added to the elements of legal interpretation designed by SAVIGNY. The translation of foreign law traditionally considered a mere fact, as a "domestic legal argument" determines that a renewed attention needs to be paid to the methodology of comparative law in legislative procedures. This consideration is increasingly assumed by the affirmation of instances of judicial control over the legislative procedure, which refer to the adequate consideration of preparatory work, namely regulatory impact assessments and increasingly proper studies on comparative law. A comprehensive understanding of the cycle of legislative procedure, which includes evaluation, drafting and control, is the necessary departing point for the future oflegislation.

Parliaments and democratic decay

Session: Parliaments and democratic decay

Petr Just – Jakub Charvát

Institution: Metropolitan University Prague, Prague, Czech Republic
Email: petr.just(©)mup.cz; jakub.charvat(©)mup.cz

Second Chambers as Barriers Against Illiberal Turns: Evidence from the Central Europe

Two out of four Visegrad countries have their parliaments organized on the principles of bicameralism. In Poland renewal of the second chamber was part of the first wave of constitutional reforms during the initial stage of the democratization process in the spring of 1989 (so called April Amendment to the Constitution), in the Czech Republic the bicameral parliament was included in newly drafted Constitution adopted shortly before the split of Czechoslovakia in December 1992. From the perspective of the vertical separation of power both countries represent unitary political systems, thus the existence of second chambers has often been questioned and challenged. While the demand for territorial representation is often quoted as the key reason for establishing second chambers, there are other models and principles of second chamber representation and / or roles they are playing. One of the other key principles and meanings of bicameral legislatures is the expansion of the checks-and-balances system beyond the traditional executive – legislative – judicial triangle. Existence of two chambers brings the check-and-balance principle also to the inside of the legislative branch itself. Second chambers are thus understood as certain guarantors of constitutionality and democracy. The focus of the article will be on what role have the second chambers in the Czech Republic and Poland played in the process of preventing democratic backsliding, a recent phenomenon visible (not only) in Central and Eastern Europe. The problem will be analyzed in the context of the circumstances in which both second chambers were established (Poland 1989, Czech Republic 1992, resp. 1996), and in the context of the constitutional position and powers (as well as limits) of both second chambers in the respective political systems. It will also analyze whether the current Czech and Polish institutional frameworks and settings allow for their second chambers to act as guarantors of constitutionality and democracy.

Session: Parliaments and democratic decay

Jan Wintr

Institution: Charles University, Prague, Czech Republic
Email: wintr(©)prf.cuni.cz

Problems of obstruction and inefficiency in the Czech Parliament and the need to reform the Rules of Procedure

The Paper will analyse the main problems in the functioning of the Czech Chamber of Deputies, especially the chaotic agenda of the meeting, the inability of the opposition to raise its topics, the susceptibility to obstruction, the inflexibility of the legislative process and the overall inefficiency of parliamentary work. Based on a study of the Rules of Procedure and the practice of the German and Austrian parliaments, as well as on more general theoretical knowledge about parliaments, the book recommends a reform of the Rules of Procedure of the Chamber of Deputies. In particular, it should be possible to determine by consensus of clubs or by a qualified majority the exact daily agenda of a meeting and the total speaking time for an agenda item or for the whole agenda, divided among clubs by size, with possible slight opposition advantage, with alternating pros and cons and with the subsidiary possibility of voting to end of the debate. These rules, which prevent obstruction, strengthen the effectiveness of parliamentary proceedings and the ability of the majority to enforce their proposals should be balanced by providing opportunities for agenda-setting by the opposition, to which the opposition will be entitled, and which will not depend on the goodwill of the parliamentary majority. Furthermore, the Rules of Procedure should make it possible to better differentiate between different types of bills, to allow for the faster adoption of non-controversial laws, and to discuss more thoroughly more complicated bills or those that are the subject of major political conflict.

Session: Parliaments and democratic decay

Dario Elia Tosi

Institution: University of Turin, Turin, Italy
Email: dario.tosi(©)unito.it

Representation, efficiency or populist anti-elite rhetoric: the rationale of some recent constitutional reform projects on the size of parliamentary assemblies

In the constitutional debate, the topic of the size of parliamentary assemblies doesn't traditionally represent a matter of specific interest. Scholars simplyassume the dimension of legislative organisms as a given issue.
Nevertheless, the US founding fathers themselves were already aware of the importance of the problem. In the Federalist, Madison states that "however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude".
This given, an overview of the constitutional landscape reveals no homogeneity in dealing with the issue. Even in recent years, the Venice Commission recognised that "there are no international standards which recommend any particular ratio of parliamentary seats to the size of population".
Till recent years, the matter has not taken an autonomous relevance, it is included in drafting processes of new constitutions. However, nowadays times are changing. In different countries, such as the UK, France, Spain and Germany, the dimension of parliamentary assemblies has gained specific importance. Italy has recently undergone an important constitutional reform on this topic.
Actually, public debate identified the size of parliamentary assemblies as one of the key elements in the functioning of constitutional systems, most of the time focusing on the problems of representation and efficiency of political institutions. Consequently, projects of reform on this topic have flourished. However, a deeper insight shows that such plans have emerged in a context of growing populism and political decay. Given this framework, the purpose of the paper is to illustrate some of the most important experiences, with the aim of finding the effective rationale behind such projects.

Session: Parliaments and democratic decay

Tamás Barczikay

Institution: Centre for Social Sciences, Budapest, Hungary
Email: Barczikay.Tamas(©)tk.hu

The media influence on policy agendas in Hungary: Studying the effect of regime hybridization

The role of media in influencing policy agenda has been subject of several studies, mostly in the US and Western Europe. The general finding is that it is difficult to capture the influence of the media agenda on policy decisions, but it has an effect on the symbolic policy agenda. However, very few research has addressed the problem in the context of the newer democracies of East and Central Europe. Previous studies on Hungary, focusing on the illiberal Orbán government, suggest that the media have no role in setting the policy agenda, and even the latter may drive the former. Our paper is the first attempt to draw a general picture of this disputed relationship in a non-Western context. Using media and interpellation data from the Hungarian Policy Agendas Project we investigate their relationship for the years 1990-2018, that is, the almost entirety of the democratic period since the regime change. The concept of Granger Causality is applied. While controlling for government cycle effects, public policy major topics are analysed separately in order to find existing uni- or multidirectional causal relationships. The hypothesis is that the hybridization of Hungarian politics that started in 2010 weakens the role of the media in influencing policy agendas since illiberal governance is less responsive to the thematisation of the media. We also study the phenomenon of parallelism and its role in the media–policy agendas nexus. Parallelism means that the media system is polarized and divided along political lines. We assume that parallelism has increased since 2010 which is reflected in the media agendas meaning that the thematic overlap between media agendas of outlets associated with different political sides has been decreasing. Previous studies on the Spanish media agenda demonstrated that there might be a systemic difference between politically aligned media outlets in terms of the policy topics they thematise more under different governments. We will study the phenomenon on the Hungarian data. We argue that the increasing parallelism of the media system affects not only the public sphere but also the role of the media in influencing policy agendas. Growing parallelism probably contribute to the weakening of the media effect on policy agendas, which is not only relevant from a policy point of view but as a sign of decreasing accountability raises concerns about the quality of democracy as well.

Session: Parliaments and democratic decay

Rebeka Kiss

Institution: Ludovika – University of Public Service, Budapest, Hungary; Centre for Social Sciences, Budapest, Hungary
Email: Kiss.Rebeka(©)uni-nke.hu

The concept and measurement of legislative backsliding – The case of Hungary[1]

This paper examines the issue of legislative backsliding defined from the perspective of liberal democracy as the deterioration in the quality of the legislative process and the laws. By examining the four dimensions of legislative backsliding – (1) public policy, (2) legal-constitutional-formal, (3) procedural, and (4) stability aspects – for the first time, we develop an index that can be used to analyse the practice of legislative backsliding. We use qualitative case studies to test this system for Hungary to gain new perspectives on an emerging phenomenon, hybrid political systems. We scrutinise laws that feature the most serious flaws to illustrate the viability of our theoretical approach. We find that often times laws which show qualitative deficiencies exhibit them in not just, but several dimensions. The index developed in our study is well-positioned for longitudinal and comparative analysis as the measurement system for legislative backsliding is scalable to most advanced democracies.

[1] Prepared with the professional support of the Doctoral Student Scholarship Program of the Co-operative Doctoral Program of the Ministry of Innovation and Technology financed from the National Research, Development and Innovation Fund.

Session: Parliaments and democratic decay

Boldizsár Szentgáli-Tóth

Institution: Centre for Social Sciences, Budapest, Hungary
Email: totboldi(©)gmail.com

Reduced formats of parliamentarism: one possible answer of parliamentarism to the pandemic

During the pandemic, several parliaments adopted measures to decrease the number of personal contacts: the number of parliamentary sittings has been decreased, online platforms have been introduced to host parliamentary sessions, or the parliament continued the work with personal presence, but with a fewer number of parliamentarians. The parliamentary groups nominated some of their representatives according to their parliamentary weight to these reduced legislative bodies. Numerous concerns have been raised as regards the constitutionality of such mechanisms, but neither constitutional court has reviewed this practice in substance. However, from the main historical crises (for instance: wars, civil wars, or transitory periods) one may find lots of analogies, that parliaments continued their work only with a certain part of its members. My contribution aims to analyse the phenomena of this „reduced parliamentarism" in a historical context, and attempts to figure out, within which circumstances, and to which degree such a solution might be constitutionally justifiable.

COVID and parliamentary functions

Session: COVID and parliamentary functions

Luca Bartolucci

Institution: LUISS Guido Carli, Rome, Italy
Email: lbartolucci(©)luiss.it

The Italian legislative procedure during the pandemic emergency and as part of the National Recovery and Resilience Plan

The paper aims to analyze the reaction of the Italian parliament to the pandemic emergency. On the one hand, the paper aims to analyze the concrete working methods of the Italian Parliament during the emergency. On the other hand, the Italian legislative procedure during the emergency is reconstructed, which has seen the development of some practices, already widespread before the outbreak of the pandemic. These are problems that must also be included in the context of Italian bicameralism, which seems to have started, after the rejection of the 2016 constitutional referendum, towards an ever-greater homogenization of the two chambers.
At least two great opportunities for an improvement in the legislative process seem to be on the horizon. On the one hand, Parliament and Government will be committed, in the coming months and years, to an ever so ambitious program of reform of the legal system as a whole. From a first analysis of the PNRR it seems possible to affirm that there is a recovery, at least "in the books", of a more orderly legislation, through the instruments of the legislative delegation and annual laws. At the same time, another "window of opportunity" is offered by constitutional law n. 1/2020 on the reduction of the MPs number, which raises the need to reform parliamentary rules of procedure.
This opportunity could also be exploited to intervene in the organization of parliamentary committees, updating and adapting the system of committees not only to the new government structure but also to the centrality that the environmental question - and intergenerational interest - are assuming in the context of the Italian legal system.

Session: COVID and parliamentary functions

Maria Diaz Crego

Institution: Europan Parliament, Strasbourg, France
Email: maria.diaz(©)europarl.europa.eu

Have hybrid working methods transformed parliamentary procedures?: a look from the European Parliament's perspective

Nearly two years on from the beginning of the pandemic, it seems time to take stock of the lessons learnt from this health crisis from the point of view of parliamentary law. The outbreak of the pandemic in March 2020 pushed many parliaments around the World to go virtual to ensure the continuity of parliamentary businesses. That was the case of the European Parliament, which held its first ever plenary session with remote electronic participation on 26 March 2020 and has continued to do so until the moment of writing (February 2002). During these two years, the Rules of Procedure of the European Parliament have changed, new videoconferencing tools and remote voting solutions have been developed and parliamentary procedures have been adapted to the new hybrid working methods. The digitalisation of parliamentary proceedings has allowed the European Parliament to continue working under the current health crisis and can be praised for that. However, remote electronic participation in parliamentary sessions is often criticised for its impact on parliamentary procedures and the way parliaments' exercise their core functions. In addition, it can be challenging from a technical and a logistical point of view, as the system put in place must be reliable and secure and allow for the verification of the identity of members participating remotely. The paper submitted proposes to have a look to the European Parliament's experience during the last two years in order to better assess the positive aspects and drawbacks of introducing hybrid working methods in legislatures.

Session: COVID and parliamentary functions

Agostino Araneo – Tony Giorgio

Institution: University of Teramo, Teramo, Italy; Bocconi University, Milan, Italy
Email: aaraneo(©)unite.it tony.gioigio(©)phd.unibocconi.it

Remote voting and elective assemblies: the functioning of Parliaments during the emergency

The pandemic of Covid-19 has led various scholars to dwell with regard to the possibility of providing for remote voting as a remedy to allow Parliaments to work without members having to go to the institutional seats. During the pandemic, Parliaments have become more and more deferential to the executive power. The possibility of expressing a vote remotely could guarantee the effectiveness and continuity of Parliaments' proceedings and, at the same time, could permit Parliaments to recover the central role they assume in traditional democratic systems. However, the adoption of such a system implies several doubts of a technical and legal nature related to the security and secrecy of the vote.
Within the European Union, remote voting has been implemented in some countries while in most of them it hasn't been realized yet. Some states, such as Spain, weren't found unprepared since remote voting was already regulated at a constitutional level; in other contexts, such as the European Parliament, it has been necessary to intervene urgently with temporary provisions that would allow deputies to exercise their functions remotely without the need to physically go to Parliament and, in some other realities, i.e. Italy, France and Germany, the e-voting has long been discussed but seems to still be serious perplexity about the possibility of its implementation.
The paper focuses on some of the many questions that e-voting presents in the European realities. There are issues of technological nature, but legal obstacles as well. Comparing the different experiences, the authors wonder whether remote voting has allowed parliament to preserve its role and, in systems where it is not provided for if the role of the parliament has been deferential to the government.

Session: COVID and parliamentary functions

Ricardo Cunha

Institution: University of Minho School of Law, Braga, Portugal
Email: ricardoscunha(©)direito.uminho.pt

The legislative answer to the Pandemic of Covid-19 – a comparative perspective from Portuguese-speaking countries

The challenges posed by the global pandemic of Covid-19 have been differently answered by each of the states of the Portuguese-speaking countries, which is a particularly apt field of study to compare legislative experiences, considering the constitutional comparative similarities. In more developed countries, like Portugal and Brazil, national parliaments were involved in the declaration of the state of constitutional exception and the control of executive reinforced powers. In Brazil the case also involved federal states. Some of the developing, like Portuguese-speaking African countries and Timor-Leste, the incipient structures had to answer political instability that imposed a very creative response from the organs of sovereignty, including parliaments.
In most cases the measures adopted by the governments, authorized by the national parliaments, under very similar measures of state of emergency, included early lockdowns and strict control over the borders. In order to prevent the permanence of the state of emergency, there was early discussion of legislation on the prevention of contagious diseases. In Timor-Leste, the Court of Appeal declared unconstitutional the governmental proposed decree-law demanding a parliamentarian intervention on the restriction of fundamental rights. In Portugal, such legislation was discussed but abandoned when the parliament was dissolved in November following the lack of agreement on the state budget and will be again discussed when parliament reconvenes in February.
The discussion of the referred events in an easily comparable constitutional and legislative setting, as is the Community of Portuguese-speaking countries, allows for the consideration of very different inputs in the legislative processes, particularly those regarding the fight on the pandemic of Covid-19 and future learned lessons.

Session: COVID and parliamentary functions

Saru Arifin

Institution: University of Pécs, Pécs, Hungary
Email: saruarifin(©)mail.unnes.ac.id

Does the Role of Parliament Matter in Times of Pandemic Crisis? The Indonesian Case

In the majority of countries, the government or executive branch is entirely responsible for pandemic response. The government's other state powers, such as legislative and judicial, are supportive. This is because the epidemic is classified as a state emergency under the constitution. However, no country, including Indonesia, can win the pandemic without the support of other governmental powers such as parliament. Based on a review of the media and secondary sources, this article asserts that the Indonesian parliament plays a minimal role in assisting the government's fight against pandemic, and as a result, the government often fights pandemic on its own, prolonging crisis management and negatively impacting society's health and economic well-being. Parliament, as the government alliances neared 80%, was only interested in approving whatever pandemic cost the administration wanted and in monitoring the government's response to the epidemic. The Indonesian parliament does not appear to be attempting to rein in the government's performance in the fight against the epidemic, resulting in a lack of control and evaluation over the government's policies, and pandemic crisis management that is unmeasurable and ineffective. Accordingly, the epidemic continues to be poorly managed, and the national economy continues to deteriorate. As a result, this article recommends that the legislative oversight function of government performance be utilized to the fullest extent possible in order to ensure that the pandemic is managed appropriately and measurably.

Majority – opposition relations

Session: Majority – opposition relations

Jindřiška Syllová

Institution: Parliament of the Czech Republic, Prague, Czech Republic; Charles University, Prague, Czech Republic
Email: syllovasyllova(©)gmail.com

Freedom of Speech and Covid in the Czech Parliament

The paper focuses on aspects of freedom of speech in the Parliament of the Czech Republic in different periods of the pandemic.
The pandemic affected both chambers of the Parliament of the Czech Republic during 2020 and 2021. Like many other Central and Eastern European parliaments, both chambers had some resistance to remote access of plenary. Throughout 2020, procedural matters were resolved voluntarily, with the agreement of parliamentary or senatorial clubs. In this regard, we can talk about self-restriction, which in some way limited the right of speech of MPs, especially the length of speech and the possibility of speaking in general. However, these restrictions, together with the use of the procedure of legislative emergency, objectively led to self-restraint, especially by the parliamentary opposition according to bills that quickly solved the consequences of a pandemic. However, compliance with the personal epidemic measures (wearing of masks) of individual MPs was put to the test before the summer of 2020, first by the more liberal individuals of the right-wing parties, and later only by the non-systemic opposition. Some MPs wanted to oppose these so-called freedom-restrictive measures, even though in practice these measures did not limit their parliamentary rights. Is the non-use of the mask a right to a Member's free speech? Or is it a violation of another law? Two MPs were expelled from the plenary meeting. However, procedural ambiguities relating to the expulsion of proceedings that is usually not used led to a technical solution to the problem: MPs surrounds a plexiglass box. Meanwhile, the affair of one of these MPs, who attacked the President the Mandate and Immunity Committee solved and the case ended a year later with the Constitutional Court. In 2021, the situation was different. While wearing respirators has become a norm that almost no one has questioned, the opposition focused on other ways of free speech, esp. on organizing anti-vax demonstrations in front of the parliament.

Session: Majority – opposition relations

Péter Smuk

Institution: Ludovika – University of Public Service, Budapest, Hungary; Széchenyi István Egyetem, Győr, Hungary
Email: Smuk.Peter(©)uni-nke.hu

Whose Majority? On the majority principle in parliamentary decision making

The majority principle is an essential feature of democratic decision-making. Prima facie it may seem like a simple solution, but in reality, it struggles with many fundamental justification problems and provokes a legitimacy debate over the democratic and rule of law principles in parliamentary process in a number of practical situations. This paper analyzes two cases from recent debates on majority decision-making, i.e., the "two-thirds" rule of the Hungarian constitution-making and the case of "qualified" double majority vote in the European Parliament (the case over the Sargentini report, C-650/18) before the European Court of Justice. Through these cases, we can show both the strengths and weaknesses of the majority principle.

Session: Majority – opposition relations

Melanie Sully

Institution: Institute for Go-Governance Vienna, Vienna, Austria
Email: melanie.sully(©)go-governance.com

Coalition Governments, case studies Austria and the UK et al

This paper will look at comparative case studies focussing on the UK and Austria with some comparisons to Germany, Belgium, the Netherlands and Ireland.
In the UK coalition government is not so well established and the most recent example came in 2010 when the Conservatives and the Liberal Democrats rapidly agreed on a work programme. Examples of how this worked and lessons learnt will be drawn. Otherwise historically coalitions came during Wartime and in exceptional circumstances. The electoral system and political culture as well as confrontation politics in Parliament have meant that coalition politics is generally not liked and was rejected as an option even during the difficult negotiations to leave the EU.
Austria on the other hand has a long experience of coalition-building with different combinations of parties in government. The experience of Civil War, War and four power occupations prompted the two main parties to work together. This prolonged had advantages but also drawbacks and recently the parties in government have included a smaller party. Coalition fragility has been notable. Now Austria is considering future options for more than two parties in government as in Germany.
Issues to look at are the coalition pacts, stability in parliament and party discipline, intra-party difficulties e.g., the Greens with the grassroots and the concept of representation e.g., ethnic minorities, women and the voters' will – usually the parties in Austria declined to say with whom they may after the election form a government.
Also, the length of negotiations to form a coalition is interesting with respect to Belgium and the Netherlands. Here the concept of Arend Lijpart's work on consociationalism is still relevant.
Finally, I would very much like to discuss these issues and am keen to participate either in person or by Zoom depending on Covid!

Session: Majority – opposition relations

Sayantani Bagchi

Institution: National Law University, Jodhpur, India
Email: sayantanibagchibl1(©)gmail.com

Why Opposition Rights Matter? A Case for a Constructive Opposition in the Indian Parliament

The opposition plays an indispensable role in reinforcing the cause of parliamentary democracy in India. Besides, creating a check on the government's function, they are meant to facilitate a meaningful dialogue with the government in the interest of the nation. The responsibility of the Opposition assumes greater significance, especially in a multiparty system characterized by a culture of coalition governments. In India, the Opposition parties have at all times, captured the centre stage, especially after the Fourth Lok Sabha (1971-1977) which marked the official recognition of a Political Party as the Opposition Party. Conventionally, a political party securing ten per cent of the strength of the House is officially designated as an Opposition Party. After the Fourth Lok Sabha elections, the retreating dominance of the Congress party paved way for opposition voices to rise in the Parliament. This phenomenon was interrupted by several phases whereno party could secure the label of an "Opposition Party". However, the last coupleof decades has underscored several serious flaws in the way parliamentary democracy in India works. Some of them include a decline in productivity due to parliamentary disruptions and forced adjournments, haste in passing bills, erosion of public trust in representative institutions, frequent violation of constitutional conventions to name a few. In many of these concerns, the opposition seems to remain at the helm of affairs and is majorly held accountable. I argue that these disruptions are inevitable owing to the indifference shown towards concretising opposition rights in India. This warrants a closer look at the foundational pillars of the institutional framework responsible for the country's governance. Further, I would explore if the Constitutional framework and democratic culture have been conducive to the healthy growth of opposition rights in India.

Session: Majority – opposition relations

Umberto Lattanzi

Institution: Bocconi University, Milan, Italy
Email: umberto.lattanzi(©)phd.unibocconi.it

Revisiting pairing agreements: a comparative study

Pairing agreements are a parliamentary practice of long tradition and wide diffusion. They consist of agreements among MPs of opposing parliamentary parties, whereby they agree, with authorisation by the respective Whips, to absent themselves in occasion of one or more votes or sessions. Their relevance was further increased given that, during the pandemic, many Parliaments made extensive recourse to such a practice in order to ensure the (safe) continuity in their proceedings.
Despite their relevance, pairing agreements seem to be under-theorised; particularly, although a comparative review of pairing practices shows a varied scenario, existing studies predominantly refer to the English case, facing the risk of over-generalising their findings. Consequently, pairing agreements are often described (after the English experience) as "bottom-up", private, informal agreements between MPs, bearing little prejudice to their parliamentary prerogatives. Contrastingly, a "top-down" model of pairing, in which pairing agreements are first and foremost agreements between the Parliamentary Parties, de facto limiting MPs prerogatives, is most prominent in the German parliamentary practice.
Such a misrepresentation of pairing agreements was not without consequence during the pandemic. For example, in the Italian debate concerning the reorganisation of parliamentary proceedings in the wake of COVID, pairing agreements were generally deemed far less encroaching upon MPs' prerogatives and the consolidated parliamentary system than remote proceedings. Instead, during the pandemic, enacted pairing agreements have followed the German model (see the cases of Canada and Italy), actually bringing it to the utmost consequences, affecting both the enjoyment of parliamentary prerogatives by MPs and the relationship between the parliamentary majority and the opposition.
Therefore, revisiting pairing agreements is needed, thereby providing a deeper theoretical understanding thereof, one that parts away from the fiction of the apparent universality of the English model and understands such a practice in more nuanced terms, whereby two different models coexist.

Limits of legislative power II.: Executive

Session: Limits of legislative power II.: Executive

Juan de Dios Cincunegui

Institution: Universidad Austral, Buenos Aires, Argentina
Email: jdcincunegui.diplomacy(©)gmail.com

The decline of the Legislative Power in Argentina

The National Constitution of the Argentine Republic (1853) was inspired mainly by the United States of America (1788). However, through the courts' jurisprudence and later through constitutional reforms (1994), the President recognized legislative powers in certain circumstances. The scope of its interpretation and abuse added to a poor culture of parliamentary control has distorted the system of division and balance of powers, violating the system of checks and balances, essentially to ensure that successive governments act in a manner that respects democratic values. This situation has produced the decline of the Legislative Power, putting at risk the very essence of political representation in Congress and the guarantees against the arbitrariness of the governments in power. It is time to review and re-establish the principles that inspired our founding fathers.

Session: Limits of legislative power II.: Executive

Tomáš Jirsa

Institution: Charles University, Prague, Czech Republic
Email: jirsa.t(©)seznam.cz

The role of the UK Parliament and the Brexit negotiations: taking back executive control?

The "the long and winding road" from invoking Article 50 of the Treaty on EU by the UK in 2017, through the Chequers plan, the UK government's White paper, to the Withdrawal Agreement and the Political Declaration, presented theGovernment and Parliament with an unprecedented legal challenge.
In the late summer of 2019, the UK Government sought to suspend Parliament, precipitating a Supreme Court judgment holding the attempt to be unlawful, clearing the way for the immediate reopening of the legislature. These legally and constitutionally explosive developments took place in a politically febrile atmosphere, with the UK apparently hurtling towards the cliff-edge of leaving the EU without any withdrawal agreement, the Government seeking to suspend Parliament, and Parliament, in its turn, racing – successfully, as it happens – to enact legislation requiring Ministers to seek an extension to the EU exit process. It was in these unprecedented circumstances that the Supreme Court issued its incendiary judgment in the Miller II case. In my contribution, I will analyse this judgment and consider, in general terms, the extent to which withdrawal from the European Union has been, and in the future will be, a 'turning point' in British constitutional law.

Session: Limits of legislative power II.: Executive

Csaba Molnár

Institution: Centre for Social Sciences, Budapest, Hungary; Corvinus University of Budapest, Budapest, Hungary
Email: molnar.csaba(©)tk.hu

The Ability of Committees to Control the Executive. The case of Hungary

A basic role of legislations is controlling the executive. Committees are very important institutions to reach this goal by their participation in law-making and by their hearings. However, in parliamentary systems, especially in arena legislatures this controlling function is much weaker. Standing committees are regularly dominated by the governing parties with strong party discipline. In Hungary, researchers regularly describes the weakness of parliamentary committees. In this paper we investigate whether this weakness is not only the result of the parliamentary system, but of the diverging structure of the executive and the committees. Thus the ministerial responsibility is fragmented among different committees and committees also are unable to specialise to the portfolio of a given ministry. We use datasets of the Hungarian Comparative Agendas Project to compare the policy profiles of ministries and committees by electoral cycle since 1867.

Session: Limits of legislative power II.: Executive

Ahmed Elbasyouny

Institution: Indiana University, Bloomington, Bloomington, United States
Email: aelbasyo(©)iu.edu

Quota-like or Executive Control? The Politics of Executive Appointments of Members of Parliaments

Public elections remain at large the dominant method of selecting members of the legislature in democracies. Yet, several constitutions grant certain institutions of the executive branch the power to name some members of parliaments to either or both chambers. In this paper, I plan to provide a taxonomy, by examining this constitutional choice in three main case studies: the presidential appointments of members of parliament in Egypt, the military-appointed MPs in Myanmar's Hluttaw, and the appointments of MPs to the Upper House in several parliamentary republics (e.g., India) and presidential republics (e.g., Algeria).
The paper will aim at three objectives. First, providing a theoretical base to the politics of executive appointments of MPs based on the notion of constitutional borrowing, by showing how the three countries were influenced by existing designs namely in the UK. Secondly, it will review the arguments for and against this constitutional choice, arguing that while this type of design could help inducing merits, expertise, diversity, and broad political representation inside the parliament, it could lead to more executive control and power imbalance between parties. And finally, the paper will aim at providing a taxonomy that shows how executive appointments of MPs work differently in the cases examined.

Session: Limits of legislative power II.: Executive

Ramachandra Byrappa

Institution: Eötvös Loránd University, Budapest, Hungary
Email: byrappa.ramachandra(©)btk.elte.hu

India: Is it time to go Presidential?

Indian democracy has come of age, and it is probably time to abandon the colonial heritage as far as its parliamentary system is concerned. Transactionality is the name of the game in India's parliamentary system, where the principle of representation is fast fading. The art of coherent electoral manifestos and democratic debate on the policy promises it contains is a distant reality. The democratic debate and electioneering are replaced by vote banks, MPs crossing the floor, personality cult and other deification of political leaders through social media hammering. The end result is the loss of morality among parliamentarians, transforming the legislature into a financial clearinghouse. The situation is further worsened by two other problems related to the parliamentary process in India. The first among these two problems is political consensus. National development, economic and social needs, demand a broad consensus and popular affirmation on a few central policies and issues to move this gigantic country forward, through the next few decades that are going to be very difficult. The only Indian statesperson that could build such a consensus was Indira Gandhi. Today India is divided and confused with no clarity of purpose, dogmatic leadership cannot replace charismatic statesmanship. The other problem is that in the best of colonial traditions, India is centralized bureaucratically but splintered politically. The parliamentary system is unable to streamline federal institutions towards one politically unifying and unified National Interest. One can therefore legitimately ask a very simple question: Is it time to make a leap towards a Presidential system, where the President is directly elected through universal suffrage? Could this help give India one national figure, one clean voice and one articulation of the National Interest?

Information, big data and parliaments

Session: Information, big data and parliaments

Giovanni Rizzoni

Institution: LUISS Guido Carli, Rome, Italy
Email: rizzoni_g(©)camera.it

Encyclopaedic Parliaments in an Age of Fragmentation

In my paper, I consider parliaments as a special example of "machines for thinking" as they need to process a huge amount of information, in order to legislate or to exercise their oversight function over the executives. The patterns which underpin this activity can heavily affect not only the inner functioning of parliaments, but also their role in the constitutional system, and, more generally,the democratic quality of our society.
I focus on one of these patterns that I consider particularly crucial: the "encyclopaedic pattern". By this, I mean the tendency for parliaments to produce and organize knowledge according to comprehensive circular structures. In the XX century, the "parliamentary encyclopaedia" was structured on the basis of a dual analytical grid. On the one hand, the organisational structure of the political groups; on the other hand, the specialised standing committees. This powerful framework made possible the emergence of a kind of "expert parliament" dominated by the new Weberian figure of the professional politician and organized according to an epistemic division of labour among MPs. I analyse how this model is currently challenged by some major trends, like the decline of the traditional political parties and the emergence in the digital sphere of the wikipedian alternative to the ideal of a circular knowledge synthesis. Against this backdrop, I maintain however that the fundamental function of representing pluralism in the growing complexity of our societies incorporates the need for parliaments to provide common and organized platforms where the key political choices can be adequately deliberated. The very possibility for parliamentary representation to survive in the current context depends therefore crucially on the effective ability to build – through a quantum leap in innovation and imagination - a new 'parliamentary encyclopaedia' capable of meeting the cognitive needs of contemporary democracy.

Session: Information, big data and parliaments

Fotios Fitsilis – Dimitris Koryzis – Juan de Dios Cincunegui

Institution: Hellenic Parliament, Athens, Greece; Universidad Austral, Buenos Aires, Argentina
Email: fitsilisf(©)parliament.gr

Advanced ParlTech tools for cooperative digital platforms

The notion of responsible parliament provides a basis for enhanced rationality in policy-making for addressing societal problems. Yet, there are challenges linked to key elements relating to political and organisational contexts of public policy-making such as inclusive, participative democracy; openness of dialogue and communication involving all stakeholders of the policy cycle; high ethical and moral standards; a capacity for learning and reflexive practice. All those elements need to be placed within a framework of 'practical reason' that seeks to promote 'appropriateness' of action based upon various forms of knowledge (research evidence, practice wisdom and user experience) and consideration of normative implications.
In this sense, the responsibility of parliaments is not only to develop effective policies but also to promote open and critical debate of underlying ends and values. To the increasing complexity of the policy-making landscape, one may add the diversification and increased complexity of digital technologies that are gradually finding their way into bureaucratic strongholds as it is the case in several parliaments. Hence, a critical task for parliamentary research is not simply to tackle inherent institutional complexity but rather, more broadly, to deal with ambiguity and ensure appropriateness of policy actions to promote social and economic welfare. In the service of responsible parliament, policy makers should use evaluative practice to make sense of an empirically complex, morally ambiguous and ever-changing modern society.
To achieve this strategic goal, digital tools in the form of elaborate cooperative platforms can be considered. Such tools that can classified under the general notion of "ParlTech" (parliamentary technology) may have several facets and different scope to address the aforementioned policy-making challenges. For instance, they can be open to access and assess public opinion thus promoting inclusion and citizen engagement; they can analyse societal response on digital platforms in real-time thus enabling rapid policy-feedback and amendment; they can learn and react to stakeholder opinions based on advanced machine learning algorithms thus becoming more efficient and useful.

In view of the ongoing digitalisation of parliaments, the article is going to analyse the evolution of cooperative digital platforms for parliamentary applications. Through several use cases, inter- and extra-parliamentary, the authors willattempt to determine trends in ParlTech and in policy-making processes and suggest specific steps towards a responsible digital parliament. In this sense, moral and ethical issues that stand out due to the use of artificial intelligence- based technology are also going to be discussed in the parliamentary context.

Session: Information, big data and parliaments

Tarun Arora

Institution: Central University of Punjab, Bathinda, India
Email: tarun.arora(©)cup.edu.in

Automated Content Analysis (ACA) of Structural, Institutional and Operational Framework of Pre Legislative Consultative Policy (PLCP) in India

Pre legislative consultative policy (PLCP) has emerged as a significant method of legitimate and transparent governance ensuring participation of 'the governed'. The process of consultation with stakeholders resolves post legislative bottlenecks and operational hurdles in the effective implementation and enforcement of the legislative instruments. The concept has been introduced in India in 2014 on the recommendation of National Advisory Council (NAC) and the National Commission to Review the Working of the Constitution (NCRWC) and Committee of Secretaries by framing Pre Legislative Consultation Policy, 2014. It requires invariable observance by every Ministry/Department of the Central Government before submission of any proposal to the cabinet for approval and consideration.
The core of present paper is to measure executive responsiveness and impact assessment of PLCP. The basic assumption to evaluate the success of the policy is that greater is the responsiveness of Impact Constituency (IC), lesser is the space for operation of any other ideology than the constitutional democracy. The proposed paper will examine and map, both qualitatively and quantitatively, loopholes in the Structural, Institutional and Operational Framework of the PLCP. It will offer suggestions for addressing the challenges in the successful implementation of the PLCP and ensuring deliberative and responsive governance.

Session: Information, big data and parliaments

Tonye Clinton Jaja

Institution: National Institute for Legislative and Democratic Studies, Abuja, Nigeria
Email: ialdlarl(©)gmail.com

The application of ICT tools in Legislative Drafting: An African Perspective

The year 1992 was the first formal mention and record of the application of ICT to legislative drafting in Nigeria. This mention is found as a chapter entitled ("Computer Based Drafting") inside a manual/book authored by the now deceased Prof. Keith Patchett of the School of Law, Cardiff University. The manual/book was entitled "Nigerian Manual for Legislative Drafting", specially and specifically published by the Royal Institute for Public Affairs (RIPA), London. The said RIPA were contracted by the Nigerian Institute of Advanced Legal Studies (NIALS) to design the pioneer programme in Legislative Drafting to train Nigerian lawyers and staff of the NIALS whom upon returning to Nigeria were to commence the design and delivery of the pioneer postgraduate diploma and masters in Legislative drafting programmes at the NIALS.
From then onward, there was a gradual movement away from the use of handwriting and typewriters in Legislative drafting in Nigeria to the use of computer and other ICT tools. Other African countries, are slowly catching on.
However, research shows that very few African countries (with the exception of South Africa) has evolved a home-grown and indigenous software for application in its Legislative Drafting tasks. Neither is the application of ICT in Legislative Drafting, a component of the curriculum of Legislative Drafting programmes at various African institutions (Nigerian Institute of Advanced Legal Studies, Zambia Institute of Advanced Legal Education, Ghana School of Law, just to mention a few) where legislative drafting is taught.
This paper seeks to provide empirical evidence of the gap and proposed solution (s) to plug the said gap in the curriculum of Legislative Drafting education and legal practice within African.

Session: Information, big data and parliaments

Flávio Quembo

Institution: Universidade Eduardo Mondlane, Maputo, Mozambique; Center for Global Reform, Maputo, Mozambique
Email: felizcidade.humana(©)gmail.com

Towards a conceptual framework for measuring political sustainability: A comparative analysis of Mozambique and Sweden

Background: The sustainability of the political relationship between people and institutions has been measured by indicators that even if accomplished do not cease the political conflict. This research study is aimed at the formulation of a Political Sustainability Index (PSI) to measure the institutional legitimacy of states.
Methodology: To calculate the level of Political Sustainability, data coded from countries that adopted legislation were classified in one of six standard stages of levels of separation of power through three categories: electoral, central, and local authorities.
Results: While observing the countries within a historical period, Ecocracy has been revealed as the highest form of Political Sustainability that dissuades struggle for recognition, while autocracy and democracy, in all versions, are concerned with the projection of domination rather than preservation of everyone's interest.
Conclusions: Correlation analyses indicate that the two countries yet are facing different hierarchical stages of political sustainability, but with the same pathways 'evolving towards a measurable finite trajectory', where decisions are made based on scientific evidence of preservation of all beings and the universalization of ecological institutions as the final form of human government".

Representation and parliaments

Session: Representation and parliaments

Bernabé Aldeguer – Pablo Oñate

Institution: University of Valencia, Valencia, Spain
Email: bernabe.aldeguer(©)uv.es; pablo.onate(©)uv.es

The Effectiveness of legal electoral quotas in the short and the long rum: Spain (2007-2019)

The legal electoral quota passed in Spain in 2007 aimed at increasing the number of female MPs in the 18 national and regional parliaments, reaching a "balanced" composition in each of them (between 40-60% of female MPs). That parity was reached in most of them, increasing the number of female MPs -above 40%- right after the quota was passed (short run effects). Nevertheless, its more questionable the extent to which the quota was effective regarding the balanced access of female MPs to the parliamentary governance structures (leading positions), understood both vertically and horizontally. In this paper we analyse the impact and effectiveness of the legal electoral quota in those 18 parliaments right after the electoral quota was passed (short run) and ten years after it was approved (long run). We measure the number of female MPs among committee boards members and spokesperson positions, as well as their allocation in committees with different political profile. Our aim is to test quota effectiveness in the long run in the parliamentary governance structures. Our final objective is to check whether legal quotas have an impact beyond increasing the number of female MPs, impacting also on the parliamentary governance positions and structure.

Session: Representation and parliaments

Vijay Kumar Singh

Institution: School of Law UPES, Dehradun, India
Email: vksingh(©)ddn.upes.ac.in

Social Media as the New Parliament

The functioning of modern State runs on three crucial pillars, i.e., Legislature, Executive, and Judiciary. Media forms the fourth estate which acts as a balance and a mirror for reflection and introspection. However, in the last few years, social media has emerged as a great influencer in law making. The age is of making news viral which influences the perception of people, including the political opinions of voters and general public on a legal issues. India has seen public outcry on the issues of corruption, violence against women, and rights of farmers, however, a greater role in these outcry has been played by social media. The effect of social media is such that even parliamentarians are not aloof from that and sometimes the tweets on Twitter becomes a political issue in parliament. It will not be an exaggeration to state that social media has emerged as a new forum for public opinion-making which translates into a great influencers for law making. The leaders in the parliament appear to address their constituency on various issues with an aim to reach their audience through the live channels and social media snippets. This paper would examine the role of social media in influencing the parliamentary debates in India.

Session: Representation and parliaments

Joseph Antwi-Boasiako – Alhassan Sayibu Suhuyini

Institution: GIZ Office Ghana Accra, Ghana; The Parliament of Ghana, Accra, Ghana
Email: joelisk1(©)hotmail.com

MPs Use of the District Assembly Common Fund in Ghana; "Perception meets Practice"

Parliaments generally perform functions including oversight, legislation and representation. In many developing countries, this representation function portrays Members of Parliament (MPs) as Developmental agents in their communities. In many developing countries, this representation function portrays MPs as Developmental agents in their communities. One of the main sources of funds for MPs has been from the District Assemblies Common Fund. The Constitution of Ghana has created the District Assemblies Common Fund (DACF) to transfer financial resources from central government to local governments (MMDAs). Out of this has been the creation of the MPs share of the DACF. The allocation is made to help MPs directly address developmental challenges in their districts. This study attempts as one of the first studies to assess the MPs Common Fund from both citizens as well as MPs perspective. This is what we term as "perception meeting practice".

Session: Representation and parliaments

An Thanh Thi Chu – Duc Tien Nguyen

Institution: Vietnam Academy of Social Sciences, Hanoi, Vietnam; University of Debrecen, Debrecen, Hungary; University of Campania "Luigi Vanvitelli", Naples, Italy
Email: anthanhchu11(©)gmail.com; ng.tien.duc(©)gmail.com

The participation of business associations in legislative process in Vietnam

For more than three decades since the economic renovation (Doi moi) in 1986, the development of private sector in Vietnam has accompanied the emergence of business interest groups, which have increasingly had an important voice in the agenda of economic modernization. In fact, Vietnam has made significant efforts to develop a legal framework to include businesses in lawmaking process. The paper analyses the regulations and practices of the participation of business associations in legislative process in Vietnam. It argues that the current framework enables the participation of business associations in legislative process to some extent, but there is room for improvement.

Session: Representation and parliaments

Hannah Muzee

Institution: University of Cape Town, South Africa, Cape Town, South Africa
Email: muzhann2002(©)gmail.com

„Political Godmother": An Analysis of the Affirmative Action Policy in Uganda's Parliament

Women's increased presence in political spaces like parliament has been due to insistent demands from the women's movement, the government will, and the presence of Affirmative Action policies. For Uganda, the reserved seats have significantly contributed to women's descriptive representation for over 30 years. However, the system has come under scrutiny by scholars, women, and activists who think that it's being taken advantage of by both the state and women parliamentarians. Some women parliamentarians have held reserved seats for more than two eras of parliament under the notion that parliament needs seasoned politicians (Godmothers) to fight for women's rights, while other factions hold opinions that through quotas, women's descriptive representation is not commensurate to their substantive representation. This paper is based on a study that interviewed long-serving women parliamentarians and the electorate in Kampala on the question of Affirmative Action. The findings revealed mixed perspectives with Women legislatures largely in favour of Affirmative Action and the electorate holding the conviction that Women who went to parliament on open seats were more vocal and effective compared to their counterparts on reserved seats. The paper recommends that reserved seats be held for a limited time to encourage competition on open seats.

Session: Representation and parliaments

Ágnes M. Balázs

Institution: Ludovika – University of Public Service, Hungary
Email: Molnarne.Balazs.Agnes(©)uni-nke.hu

Voice of the Nationalities in the Hungarian National Assembly (2014-2022)

The relationship between substantive and descriptive representation of minorities is a widely discussed topic in the academic literature. Presence of minority-related issues on the legislative agenda could be a good measure of substantive representation of minorities. However, it is hard to measure whether the increase of minority-related issues on the agenda is the consequence of presence of MPs belonging to certain (e.g., ethnic) minorities or other factors. It is especially true in such systems where belonging to a minority constitutes a sensitive data and therefore is hard to identify members belonging to these groups. At the same time, we have easier job, if institutional changes regarding minorities' substantive representation occur. In Hungary, special, preferential representation of national minorities was introduced in 2014. Should a minority's list achieve a preferential quota, a minority MP represents the minority in Parliament. If not, then a nationality spokesperson having limited rights represents the group. That was the case between 2014 and 2018. In 2018, a minority MP (the former German Spokesperson) get to the Parliament, who has the full rights of an MP. In 2020, minority MPs got broader competences. That is why Hungary provides a good basis of examination of the relationship between descriptive and substantive representation of minorities. In this paper, we examine, whether these institutional changes led to an increase in minority-related issues on the legislative agenda during the 2014-2018 term compared to the preceding one. At the same time, the activity of the German minority MP (former spokesperson) will be examined across institutional changes. We seek answer to the question, how these changes impacted his behaviour in the Parliament.

Supranationalims, federalism and parliaments

Session: Supranationalims, federalism and parliaments

Dominik Králik – Kateryna Vorotylenko

Institution: The Office of the Government of the Czech Republic, Prague, Czech Republic; Charles University, Prague, Czech Republic
Email: kralikdominik(©)gmail.com

The Problem of Implementation of EU Law into National Legal Orders - What is the role of national parliament?

In the paper, we will discuss these 4 ideas:
1. The most important role at the national level in the process of implementing EU rules is played by the national executive. The powers of the national legislative bodies - parliaments are limited to voting on transposition laws. Are national parliaments really just "voting-robots"?
2. Not only directives require transposition. National law must adapt almost every EU legal norm, nevertheless if it is hard law or soft law. This raises many questions, which certain? And is it really the duty of the member state to implement every EU legal norm?
3. Non or false implementation brings negative consequences. The Commission, as guardian of the treaties, can activate the ECJ for breach of contract. But it does not have to - if the informal talks with national bodies lead to the satisfactory result. If the legal action is brought by another state, there is a space to reach an agreement. We will discuss the case of Mine de Turow, Poland vs. Czech Republic.
4. We will shortly discuss the role of national parliament in the case of gaining the membership to new members on example of Ukraine.

Session: Supranationalims, federalism and parliaments

Vijay Kumar Tyagi – Ayush Sachan

Institution: University of Delhi, New Delhi, India
Email: vijaytyagi31(©)gmail.com

Impact of Sporadic Elections on the Functioning of Parliament: A Case Study from India

India is a 138 crore citizens' strong multi-party parliamentary democracy with a unique structure of centre-state relations. Individuals are elected to both central legislature and state legislatures at different periods of time for effective governance and catalogued law-making according to the provisions of the Constitution. There is no provision for holding simultaneous elections for all legislatures. This leads to continuous campaigning for elections in one or the other part of the country at nearly all times during the year. The central legislature (Parliament) consists of Lok Sabha, having members representing their respective constituencies, and the Rajya Sabha, having members representing the states. Generally, these members of parliament also belong to certain political parties as a result of which they tend to prioritise state election campaigning over and above their attendance in the parliament.

With this paper, the researchers' aim is to analyse the impact of elections to the state legislature on the efficiency of elected members in the parliament using data from the 16th Lok Sabha (2014-2019). Factoring in considerations like attendance in house, number of questions asked, number of private member bills presented and participation in debates inter alia, the researchers aim to develop an understanding of this phenomenon and develop an argument in favour of simultaneous elections to maintain federalism and efficient working of the highest law making body of the country.

Session: Supranationalims, federalism and parliaments

Azer Sumbas

Institution: Hacettepe University, Ankara, Turkey
Email: asumbas(©)ucdavis.edu

From Parliamentary Sovereignty to Federalism: A Case Study of Canada and Australia

Parliamentary sovereignty, also called parliamentary supremacy, is one of the core features of public law debates as well as the notion of federalism. Considering parliamentary sovereignty and federalism in one form, both become legally and politically sensitive due to the fact that parliament as the legislative body does not hold absolute sovereignty as sovereign powers are divided and fragmented in one form or another in federations. For instance, arranging differences regarding institutional design between parliamentary sovereignty and federalism requires what powers Parliament should be had vis-à-vis the federal constituent entities or the States.

In this framework, this research initially aims to explain the concept of parliamentary sovereignty by referring to AV Dicey's valuable works on parliamentary sovereignty. Then, it will be underlined how the Westminster Parliament constitute a federation in Canada and Australia as the British Dominions. On the one hand, due to the fact that division of powers and limited sovereignty has always been a reality in federations, the notion of federalism will be encapsulated. On the other hand, both federations adopt parliamentary sovereignty, in the understanding of sovereignty has been seen a considerable evolution in terms of limiting itself entirely such as most amendments to the Canadian Federal Constitution may only be altered with the consent of both the Parliament and two-thirds of provinces containing 50% of the population.

Therefore, while emphasizing AV Dicey's theory, this research will present how Australia and Canada as former British colonies harmonized parliamentary sovereignty and federalism. Doing so, meanwhile the Canadian and Australian courts' decisions on the basis of the doctrine of parliamentary sovereignty will be revealed, a comparative approach will be adopted in order to identify the differences and familiarities as well as socio-economic aspects by virtue of being former colonies.

Session: Supranationalims, federalism and parliaments

Alberto Nicotina

Institution: University of Antwerp, Antwerp, Belgium
Email: alberto.nicotina(©)uantwerpen.be

The role of National Parliaments in EU law-making: "efficiency" and "legitimacy" approaches

When negotiating EU draft legislation within the EU Council of Ministers, Member States are represented by the members of the national executives. National Parliaments, therefore, play in many cases only a marginal role. In other cases, the institutional design at the national level enables Parliaments to vent opinions on EU draft legislation and, in some cases, these opinions bind the government during the negotiations.
As a consequence, it is possible to distinguish Member States in which an information obligation is foreseen, others in which the government is bound to take into account parliamentary opinions, others in which a scrutiny reserve is in place (i.e., those cases in which the government cannot express vote before that the Parliament has expressed its position) and others yet foreseeing an actual mandate system, where the government is bound by parliamentary decisions.
These different positions can be situated in a spectrum ranging from "efficiency", including those systems that prefer the need for efficiency over a more punctual democratic control – and "legitimacy", referring by contrast to those systems that are more concerned with providing the supranational legal order with a strengthened democratic legitimacy.
However, such an analysis alone would be limited to the so-called "law in the books", i.e., to what the legal framework establishes in such cases. Both legal and political science literature actually suggests that it is not uncommon to observe systems in which a mandate system is established "de jure" where parliaments hardly discuss EU affairs and others in which parliaments with theoretically weak oversight powers "de facto" play a strong role in EU affairs.
The proposed paper intends to draw from existing literature on both institutional design and parliamentary practices in order to provide a comprehensive overview to be subsequently interpreted in the light of the above-mentioned theoretical framework (efficiency approach vs legitimacy approach).

Ludovika – University of Public Service, Hungary
Department of Constitutional and Comparative Public Law

Global Conference on Parliamentary Studies

12-13 May 2022
Budapest, Hungary

BOOK OF ABSTRACTS
2022

The conference is organized by:
Ludovika – University of Public Service, Hungary
Faculty of Public Governance and International Studies
Department of Constitutional and Comparative Public Law

ISBN 978-963-531-760-8

Web: https://en.uni-nke.hu/events/programs/global-conference-on-parliamentary-studies

BRILL

KONRAD ADENAUER STIFTUNG