ABSTRACTS

LEVENTE NAGY

The dilemmas of the Majority Principle and of choosing the majority

In modern times, the idea that there might be many ways in which something can be true when interpreting „reality" has become more and more widespread. In other words, it seems that there is more than one truth about the world, about the people and about society. In this pluralistic world, and with the diversity of views, for societies to function, there is a need for collective decision-making based on the Majority Principle. It turns out that majority rule is an important element of democratic politics and deserves careful consideration. The notions 'tyranny of the majority' and 'rights of the minorities' suggest that majority rule can be dangerous, and this explains why we have to emphasise that majority rule is not identical to almighty government, and that the Majority Principle does neither lead to anarchy, nor to absolutism, but it rather brings about a self-constrained system of government. This system needs aggregate group decisions, compromises and/or consensus, expressing the will of the majority with respect to the interests of the minorities. This paper attempts to present a short analysis of the *Majority Principle*, and to present three methods (first preference; Condorcet method; Borda count) for *selecting members of the majority*.

Key words: Borda count, Condorcet method, first preference, majority, Majority Principle

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SÁNDOR MÓRÉ

The legal framework and the first two years of the institution of nationality spokespeople

This paper, in addition to presenting the first two years of the operation of the new institution of nationality spokespeople, examines the answers of the legislator given to the criticism related to the lack of parliamentary representation of national minorities. The legislator originally considered the possibility that national minorities should not gain representation despite the preferential quota. National minorities that have a nationality list but did not earn a mandate may represent themselves in the parliament through a nationality spokesperson. The term may lead to misunderstandings, because the spokesperson may seem to be an MP. The nationality spokesperson, who bears immunity does not have an "ordinary" MP status: they are not allowed to exercise the main right of MPs, which means they do not have the right to vote at the sessions of the parliament. Important rights of spokespeople include that they are allowed to submit legislative proposals through the relevant national minority committee, they participate in the work of the committee and have the right to vote. In a small parliament, such as the current one in Hungary, the establishment of a preferential mandate may lead to the increase of aversion related to national minorities, and the issue of parliamentary groups is also problematic. The author believes that a modern second chamber of the parliament would solve many problems like, among others, the one concerning the parliamentary representation of national minorities. The final conclusion of the paper is that more trust and time should be vested in spokespeople who can make their voice heard by using the public nature of the parliament, which would be a step forward compared to the previous regulation.

Key words: Constitutional Court, components of the state, parliamentary representation, second chamber of parliament, nationality spokesperson

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MIKLÓS SEBŐK – ÁGNES BALÁZS

Research Topics and Methodologies in Legislative Studies – A Computer Assisted Qualitative Analysis

This paper provides an overview of the current trends in the research, topics and methodology of legislative studies. This task is accomplished by a content analysis of the two flagship journals of the research field, the Legislative Studies Quarterly (LSQ) and the Journal of Legislative Studies (JLS). The computer-aided qualitative data analysis is performed using ATLAS.ti on a database consisting of 100 LSQ and 149 JLS abstracts of research papers published in the journals between 2011 and 2015. We established 11 main thematic categories for the topics of abstracts. Roughly a third of the topic codes were associated with legislative institutions, processes and behaviour in the case of LSQ; for JLS, this ratio reached almost 50%. Additional major research topics include parties and ideologies; legislative relations with external partners (the president, interest groups, the judiciary); as well as elections and candidate selection. In terms of methodology, most abstracts implied (or explicitly used) a regression-based analysis. Important data sources included legislative data (such as roll-calls) and electoral results. The geographical content of abstracts in LSQ was firmly centred on the United States, with the Congress and state legislatures emerging as important sub-fields. On the other hand, the main geographic focus of JLS is Europe. In the period under scrutiny, the research papers showed a wide range of types from case studies to long time series.

Key words: legislative behaviour, legislative institutions, legislative studies, political science, qualitative content analysis

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KATEŘINA ŠIMÁČKOVÁ

The autonomy of the parliament and parliamentary immunity in the current case law of the Constitutional Court of the Czech Republic

Last year, after a previous decision of the Czech Supreme Court, the Czech Constitutional Court issued two statements regarding the question of the autonomy of the parliament and the scope of immunity of MPs. According to the Constitutional Court, the bodies of the chambers of the parliament do not make decisions as public authorities while exercising their disciplinary power, and their decisions are not subject to judicial review. This means that the decision is also a manifestation of the autonomy of the parliament. In addition, the Constitutional Court, in the justification of a constitutional complaint they refused, argued that parliamentary immunity is an exception to the principle of equality before the law, where parliamentary immunity belongs to the parliament as a whole. Therefore, in the event of indemnity, it is the parliament as a forum of debate among deputies and senators that is protected primarily. Both cases lead us to think about the question whether it is desirable to exempt deputies and senators from both criminal and administrative law sanctions.

Key words: case law of constitutional court, Czech Republic, immunity, legal status of representatives and senators, parliamentary autonomy

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PÉTER SMUK

Rights of the opposition as a qualified minority in the Bundestag

In the conflict of the constitutional values of the equality of Members of Parliament and effective opposition, the German Federal Constitutional Court decided in favour of the former. The constitutional issue stemmed from the situation where the opposition

parties in the 18th Bundestag opposing the grand coalition did not reach the thresholds (quorums) necessary to exercise minority rights provided by the *Grundgesetz*. In its decision [2 BvE 4/14], the Court found that the basic law does not expressly create specific rights for parliamentary opposition groups; nor can one derive an obligation to create such rights from the basic law. The rights of the opposition as rights of a „qualified minority" are neutral prerequisites – regulating them according to political affiliations would harm the neutrality of democratic processes and also the principle of political equality. Quorums provided by the basic law already express the constitutional status of the opposition; changing this framework would have impact on the values of effective government (avoiding the abuse of minority rights) and the role of the political minority played in the division of powers and plural democracy.

Key words: Bundestag, Constitutional Court, democracy, Grundgesetz, opposition

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ZSOLT SZABÓ

The Parliament in the Brexit: active or passive player?

After the referendum held in the United Kingdom on 23rd June this year, several contradictory opinions have been published in the domestic and international law journals about the public law procedures to be followed and the role of Parliament in these procedures. Some of these argue that Parliament must give approval or at least have a debate before the official announcement of the withdrawal from the EU according to Article 50 of the Treaty on European Union. Others claim that the government can decide without Parliament based on its historical sovereignty in foreign affairs. This paper sums up the arguments of both sides and attempts to uncover the background of Brexit in constitutional law, providing an analysis of the role of referendums within the constitutional system of the UK and the power of Parliament concerning the result of referendums, with special regard to the ruling of the High Court in November 2016.

Key words: Brexit, direct democracy, parliament, referendum, United Kingdom

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PÉTER VÁCZI

Verdict in the case Karácsony and others versus Hungary

In order to have immunity from responsibility, the sovereignty and autonomy of member states is a beloved excuse for presidents and prime ministers; nowadays it is especially popular, considering either the Council of Europe, the European Union or other international bodies. What is the range of the autonomy of a member state, what can a national parliament do and what can it not do? What requirements can be formulated by the European Court of Human Rights in the field of parliamentary disciplinary law, which is a traditionally sovereign field of law? The answer was given by the forum in Strasbourg in the verdict reached in the case of Karácsony and others.

Key words: Article 10 of EJEE, disciplinary sanctions, European Court of Human Rights, freedom of speech, parliamentary autonomy

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GUSZTÁV SZÁSZY-SCHWARZ

The legal theory of obstruction – Remarks on a theory of the law of general debates 1.

The Author, Gusztáv Szászy-Schwarz was a well-known professor in the golden era of Hungarian legal science at the turn of the century. His scholarly work extended to every field of civil law, which was based on Roman law and pandectism. As a great jurisconsult, he participated in the editing process of the new Hungarian Civil Code in 1895. In his work "The Legal Study of Obstruction", which was first published in 1904 and is also rich in references to civil law and Roman law, he states that obstruction is a general phenomenon of the whole legal system, which should not be restricted to parliamentary law. Obstruction

can occur in any type of debates: even in a lawsuit or at a general meeting of a company. Szászy-Schwarz traces obstruction back to the institution of “in fraudem legis agree” and the principle of the prohibition of the abuse of rights. The paper also describes the proceedings against obstruction and analyses the rights and duties of the chairman leading the debate.

Key words: abuse of rights, obstruction, relationship between civil law and parliamentary law, Roman law

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ÉVA BALOGH

Whither Europe? – An overview of the conference “European Constitutional Democracy in Peril – People, Principles, Institutions”

The experiences of the recent years show that constitutional democracy is in peril in Europe. Different kinds of problems have appeared on several levels in the European countries. These changes are questioning the principles and practices of constitutional democracy, therefore they need to become subjects of international debates. For this reason, Catherine Dupré, Kriszta Kovács and Gábor Attila Tóth organised an international conference on 23rd and 24th June 2016 in Budapest. The event took place at the Faculty of Social Sciences of Eötvös Loránd University. As the title of the conference shows, the organisers sorted these dangers into three categories. The conference panels were divided based on this classification. The panels discussed these topics and other related questions in detail and from various perspectives. This article gives an overview of the high-standard conference. Its conclusion is that discourses such as this can take us closer to answering the questions concerning the maintenance of European constitutionalism while preserving and, at the same time, reforming democratic solutions and practices.

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ZSÓKA MAGYAR

Beyond the Rules of Procedure

This paper aims to review the last three lectures of the series "Beyond the Rules of Procedure" of the Foundation Semester of the two-year series. The organiser of the events, the Office of the National Assembly managed to find topics that gave the lecturers an opportunity to deal not only with theoretical, but also with practical problems of parliamentary law. The audience gained such insights into the topics that cannot be gained from books or university lectures. It should be noted that some of the speakers, based on their own work experience, were able to draw attention to some practical problems. The Foundation Semester achieved its purpose, providing the necessary fundamental knowledge for understanding the following events. Each thematic lecture discussed in the paper highlighted a basic constitutional issue: Péter Smuk and Csaba Erdős spoke about the position of the parliament in the separation of powers. They analysed this question from several aspects, like, among others, institutional, functional and temporal, and they also dealt with the constitution-making competence of the National Assembly. Professor József Petrétei delivered his presentation on the legislative procedure. He criticised the fast pace of legislation and the so-called exceptional legislative method. The third lecture was given by two presenters. László Salamon and professor Balázs Schanda spoke about the monitoring role of the parliament. They highlighted the ascendant role of the media in the monitoring of the executive power. The presentation also covered the challenges of the rights of the opposition in the monitoring function of the Parliament and the problem of "self-interpellation".

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ANDRÁS TÉGLÁSI

The day of parliamentarism at the parliament on 2nd may 2016

The Research Centre for Parliamentarism organised a large-scale event at the parliament, which was held in the hall named after Béla Varga on 2nd May 2016. The organisers wanted to set a new trend by organising the day of parliamentarism for the first time, commemorating the opening of the first freely elected parliament on 2nd May 1990, also mentioned in the basic law. The event also hosted the introduction of "Parliamentary Review", the new academic journal of parliamentary research, and the launch of the first issue of a series of monographs called "Parliamentary Volumes", a book by Csaba Erdős on the autonomy of the parliament. The chair was university teacher István Stumpf, judge of the constitutional court. The event was opened by professor István Kukorelli. The first session of the parliament, its circumstances and significance were recalled by Gergely Gulyás, vice-president of the parliament, professor Mihály Bihari, former president of the constitutional court, and István Soltész, former general secretary of the parliament. Zsolt Szabó senior lecturer, founder and co-editor of the journal Parliamentary Review, Péter Smuk associate professor, member of the editorial board and Zsolt Ződi, technical director of the publishing company, Opten Ltd, talked about the launch of the journal. The book was presented by István Bácskai, director of Gondolat Publishing House, Imre Papp senior lecturer and Balázs Orbán to a packed audience.

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