

ABSTRACTS

ZOLTÁN SZENTE

The major characteristics and institutions of the early estate assemblies

The study describes the key features of the early (13th and 14th century) estate assemblies. In doing so, it defines the concept of medieval parliaments, and presents the most important conditions and circumstances of their development. The paper tries to answer the question of why these representative institutions emerged in the late Middle Ages only in Europe. Then, it explores the causes which led to the establishment of estate assemblies in the different countries. The author examines also the main principles and theories of medieval representation, as well as the most important functions and powers of the early representative assemblies. Also describes the models of stratification in feudal society, in so far as it determined the structure of the medieval parliaments, with special reference to the classical theory of the German legal historian Otto Hintze, who linked the structure of early estate assemblies and even the political development in the subject countries to the historical traditions of the various medieval monarchies. Finally, the study describes the most general features of the early parliamentary procedures.

Keywords: estate assemblies, parliaments, representation, Middle Ages, institutional history

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Forms of state and government

The essay underlines the importance of a clear distinction between different terms, such as forms of state and forms of government, whereas declines the distinction between different types or forms of state and government, such as constitutional and parliamentary monarchy or presidential republic. Despite common usages of these terms, the essay argues that, in most cases, some of the widely used terms make, in fact, little sense and do not add to our common knowledge of parliamentary and presidential systems, as well as our perceptions of monarchies and republics today. The essay, therefore, makes an attempt to search ways to avoid such difficulties with emphasising the character of the commonly used terms, arguing that some of them, indeed, fail to characterize the phenomena they intend to describe. Considering the problems some scientific terms may cause, this essay proposes to alter a few of the old phrases with new ones in order to develop a more coherent doctrine of political and governmental systems and a better understanding of the world of constitutional democracy and government.

Keywords: Monarchy, republic, constitutional, parliamentary, presidential

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ÁGNES M. BALÁZS

Family voting and sustainability

Family policy is an important policy area in Hungary nowadays. During the process of drafting the new Constitution of Hungary, the idea of the so-called „family voting” emerged. That means that the parents of children could have cast additional votes at parliamentary elections according to the number of their children or parents could have cast one additional vote, with no respect to the number of their children. It could be solved in a way that children would have suffrage from the time of their birth and one of their parents could cast a vote instead of them until they come of age. This issue is disputed in the German scientific literature as well. Authors supporting this institution allege that the so-called family voting would be in favour of sustainable development or sustainable democracy. Balázs Schanda shares the same opinion. In one of his writings on family voting and sustainable democracy he argues that family voting would support sustainable development. Authors having the same opinion share the presupposition that people having children are more far-seeing than people with no children. In this paper it will be examined in the context of rational choice theory whether “family voting” could support sustainable development or not. We not only use game theory models to support our hypothesis but also use the concept of net present value. It also comes at stake whether family voting would be in favour of sustainability of democracy or not.

Keywords: suffrage, family, sustainability, sustainable democracy, sustainable development

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MARCELL MELLES

The recent amendment to the Rules of Procedure of the Slovak National Council and its background

The National Council of the Slovak Republic has been facing various challenges pertaining to its dignity since the parliamentary elections held in 2010. The new political actors introduced a new style in the political arena, not only on the streets of Slovakia, but during the plenary sessions of the National Council of the Slovak Republic too. The politician representing this new wave is Igor Matovič himself, turning the thinking on how to behave in the plenary room upside down. The consequences of his stance are manifold.

Since the disturbances became continuous, the new Speaker of the National Council of the Slovak Republic came up with the idea to introduce stricter rules on the behaviour of the MPs. As the consultations between the political groups in the National Council of the Slovak Republic did not have any chance to reach a conclusion, the Speaker and the representatives of the governing parties submitted the draft bill by August 2016. Proposals to amend the bill by MPs of the governing parties slightly changed the text; however, the original aims remained intact. Now all the new paragraphs are in force, so the representatives of the National Council of the Slovak Republic are facing a new era: if their behaviour does not comply with the new rules, they may be subject to fines imposed by the resolution of the plenary session, which may exceed the whole amount of their salary as a representative.

The purpose of this article is to summarise what were the reasons behind the draft bill, what arguments the stakeholders had and what kind of consequences has the adopted rules. It is also important to introduce the legislative procedure of the National Council of the Slovak Republic to the extent needed, otherwise one can have difficulties to understand the milestones of the process. The experiences we already have in the Hungarian National Assembly and the lessons from what happened in the National Council of the Slovak Republic give us the chance to start thinking over the desirable manner in parliaments and regulations needed to reach the purpose in a wider context. It is clear, that even those, who opposed the proposed amendments, have some arguments that are worth to be considered.

Keywords: Slovakia, parliamentarism, Rules of Procedure, symbolic tools, sanctions

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Parliamentary elections in Serbia, Montenegro and Macedonia

The year 2016 was decisive for the whole Western Balkan, as parliamentary elections were held in three states of the region. In both Serbia and Montenegro, the political forces in favour of the EU accession received the mandate to form a government; there are similar aspects in Macedonia as well, where all political parties in the Parliament support EU integration. The results of the elections display that regional reconciliation, neighbouring countries' cooperation and economic governance will be the key elements of the governments' agendas, which will contribute to the whole region's stability and development. This has a great importance at a time, when it has recently been confirmed that homeland and external tranquillity of some states is remarkably fragile, and peace can hardly be maintained without external support. The results and the events of the elections have also proved that the current direction is not acceptable for everyone. The EU has clearly lost some popularity among the people of the region, partly due to the crisis of the organization, the changing dynamics of the accession negotiations, and the uncertainties of the altering world order. It has become clear that unless the European Union rises to the challenge and becomes more attractive and visible in the states of the region, other political platforms could be endorsed. This year can be significant for the EU and the Western Balkan region, as Germany holds federal elections, while the French choose their next president.

Keywords: Western Balkans, elections, parliament, European Union, enlargement policy

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The power of the Constitutional Court of the Russian Federation on the review of the judgements of the European Court of Human Rights

The Constitutional Court of the Russian Federation has been entitled to review the decisions made by interstate bodies on protection of human rights and freedoms, including those of the European Court of Human Rights since December 2015. In cases being viewed as contradictory to the Russian Constitution, the Constitutional Court has the power to declare the decisions of the aforementioned organisations inexecutable. Emerging upon the adoption of the amended act on the Constitutional Court, it was concerned an act by Russia, so as to avoid implementing the judgement of the European Court of Human Rights issued in the Yukos case. This assumption was proven in January 2017 when the Constitutional Court concluded that the payment of the unprecedented amount of compensation ordered by the European Court of Human Rights does not comply with the provisions of the Russian Constitution, therefore the implementation of the judgement is impossible. The aim of this paper by reviewing the decisions of the Constitutional Court based on the controversial provisions is to present that both the act and the decisions of the Constitutional Court are in breach of the provisions of many international agreements and the Constitution itself. In the future the non-compliance of the binding judgements of the European Court of Human Rights may have unforeseeable consequences on the international opinion about Russia as well as on the cooperation between Russia and the Council of Europe.

Keywords: Constitutional Court of the Russian Federation, constitution, European Court of Human Rights, implementation of judgements, Yukos case

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Constitution amendment without the Parliament? Dilemmas in the interpretation of the Japanese Constitution

The Constitution, promulgated on 3rd of November 1946, entered into force on 3rd of May 1947 and since then hasn't been amended, although its text was based mostly on the draft proposed by the Allied Powers in February 1946.

The Constitution embodied the basic provisions of a real parliamentary monarchy, whereby the Emperor is the symbol of the unity of the Japanese people (象徴, *shōchō*), the executive power is carried out by the Government accountable to the Diet. The Diet (国会 *kokkai*) represents the highest organ of the state power, and the sole law-making organ of the State.

One of the main reasons, why the amendment of the Constitution is on the agenda for a long-time, is the so-called peace-clause, whereby Japan forever renounces the right of belligerency and the use of military forces.

Subject to the early decisions of the Japanese Supreme Court, whereby the exercise of the right to self-defence was not considered as unconstitutional, several acts were adopted by the Japanese Diet not only on the right to individual self-defence, but – in light of the international obligations of Japan – since 2015, also on the right to collective self-defence.

The adoption of any amendment of the Constitution would require two-thirds majority in both Chambers, and the ratification by the people through a referendum. For several decades the lack of the necessary parliamentary majority was the reason for the Government to make use of the opportunities provided by the interpretation of Article 9. This has also stemmed from the fact that the prohibition determined in Article 9 was set by the Supreme Court in parallel with the obligation to guarantee the right to life, liberty, and the pursuit of happiness as set out Article 13.

Nevertheless, it should be specified that the changing international threats can make an act grounded, but the constitutional empowerment is still urgently needed.

Keywords: Japanese Constitution, Japanese Diet, Peace-Clause, Right to Self-Defence, Amendment of the Constitution

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The institution-building activities of the Hungarian National Assembly in the parliaments of South-East Europe, with special regards to the Western Balkans

The Office of the Hungarian National Assembly has been playing an active role in consultancy (technical support) programs supported by the EU since 2004. The aim of such programs are to support the parliaments of the states, located in South-East Europe, which states are on their way of EU accession or have a partnership with the EU. The staff of the Office together with colleagues from other cooperating Member States' parliaments take part in workshops and try to transfer their knowledge and experience to the institutions of the beneficiary countries. This consultative activity covers general questions in connection with democracy and legislative work as well as special topics relating EU membership. The affected states (Romania, Turkey, Moldavia, Croatia, Macedonia, Albania) got specific suggestions regarding legislation and institution-building. These suggestions contributed the practice of their tasks relating EU accession and partnership. The Study represents the background and results of these programs.

Keywords: twinning, institution-building, EU-accession, Western Balkans

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GUSZTÁV SZÁSZY-SCHWARZ

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

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 juris consult, 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 agere” 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.

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

CSABA ERDŐS

Parliamentarism in Hungary and in Europe – An Overview of the Centre for Parliamentary Studies’ Conference

The Centre for Parliamentary Studies (hereinafter: CPS or Centre) held a conference called “Parliamentarism in Hungary and in Europe” on the 1st December 2016 at Széchenyi István University’s Faculty of Law and Political Sciences. It was the first conference in the CPS’s history wherein the new – so called external – members of the Centre could take part. Beyond the internal and external members, experts of the Office of the National Assembly, researchers of the Hungarian Academy of Sciences and lecturers from other universities also visited the conference. The keynote speaker of the morning session was prof. István Stumpf (the member of the Hungarian Constitutional Court) who delivered a lecture called “Rule of law and parliaments”. In the afternoon session prof. József Petrétai spoke about the possible directions, topics of the future parliamentary studies. The assistant director of the Office of the National Assembly Tibor Bárány summarized the Office’s activities in the field of scientific research and the Office’s relations with universities. As the leader of the CPS prof. István Kukorelli also emphasized the importance of the co-operation between the institutions of practical and academic spheres. The paper gives an overview on the main points of the speeches listed above and other comments said by other participants of the conference.

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MÁRTON NÉMETH

Beyond the Rules of Procedure – Reforming the Parliamentary Law of Hungary

The purpose of the review is to summarize the main findings of the latest events of the conference series „Beyond the Rules of Procedure” organized by the Directorate of Legislation of the Office of the National Assembly.

The first session of the third semester held by the Constitutional Court member Attila Horváth and former Secretary General of the Office of the National Assembly István Soltész aimed to describe the importance and impact of the Hungarian parliamentary tradition on the legislative procedure today. The lecturers pointed out that the rich parliamentarianism of the last two centuries of Hungary exercised significant importance on the Rules of Procedure of the last two decades as well.

The next speaker Mihály Bihari, former President of the Constitutional Court of Hungary spoke about the operation of the National Assembly. He praised the new Rules of the Procedure as an effective and modern piece of legislation also in comparison to other European acts.

The political function of the Hungarian parliament was the topic of the next session held by two professors of the Corvinus University of Budapest, Gabriella Ilonszki and Réka Várnagy. They criticized the new legislation for handicapping the opposition through the new rules concerning the committees work and the publicity of the legislative process.

The aim of the last session of the semester was to summarize the experiences of the new Rules of Procedure of the National Assembly. The lecturers were Gergely Gulyás, Deputy Speaker of the National Assembly and Tibor Bárány, the Director General of the Office of the National Assembly. They emphasized that in spite of the criticism concerning the construction of the new rules, they see the enacted legislative procedure as a success based on the experiences so far and they are confident that the new rules are going to provide a solution for the most rigorous problems of the operations of the Hungarian National Assembly in the long run as well.

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TÍMEA VARGA

A summary of the speeches held at the book launch presenting the monograph 'Parliaments in Western Balkans'

This report gives a summary of the speeches held at the book launch on 27th October, 2016 presenting the monograph by Zsolt Szabó about the parliaments in Western Balkans. The event was organized as a joint occasion of the Centre for Parliamentary Studies and Gondolat Publishing House. Invited speakers of the event were the following: Zsolt Németh MP, the Chairman of the Foreign Affairs Committee of the Hungarian National Assembly, Zoltán Horváth, Leader of the EU Technical Assistance Project of the Hungarian National Assembly, Iván Halász, professor of the National University of Public Service and Peter Smuk, Head of the Constitutional Law and Political Science Department of Széchenyi István University. All of the speakers emphasized the uniqueness of the book given that it is the first monograph dedicated to the parliaments of Western Balkans in the Hungarian and international literature. The series of speeches were opened by Zsolt Németh who stressed the importance of the international activity of the Hungarian National Assembly, without this remarkable work this book would probably not have been created. Mr. Németh highlighted that the Western Balkans play a very important role in Hungary's foreign policy, the countries of the region are regarded as economic and political take-off point for Hungary. Then he drew attention to several similarities between the countries of Western Balkans which provide reasons for a comparison of the countries. One of the most significant features of these countries is the interethnicity, the presence of the ethnic issues. Zoltán Horváth introduced the technical assistance projects completed in the countries of the Balkan region by the Hungarian National Assembly. These assistance projects have been implemented in the framework of twinning programmes. Mr Horváth accentuated that the National Assembly of Hungary is by far the most active one among the parliaments of the EU countries regarding the EU accession projects. Iván Halász examined the similarities in the West Balkan countries from the point of view of comparative law.

The closing speech was held by Péter Smuk, who emphasized that the monograph provides lots of useful information about the activities of the parliaments and other constitutional institutions of the region. Mr Smuk recommended to the audience a virtual bookmark with two main key concepts: sovereignty and self-determination. At the end of the event the author made reflections on the remarks of the speakers concerning the launched monograph and he also talked about the moments of the two-year journey that lead to the accomplishment of the book.

Keywords: book launch, Western Balkans, parliaments, comparative law, ethnic issues

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