

CONSTITUTIONAL CULTURE IN WESTERN AND CENTRAL EUROPE

THEORETICAL AND PRACTICAL PROBLEMS IN LIGHT OF
THE RECENT POLITICAL AND ECONOMIC CHALLENGES

Mos Maiorum Research Group

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CONSTITUTIONAL CULTURE IN WESTERN AND CENTRAL EUROPE

Executive Summary

Recent constitutional developments in Hungary and Romania drew remarkable international attention to the Central European region and shed a new light on the age old problem of constitutional and democratic consolidation processes. Only a few scholars and politicians have assumed that after more than two decades of experiencing with democratic practices a series of institutional changes may occur in countries which were supposed to be consolidated or at least semi-consolidated democracies. On the other hand, the financial and economic crisis from 2008 has induced Western European countries to rethink some constitutional constraints, especially but not exclusively on public finances. Both on the European and the national level tendencies have loomed which implicated radical or sophisticated changes (or challenges of the prevailing constitutional regulations as in case of Portugal) in the political system of individual countries and the European political system as well. Questions were raised especially concerning the role of constitutional courts as powerful veto players in public financial matters. Although in different contexts and with different aims, important decisions (or cut of the competence) of the constitutional courts in Portugal, Hungary and Germany showed that the financial and economic crises had a deep impact on and reopened some constitutional debates.

Nevertheless some scholars think that the disfunctionality of certain institutional factors or even their deadlocks in the political system are only symptoms of a more fundamental factor which determines the workings of the whole structure or at least the attitudes towards and operations of particular political institutions and their cooperations. From this point of view institutions are organizational frameworks which can determine the political life of a political community only to a certain extent. This brings us to another major factor of the constitutional life of Western democracies: it is the role of unwritten norms of a given political culture to secure the appropriate daily operation of the political mechanism of a community. Beyond securing a rational institutional structure the daily performance of political actors should also be the object of scientific research: players on the political field have an immense and largely underestimated personal responsibility in establishing and maintaining a constitutional and democratic culture.

Against this background our conference aims to highlight some theoretical, historical and practical questions regarding the contemporary challenges of constitutional and democratic culture.

THE FIRST SESSION of the conference, entitled *Philosophers in and about Western democratic constitutional culture* confronts the issue on the level of philosophical abstractions. The issues to be tackled are the following: What is the state of the art in the field of political philosophy in the aftermath of the Habermas-Ratzinger discussion on the pre-political conditions of Western constitutions? How should political philosophy conceptualize the different forms of constitutional arrangements of member states and the European Union? Is there a philosophical reflection on the necessary personal and common virtues of a thriving constitutional culture? How and how far should institutions be guarded by the active participation of citizens? How can new democracies formulate new democratic practices or return to updated forms of their own constitutional tradition? How far is constitutional practice driven by or against the reflections of political philosophers?

THE SECOND SESSION, entitled *History of constitutional ideas and practices* turns to the historical background of constitutionalism from the perspective of the history of ideas. Hungary has a long tradition of constitutional thought and practice, questions of the public law have always been at center of political issues. The classics of the 19th century, including Széchenyi, Kossuth, Deák or Eötvös, could easily refer back to a long history of constitutional awareness. The historical achievements of this tradition is openly addressed by the preamble of the new Fundamental law. Constitutional lawyers were however quite timid so far in addressing the issue, limiting themselves to the his-

torical achievements of the constitutional culture of the last twenty years. This session tries to provide keys to connect these two parts of the troubled but rich history of constitutional theorizing in Hungary, also looking at it in a regional context. For the dissatisfaction with the political transition in Hungary is not exceptional in Central Europe: intellectual history can reveal some of the common elements in the mentality of the political communities in the region, while explaining also the sometimes surprising dissimilarities among them. Questions in this panel therefore should include: How can our research into the historical semantics of popular, liberal or democratic vocabularies contribute to the understanding of recent constitutional processes in East-Central Europe? How are past struggles for survival, freedom and independence mirrored in post-1989 constitutions? What kind of role does the memory of these efforts play in the collective consciousness of East-Central European nations? Can common features in East-Central European constitutional traditions be revealed that would arch over national agendas? How far differences in historical development did cause dissimilarities in their re-democratization processes?

THE THIRD SESSION of the conference, entitled *At the Frontier of Law and Politics: Constitutional Culture and Struggle for Power*, focuses on the problem of constitutional culture from the perspective of political science and legal studies. Constitutions are not only sets of fundamental regulations in codified or uncoded form. The textual corpus of constitutions are always in need of interpretation thus constitutionalism only starts out but certainly

never finishes with constitution drawing processes and their textual developments (as in the case of Britain). After clearing up more or less ostensibly what should be regarded as the content of a constitution (i.e. the object of constitutionalism) a process of power struggle begins for the right interpretation of the corpus, on the one hand, and for the competence of interpretation over this corpus, on the other hand. How should this corpus be interpreted and who has the right/competence to interpret this corpus? Both questions refer to different levels of political power struggle in the aftermath of a crystallization process of the constitutional corpus. Nevertheless, from this constant struggle emerges a special kind of constitutional culture which is sometimes more important factor in politics than the textual corpus of the constitution itself. Constitutional culture is a certain attitude towards the constitution by the political actors and institutions in their daily activities. When solidified, constitutional culture determines the boundaries of the struggle for power, it sets limit to the actual use of power. Answers to questions like the “juridification” of politics and, in turn, the “politicization” of judicial issues are related to the scope and nature of a given constitutional culture. Since constitutional affairs are at the frontier of politics and law in this third session, which tries to combine the perspective of political science and legal studies, we’re going to shed light not only on the theoretical questions of the subject and methods of constitutionalism, together with the power struggles around constitutional interpretation, but we shall also try to point at relevant and persistent constitutional mechanisms by examining case studies of different countries of Europe and more particularly of this region.

AS FOR THE FOURTH SESSION

(The sociology of democratic constitutional cultures) a sociological perspective will be used to tackle the issues brought up in the other sessions regarding their social aspects and on a more empirical basis. The problem of political legitimacy is, after all, one of the key concepts having been disseminated from Max Weber’s sociology of domination. From Émile Durkheim we inherited the quest for social solidarity and the idea of contractual and precontractual elements of it. Indeed, the problem of the normative and legal components of the society are up to now at the heart of political sociology. A special issue of modern political order consists in the constitutional establishment of the nation state. A diagnosis of the recent constitutional developments both on national and European transnational level from a sociological point of view is a great need in times of challenging the very fundamentals of this genuinely modern socio-historical phenomenon. The scope of highly relevant questions concerning the sociology of constitutional politics denotes subjects like these: social and cultural frames and embeddedness of constitutional democracies; social aspects of statehood in European context; constitutionalism and nation-building processes; the variety of constitutionalism in diachronic and synchronic comparison; the guiding ideas and formative institutions of constitutionalism; the social carriers of constitutional ideas; the economical relevance of constitutions in the times of high capitalism; the changing role of the state in transition regions; the social function of the constitution and of constitutional debates by the multiple transitions to democracy as well as by the formation of modern political communities at all.

PROGRAM SCHEDULE

Wednesday, November 13, 2013

9:30	opening the conference	
10:00-11:30	Session 1 (3 speakers)	Chair: Gábor Gángó
11:30-13:00	lunch	
13:00-14:30	Session 1 (3 speakers)	Chair: Gábor Gángó
14:30-15:00	coffee break	
15:00-16:00	Session 2 (2 speakers)	Chair: Ferenc Hörcher
16:00-16:30	coffee break	
16:30-17:30	Session 2 (2 speakers)	Chair: Ferenc Hörcher
19:00	dinner	

Thursday, November 14, 2013

9:00-10:30	Session 3 (3 speakers)	Chair: Kálmán Pócza
10:30-11:00	coffee break	
11:00-12:30	Session 3 (3 speakers)	Chair: Kálmán Pócza
12:30-14:00	lunch	
14:00-15:30	Session 4 (3 speakers)	Chair: András Jakab
15:30-16:00	coffee break	
16:00-17:00	Session 4 (2 speakers)	Chair: András Jakab
18:00	general discussion	

Friday, November 15, 2013

10:00-12:00	Lessons and consequences of the TÁMOP Project (in Hungarian)	
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VENUE:

Sophianum, Budapest 1088 Mikszáth Kálmán tér 1.
Pázmány Péter Catholic University, Faculty of Humanities and Social Sciences

ORGANIZING COMMITTEE:

Prof. Dr. Gábor Gángó, Department of Political Science, PPCU
Dr. Zoltán Hidas, Department of Sociology, PPCU
Prof. Dr. Ferenc Hörcher, Department of Philosophy, PPCU
Dr. Kálmán Pócza, Department of Political Science, PPCU

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Mos Maiorum Research Group, PPCU
Department of Political Science, PPCU
Doctoral School of Political Science, PPCU

Wednesday, November 13, 2013

9:30	opening the conference
10:00-11:30 Session 1	<p>Philosophers in and about Western democratic constitutional culture Chair: Gábor Gángó</p> <p>EDUARDO NOLLA (Camilo José Cela University, Madrid) CONSTITUTIONS AND DEMOCRATIC TRANSITIONS. A TOCQUEVILLIAN APPROACH REVISITED</p> <p>JARMILA JUROVÁ (Constantine the Philosopher University, Nitra) DEMOCRACY IN COMMUNITARIAN PERSPECTIVE</p> <p>MICHAEL PINTO-DUSCHINSKY (Policy Exchange) THREE CONSTITUTIONAL ISSUES FOR EUROPE: MEMORY, NATIONAL SOVEREIGNTY, AND THE BALANCE BETWEEN LAW AND POLITICS</p>
11:30-13:00	lunch
13:00-14:30 Session 1	<p>Philosophers in and about Western democratic constitutional culture Chair: Gábor Gángó</p> <p>JENS HACKE (Hamburg Institute for Social Research) CONSTITUTIONAL CULTURE BETWEEN LEITBILD AND PRACTICE. GERMAN NOTIONS OF “VERFASSUNGSPATRIOTISMUS”</p> <p>FERENC HÖRCHER (Pázmány Péter Catholic University, Budapest) IS A POLITICAL COMMUNITY A PRECONDITION FOR A CONSTITUTION? BÖCKENFÖRDE, HABERMAS, POPE BENEDICT AND HUNGARY</p> <p>TIBOR MÁNDI (Eötvös Loránd University, Budapest) THE UNREALITY OF POLITICAL REALISM</p>
14:30-15:00	coffee break
15:00-16:00 Session 2	<p>History of constitutional ideas and practices Chair: Ferenc Hörcher</p> <p>MAREK HRUBEC (Charles University, Prague) TRANSNATIONAL CHALLENGES FOR CONSTITUTIONAL CULTURE</p> <p>GÁBOR GÁNGÓ (Pázmány Péter Catholic University, Budapest) SOVEREIGNTY AND CONSTITUTIONALISM IN EARLY MODERN EUROPE: LEIBNIZ’S VIEW</p>
16:00-16:30	coffee break
16:30-17:30 Session 2	<p>History of constitutional ideas and practices Chair: Ferenc Hörcher</p> <p>ANDRÁS CIEGER (HAS Research Centre for the Humanities, Budapest) CONSTITUTIONALISM AND CONSTITUTIONAL PATRIOTISM IN THE CONTEXT OF HUNGARIAN HISTORY. AN OVERVIEW.</p> <p>MARTYN RADY (University College London) CONSTITUTIONAL DÉJÀ VU: THE HIGH JUSTICE CONFERENCE OF 1861</p>

Thursday, November 14, 2013

9:00-10:30 Session 3	<p>At the Frontier of Law and Politics: Constitutional Culture and Struggle for Power Chair: Kálmán Pócza</p>
	<p>PAUL YOWELL (University of Oxford) THE PERPETUAL CONSTITUTION</p>
	<p>PATRICK J. DENEEN (University of Notre Dame) CONSTITUTION AS REGIME</p>
	<p>ANDRÁS JAKAB (Hungarian Academy of Sciences) THE LANGUAGE OF A CONSTITUTIONAL DISCOURSE</p>
10:30-11:00	coffee break
11:00-12:30 Session 3	<p>At the Frontier of Law and Politics: Constitutional Culture and Struggle for Power Chair: Kálmán Pócza</p>
	<p>PATRICIA POPELIER (University of Antwerp) GUARDIAN OF CONSENSUS DEMOCRACY OR VENUE FOR DELIBERATION: THE BELGIAN CONSTITUTIONAL COURT CAUGHT BETWEEN CONFLICTING ROLES</p>
	<p>HANS VORLÄNDER (Dresden University of Technology) THE POWER OF INTERPRETATION AND THE GERMAN CONSTITUTIONAL CULTURE</p>
	<p>UWE KRANENPOHL (Lutheran University of Applied Sciences, Nuremberg) THE REPUTATION OF THE FEDERAL CONSTITUTIONAL COURT AND THE LEGITIMACY OF POLITICS IN GERMANY</p>
12:30-14:00	lunch
14:00-15:30 Session 4	<p>The sociology of democratic constitutional cultures Chair: András Jakab</p>
	<p>CHRIS THORNHILL (University of Manchester) TRANSNATIONAL LAW IN NATIONAL CONSTITUTIONS: A SOCIOLOGICAL ANALYSIS</p>
	<p>PAUL BLOKKER (University of Trento) CONSTITUTIONS IN CONTEXT: A POLITICAL-SOCIOLOGY OF CONSTITUTIONAL CULTURE</p>
	<p>ANDREAS ANTER (University of Erfurt) THE CHICKEN-AND-EGG PROBLEM: STATEHOOD AS CONDITION OF POSSIBILITY OF CONSTITUTIONAL ORDER?</p>
15:30-16:00	coffee break
16:00-17:00 Session 4	<p>The sociology of democratic constitutional cultures Chair: András Jakab</p>
	<p>RUDOLF REZSÓHÁZY (University of Louvain) DEMOCRACY ENDANGERED</p>
	<p>JIRÍ PŘIBÁŇ (Cardiff University) CONSTITUTING THE HETERARCHY OF EUROPEAN CONSTITUTIONALISM IN THE EU'S NEW MEMBER STATES AND THE RISE OF CONSTITUTIONAL POPULISM</p>
17:00-18:00	break
18:00	GENERAL DISCUSSION

ABSTRACTS AND SPEAKERS

SESSION 1

Philosophers in and about Western democratic constitutional culture

1. Eduardo Nolla

Constitutions and Democratic Transitions.

A Tocquevillian Approach Revisited

Alexis de Tocqueville is one of the greatest commentators of the American Constitution. A lawyer by training, he carefully researched and unrelentingly asked, his American hosts about the American legal system. His research brought him to the conclusion that laws and constitutions alone couldn't explain the workings of the American democracy. This assumption placed Tocqueville in a peculiar position, closer to a sociological and cultural reading of the American legal system than to a merely legalistic and textual approach.

With many countries still attempting to move from authoritarian regimes to free and democratic ones, the matter of the role of constitutions in political transitions remains crucial to transition process. Tocqueville's theory about the universal movement towards equality and the role of constitutions continue to be relevant.

*Eduardo Nolla is Professor of Political Theory and Rector at Universidad Camilo José Cela, Madrid. He has previously taught at Yale University, Universidad Antonio de Nebrija and Universidad San Pablo-CEU. Professor Nolla is the author of numerous books and articles on Alexis Tocqueville and related topics and is the editor among other publications of *The Bilingual Critical**

Edition of "Democracy in America."

2. Jarmila Jurová

Democracy in Communitarian Perspective

Communitarianism as a concept responds to the need of a person to belong and have a goal. Recognizing the interconnectivity of individual rights and personal and social responsibility, communitarians emphasize the importance of the existence of a common commitment to the common values at the time of pluralism. Personal satisfaction and social order are understood as dependent on the security of moral framework that can be provided only by and within communities. Moreover, communitarians are willing to limit certain individual rights in favour of what they consider a broader and more general goal – the common good of the community. Hence they produce new values and institutions, thus a new ethics, which can bind us together. Communitarians supplement liberal starting points with the social aspect of the anchorage of the individual. This is supported with the evidence of communitarian vision of democracy, and with the emphasis on the connectedness of individuals' rights and obligations in the community and society. Communitarianism is trying to search for balance, for a sort of "the third way" between the rights of individuals and the social interests. In Western societies the rights are devoted enough attention. However, responsibility and obligations must be

emphasized, too, as they are the two sides of the same coin. The paper will deal with communitarian claims for democracy and civic society.

Jarmila Jurová is an assistant professor at the Department of General and Applied Ethics, Faculty of Arts, Constantine the Philosopher University in Nitra, Slovakia. She lectures Social and Political Philosophy and Social Ethics, and she specializes in the issue of justice, equality, freedom, toleration, and morality in current democratic societies. She is the author of three monographs and more than fifty professional and scientific articles and other publications.

3. Michael Pinto-Duschinsky

Three Constitutional Issues for Europe: Memory, National Sovereignty, and the Balance Between Law and Politics

The presentation will discuss: (1) memory, (2) sovereignty (3) the uncertain boundary between law and politics.

Memory: The inadequate treatment both in Western and Eastern Europe of the memory of the Nazi Holocaust is undermining the foundations of a solid constitutional culture. **Sovereignty:** Sovereignty arguably is the pre-condition for constitutionalism. Yet, we are witnessing concerted efforts to create an international order. It will be argued that these attempts are undesirable and impractical, especially if they set out to micro-manage the affairs of sovereign states.

Law and democracy: Where there are uncertainties and disagreements about the meaning of a constitution, it normally will be for senior judges to adjudicate. Judicial power must itself be accountable. The presentation will discuss how such accountability may be achieved without

undermining judicial independence.

Michael Pinto-Duschinsky is Senior consultant on constitutional affairs to the leading British think tank Policy Exchange. A former research fellow and lecturer at Pembroke College, Oxford, Merton College, Oxford and Brunel University, he is the author of Bringing Rights Back Home: Making human rights compatible with parliamentary democracy in the UK. In 2011-12, he was a member of the UK Commission on a Bill of Rights. He was a founder governor of the Westminster Foundation for Democracy.

4. Jens Hacke

Constitutional Culture between Leitbild and Practice. German Notions of "Verfassungspatriotismus"

Constitutions create normative order and need a certain degree of openness at the same time. In the Federal Republic such different thinkers as Dolf Sternberger and Jürgen Habermas claimed for diverse reasons the concept of constitutional patriotism as a mode for normative integration. Paradoxically this form of devotion to the constitution has never referred to the creation or the literal meaning of the Grundgesetz itself; Sternbergers highly abstract Aristotelianism focuses on the acting in concert of the citizens, whereas Habermas's ethics of discourse rather pronounce a process of liberalization apart from constitutional frameworks and institutions.

Do political philosophers and theorists underestimate the formative power of the constitution? It seems that they either one-sidedly look at political culture or at normative theory, but tend to underestimate the constitution as a founding act of a civil

society. My paper looks for the missing links between constitutional culture in theory and practice and tries an explanation from the perspective of the liberal-conservative school of Joachim Ritter.

Jens Hacke studied history, political science and philosophy at Humboldt University, Berlin. He earned his Ph.D. with a thesis on the liberalization of German conservatism, entitled "Philosophie der Buergerlichkeit". After four years as researcher and lecturer at the department of social sciences at Humboldt he joined the Hamburger Institut für Sozialforschung in 2008. He currently writes a book on the crisis of liberalism in the interwar period 1918-1939. Fields of interest: the history of liberalism, social philosophy, the history of ideas in the 19th and 20th century.

5. Ferenc Hörcher

Is a Political Community a Precondition for a Constitution? Böckenförde, Habermas, Pope Benedict and Hungary

The famous discussion between Habermas and Pope Benedict of the conditions of drawing a viable constitution, as it was articulated by Böckenförde, brought up the question of how to define a political community. This paper looks at this problem first from an Aristotelian perspective, by identifying the terms of a political community. In the second part of the paper the theoretical problem will be applied to the 1989-90 and the 2010 Hungarian constitution, claiming that the reason behind the legitimacy deficit was exactly the lack of a preconstitutional political community.

Ferenc Hörcher is a philosopher, dealing with political philosophy, history of political thought and Aesthetics. He has a degree in Hungarian, English, Aesthetics and Legal

Theory. His PhD was on the philosophy of moderation of the Scottish Enlightenment. Among others he has published on contemporary Hungarian literature, on Conservatism and on the history of aesthetic thought in the Enlightenment. He is director of the Institute of Philosophy, Research Centre for the Humanities, the Hungarian Academy of Science, and full professor at the Institute of Philosophy of Pázmány Péter Catholic University.

6. Tibor Mándi

The Unreality of Political Realism

Political realism, which, as a school of political philosophy can be traced back to the writings of Machiavelli and Thomas Hobbes, and is associated with such 20th century thinkers as Max Weber and Carl Schmitt, has been enjoying a resurgence lately through the works of, among others, Bernard Williams, Raymond Geuss, Mark Philp, and Matt Sleat. The central thesis of the realist school, as Bernard Williams put it, is that "in the beginning was the deed," that is, that political action, the "political," is prior to the moral. While granting that political realism can serve as a useful corrective to morally based theories of political philosophy (especially Rawlsian liberalism), I will argue – drawing on the thought of Michael Polanyi and others – that it cannot provide a satisfactory framework for thinking about politics, as it leaves the most basic question of political action, the question of motivation, unanswered.

Tibor Mándi is a senior lecturer in the Institute of Political Science at the Faculty of Law and Government, Eötvös Loránd University, Budapest, where he also got his J.D., and Ph.D. in political science. His research interests include the history of British

and American political thought, British and American liberalism and conservatism, democratic theory, and theories of political knowledge. His book Ideology and Tradition. The Problem of Political Knowledge in British and American Conservative and Neoconservative Political Thought was published in 2012 in Hungary, and won the Aurél Kolnai Award of the Hungarian Political Science Association for the best political science publication of the year.



SESSION 2

History of constitutional ideas and practices

1. Marek Hrubec

Transnational Challenges for Constitutional Culture

The paper will deal with an issue of transnational challenges for national constitutional cultures from the point of view of political philosophy focusing on historical development of the constitutional and political cultures during the last decades. It will analyse problematic interactions between national and macroregional (European) levels of establishment of political and constitutional cultures. In this connection, it will address also a discussion on absolute and shared models of sovereignty.

The general arguments will stem from an idea of political community at several (local, national, macroregional) levels concerning preconditions of legal, especially constitutional, participatory and democratic arrangement. It will concentrate on mutual patterns of recognition among citizens within such a structured political community.

Marek Hrubec, PhD., is Director of the Centre of Global Studies, joint centre of the Institute of Philosophy at the Academy of Sciences of the Czech Republic and Charles University in Prague. He is also Head of the Department of Moral and Political Philosophy at the mentioned Institute of Philosophy. He teaches at the Department of Political Science at Charles University in Prague. He focuses on issues of political justice, recognition, and democracy in the transnational and global processes.

2. Gábor Gángó

Sovereignty and Constitutionalism in Early Modern Europe: Leibniz's View

The wide scope of Gottfried Wilhelm Leibniz's scientific and technical interests extended to, on European or global scale, a surprising number of issues in the field of politics, history, linguistics, religious matters, culture, economics, even mining, on the horizon of which Eastern Europe inevitably appeared time and again. His political, cultural, or linguistic interest in this part of the world which was not entirely a sui generis one was engendered by three main factors: the waning of the Turkish Empire, the changes that transformed the vast regions of the emerging northern empire of Russia, and the post-Westphalian constellation in Western Europe. The midway nature of Eastern Europe that aroused Leibniz's interest had accordingly three main elements. Eastern Europe is, first, a strategically important territory between the East and the West; secondly, a channel of communication forwarding information about the East to the West; and thirdly, as a suitable territory for Western (and Russian) economic expansion.

Leibniz broke with the medieval conception of sovereignty which anchored the origin of the rule in the person of the ruler. He used the term „territorial sovereignty” and regarded the states as actors, sovereign unities. It is, in Leibniz's eyes, the lack of sovereignty what characterises the states between Russia and the German world. Apparently, they are state formations but with lost sovereignty and lastingly

violated territorial integrity (Hungary) or with a fragile constitution and contested territorial sovereignty (Poland). To tackle the problem of “differently” sovereign states, Leibniz challenged Jean Bodin’s monistic interpretation of sovereignty. Working toward an overall theory of sovereignty suitable not only for the new European nation states but also for other more peculiar state forms, Leibniz added the territorial principle to the definition of a state formation to constitute territorial hegemony as a sort of political rule.

Gábor Gángó graduated in Hungarian studies and history from ELTE Budapest University in 1991; he obtained his PhD there in literary studies (1997) and philosophy (2004). He is professor at the Institute of International Studies and Political Science at Pázmány Péter Catholic University, Hungary and scientific advisor at the Institute of Philosophy of the Research Centre in the Humanities, Hungarian Academy of Sciences. His research encompasses German intellectual history, political ideas in East-Central Europe, and early modern and modern philosophy. His last book (Marxismo, cultura, comunicación: De Kant y Fichte a Lukács y Benjamin) was published at Herramienta in 2009.

3. András Cieger

Constitutionalism and Constitutional Patriotism in the Context of Hungarian History. An Overview.

In my short overview I intend to examine what values, meanings and past-interpretations have been connected to the notion of constitution and constitutionalism in Hungarian political and academic life since the beginning of the long 19th century. The key question I shall answer

with the help of some examples from Hungarian History is, why constitutional patriotism could not develop in different historical periods of Hungary - except for a few short moments - despite the long parliamentary traditions. According to my hypothesis the successive political regimes used constitutional values and the memory of the struggles for constitutionalism only as a symbol or a slogan to reach their short-term political aims. The political elites in Hungary utilised the constitutional consciousness of society rather than strengthened it.

András Cieger works as research fellow at the Institute of History of the HAS Research Centre for the Humanities in Budapest. His main areas of scientific interest are: political and social history of Hungary, history of political thought and the development of freedom rights in the 19th century. He wrote two monographs (a biography of the Prime Minister, Count Menyhért Lónyay in 2008 and a book on the history of political corruption in Hungary in the second half of the 19th c. in 2011). His current research project is: Everyday Life of the Hungarian Parliament (1865-1918): A new political history. A recent publication related to the conference is a review of László Péter’s book (Hungary’s Long Nineteenth Century. Constitutional and Democratic Traditions in a European Perspective. Collected Studies, Leiden, Brill, 2012) in the Hungarian Historical Review, 2012, 1-2, p. 246-252.

4. Martyn Rady

Constitutional Déjà Vu: The High Justice Conference of 1861

Hungary has had historically two episodes of ‘constitutional hiatus’, when the legal and institutional arrangements of a period

of time have been declared void. The first was the reign of Joseph II; the second was the period of 'neo-absolutism' after 1849. In the first instance, the monarch withdrew his legislation, after which the Hungarian Diet sought to restrict the use of legislation by decree and to codify the law in its entirety. Both attempts failed. In the second case, the Diet attempted to replace the legislation of Franz Joseph with new arrangements that were in keeping with national traditions. Definition of the marks of national character proved elusive. The High Justice Conference of 1861 embraced a hotchpotch of arrangements that mostly derived from Austrian law, but which also rescued elements of the old Hungarian law of *aviticitas* (*ösiség*). It converted these into legislation by claiming that the method of their promulgation was customary. By appealing to customary law in this way, the High Justice Conference provided a mechanism by which non-statutory instruments might be considered in future to have a fully legal character.

Martyn Rady is Professor of Central European History at University College London (School of Slavonic and East European Studies). He holds an honorary doctorate from the Károli Gáspár University of the Reformed Church. He is General Editor of the Slavonic and East European Review and an Honorary Life Member of the Modern Humanities Research Association. He was a Senior Research Fellow of the Leverhulme Trust, 2010–12. He is currently completing a book on the history of customary law in Hungary.



At the Frontier of Law and Politics: Constitutional Culture and Struggle for Power

1. Paul Yowell

The Perpetual Constitution

A legal system needs an institution capable of changing the law efficiently, in order to respond to changing conditions in society and to new understandings and discoveries. This is one of HLA Hart's insights in his argument that pre-legal systems suffer from the defect of stasis. John Rawls, however, argues with regard to constitutions that one of their purposes is to establish certain principle and rules and place them beyond the possibility of change (even by constitutional amendment). I will argue against Rawls's proposal for perpetual constitutional law, and will contend that the reasons for rejecting it also give us reason for concern about certain forms of judicial review of legislation, which create a danger of perpetual law or of reverting to the stasis of pre-legal systems.

Paul Yowell has been Fellow and Tutor in Law at Oriel College, Oxford since October 2012. Prior to that, he was Lecturer in Law at New College, and a postdoctoral fellow with the Oxford Law Faculty for the AHRC project Parliaments and Human Rights. His main areas of research are in constitutional and legal theory, comparative constitutional law, and human rights. At Oxford he teaches Constitutional Law, EU Law, Jurisprudence and Human Rights.

2. Patrick J. Deneen

Constitution as Regime

While most commentaries on Constitutions analyze the ways that fundamental law establishes institutional, political, and legal guidelines, at the deepest level, a Constitution also aims to create a "politeia," or "regime" – a "way of life," premised upon a view of the human person. This paper will discuss the kind of "regime" the American constitution aimed to instantiate, and how, over time, it shaped a people. In particular, looking through the lens of Tocqueville's analysis in *Democracy in America*, we see with greater clarity how the American constitution shapes a society of largely private-oriented individuals that, over time, increasingly makes shared civil governance more difficult. Even as it presumes the persistence of cultural and social practices that will offer corrective resources, over time, every aspect of society conforms to the "regime," thus engendering a constitutional crisis that arises from the constitutional order itself.

Patrick J. Deneen holds a B.A. in English literature and a Ph.D. in Political Science from Rutgers University. From 1995–1997 he was Speechwriter and Special Advisor to the Director of the United States Information Agency. From 1997–2005 he was Assistant Professor of Government at Princeton University, and from 2005–2012 was Tsakopoulos-Kounalakis Associate Professor of Government at Georgetown University, before joining the faculty of Notre Dame in Fall

2012. He the author and editor of several books and numerous articles and reviews and have delivered invited lectures around the country and several foreign nations. Published books include: *The Odyssey of Political Theory*, 2000 (Rowman and Littlefield); *Democratic Faith*, 2005 (Princeton); *Democracy's Literature* (ed.), 2005 (Rowman and Littlefield); *The Democratic Soul* (ed.), 2011 (University Press of Kentucky); *Redeeming Democracy in America* (ed.), 2011 (University Press of Kansas).

3. András Jakab

The Language of a Constitutional Discourse

The presentation deals with some fundamental questions of the nature of a constitutional discourse: What is the constitutional vocabulary in our discourse, can we choose that vocabulary at all and if yes then why do we choose that? What is the grammar of our constitutional discourse? How far is political and how far is descriptive the determination of the constitutional vocabulary and of the grammar? How can grammatical rules of constitutional discourses be rewritten? What kind of (legal or non-legal) arguments can be used in a constitutional discourse? How far can we be honest about the real nature and about the political stakes in a constitutional discourse? What is the difference between a political philosopher and a constitutional lawyer in the way they argue about the same problems?

András Jakab is the Director of the Institute for Legal Studies at the Hungarian Academy of Sciences in Budapest where he also holds a tenured research chair, and he is a Schumpeter Fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg where he is currently

leading a five years project on comparative constitutional reasoning. Formerly he held different research and teaching positions at the Pázmány Péter Catholic University in Budapest (2010–2011); at the Centro de Estudios Políticos y Constitucionales (CEPC) in Madrid (2008–2010); at the University of Liverpool (2006–2008); at the Nottingham Trent University (2004–2006); at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg (2003–2004); and at the Calvinist University Károli Gáspár in Budapest (2001–2003). His main research interests are legal theory (esp. theory of norms), constitutional theory and comparative constitutional law.

4. Patricia Popelier

Guardian of Consensus Democracy or Venue for Deliberation: the Belgian Constitutional Court Caught Between Conflicting Roles

There are reasons to expect that judicial review is beneficial for consensus-making in consensus democracies, and in particular in divided societies, where judicial review may enforce basic rules of consensus governance. But constitutional review also complicates law-making in consensus democracies governed by consociationalist practices. Although consociationalist systems favour co-operation and negotiation between some segments of society, they also generate elite decision making. Judicial review opens access to groups and individuals, excluded from the bargaining procedures, to challenge the outcomes of difficult negotiations. Moreover, constitutional rights adjudication implies transparency and a weighing of interests, in contrast to the opaqueness desired in consociationalist decision-making. This may transform courts into venues for deliberation. In this presentation, Belgium, considered by Lijphart as a model of consensus democracy, serves as a case study for the question of how

courts deal with the tension between their role as guardian of consensus democracy and venue for deliberation.

Patricia Popelier is full professor at the law faculty of the University of Antwerp, where she is director of the research group on Law and Government. She is also vice-president of the International Association of Legislation, president of the Flemish interuniversity center for legislation and member of the editorial board of the Hart journal TPLeg (formerly Jurisprudence). Her research covers constitutional courts, multilevel governance and federalism, constitutionalism and the rule of law, and law making procedures and quality of regulation.

5. Hans Vorländer

The Power of Interpretation and the German Constitutional Culture

The German constitutional court must be seen as a very powerful Court. Yet, its influential role in German politics can be attributed only partly to its competences. Its power is largely a soft power, relying neither on the purse nor the sword. Interpreting the constitution makes it an institution no political power can ignore. The Court has been gaining authority over a long period of time, struggling for supremacy and reaching out for the trust of the people. The court benefits from a legalistic political culture, where the judiciary enjoys a high degree of confidence.

Hans Vorländer studied Law, Political Science and Philosophy at the Universities of Bonn and Geneva. He got his Ph. D. degree from the University of Bonn. Vorländer was a Research Associate and Kennedy Memorial Fellow at Harvard University. He taught at the University of Frankfurt/Main and and of Essen. Since 1993 he has been Professor of

Political Science at the University of Dresden, where he holds the Chair for Political Theory and the History of Political Ideas. From 1997 to 2000 he served as Dean of the Faculty of Arts, Humanities and Social Sciences and as a Senator of his University. In 2001 and 2006 he was Visiting Professor and Directeur d'études at the École Pratique des Hautes Études, Paris. Since 1996 he has been Visiting Professor for Political Theory at the Inter-University Center Dubrovnik, in 2010 he was Visiting Professor at Universidad Nacional Autónoma de México and at Instituto Tecnológico Autónoma de México. From 2000 to 2008 he was Vice Chairman of the Collaborative Research Center 537 "Institutionalität und Geschichtlichkeit/ Institutionalität and Historicity". From 2001 until 2003 Vorländer was President of the German Association of Political Science. He was Chairman of the Scientific Council of the German Federal Agency for Civic Education from 2001 to 2005. Since 2007 he is Director of the Center for the Study of Constitutionalism and Democracy, which he founded, and since 2009 Founder and Speaker/ Chairman of the Collaborative Research Center 804 "Transzendenz und Gemeinsinn/ Transcendence and Common Sense" at the University of Dresden, which is funded by the German Research Foundation. Vorländer is a member of several national and international Editorial and Advisory Boards. He published more than 200 articles in national and international journals and books.

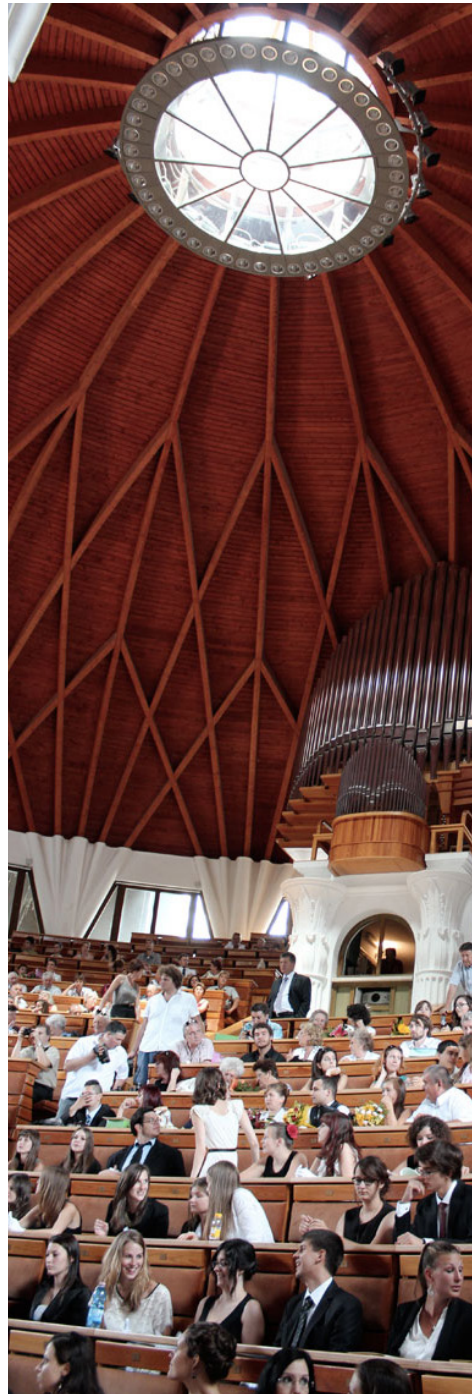
6. Uwe Kranenpohl

The Reputation of the Federal Constitutional Court and the Legitimacy of Politics in Germany

The immense reputation of the Federal Constitutional Court (FCC) is maybe its most important source with regard to the political and social acceptance of its

decisions. Thereby the court especially benefits from its apolitical image. Crucial for this image is the specific consensus-oriented and conflict-minimizing internal culture of the court which creates an “aura of mystery” and only rarely the courts findings make resistance. Therefore the FCC opens a non-controversial way of decision-making in the political system of Germany. It is remarkable that rulings of the FCC find confidence by the society despite the topics were encountered by widespread opposition. But this increasing of governance capacities by the reputation of a constitutional court perhaps is only a specific type of the German Sonderweg and could not be transferred to other Central European nations.

Uwe Kranenpohl is professor for Political and Administrative Sciences at the Lutheran University of Applied Sciences Nuremberg since 2009 and private lecturer for political science at the University of Passau; Master in Political Science, Economics and History (Passau and Free University Berlin) in 1991. Doctorate on small parliamentary parties in the German Bundestag in 1997. Habilitation (postdoctoral lecture qualification) on the decision-making process of the FCC in 2009.



1. Christopher Thornhill

Transnational Law in National Constitutions: A Sociological Analysis

This paper examines the emergence of the increasingly transnational form of contemporary constitutionalism. This form is defined (a) by the increasing migration of de facto constitutional norms – and especially human rights law – across national boundaries; (b) by the increasing application of international law in domestic constitutional systems; (c) by the growing fusion between national and international law in the jurisprudence of national and supranational judicial bodies. Placing particular emphasis on transitional and post-transitional polities, the paper approaches these phenomena in a distinctively sociological perspective, and it attempts to explain the rise of transnational constitutional law by assessing how the assimilation of international law in domestic public law impacts on national legal and political institutions and how it affects their position within national societies. In particular, it argues that one of the main reasons why international law has assumed such importance as a normative source of state legitimacy in recent decades is that it has allowed states to construct legitimacy for laws in precarious environments, and it forms a normative framework in which state institutions, exposed to unmanageable expectations in respect of social inclusion and statutory legislation, are able internally to stabilize and autonomously to organize their legislative functions, in relative independence of

external societal influence. On this basis, the rise of transnational constitutional law is placed on a sociological continuum with more traditional patterns of constitutional formation, and it is seen as intensifying the state-building functions historically performed by national constitutional law. The growth of transnational constitutional law has its sociological foundation in the fact that it enables states to produce legitimacy for law from within a pre-structured legal system, it diminishes requirements for external social inclusion and legitimation, it raises the statutory power of the legal/political system of society, and it intensifies the autonomy and differentiation of the political system as a whole.

Chris Thornhill is Professor in Law at the University of Manchester, UK. He is the author of a number of publications on the sociological origins of constitutional law and transnational public law. He is currently researching for a book on the sociology of transnational constitutional law.

2. Paul Blokker

Constitutions in Context: a Political-sociology of Constitutional Culture

Constitutions are increasingly the object of dispute. This is not least because of the changing role of constitutions in modern societies and due to the significant challenges constitutions face in current times, both domestically and from without. Disputes take different forms in distinct contexts as challenges are interpreted

differently and articulated in distinct ways in various (domestic) arenas. The political-sociological approach proposed here engages with constitutional conflict, shifting constitutional vocabularies, and political claims-making. Constitutional vocabularies engage with either the status quo or with providing alternatives. In this, the latter vocabularies often engage in (a range of different forms of) critique of modern, liberal constitutions. The paper will develop a theoretical-conceptual approach in the first part. In the second part of the paper, various European contexts will be used as examples.

Paul Blokker, PhD. (European University Institute, Florence) is principal investigator in the research unit 'Constitutional Politics in post-Westphalian Europe' (CoPolis) at the department of Sociology, University of Trento, Italy. His current research is on constitutional change, a political sociology of constitutions, multiple democracies, critique and dissent, and democratic participation (in constitutional politics). He is a member of the International Editorial Board of the European Journal of Social Theory (EJST).

3. Andreas Anter

The Chicken-and-Egg Problem: Statehood as Condition of Possibility of Constitutional Order?

A particular issue of today's legal theory and political science is the question of a causal relationship between State and constitution. Is the existence of a State a condition of establishing a constitution? Or brings only the constitution the State into being? At first glance, this seems to be a chicken-and-egg question. On closer examination, however, this question turns out to be a decisive problem of state-building and constitution-making, and

not least with regard to the problems of the European Union.

Andreas Anter is Professor of Political Science at the University of Erfurt (Germany). After his studies in Münster, Freiburg, and Hamburg, and his Ph.D. in Hamburg, he taught at the Universities of Hamburg, Leipzig, and Bremen. Subsequently he was editor of Rowohlt Verlag (Hamburg) and chief editor of Reclam Verlag Leipzig. He is the author of Max Weber's Theory of the Modern State (2014), Staatskonzepte (2013), Theorien der Macht (2012), and Die Macht der Ordnung (2nd ed. 2007).

4. Rudolf Rezsőházy

Democracy Endangered

We identify three main sources originating the collapse of a democratic political system.

1st – It is unable to cope with the problems arisen from a society which came to a deadlock (the Weimar Republic, the French IVth Republic...); 2nd – It fails to choose „the right man at the right place”: the competition mechanisms are deviated by different manipulations of the public opinion (comparing the American presidents, elected, to the Belgian kings, inherited); 3d – It is unviable without an underlying democratic culture: no democracy without democrats (the case of the recent „Arab spring”). All these sentences possess their exceptions (Japan, India...)

Rudolf Rezsőházy is emeritus professor of the University of Louvain (Belgium), member of the Belgian Royal Academy and foreign member of Hungarian Academy of Sciences. Main research fields and recent publications: political action and change (Pour comprendre

l'action et le changement politiques, Louvain-la-Neuve, Duculot, 1996), social values (Sociologie des valeurs, Paris, Armand Colin, 2006 and Emergence des valeurs communes aux Européens à travers l'histoire, Paris, L'Harmattan, 2012)

5. Jiří Přibáň

Constituting the heterarchy of European Constitutionalism in the EU's New Member States and the Rise of Constitutional Populism

This paper focuses on institutional and jurisprudential reflections on sovereignty and constitutionalism in the context of European integration of post-communist nation states, their recent constitutional politics and legal systems. The EU's constitutional domain is subsequently used as an example of profound changes in contemporary European societies and their constitutional systems and cultures. After importing laws and constitutional doctrines during post-communist legal and political transformations, constitutional courts of new member states needed to adopt constitutional concepts and arguments related to EU membership and specific structural preconditions of European legal and political institutions. While the 1989–2004 period was typical of defining principles and jurisprudence of the sovereign constitutional state and the democratic rule of law, the post-2004 period has been typical of attempts to adopt the notion of divided sovereignty and thus to grasp complexities of EU law and national constitutional systems and cultures. The concept of divided sovereignty, therefore, was adopted by constitutional courts of new member states and internalized as a form of emerging EU constitutional jurisprudence and common legal culture of European

society in the post-national constellation. Recent developments of constitutional populism, examples of which are the new Hungarian constitution of 2011, the 'Fourth Republic' constitutional ideology of the Law and Justice Party in Poland or confrontations between Parliament and President of the Czech Republic, subsequently demonstrate intrinsic systemic risks of constitutional politics and responses to societal and political tensions in Central Europe in the last twenty five years.

Jiří Přibáň graduated from Charles University in Prague in 1989. Jiří received his LL.D in 2001 and was appointed professor of legal philosophy and sociology at Charles University in November 2002. In 2006, he was appointed professor of law at Cardiff Law School, Cardiff University. Jiří was also visiting professor or scholar at European University Institute in Florence, New York University (Prague Office), University of California in Berkeley, University of San Francisco, University of Pretoria, and University of New South Wales, Sydney. He has published extensively in the areas of sociology of law, legal philosophy, constitutional and European comparative law, and theory of human rights. He is an editor of the Journal of Law and Society and a regular contributor to the BBC World Service, the Czech TV, newspapers and other periodicals. Books in English: Legal Symbolism (2007), Dissidents of Law (2002), Liquid Society and Its Law (ed., 2007), Systems of Justice in Transition (ed. with James Young and Pauline Roberts, 2003), Law's New Boundaries (ed. with David Nelken, 2001), The Rule of Law in Central Europe (ed. with James Young, 1999) and Pictures of Czech Postmodernism (2013).



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