



TABLE RONDE
MONDIALE
SÉRIE DE WEBINAIRES

IACL-AIDC
DÉMOCRATIE
2020
III

ÉVALUATION DU DÉCLIN ET
DU RENOUVELLEMENT
CONSTITUTIONNEL

18-26 NOVEMBRE 2020

PROGRAMME

5 DATES



5 CONTINENTS



50 PARTICIPANTS



ASSOCIATION INTERNATIONALE DE
DROIT CONSTITUTIONNEL
INTERNATIONAL ASSOCIATION OF
CONSTITUTIONAL LAW

DÉMOCRATIE 2020
ÉVALUATION DU DECLIN ET
DU RENOUVELLEMENT
CONSTITUTIONNEL

TABLE RONDE MONDIALE SÉRIE DE WEBINAIRES

18 19 24 25 26 Novembre

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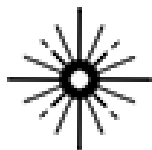


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#démocratie2020

ACCUEIL



C'est pour moi un grand plaisir de m'adresser à vous à l'occasion de l'ouverture de cette série de webinaires de la Table Ronde Mondiale de l'Association Internationale de Droit Constitutionnel (AIDC) : 'Démocratie 2020: évaluation du déclin et du renouvellement constitutionnel'.

La pandémie m'empêche de vous accueillir tous à Melbourne, comme je l'avais espéré, mais je suis ravie que les organisateurs, Wojciech Sadurski et Tom Daly, se soient adaptés à la crise avec tant de détermination et d'imagination.

Cette série de neuf webinaires permettra le partage, durant 5 jours, d'un ensemble riche et varié d'articles présentés par des chercheurs originaires de toutes les régions du monde.

L'Association internationale de droit constitutionnel (IACL) est fière que cet événement soit une table ronde de l'IACL, une partie intégrante de notre programme régulier d'événements mondiaux.

C'est précisément le genre de colloque qui permet à l'IACL de réaliser ses objectifs de développer un réseau mondial de constitutionnalistes et de fournir un forum pour l'échange de connaissances.

Je voudrais également remercier les partenaires de l'IACL et, en particulier, les mécènes de notre conférence: l'Australian Research Council dans le cadre du Laureate Program in Comparative Constitutional Law de Melbourne Law School et la School of Government de l'Université de Melbourne.

Professeur Adrienne STONE

Président

AIDC

Nous avons l'honneur de vous présenter le programme d'un événement notable : la première table ronde entièrement en ligne de l'IACL, organisée sous forme de série de webinaires du 18 au 26 novembre 2020.

À la clôture d'une année particulièrement éprouvante pour la démocratie libérale, cette table ronde vous proposera un moment de pause et de réflexion, non seulement sur les événements de 2020, mais aussi une chance de faire le bilan de la dernière décennie et d'envisager la décennie à venir.

Avec 50 conférenciers venant de 5 continents, nous nous dotons d'un programme riche et varié.

Les discussions aborderont une gamme étendue de contextes et de défis nationaux peu étudiés, ce sera une conversation véritablement mondiale.

Nous attendons avec plaisir un échange ouvert et inclusif, qui réunira d'éminents experts, de nouveaux talents, et des acteurs du domaine politique.

Cette inclusion est partie entière de la mission de l'IACL, un réseau vraiment mondial pour les constitutionnalistes. Nous espérons que vous pourrez vous joindre à nous.

Professeur Wojciech SADURSKI

Maître de conférences Tom Gerald DALY

Coordinateurs



INTRODUCTION

Avant même le choc de la pandémie de coronavirus, 2020 s'annonçait être une année importante pour ceux qui veillent sur la bonne santé de la démocratie constitutionnelle dans le monde.

Cette année marque les dix ans de l'élection du gouvernement Fidesz en Hongrie qui, en raison de l'utilisation de mesures juridiques et politiques sophistiqués, a progressivement élaboré un modèle pour le démantèlement systématique d'un gouvernement démocratique. Autour du monde, depuis 2010, on observe que le nombre de démocraties libérales dont la bonne santé, ou même la persévérance, est incertaine a augmenté de façon exponentielle.

D'autres états ont suivi la même voie que la Hongrie : la Pologne, sous le contrôle du parti 'Prawo i Sprawiedliwość' ('PiS', ou 'Droit et Justice') depuis 2015, s'incline vers une éventuelle rupture du système démocratique depuis que le pouvoir du parti fut consolidé lors des élections tenues en octobre 2019.

Ailleurs, dans bien d'autres pays, on constate de graves atteintes aux systèmes démocratiques qui ne suivent aucun schéma évident mais qui restent toujours aussi inquiétantes, dont les États-Unis, l'Inde sous le contrôle du parti BJP, et le Brésil sous le gouvernement d'extrême droite du président Jair Bolsonaro. Au Royaume Uni, la crise constitutionnelle engendrée par le Brexit a suscité des inquiétudes quant à l'état de droit. En Australie, l'action gouvernementale et les actions de l'État ont soulevé de profondes interrogations sur la protection des libertés fondamentales, telle que la liberté d'expression.

Parmi les nombreux états dont les trajectoires démocratiques demeurent insuffisamment étudiées, faut-il aussi compter l'El Salvador, l'Indonésie, la Lettonie, la République de Malte, la Malaisie, le Népal, et le Sri Lanka.

Partout, la démocratie est en fluctuation, mis au défi par plusieurs tendances internationales, telles que «le gouvernement algorithmique», le populisme autoritaire, le néolibéralisme, et la corruption.

La pandémie a accéléré les tendances négatives mondiales, tout en intensifiant l'attention que porte le monde entier à la redynamisation et le renouvellement de la démocratie.

Cette table ronde mondiale de l'Association internationale de droit constitutionnel (AIDC) rassemble un groupe d'experts éminents et émergents pour collaborer dans un exercice de 'bilan global' qui cherche à cartographier la santé et la trajectoire des principales démocraties dans le monde, à identifier les lacunes dans l'analyse, et à présager des enseignements plus généraux qui peuvent être tirées de multiples contextes et expériences.

En raison de la pandémie, nous avons repensé la structure de notre conférence qui était initialement envisagée comme un événement sur 2 jours et qui se déroulera donc sous forme d'une série de 9 webinaires interconnectés sur 2 semaines.

1er Jour

18 Novembre

Webinaire 1

Défis mondiaux:
menaces et résilience

10h – 12h30 AEDT

Webinaire 2

Défis mondiaux: le
panorama

19h – 21h30 AEDT

2ème jour

19 Novembre

Webinaire 3

Amériques: déclin
constitutionnel, effondre-
ment et résilience

10h – 12h30 AEDT

Webinaire 4

Moyen-Orient et Afrique:
constitutionnalisme,
corruption et tribunaux

19h – 21h30 AEDT



Cliquez ici

pour vous inscrire
à l'une ou plusieurs
webinaires

L'heure mondiale:

Webinaires 1 & 3

New York 6h – 8h30

São Paulo 8h – 10h30

Hong Kong 7h – 9h30

Paris 12h – 14h30

L'heure mondiale:

Webinaires 2 & 4

Paris 9h – 11h30

Jérusalem & Le Cap 10h – 12h30

Hong Kong 16h – 6h30

New York 3h – 5h30

I ER SEMAINE

18 19

Novembre



Toute heure de
l'itinéraire est à
l'heure locale de
Melbourne (AEDT),
soit UTC+11



Cliquez sur l'icône
pour l'heure
mondiale

3ème Jour

24 Novembre

Webinaire 5

Asie: voies constitutionnelles non linéaires

13h – 15h30 AEDT

Webinaire 6

Europe: impatience et incertitude constitutionnelle

19h – 21h30 AEDT

4ème Jour

25 Novembre

Webinaire 7

Asie: l'Inde et le Sri Lanka en lumière

15h – 17h30 AEDT

Webinaire 8

Europe: la Hongrie et la Pologne en lumière

19h – 21h30 AEDT

5ème Jour

26 Novembre

Webinaire 9

Sauvegarder la démocratie: remèdes et renouvellement

19h – 21h30 AEDT

L'heure mondiale:

Webinaire 5

Hong Kong 10h – 12h30

New Delhi 7h30 – 10h

New York 9h – 11h30

Paris 15h – 5h30

2ÈME SEMAINE

24 25 26

Novembre



L'heure ne vous convient pas?
Cliquez sur l'icône pour accéder aux enregistrements

Webinaire 7

Hong Kong 12h – 14h30

New Delhi 9h30 – 12h

Paris 5h – 7h30

Webinaires 6, 8 & 9

Voir la page précédente – l'heure mondiale pour les webinaires 2 & 4

INSCRIPTION



L'inscription est gérée par l'université de Melbourne, et la démarche a été conçue pour être simple et rapide.



Consultez la page d'inscription, à <https://bit.ly/2HK0h9S>

Si vous rencontrez la moindre difficulté pour vous inscrire, n'hésitez pas à nous contacter:

IACL2020-
Registration@unimelb.edu.au



Sélectionnez vos webinaires.



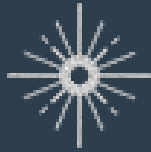
Vérifiez vos coordonnées – nous vous demandons votre nom, adresse électronique, et affiliation professionnelle. Nous protégerons vos renseignements personnels.



Vous recevrez un e-mail de confirmation avec les liens pour tous les webinaires.



Si nécessaire, vous pourrez modifier les détails d'inscription en utilisant le lien dans l'e-mail de confirmation.



L'ASSOCIATION

Mission de l'AIDC

Établi en 1981, l'objectif premier de l'AIDC est d'offrir un forum dans lequel les constitutionnalistes du monde entier peuvent commencer à comprendre le système constitutionnel de chacun, expliquer et réfléchir par eux-mêmes, et se livrer à des comparaisons fructueuses, dans des buts variés.

Les principales missions de l'Association comprennent:

- Développer un réseau de constitutionnalistes venant du monde entier.
- Fournir un forum dédié à l'échange de connaissances et d'informations sur les systèmes constitutionnels.
- Examiner et comparer les problèmes et phénomènes constitutionnels communs;
- Anticiper les nouvelles questions et identifier les approches qui pourraient être prises.
- Proposer un groupe d'experts parmi lesquels des équipes pourraient être formées pour examiner et conseiller sur des questions spécifiques.

Communiquer avec nous

Il y a plusieurs moyens de se connecter à l'AIDC et de s'intégrer à notre association globale :

- **Blog:** Saviez-vous que notre blog est parmi les blogs de droit public les plus lus au monde ? La démarche est simple et nous publions des textes de 600 à 1.200 mots en trois langues (anglais, français, espagnol)
<https://blog-iacl-aidc.org>
- **Associations nationales :** découvrir votre association nationale ou, autrement, envisager la création d'une association nationale
<https://blog-iacl-aidc.org/national-associations-list>
- **Groupes de recherche:** rejoindre l'un de nos nombreux groupes internationaux de recherche de pointe ou créez un nouveau groupe.
<http://iacl-aidc.org/index.php/fr/recherche/groupes-de-recherche>

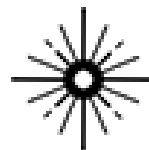
Options d'Adhésion

Il y a trois catégories de membres dans l'AIDC:

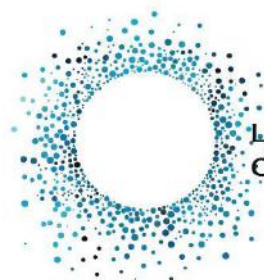
- **les experts** en droit constitutionnel ou autres disciplines associées et les juristes pouvant démontrer un engagement au droit constitutionnel peuvent être admis en qualité de membres individuels.
- **les associations** supranationales, nationales et régionales de droit constitutionnel.
- **les institutions scientifiques** actives dans le domaine du droit constitutionnel.

Vous pouvez trouver plus de renseignements et les fiches d'inscription ici: <http://iacl-aidc.org/index.php/fr/membres>

PARRAINS & PARTENAIRES



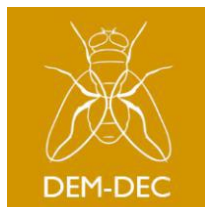
Cette table ronde et nos webinaires seraient impossibles sans le très généreux soutien du Laureate Program in Comparative Law at Melbourne Law School, établi par l'Australian Research Council (ARC) et la Melbourne School of Government. Tous les deux sont intégrés à l'University of Melbourne.



Laureate Program in
Comparative Constitutional Law



Australian Government
Australian Research Council



**CONSTITUTION
TRANSFORMATION
NETWORK**

Nous sommes également fiers de travailler en collaboration avec:

IACL-AIDC Blog

Democratic Decay & Renewal (DEM-DEC)

Constitution Transformation Network (CTN)

1 ER JOUR
18 NOVEMBRE



18 NOV

10h-12h30

AEDT

WEBINAIRE I

DÉFIS MONDIAUX : MENACES ET RÉSILIENCE

Présidé par **Tom Gerald DALY**

Directeur adjoint

Melbourne School of Government, Australie

Le webinaire 1 donne un aperçu des principaux défis auxquels le constitutionnalisme et la démocratie sont confrontés dans le monde. Des attaques contre la liberté académique aux menaces technologiques, de la suppression des électeurs à l'affaiblissement de la culture du constitutionnalisme en Chine, une panoplie de perspectives complètera un panorama de l'état des lieux de la démocratie mondiale.

1 **Welcome and Opening Remarks: Academic Freedom, Constitutionalism and Democracy**

Adrienne STONE President of the IACL; Redmond Barry Distinguished Professor, Melbourne Law School, Australia

2 **In memoriam: Lidija Fleiner**

Cheryl SAUNDERS President Emeritus, IACL; Professor, Melbourne Law School, Australia

3 **In memoriam: Héctor Fix Fierro**

José Maria SERNA IACL Executive Committee; Professor, UNAM, Mexico

4 **Technological Change as a Key Facilitator of Democratic Decline: Is Australia at Risk?**

Shireen MORRIS Senior Lecturer, Macquarie University, Australia

Andrew BALL Consultant, Accenture, Melbourne, Australia

5 **The Comparative Constitutional Law and Politics of Voter Suppression**

Michael PAL Associate Professor, Faculty of Law, University of Ottawa, Canada

6 **How 'Constitutionalism' Withers: Explaining the Changing Discourse of Constitutionalism in Chinese Constitutional Scholarship (1981-2017)**

ZHAI Han Assistant Professor, School of Law, Wuhan University, China

HUANG Chen Assistant Professor, Department of Political Science, Renmin University, China

7 **Constitutionalising Democratic Resilience**

Ros DIXON Professor, UNSW Law School, Australia

David LANDAU Professor, Florida State University, USA

WEBINAIRE 2

DÉFIS MONDIAUX : LE PANORAMA

18 NOV

19h-21h30

AEDT

Le webinaire 2 approfondit la discussion abordée pendant le webinaire 1 avec une analyse plus poussée de la crise de la démocratie libérale et de la façon dont nous comprenons la démocratie. La discussion portera sur l'impact de la pandémie de COVID-19 sur les tendances populistes déjà existantes et sur son effet accélérateur par rapport à d'autres tendances mondiales telles que la gouvernance algorithmique.

Wojciech SADURSKI **Présidé par**
Challis Professor of Jurisprudence
Université de Sydney

1 La crise protéiforme du système de démocratie libérale

Bertrand MATHIEU Vice-président de l'AIDC; Professeur, Université Paris I-Sorbonne, France

2 Illiberal Democracy and Undemocratic Liberalism: Two Symmetrical Opposites

George KATROUGALOS IACL Exec. Committee.; Professor, Demokritos University of Thrace, Greece; Member, Hellenic Parliament

3 Constitutional Decay and the Crisis of the Liberal Imagination

Nigam NUGGEHALI Dean, School of Law, BML Munjal University, India

4 Populism, Democracy, and the COVID-19 Pandemic

Tamar HOSTOVSKY BRANDES Senior Lecturer, Faculty of Law, Ono Academic College, Israel

Yaniv ROZNAI Associate Professor, Harry Radzyner Law School, IDC, Herzliya, Israel

5 Constitutional Democracy in the Age of Algorithms: The Implications of Digital Private Powers on the Rule of Law in times of Pandemics

Oreste POLLICINO Full Professor of Constitutional Law, University of Milano-Bicocca, Italy

Giovanni DE GREGORIO PhD Candidate in Constitutional Law, University of Milano-Bicocca, Italy



2ÈME JOUR
19 NOVEMBRE

19 NOV

10.00AM-12.30PM

AEDT

WEBINAIRE 3

AMÉRIQUES : DÉCLIN CONSTITUTIONNEL, EFFONDREMENT ET RÉSILIENCE

Présidé par **Raul SÁNCHEZ-URRIBARRI**
Maître de conférences
Université de Latrobe, Australie

Le webinaire 3 vise à approfondir notre compréhension des défis auxquels font face la démocratie constitutionnelle et les projets d'élaboration de constitutions, ainsi que les sources de résilience, en s'appuyant sur les expériences et les tendances à travers les Amériques, y compris le Chili, le Brésil, El Salvador et le Canada.

- 1 A Covid-19 Constitution? Democratic Erosion, Public Trust and Constitutional Creation in Chile**
Jorge CONTESSE Associate Professor, Rutgers Law School, USA; Visiting Professor, University of Paris 1 Panthéon-Sorbonne, France
- 2 The Consequences of the Change of Political Positioning of the Brazilian Government on Facing the Covid-19 Pandemic: A Breakdown of Democracy**
Tatiana CARDOSO SQUEFF Professor of International Law (tenure-track), Universidade Federal de Uberlândia (UFU), Brazil
Lúcia SOUZA D'AQUINO Researcher, Universidade Federal do Rio Grande do Sul (UFRGS), Brazil
- 3 From Hardball to Packing the Court: "PEC do Pijama" and the Attempt to Attack the Brazilian Supreme Court**
Katya KOZICKI Full Professor of Law, Federal University of Paraná (UFPR) and Pontifical University of Paraná (PUCPR), Brazil
Rick PIANARO LL.M. Candidate, Federal University of Paraná (UFPR), Brazil
- 4 Judicial Assertiveness in Times of Crisis: The case of El Salvador**
Mónica CASTILLEJOS-ARAGÓN Lecturer, Legal Studies Department, University of California, Berkeley, USA
- 5 The Return of the Notwithstanding Clause: Pitting Rights Against Democracy and the Next Power Struggle Between Courts and Legislatures**
ZHOU Han-Ru Associate Professor of Public Law, Université de Montréal Faculty of Law, Canada

WEBINAIRE 4

MOYEN-ORIENT ET AFRIQUE : CONSTITUTIONNALISME, CORRUPTION ET TRIBUNAUX

19 NOV
19h-21h30
AEDT

Le webinaire 4 s'oriente vers le Moyen-Orient et l'Afrique, qui sont toutes deux des régions sous-étudiées dans l'analyse globale de la démocratie, de la dégradation constitutionnelle et de l'effondrement démocratique. Le webinaire commence par un aperçu de la démocratie dans le monde arabe, suivi par des études de cas axées sur les tribunaux et la corruption.

Selin ESEN **Présidé par**
Professeur, Département de Droit Constitutionnel
Faculté de Droit, Université d'Ankara, Turquie

- 1 The Trajectory of Arab Democracy through the Lens of Covid-19 Measures**
Osayd AWAWDA Assistant Professor, Hebron University, Palestine
- 2 Democratic Decline in South Africa – The Case of the Protection of State Information Bill**
Juha TUOVINEN Postdoctoral Research Fellow, Department of Legal Studies, Central European University (CEU), Budapest, Hungary
- 3 Neopatrimonialism and Rule of Law in the Nigerian Constitutional Paradigm**
Tajudeen SANNI Research Fellow, Nelson Mandela University, South Africa
- 4 Unpacking the Normative Roles of Courts in Electoral Processes**
Ugochukwu EZEH Lecturer, Faculty of Law, University of Lagos, Nigeria
- 5 Executive Control of the Judiciary Through Appointment of Judges: Case Studies from Turkey and Cameroon**
Leighann SPENCER Ph.D Candidate, Charles Sturt University, Melbourne, Australia

3ÈME JOUR
24 NOVEMBRE



24 NOV

1.00PM-3.30PM

AEDT

WEBINAIRE 5

ASIE : VOIES CONSTITUTIONNELLES NON LINÉAIRES

Chair Jaclyn NEO

Directeur, Centre d'études juridiques asiatiques
Université nationale de Singapour

Le webinaire 5, premier webinaire de la semaine 2, se concentrera sur les voies constitutionnelles et démocratiques diverses et non linéaires d'un éventail d'états peu étudiés à travers l'Asie: le Népal, la Malaisie, l'Indonésie et le Bangladesh. Le webinaire se termine par une discussion comparative sur la manière dont les approches des tribunaux en matière de clauses religieuses ont permis aux gouvernements populistes d'adopter des politiques qui sèment le communautarisme et de la démocratie locale en Turquie.

1 Two Steps Forward, One Step Back, Another Step Sideways? Dissecting Narratives of Democracy in Nepal

George VARUGHESE Senior Strategic Advisor, Niti Foundation, Nepal

Iain PAYNE Program Analyst, Niti Foundation, Nepal

2 Political Change and the Decline and Survival of Constitutional Democracy in Malaysia and Indonesia

Dian SHAH Assistant Professor, National University of Singapore (NUS)

3 Maintaining Democracy and Public Order in the Period of Health Crisis – Malaysian Experience

Nurhafilah MUSA Senior Lecturer, Law Faculty, National University Malaysia (UKM)

4 Government Without Opposition: A New Form of Democracy in Bangladesh

Pritam DEY PhD Candidate, School of Law, University of New England, Australia

5 The Decay of Establishment Clauses

Darshan DATAR Ph.D candidate, Melbourne Law School, Australia

6 Defending Local Democracy Against Democratic Decay in the Post-Covid World

Atagün Mert KEJANLIOGLU Doctoral Candidate, McGill University, Canada

WEBINAIRE 6

24 NOV

19h-21h30

AEDT

EUROPE : IMPATIENCE ET INCERTITUDE CONSTITUTIONNELLE

Le webinaire 6, le premier de deux webinaires axés sur l'Europe, comprend une sélection d'études de cas sur la démocratisation, la modification constitutionnelle et la dégradation constitutionnelle dans la Communauté d'États indépendants (CEI), Malte, la Lettonie et la Lituanie, et aussi une comparaison des politiques judiciaires et électorales dans d'autres états, parmi lesquels, la Slovaquie, la Macédoine du Nord, et le Royaume-Uni.

Erika ARBAN **Chair**

Éditeur, Blog de l'AIDC

Faculté de droit: Melbourne Law School, Australie

- 1 La démocratisation dans les pays de la Communauté d'États indépendants entre reconnaissance constitutionnelle et pratiques politiques**
Tatiana MASLOVSKAYA Professeur agrégé de l'Université d'Etat biélorusse, Minsk, Biélorussie
- 2 Democratic Decay in Malta**
John STANTON Senior Lecturer in Law, The City Law School, United Kingdom
- 3 What is the Status of Democracy in Lithuania and Latvia? A Two Country Study in the Context of Democratic-Backsliding in Eastern and Central Europe**
Beatrice MONCIUNSKAITE Ph.D. Candidate, School of Law & Government, Dublin City University, Ireland
- 4 Snap Elections in Illiberal Regimes: Confirming Trust or Establishing Hegemony? The Case of North Macedonia**
Dorjana BOJANOVSKA S.J.D. Candidate, CEU, Budapest, Hungary
- 5 Crises and Constitutional Courts: Lessons from the Case of Slovakia**
Max STEUER Department of Political Science, Comenius University in Bratislava, Slovakia
(presenting a paper co-authored with Sascha KNEIP, WZB, Berlin, Germany)
- 6 Populism, Democracy and 'Constitutional Impatience': Courts as Institutional Decelerators in the United Kingdom**
Raphaël GIRARD Ph.D candidate in Law, London School of Economics and Political Science (LSE), United Kingdom



4ÈME JOUR
25 NOVEMBRE

25 NOV

15h-17h30
AEDT

WEBINAIRE 7

ASIE : L'INDE ET LE SRI LANKA EN LUMIÈRE

Chair **Menaka GURUSWAMY**
Avocat chevronné
Cour suprême de l'Inde

Le webinaire 7 se concentre sur deux états voisins, l'Inde et le Sri Lanka. La discussion abordera la santé de la démocratie constitutionnelle dans chaque État à travers des prismes différents, dont le populisme judiciaire, la domination des partis politiques, la protection des droits et les processus d'élaboration de constitutions partisanes. Deux conférenciers se concentreront sur l'impact de la pandémie du

1 India's Judicial Populism in the Modi Era

Anuj BHUWANIA Professor, Jindal Global Law School, O. P. Jindal Global University, India

2 Party Dominance and Constitutional Structure: India

Aradhya SETHIA Ph.D Candidate, University of Cambridge, United Kingdom

3 Bicameralism and the Rule of Law: Reining in the Abuse of Money Bills in Legislative Procedure

Gaurav MUKHERJEE S.J.D. Candidate in Comparative Constitutional Law, Central European University (CEU), Budapest, Hungary

4 Rights During a Pandemic: The Indian Experience

Thulasi K. RAJ Lawyer, Supreme Court of India; Equality Fellow Centre for Law & Policy Research, Bangalore, India

5 Covid-19 and Democratic Decay in Sri Lanka

Ayesha WIJAYALATH Ph.D Candidate, UNSW, Sydney, Australia

6 Sri Lanka's Dance with Constitutional Democracy

Mario GOMEZ Executive Director, International Centre for Ethnic Studies, Sri Lanka

WEBINAIRE 8

25 NOV

19h-21h30

AEDT

EUROPE: LA HONGRIE ET LA POLOGNE EN LUMIÈRE

Le webinaire 8 s'appuie sur le webinaire 6 avec une discussion encore plus détaillée des deux cas les plus connus de dégradation et de rupture constitutionnelle en Europe: la Hongrie et la Pologne. Ce webinaire sera l'occasion de faire le point sur 10 ans de régime Fidesz en Hongrie, et 5 ans de règne du parti Droit et justice en Pologne, l'examen des moyens utilisés pour atteindre le système démocratique et

Joelle GROGAN

Chair

Maître de conférences

Faculté de droit: Université de Middlesex, Royaume Uni

1 **The Year 2020: Lessons Learned from the Hungarian and Polish Management of the COVID-19 Crisis and Beyond**

Agnieszka BIEN-KACAŁA

Associate Professor, Faculty of Law and Administration, Nicolaus Copernicus University in Toruń, Poland

Timea DRINÓCZI

Professor, Faculty of Law, University of Pécs, Hungary

2 **The Façade of State Organs in Contemporary Autocratic Regimes: The Case of the Polish Parliament**

Piotr MIKULI

Professor, Jagiellonian University in Krakow, Poland

3 **Criminal Liability of Representatives of the Highest State Authorities in the Light of the Polish Constitution of 2nd April 1997 and the Current Situation in Poland**

Monika CZECHOWSKA

Doctoral Candidate at the Department of Criminal Law, University of Wroclaw, Poland

4 **Shrinking Space of Human Rights Defenders in the last 10 years of the Hungarian Government**

Eszter KIRS

Associate Professor, Corvinus University of Budapest, Hungary

5 **The Role of Emergency Politics in the Hungarian Autocratic Transition**

Gábor MÉSZÁROS

Senior Lecturer, Faculty of Law, University of Pécs, Hungary

6 **Dismantling Democratic Governance through Manipulative Electoral Politics – the Hungarian Case**

János MÉCS

PhD Candidate, Eötvös Loránd University, Budapest, Hungary

5ÈME JOUR
26 NOVEMBRE



26 NOV

19h-21h30
AEDT

WEBINAIRE 9

SAUVEGARDER LA DÉMOCRATIE CONSTITUTIONNELLE: REMÈDES ET RENOUVELLEMENT

Chair Cheryl SAUNDERS

Président Émérite de l'AIDC

Professeur, Faculté de droit: Melbourne Law School
Australie

Le webinaire final examine les sources de résilience et de renouveau dans les sociétés démocratiques contemporaines, des «boîtes à outils» pour faire face aux avancées autoritaires, aux processus de renouveau démocratique menés par les citoyens, en passant par l'intervention internationale. Un fort accent est mis sur les leçons qui peuvent être tirées des expériences à travers le Sud global ainsi que l'hémisphère Nord.

1 Ensuring Resiliency during Crisis by Protecting Fundamental Equality and ESC Rights

Amy RAUB Principal Research Analyst, WORLD Policy Analysis Center, UCLA

2 Barangay Assembly: A Citizen-led Reinvigoration of Political Discourse and Civic Engagement in the Philippines

Michael Henry YUSINGCO Research Fellow, Ateneo School of Government, Ateneo de Manila University, Philippines

3 A Toolkit for Preventing Constitutional Decay in India

Amal SETHI Fellow, University of Pennsylvania, USA

4 Is the Rule of Law Framework an Adequate Response to the Constitutional Decay?

Teodora MILJOJKOVIC SJD Candidate, Legal Department, Central European University (CEU), Budapest, Hungary

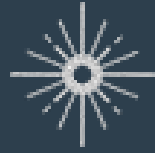
5 Constitutional Decay in Europe: Can the EU Save the Day?

Matteo BONELLI Assistant Professor, Law Faculty, Maastricht University, Netherlands

7 Constitutional Reform in Bosnia and Herzegovina: Can We Expect It in The Near Future?

Ajla SKRBIC Assistant Professor; Faculty of Law, University of Business Engineering & Management Banja Luka, Bosnia and Herzegovina

RÉSUMÉS



WEBINAIRE I

DÉFIS MONDIAUX: MENACES ET RÉSILIENCE

Technological Change as a Key Facilitator of Democratic Decline: Is Australia at Risk?

Shireen MORRIS Senior Lecturer, Macquarie Law School, Sydney, Australia

Andrew BALL Senior Manager, Accenture, Melbourne, Australia

Throughout human history, technological advancements have buttressed the expansion of modern, representative democracies. Yet in recent decades, the ever-quickening pace of technological change is propelling stable democracies in chaotic new directions. We argue it is the key contributing factor facilitating democratic decline in developed democracies like the US. And Australia is not immune to such seismic shifts. While most scholars rightly consider Australia a healthy and stable democracy, we argue that many drivers of democratic decline observable in the US are increasingly present in Australia. Australia is not immune to the risks to democracy posed by technological change. This

paper surveys recent Australian trends and key examples of technology-driven democratic decline and 'populist' political tactics. It argues that, while Australian democracy is not as fragile as elsewhere, risk factors are present. Reform is needed to ensure technological change does not decay Australian democracy.

The Comparative Constitutional Law and Politics of Voter Suppression

Michael PAL Associate Professor, Faculty of Common Law, University of Ottawa, Canada

This presentation considers voter suppression as a comparative phenomenon and as a key component in the mix of tactics adopted by would-be autocrats. Voter suppression refers to the implementation of restrictions on access to the fundamental right to vote. The comparative literature on democratic decline has generally not put voter suppression at the heart of its analysis. I argue that the literature on competitive authoritarian regimes provides insights into the mechanisms by which voter suppression is pursued, even in democracies. Voter suppression strategies operate wherever there are levers of control that can affect turnout and electoral results. I argue that voter suppression in the new era of democratic decay emerging post-2008 uses these levers to

hollow out electoral democracy such that appearance of competition and legitimacy are maintained, but without the substance. I consider several explanations, including capture, the role of courts, and disputes about the minimum conditions of democracy.

How 'Constitutionalism' Withers: Explaining the Changing Discourse of Constitutionalism in Chinese Constitutional Scholarship (1981-2017)

ZHAI Han Assistant Professor, Department of Constitutional Law and Administrative Law, School of Law, Wuhan University, China

HUANG Chen Assistant Professor, Dept. of Political Science, School of International Studies, Renmin University of China

This paper is a marriage between the constitutional study and the sociology of knowledge. The rise and fall of constitutionalism discourse indicate not only the directions of contemporary Chinese constitutional research but also presents the collective professionalism of Chinese scholars and its limitation under real political circumstances. We inquire how exactly and why all the main

changes take place in contemporary Chinese constitutional scholarship. Before the recent political decay, the scholarship has already deeply and subtly changed, which are featured as:

- the narrowing size of constitutional studies in Chinese,
- the core concepts such as Constitutionalism being replaced by their conservative alternatives,
- the weakening normative awareness in Chinese constitutional theories.

The underpinning reason is, disciplined by the political power, the professional role of constitutional lawyers moving from the legislative consultant to the advertiser of the developments of Socialist Rule of Law.

Constitutionalising Democratic Resilience

Ros DIXON Professor, University of New South Wales (UNSW) Law School, Australia

David LANDAU Mason Ladd Professor, Florida State University, USA

We are living in an era of democratic backsliding. One of the hallmarks of this era is also the ways in which would-be authoritarians

are relying on stealth over open attacks on liberal democratic norms. Instead of turning to military coups or outright suspensions of democracy to gain or hold on to power, would-be authoritarians are turning to “abusive” constitutional tactics – i.e. the use of liberal democratic norms as veneer or justification for their anti-democratic actions.

This kind of “abusive constitutional borrowing”, we argue, can take numerous forms: it can involve radical superficiality, selectivity, acontextual or anti-purposive applications of liberal democratic norms and ideas. But the basic logic of democratic erosion is the same. It involves the subversion of liberal democracy for anti-democratic ends, and indeed of the whole project of comparative constitutionalism – as a cosmopolitan liberal democratic project. Abusive constitutional borrowing, therefore, should cause us to revisit not only our understanding of current waves of democratic backsliding, but also current waves of constitutional transfer, comparison and exchange. While we may still want to hold on to this project, we need to take a more sceptical, realist and potentially narrowed view of the way in which the field generates ideas and concepts that can be borrowed in this way.

La crise protéiforme du système de démocratie libérale

Bertrand MATHIEU Professeur agrégé des facultés de droit, Université Paris I, Sorbonne, France

L’analyse proposée part d’un constat : une crise protéiforme du système de démocratie libérale. Tenter de surmonter cette crise implique de ne pas s’enfermer dans une posture idéologique mais d’en analyser les causes. En réalité, on assiste à une rupture entre deux éléments qui, associés, ont donné la démocratie libérale : la démocratie en tant que mécanisme de légitimation du pouvoir et le libéralisme en tant que mécanisme d’exercice du pouvoir, visant à la mise en place d’un « gouvernement modéré ». La notion d’État de droit masque ces contradictions. En réalité la démocratie implique l’existence d’un peuple inscrit dans des frontières et partageant des valeurs communes. Or l’ensemble de ces facteurs sont en crise. Il en résulte que le mécanisme même de la démocratie représentative ne fonctionne plus

Illiberal Democracy and Undemocratic Liberalism: Two Symmetrical Opposites

George KATROUGALOS Professor of Public Law; Member, Hellenic Parliament, Greece

Democratic regimes historically synthesize two components, a democratic one, implying rule of majority and popular sovereignty and a liberal one, implying respect of human rights. Liberal democracies need both elements to function properly and not to degenerate. However, the bulk of the criticism is usually limited to the emergence of “illiberal democracies”, in other words the rise of autocrats in states where elections are held, but rule of law is weakened.

However, weakening of our democracies can clearly be associated also with the dominance of policies which undermine the democratic element, by trends such as the breach of the social contract associated with the welfare state and the delegation of important political decisions to unaccountable public decision makers. I consider this “undemocratic liberalism” as a catalyst for the generation of its inversed idol, the “illiberal democracy” and I will try to show at my presentation the interaction between them.

Populism, Democracy, and the COVID-19 Pandemic

Tamar HOSTOVSKY BRANDES Senior Lecturer, Faculty of Law, Ono Academic College, Israel

Yaniv ROZNAI Associate Professor, Harry Radzyner Law School, IDC, Herzliya, Israel

The COVID-19 pandemic emerged in an era in which a large number of countries are encountering challenges to democracy by populist, semi-authoritarian trends and leaders. The question then arises, whether, and is so, how, the pandemic has affected these challenges. In this paper, we argue that from what that currently be observed, the pandemic may affect existing populist trends in several different, and, potentially conflicting, manners: as an excuse and guise for power grab; through the central role science and scientists – which were undermined in populist thinking; the blurring on the one hand of the friend/enemy distinction as the virus acts indiscriminately yet on the other hand it served as a pretext for xenophobia and for blaming minority groups; and finally the pandemic lead to a process of internal convergence, which culminated with border closers but comparativism has been

rising as countries have continuously consulted and learned from other countries.

Constitutional Democracy in the Age of Algorithms: The Implications of Digital Private Powers on the Rule of Law in Times of Pandemics

Oreste POLLICINO Full Professor of Constitutional Law, Bocconi University, Italy

Giovanni DE GREGORIO PhD Candidate in Constitutional Law, University of Milano-Bicocca, Italy

New algorithmic technologies are challenging the principles at the heart of constitutional democracy. While the newness of new technologies is a natural challenge for the rule of law due to legal uncertainty, the new backsliding of democracy we are now facing in the information society concerns the implementation of artificial intelligence technologies by online platforms. These systems make decisions on fundamental rights outside the limit of the rule of law, thus, influencing democratic values worldwide. Our primary research question is: how can constitutionalism face the challenges brought by the emergence of new forms of power threatening

the principle of the rule of law? We believe that potential answers can be found by looking at the emerging season of digital constitutionalism. Constitutions have been conceived to limit public powers. Therefore, the shift of power from public to (digital) private hands requires framing traditional categories in the new technological scenario.

Constitutional Decay and the Crisis of the Liberal Imagination

Nigam NUGGEHALI Dean and Professor of Law, School of Law, BML Munjal University, India

Liberal constitutions have an abiding faith in the political process, demonstrated in the tasking of majoritarian politics with creating a more equitable society. The judiciary has been typically given more limited powers of preventing abuse and has been cloaked with a limited independence, mainly to do with their tenure. I believe that there is a need for a revaluation of the liberal idea that politics is a force for the good.

I argue for a judicial function that is present pervasively in top to bottom governance issues and is completely, not partially, independent of politicians. Liberals must acknowledge the

need for an independent review mechanism outside of business and political interests. We have seen the beginnings of this realisation in the private space already, with the emphasis on independent directors. We need to see a similar recognition in all forms of governance.

WEBINAIRE 3

AMÉRIQUES:
DÉCLIN CONSTITUTIONNEL,
EFFONDREMENT &
RÉSILIENCE

A Covid-19 Constitution? Democratic Erosion, Public Trust and Constitutional Creation in Chile

Jorge CONTESSE Associate Professor, Rutgers Law School, USA; Visiting Professor, University of Paris 1 Panthéon-Sorbonne, France

In October 2020, Chile will hold a constitutional referendum to decide whether a new Constitution should be adopted; and, if the option for a new Constitution wins, which mechanism should be used for it: a constituent assembly or a “mixed” convention of citizens and members of Congress. The 1980 Constitution, drawn up by the Pinochet dictatorship, is coming to end. My contribution focuses on two aspects: first, it discusses some of the main causes of the dramatic constitutional change that is underway, with an emphasis on the role of the Constitutional Court as a key factor for triggering the constituent impetus. Second, it assesses the

constituent process as a distinctive case of democratic renewal, that is, instances where decay is democratic, as when the normal (but imperfect) functioning of the constitutional system may lead to its own destruction followed by a moment of constitutional creation—a sort of institutional implosion.

The Consequences of the Change of Political Positioning of the Brazilian Government on Facing the Covid-19 Pandemic: A Breakdown of Democracy

Tatiana CARDOSO SQUEFF Professor of International Law (tenure-track), Universidade Federal de Uberlândia (UFU), Brazil

Lúcia SOUZA D'AQUINO Researcher, Universidade Federal do Rio Grande do Sul (UFRGS), Brazil

Brazil saw significant governmental changes in 2016, indicating a political positioning alteration. Several measures demonstrate them, being the Constitutional Amendment (CA) no. 95 one. It transformed the way government funds are relocated to several areas, including health and education,

preventing an increase in spending. Thus, it hampered public budget, weakening if not interrupting essential investments directed to social policies intended to reduce regional/social inequalities. In 2018, such political position change was confirmed when Bolsonaro ascended to power. Hence, this proposal aims to debate the consequences of it on the measures adopted to face the Covid-19 pandemic in Brazil, confirming the hypothesis that the limitations imposed by CA/95 made a possible health policy to combat the virus inexistent, and increased inequalities, attesting the breakdown of democracy. To this end, using the *hypothetical-deductive method*, a *descriptive-explanatory study was conducted*, aiming at solving the proposed problem, *based on doctrinal and documental analysis*.

From Hardball to Packing the Court: “PEC do Pijama” and the Attempt to Attack the Brazilian Supreme Court

Katya KOZICKI Full Professor of Law, Federal University of Paraná (UFPR) and Pontifical University of Paraná (PUCPR), Brazil

Rick PIANARO LL.M. Candidate, UFPR, Brazil

In May 2015, the Brazilian Chamber of Deputies approved an amendment that raised

the retirement age of the Supreme Court members from 70 to 75 years. Just four years later, there is a new proposal, known as “PEC do Pijama”, to revoke the former one. The paper assumes that changes in rules that affect the checks and balances system must be taken seriously. While in a hardball conjuncture these kinds of changes can be seen as questionable, in a context of constitutional crisis there could be a deliberate attack to compromise Court independence. The polish “Law on the Supreme Court”, and the Brazilian authoritarian past are taken into account to review the facts and norms and analyze them. In this paper the authors argue that the latter proposition violates constitutional stability and magistracy guarantees, consisting in an autocratic move to consolidate power and pack the Court.

Judicial Assertiveness in Times of Crisis: The Case of El Salvador

Monica CASTILLEJOS-ARAGON Lecturer, Legal Studies Department, University of California, Berkeley, USA

My research critically evaluates a set of research that claims that emergencies naturally and reflexively align courts with political leaders and augment presidential

WEBINAIRE 4

MOYEN-ORIENT ET AFRIQUE: CONSTITUTIONNALISME, CORRUPTION & TRIBUNAUX

powers. In the case of El Salvador, judges have not been deferential to the executive power. Rather, the Constitutional Court has issued rulings to limit the presidential power and curbed administrative actions, especially when it comes to protect rights and freedoms of citizens.

The Return of the Notwithstanding Clause: Pitting Rights Against Democracy and the Next Power Struggle Between Courts and Legislatures

ZHOU Han-Ru Associate Professor of Public Law, Université de Montréal Faculty of Law, Canada

The product of a last-minute political compromise between the federal government and some provinces as a condition for adopting a constitutional bill of rights, s. 33 of the Canadian Charter of Rights and Freedoms 1982 allows lawmakers to enact an override of certain rights guaranteed by the Charter. By and large, use of the 'notwithstanding clause' has been rare. However, over the last couple of years, resort to s. 33 has picked up again in several provinces, each time bringing the political debate before the courts. The end

result of this latest round of power struggle between the government and the judiciary should recast the longstanding role of Canadian courts as the self-appointed guardians of the Constitution and determine their real ability to act as a countermajoritarian force in a constitutional democracy.

The Trajectory of Arab Democracy through the Lens of Covid-19 Measures

Osayd AWAWDA Assistant Professor of Constitutional Law, Hebron University, Palestine

Despite constitutional reform attempts in the Arab region following the Arab Spring, it is arguable that these reforms existed as mere theoretical principles, with significant lack of commitment in practice. The executive powers of many states in the Arab region have been able to control other state organs. Reviewing many Arab states' responses to the Covid-19 pandemic reveals that respecting human rights, limiting exceptional powers of the executive, and deploying an efficient system of checks and balances are still far from becoming realities in many Arab states. These states responded to the Pandemic not only by declaring the state of emergency, but also through passing controversial laws that go

beyond the scope of facing health threats, seeking even more restrictions on state organs for the interest of the executive power. Such restrictions are arguably indicative of the unfortunate, looming future of democracies in the Arab region.

Democratic Decline in South Africa – The Case of the Protection of State Information Bill

Juha TUOVINEN Postdoctoral Research Fellow, Department of Legal Studies, Central European University (CEU), Budapest, Hungary

When it comes to the state of democracy, South Africa is sometimes presented as a state on the same trajectory as Hungary and Poland albeit not having gone all the way yet. This contribution draws on research on the Protection of State Information Bill to explore some of the challenges facing South Africa's constitutional system. The Bill has been called "the greatest test of South Africa's democracy" (Klaaren). Here I want to use the Bill to demonstrate some of the particular characteristics of democratic decline in South Africa in order to explore the direction of democratic decline in SA (avoiding corruption, settling inter-ANC fighting, entrenching ANC rule while

displaying some forms of resilience within the legislative process). Thus, the saga of the Protection of State Information Bill is useful to shed light on some of the dynamics of the future of constitutionalism in South Africa.

Neopatrimonialism and Rule of Law in the Nigerian Constitutional Paradigm

Tajudeen SANNI Research Fellow, Nelson Mandela University, South Africa

Over the last decades, many African countries have managed to shed off totalitarian military rule and adopted constitutional democracy. The adoption of constitutional democracy entails rule of law which is about supremacy of the law and equality before the law, to paraphrase Dicey's conception of rule of law. It is the legal principle that nations must be governed by a corpus of laws rather than arbitrary orders of individual persons. All constitutions in Africa including that of Nigeria clearly provide for rule of law. However, few are examples of rule of law as Mo Ibrahim Governance Index and many other political indexes have shown. One serious challenge to rule of law is neo-patrimonialism. Neo-patrimonialism, as defined by Christopher

Clapham, refers to a form of organization in which relationships of a broadly patrimonial type pervade a political and administrative system which is formally constructed on rational-legal lines. In a neo-patrimonialist state some sort of patron-client relationship systematically supplants the bureaucratic structure of the state with the attendant implication that those with power and economic influence exercise real control in a way that undermines established rules. In Nigeria, it is common for people to raise alarm about "powerful mafia" who undermine rule of law and whose actions amount to subtle overthrow of the constitution. To that effect the objectives of this paper are two; firstly, to examine the constitutional provisions relating to rule of law in the African continent with specific reference to Nigeria, the latter being the most populous and middle-income developing country. The second objective is to examine the extent to which neo-patrimonialism operates in the West African nation and to what extent the powers given to the president and other office holders in the constitution aids neopatrimonialism.

Constitutional Decay and Arrested Democratisation in Africa: Unpacking the Normative Roles of Courts in Electoral Processes

Ugochukwu EZEH Lecturer, Faculty of Law, University of Lagos, Nigeria

This presentation contributes to the discourse on constitutional decay in nascent democracies by thematising a significant phenomenon—the increasing judicialisation of highly charged electoral politics in several African jurisdictions. As such, courts, politico-constitutional actors, and pro-democracy activists in a range of jurisdictions have sought—with varying degrees of success and failure—to invoke judicial power as a remedial mechanism against the onslaught of electoral malpractices and broader patterns of arrested democratisation. Indeed, the ‘African’ presidential election petition (PEP) has particularly emerged as a critical terrain of democratic struggle. The presentation will engage this phenomenon by exploring the normative roles that courts can play in such contexts.

First, courts can edify democratising polities by utilising strategic opportunities provided by PEPs to disseminate democratic values and foreground the need for credible electoral

processes. Second, courts can deploy PEPs to facilitate institutional empowerment by opening up juridical space for core democratic institutions (like electoral commissions) to assert their independence with a view to strengthening democratising processes. Third, courts can exercise practical remedial functions by refusing to sanction electoral irregularities and malpractices.

Executive Control of the Judiciary through Appointment of Judges: Case Studies from Turkey and Cameroon

Leighann SPENCER PhD Candidate, Charles Sturt University, Melbourne, Australia; Tutor in Justice Studies, La Trobe University, Melbourne, Australia

A core principle of democracy and the rule of law is the separation of powers. The executive, legislative, and judicial arms of government must exist independently of one another. Yet in many countries, separation of powers remains dubious. This paper looks at executive control of the judiciary with regard to the appointment of judges in Turkey and Cameroon. In Turkey, judge appointment occurs through the High Council of Judges and Prosecutors (HSYK).

However, appointment to the HSYK is controlled by the executive, rendering it just a middleman. In Cameroon, judges are explicitly appointed by the President. An analysis brings forward four key arguments. First, the contention that judicial interference occurs in the face of regime insecurity is upheld. Secondly, judge appointments have predictably led to court rulings aligned with the regimes’ wills. Thirdly, there have been unexplored consequences on broader society; namely, persecution of minorities. Finally, this paper argues that reform requires international intervention.

WEBINAIRE 5

ASIE: VOIES CONSTITUTIONNELLES NON LINÉAIRES

Two Steps Forward, One Step Back, Another Step Sideways? Dissecting Narratives of Democracy in Nepal

George VARUGHESE Senior Strategic
Advisor, Niti Foundation, Nepal

Iain PAYNE Program Analyst, Niti
Foundation, Nepal

In the aftermath of a decade-long conflict and nearly five years after the promulgation of a new constitution, the democratic project that began in Nepal in the early 1990s remains a work in progress. Democratic institutions exist, elections have taken place with routine efficiency, and the federalisation of the state promises new opportunities for more inclusive governance. However, the dividends of democracy like representation of public interest and accountability of government appear to remain out of reach.

Contemporary commentaries on Nepali democracy tend to situate themselves within

one of several broad narratives: of incremental democratic consolidation notwithstanding occasional setbacks; or of democratic backsliding and creeping communist authoritarianism; or of unchanged and enduring patterns of patrimonial kleptocracy. In taking stock of democracy in Nepal, this paper critically draws these narratives together, assessing points of synergy and pinpointing gaps in analysis. In doing so, it draws attention to the complexity of Nepal's democratic story.

Political Change and the Decline and Survival of Constitutional Democracy in Malaysia and Indonesia

Dian SHAH Assistant Professor, National
University of Singapore (NUS)

In the past two decades, Indonesia and Malaysia have undergone significant political change that promised, and paved the way for, democratic reform. However, this process has been challenged and stunted by a series of events that have instead sought to undermine constitutional democracy. This presentation is provoked by recent events in the two countries and it aims to shed light on two main questions: (1) what are the forms of challenges against

constitutional democracy that have emerged in Malaysia and Indonesia; (2) how did different constitutional institutions, political actors, and citizens respond to those challenges? It highlights several issues, including the repression of anti-government voices in the lead up to the 2019 Indonesian presidential elections, and the role of the monarchy in Malaysia's democratic governance.

By analysing the two questions, the presentation aims to shed light on whether there is a risk or pattern of constitutional decline, or conversely, whether constitutional democracy is sustained (or even reinvigorated) through the ability to withstand such challenges. The analysis will also consider how political imperatives and dynamics shape the operation, evolution and survival of constitutional democracy in Malaysia and Indonesia.

Maintaining Democracy and Public Order in the Period of Health Crisis – Malaysian Experience

Nurhafilah MUSA Senior Lecturer, Law
Faculty, National University Malaysia (UKM)

From February 2020 until July 2020, Malaysia is experiencing multiple crisis, unprecedented

since its Independence. It began with the early cases of coronavirus and continued with political crisis which changed the federal government and currently, economic crisis due to the so-called 'lock-down' or Controlled Movement Order (CMO). This paper argues that the maintenance of separation of power is crucial to ensure democracy and public order are preserved in accordance with the rule of law. Despite certain calls for general election as a tool to return the democratic mandate to the people, the survey on the mass shown that people want to focus on the economy and surviving the new normal. This paper intends to record Malaysian experience in maintaining democracy and public order during covid-19 pandemic using the National Security Council Act and the Control and Prevention of Infectious Disease Act through-out mid-March up to July 2020. This paper will also identify key democratic and public order challenges faced by the federal government and steps taken to overcome the challenges.

Government Without Opposition: A New Form of Democracy in Bangladesh

Pritam DEY PhD Candidate, School of Law, University of New England, Australia

There is little doubt in anyone's mind that without a viable and effective Opposition, parliamentary democracy would be largely a sham. Without it, parliament could not perform its oversight functions, elicit response from wielders of power and enforce accountability. In other words, working democracy rests not only in posting an electoral majority, but in engendering a parliamentary opposition that would be the conscience of the nation. However, this idea of democracy is not currently applicable in Bangladesh, where an increasingly fraught politics is transforming a fragile but nonetheless democratic and moderate Muslim majority nation into a one-party state. The hallmark of a decade's rule of the incumbent Awami League party has seen two general elections where majority members of the ruling party were elected unopposed. These elections were boycotted by all opposition parties and deemed to be far from credible by international observers. Instead of building bridges with the opposition, the government embarked on jailing, forced disappearance and extra-judicial killings of scores of opposition leaders and members.

This slide into authoritarianism is certainly not new for a nation that has experienced fifteen years of military rule over its fifty-year history. However, the unconstitutional route through

which the Awami League is transforming Bangladesh into a one-party state has shocked many. In this paper, I review this facet of democratic decay in Bangladesh through two stages. I argue that the Awami League government, through the use of the anti-defection clause of the Bangladesh Constitution, has persuaded the parliament to incorporate far-reaching amendments in the Constitution. The party compelled its MPs to blindly comply with the directives of the government, which has in turn has enabled the regime to essentially substitute the rule of law with rule of man. As a result, the government was able to enact the Constitutional (Fifteenth Amendment) Act, 2011, which scrapped the law that required general elections to be conducted by a neutral caretaker government. This effectively destroyed the structure of free and fair elections in Bangladesh, which has resulted in the state sliding towards a one-party rule.

The Decay of Establishment Clauses

Darshan DATAR Ph.D candidate, Melbourne Law School, Australia

Based on a doctrinal study of case law from the United States, India, and the European Court of Human Rights (ECtHR), I conclude that the

WEBINAIRE 6

EUROPE: IMPATIENCE ET INCERTITUDE CONSTITUTIONNELLE

judicial concept of religion is implicated in the decay of religious freedom and establishment clauses in constitutional systems. In light of this conclusion, I hypothesize that the judicial concept of religion responds to context. Judges in jurisdictions with a generalised freedom of religion provision and an establishment clause possess a broad concept of religion in freedom of religion cases and a narrow concept of religion in establishment cases. In non-establishment jurisdictions, judges narrow their concept of religion by 'inculturating' symbols and practices of the majority religion to privilege the majority religion of the country. In this paper, I will argue that the judicial inculturation of symbols and practices which form a part of the majority religion has allowed populist governments to adopt communally divisive policies.

Defending Local Democracy Against Democratic Decay in the Post-Covid World

Atagün Mert KEJANLIOGLU Doctoral Candidate, McGill University, Canada

Local democracy contributes to a pluralistic perspective of democracy by decentralizing the power and creating a closer relationship bet-

ween the administration and the citizens. Unfortunately, the current global populist wave undermines this pluralist vision. Populists tend to centralize the power and weaken the decentralization. It is within this context that the global pandemic of COVID-19 created a disguise to legitimize this tendency. As coordinated responses became necessary, the regional and central authorities began to clash. In Turkey, opposition mayors wanted to take measures to alleviate the effects of COVID-19 as the Turkish government sought to block these actions and attempted to alienate these mayors in public opinion. Using Turkey as an example, this paper will argue that, despite the effects of COVID-19, local democracy deserves more attention as a tool against democratic decay because local authorities also hold electoral legitimacy when populist authoritarians take over the central government.

La démocratisation dans les pays de la Communauté d'États indépendants entre reconnaissance constitutionnelle et pratiques politiques

Tatiana MASLOVSKAYA Prof. agrégé de l'Université d'Etat biélorusse, Minsk, Biélorussie

Cette intervention prend en compte la manière dont les concepts démocratiques ont été inscrits dans les textes normatifs des États de la CEI, passés dans un laps de temps très court du socialisme à un système qui se veut démocratique, mais aussi comment ils se sont traduits, ou non, dans le fonctionnement institutionnel, en empruntant, au regard des spécificités du contexte socioculturel et politique, à la fois des éléments de démocratie et des éléments qui se rattachent à une tradition non libérale.

Democratic Decay in Malta

John STANTON Senior Lecturer in Law, The City Law School, City, University of London, UK

In October 2017, Maltese journalist, Daphne Caruana Galizia, was murdered. She alleged involvement by certain Maltese politicians in the Panama Papers scandal. Investigations into those responsible for the attack are ongoing, though focus is on figures within the Government and close to former Prime Minister, Joseph Muscat. Some have been questioned and have left their posts; Muscat resigned in January 2020.

The allegations of corruption and the way in which the investigations have been organised raise questions of the Government's actions, as well as fundamental features of the Maltese constitutional system. This paper examines these questions, focusing on the allocation and separation of powers in Malta, and the rule of law. It argues that the imbalance of power in favour of the Government, combined with recent actions of that Government, are leading to democratic decay and neglect for values central to the rule of law. It then explores how reforms might reverse the trend of decay, correct the imbalance of power in Malta, and enhance the rule of law on the archipelago.

What is the Status of Democracy in Lithuania and Latvia? A Two Country Study in the Context of Democratic-Backsliding in Eastern and Central Europe

Beatrice MONCIUNSKAITE Ph.D. Candidate, School of Law & Government, Dublin City University (DCU), Ireland

It has been well documented that the global state of democratic governance has fallen dramatically short of the expectations we had around the turn of the century. Countries in the former 'Eastern Bloc' in the EU seem to have been particularly badly hit by democratic decay. Hungary and Poland who successfully departed from communism in the 'Third Wave' of democratisation have increasingly slipped back into their authoritarian past. Much international and scholarly attention has been directed at these two states for their violations of the rule of law and democratic principles. However, little attention has been spared for the Baltic states of Lithuania and Latvia who have had a very different experience with democracy compared to their Polish or Hungarian counterparts.

This contribution will explore the status of democracy in Lithuania and Latvia with an aim

to distil the factors that encourage or inhibit democratic decay.

Snap Elections in Illiberal Regimes: Confirming Trust or Establishing Hegemony? The Case of North Macedonia

Dorjana BOJANOVSKA S.J.D. Candidate, Central European University (CEU), Budapest, Hungary

Snap elections test constituents' trust in government but, at the right time, they can also be a tool for elevating majorities and/or perpetuating power. Focusing on the case of North Macedonia, where between 2006 and 2016 five general elections were held, the piece will incorporate a two-fold approach. First, I will elaborate on the aim of snap elections, arguing that between 2006 and 2016 they had several additional purposes: 1) to reinforce the populist notion of electoral legitimacy as bases for a narrative justifying violation of constitutional restraints; 2) to perpetuate power, aiming to rearrange the composition of state institutions when lacking majority necessary to enact constitutional change. Second, I will elaborate on both the institutional and non-institutional means for

ensuring electoral victory. Finally, I will briefly assess the continuing practice of snap elections post-2016 and the challenges posed by the COVID-19 crises on the 2020 snap elections.

Crises and Constitutional Courts: Lessons from the Case of Slovakia

Max STEUER Assistant Professor, Jindal Global Law School, O.P. Jindal Global University, India; Department of Political Science, Comenius University in Bratislava, Slovakia

Sascha KNEIP Research Fellow, WZB Berlin Social Science Center, Germany

Thinking of constitutional courts (CCs) as guardians of democracy and constitutionalism implies thinking of them as preventing crises of both. Recognising some peculiarities of the concept of ‘crisis’, we introduce a framework for studying CCs’ crisis-preventing capacities, and apply it to the Slovak case. While some CCs of the so-called Visegrád countries have received considerable attention, the Slovak Constitutional Court is rarely studied despite its broad competences and considerable resemblance to its Hungarian and Polish counterparts before their powers had been curtailed.

The Slovak case indicates that ‘strategic judicial deferentialism’ is not conducive for building up crisis-preventing capacities. Moreover, if invoked in cases concerning executive efforts to dismantle the separation of powers in crisis conditions, deferentialism might pave the way towards undermining the CCs’ position in the constitutional system, as illustrated by the Hungarian and Polish cases. Hence, crisis-preventing CCs need to be bold not only in times of crises.

Populism, Democracy and ‘Constitutional Impatience’: Courts as Institutional Decelerators in the United Kingdom

Raphaël GIRARD Ph.D candidate in Law, London School of Economics and Political Science (LSE), United Kingdom

Populism dislikes intermediaries and is impatient with procedures. From a temporal perspective, populists want to do things faster. They want to go away with intermediaries and institutions (including Parliament and courts), which are seen as “thwarting the will of the people.” For that reason, populists are eager to invoke executive prerogatives. In the United Kingdom, the Royal Prerogative was invoked to

“get Brexit done” (right now, urgently). Yet, it is in the context of what I would call “constitutional impatience” that courts can play the role of an institutional decelerator. Judicial proceedings have been noted – and criticized – for their slow pace, which, perhaps counterintuitively, “can be a structural asset of the multistage process of constitutional governance in its pushback against new populism.” In this presentation, I argue that courts can act – and have indeed successfully acted – as judicial decelerators and as bulwarks against populist, executive aggrandizement. I make this argument by reference to the *Miller (no. 1)* and *Miller (no. 2)/Cherry UK* Supreme Court cases.

WEBINAIRE 7

ASIE : L'INDE ET LE SRI LANKA
EN LUMIÈRE

Rights During a Pandemic: The Indian Experience

Thulasi K. RAJ Advocate, Supreme Court of India; Equality Fellow Centre for Law & Policy Research, Bangalore, India

The Covid-19 outbreak led to significant changes in Indian democracy at least on two levels. Firstly, wide powers were assumed by the executive exercising a free hand and secondly, courts showed high deference in judicial review. The prominent argument by the state was that during times akin to emergencies, rights matter less. I will argue that this hands-free approach is misplaced and based on a wrong conception of rights.

While in emergencies, the state might be able to appeal to additional justifications for restricting the scope of certain rights. However, a suspension of the proportionality test, as indirectly condoned by the court is impermissible. Even during crises, the executive action must be tested based on the proportionality test known to international

human rights law. I will show that the actions of the state failed to meet this test.

India's Judicial Populism in the Modi era

Anuj BHUWANIA Professor, Jindal Global Law School, Jindal Global University, India

One of the most conspicuous casualties of the ongoing crisis of democracy in India is the complete capitulation of the Indian judiciary to the majoritarian rule of Prime Minister Narendra Modi. With its well-known innovations like public interest litigation, basic structure doctrine and the concomitant judicialization of politics in India, the Indian Supreme Court has for decades attracted disproportionate public attention and international admiration for its judicial interventions. Since Modi's election in 2014 however, there has been a general sense of disappointment with the Indian Supreme Court, with a widely shared lament that the Court has failed to be a protector of democratic institutions.

I will address two questions regarding the role the judiciary has played in India's democratic backsliding in this period. First, to what extent does the Court's behaviour in the Modi era

really mark a discontinuity? Second, how have the Indian Supreme Court's famed doctrinal improvisations in constitutional interpretation fared in this period?

I believe the answers to these related questions will help us better understand how the Indian higher judiciary has served as an ally to Modi's destruction of democratic institutions. While the judiciary is generally seen as a check on creeping authoritarianism in government, the Indian case is a peculiar one among the recent global instances of democratic backsliding because the Indian supreme court had long abandoned any counter-majoritarian role. I will argue that India's long history of judicial populism has made its higher judiciary a particularly potent and natural ally to the authoritarian populism in power personified by Modi.

Party Dominance and Constitutional Structure: India

Aradhya SETHIA Ph.D Candidate, University of Cambridge, United Kingdom

This talk will analyse the consequences of party dominance in Parliament on three inter-related constitutional structures in India: parliamentarism, federalism, and electoral democracy.

Parliamentarism: Indian political parties are tightly disciplined with a strong concentration of power in the party leadership. As a result, the parliamentary accountability of the executive is unlikely to come from within the party. This truncation of the role of Parliament is further facilitated by the poor understanding of the role of parliamentary Opposition in the Indian constitution.

Federalism: In the face of comfortable majorities, the Indian constitutional structure reveals its tendencies to concentrate power in the federal government, while diminishing the position of states. In the essay, I will analyse the conflict between 'federalism as the loyal opposition' and 'the constitution's unitary tilt' in the face of diminished role and strength of opposition parties in Parliament.

Finally, Indian electoral democracy, despite its acclaimed successes, faces the challenge of the role of money in politics. I will conclude with observations on election finance regime, pending constitutional challenges to recent laws, and their significance for the future of Indian constitutionalism.

Bicameralism and the Rule of Law: Reining in the Abuse of Money Bills in Legislative Procedure

Gaurav MUKHERJEE S.J.D. Candidate,
Central European University (CEU), Budapest,
Hungary

The preponderance of a dominant executive in the process of law-making by sidestepping the Upper House of Parliament through the labelling of potentially rights-infringing legislation as 'money bills' has serious deleterious consequences for the democracy and the rule of law. This practice has been further enabled by decisions from the Supreme Court of India in a landmark judgment in 2019. My presentation argues against the constitutional rectitude of the decision by *first* examining the normative basis for the bicameral structure of government in India that seeks to balance its *demos-constraining* and *demos-enabling* functions. *Secondly*, I identify points of capacity-loss through an examination parliamentary and political practice which denude the capacity of bicameralism to serve its intended ends. I conclude that the capacity of the upper house to be *demos-enabling* and *constraining* can be restored if we reckon with the points of capacity-loss, and generally, with the practice

of working the Constitution among political actors, in fora other than courts.

Covid-19 and Democratic Decay in Sri Lanka

Ayesha WIJAYALATH Ph.D Candidate,
University of New South Wales (UNSW),
Sydney, Australia

As political leaders use expansive powers to combat Covid-19, it equally tests their true commitment to liberal democratic values. In Sri Lanka, it has created the perfect platform for executive-style governance posing serious threats to her constitutional democracy.

Managing the pandemic questions the role of the executive at times of crisis. The debate oscillates between calls for a stronger executive with the ability to control resources and effectively deploy armed forces, and that of an executive who is subjected to checks and balances. The significance of this debate lies on the long-term implications for the rule of law and constitutional rights.

While the paper explores the broader constitutional ramifications posed by the pandemic in Sri Lanka, it particularly aims to examine the calls to repeal the 19th Amendment that

significantly curbs executive powers. The paper equally aims to contribute to the scholarship on the role of exogenous factors, such as the pandemic, towards democratic backsliding.

Sri Lanka's Dance with Constitutional Democracy

Mario GOMEZ Executive Director, International Centre for Ethnic Studies, Sri Lanka

Sri Lanka represents an interesting study of the ebb and flow of constitutional decay and renewal. In newly independent Ceylon, constitutional democracy functioned well, and power alternated between the two main political parties. However, partisan constitution-making processes, in 1972 and 1978, paved the way for periods of authoritarianism. This contribution will examine the structures and politics of constitutional decay and renewal in Sri Lanka under the three constitutions of 1948, 1972, and 1978, and after the constitutional amendment of 2015. It will ask if the country's democratic institutions can stay resilient in the face of recent political changes, and comment briefly on how political power was exercised during the pandemic. Can the constitutional changes of 2015 that introduced a more balanced form of government endure, and can institutions resist political pressure and retain,

if not build on, the democratic space that was unleashed between 2015 and 2019?

WEBINAIRE 8

EUROPE: LA HONGRIE ET LA POLOGNE EN LUMIÈRE

The Year 2020: Lessons Learned from the Hungarian and Polish Management of the COVID-19 Crisis and Beyond

Agnieszka BIEŃ-KACAŁA Associate Professor (prof. UMK), Faculty of Law and Administration, Nicolaus Copernicus University in Toruń, Poland

Timea DRINÓCZI Professor, Faculty of Law, University of Pécs, Hungary

It is still true, even in July 2020, that the Hungarian and Polish COVID-19 crisis management, accompanying but not necessarily virus-related ordinary legislation, judicial decisions, and the lack thereof, could exemplify how illiberal constitutionalism slips into authoritarianism. During the pandemic, there were three possible scenarios. The most positive one could be a total restoration of the pre-illiberal-constitutionalism state. The middle way would be a return to the pre-COVID constitutionalism. The most pessimistic outcome a real and

undeniable authoritarian turn: the Hungarian Government will abuse its newly created statute-based emergency and the crisis is not over when it actually is; PiS would not only win the presidential election but keep pushing its judicial reform. In two months period after the election, we should see the development; but, we shall not forget that at the moment, Poland is far closer to a virtual Polexit than Hungary to a Hunexit.

The Façade of State Organs in Contemporary Autocratic Regimes: The Case of the Polish Parliament

Piotr MIKULI Professor, Chair in Comparative Con Law, Jagiellonian University, Poland

One of the characteristic features of the current form of authoritarianism is that legal institutions or procedures are not simply abolished – on the contrary, they are misused, and their real meaning is changed. In the paper, the author presents institutional, legal and practical examples of parliamentary freezing in Poland in the years 2015–2020, using three approaches: 1) the issue of the contrast between legal and political constitutionalism: undermining parliamentary debates falsifies the thesis of shaping the latter in Poland; 2) the

issue of parliamentary functions: suppressing the opposition leads to the practical disappearance of these functions because characteristic legal and constitutional tools are usually used by opposition deputies; 3) the dogmatic and practical approach: presenting a classification of those mechanisms that have been used to make the Sejm an institution essential to rubberstamping the ruling party's decisions (made outside of parliamentary debates).

Criminal Liability of Representatives of the Highest State Authorities in the Light of the Polish Constitution of 2nd April 1997 and the Current Situation in Poland

Monika CZECHOWSKA Doctoral Candidate at the Department of Criminal Law, University of Wrocław, Poland

This paper deals with the criminal liability of representatives of the highest state organs in the light of the Polish constitution of April 2, 1997 and the current situation in Poland.

The aim of the article is to analyze Polish legal solutions regarding the possibility of prosecution of representatives of the highest state organs for both violation of the Constitution or

statutes, as well as for crimes committed in connection with the position held.

The subject of the analysis will be both the provisions of the Polish Constitution of 2nd April 1997, as well as -to a limited extent -the provisions of the Act of March 26, 1982 on the Tribunal of State. The subjective scope of the analysis will apply to all entities indicated in the content of art. 198 paragraph 1 of the Constitution of the Republic of Poland-i.e. the President of the Republic of Poland, the President of the Council of Ministers and members of the Council of Ministers, the President of the National Bank of Poland, the President of the Supreme Audit Office, members of the National Council of Radio and Television, as well as persons entrusted with managing the ministry and the Commander-in-Chief of Forces armed. The subject scope of the analysis will cover types of liability, the mode of prosecution before the State Tribunal, as well as the proceedings before the Tribunal and the types of sanctions imposed.

In conclusion, the author will try to answer the question of whether the State Tribunal can be an effective tool to enforce constitutional responsibility, or whether it is only a "political sword hanging over the heads of the rules.

Shrinking Space of Human Rights Defenders in the Last 10 Years of the Hungarian Government

Eszter KIRS Associate Professor, Corvinus University of Budapest; Legal Officer, Hungarian Helsinki Committee, Hungary

Since 2010, the Hungarian government has systematically undermined fundamental institutions of the rule of law and democracy. The centralization of power has been coupled with restrictive measures on media freedom, parliamentary debate, freedom of assembly, and the deterioration of independent institutions, such as the Constitutional Court or the office of the ombudsperson. Civil society organizations have played a central role in defending human rights and the rule of law. The intervention will provide an insight into the process of governmental attacks on human rights defenders (e.g. blacklisting, anti-NGO laws, threatening propaganda) and their impact on the operation and efficiency of domestic NGOs, with particular attention to strategic litigation, monitoring of human rights violations, domestic and international advocacy, capacity building of legal professionals, and professional cooperation with state authorities. Emphasis will be put on “survival strategies” of human rights NGOs under the

constant and ever-growing pressure of the governmental attacks.

The Role of Emergency Politics in the Hungarian Autocratic Transition

Gábor MÉSZÁROS Senior Lecturer, Faculty of Law, University of Pécs, Hungary

From 2010 the fictitious emergencies were simply tools in the hand of the Hungarian government. The first step was the new category of ‘state of migration emergency’, which enabled the using of extra-legal measures in the ordinary legal order. In the year 2020 it became evident that, regardless of the strict state of emergency regulations, the government uses emergency measures in order to gain more and more political power. The situation became more complicated after the acceptance of the “Enabling Act” which gave unconstrained power for the government. The rule of law concerns accumulated when the government – with the assistance of the Parliament – finally ended the previously declared state of danger but in the meantime with the newly minted ‘state of medical emergency’ extended its unconstitutional practice started with the ‘state of migration emergency’.

Dismantling Democratic Governance through Manipulative Electoral Politics – the Hungarian Case

János MÉCS PhD Candidate, Eötvös Loránd University, Budapest, Hungary

A shrewdly tailored electoral regulation has been a cornerstone in building up the Hungarian populist regime that unfolded itself gradually from 2010. The Orbán Government did not merely intend to win the votes of a neutral and pre-given electorate, but ‘extracted the people from the people’ (Müller) by changing the rules of the political process themselves. This involved the modification of the electoral system (e.g. gerrymandering, introduction of winner-bonus) and the electoral procedure (e.g. discriminative postal voting) as well as constantly redesigning the regulation.

The paper argues that since democratic accountability itself was directly weakened by these changes, the Hungarian Constitutional Court (HCC) was justified and required to take up an active role in reviewing electoral legislation. However, as an analysis of its decisions show, the court stood idle, for various reasons. The paper argues that key stakeholders in

WEBINAIRE 9

SAUVEGARDER LA DÉMOCRATIE CONSTITUTIONNELLE: REMÈDES & RENOUVELLEMENT

democracies need to overthink the rules on modification of electoral regulation as well as to develop a thick theory of judicial review of the said regulation. It is argued that the protection of the right to vote may exclude some of the manipulations, however, structural values such as democracy, elections and rule of law enshrined in national constitutions may be of help as well in addressing the danger of dismantling democratic governance through manipulative electoral politics.

Ensuring Resiliency during Crisis by Protecting Fundamental Equality and ESC Rights

Amy RAUB Principal Research Analyst,
WORLD Policy Analysis Center, University of
California, Los Angeles (UCLA), USA

The impacts on health, economies, and governance of COVID-19 have been profound and have highlighted existing inequalities with the most marginalized population groups facing the highest risks of morbidity and mortality. Low-wage workers are also the most likely to fall into or further into poverty, as economic shutdowns eliminate many jobs, particularly in the informal economy and those that cannot transition to remote work. As fundamental documents, constitutions have an important role to play in ensuring equality of opportunity. These fundamental protections are especially critical during the current pandemic and to strengthen our resiliency for the next crisis. Using comparative data from

the WORLD Policy Analysis Center on constitutional rights in 193 countries, this presentation will examine the extent to which countries are prepared for the next pandemic, both by guaranteeing equality and non-discrimination for marginalized groups and ensuring that everyone has the right to health, education, and work.

Barangay Assembly: A Citizen-led Reinvigoration of Political Discourse and Civic Engagement in the Philippines

Michael Henry YUSINGCO Research
Fellow, Ateneo School of Government, Ateneo
de Manila University, Philippines

The Filipino indigenous custom of collective action known as bayanihan is institutionalized in the Barangay Assembly, a community forum where citizens can directly influence local governance. However, it is not widely utilized because many barangay officials are co-opted by local political dynasties. Results of the 2019 elections reveal that political dynasties continue to dominate the electoral process, making genuine political competition virtually impossible. This piece will present the strategy of using the Barangay Assembly as a citizen-led

reinvigoration of political discourse and civic engagement. It will expound on the inherent value of the Barangay Assembly as a venue for purposeful democratic deliberation at the community level and the suitability of actively involving civil society organizations (CSOs) in organizing and managing those deliberative sessions. The piece will make the argument that citizens can collectively exert more influence in local politics and governance by routinely utilizing the Barangay Assembly in this manner. This regular formal process of robust civic participation in local democracy can then instigate the incremental erosion of political dynasty domination in local politics.

A Toolkit for Preventing Constitutional Decay in India

Amal SETHI Fellow, University of Pennsylvania, USA

In India, tactics used by activists and opposition leaders to prevent constitutional decay have not been particularly effective. This is compounded by the fact that civil society is disorganized, and the opposition is in a state of disarray. Departing from solutions that are in the nature of constitutional/institutional reforms, this article hopes to provide a more pragmatic template to address the immediate

constitutional decay in India. This article will show how efforts at safeguarding constitutional democracy would require activists and opposition leaders to be extremely patient, strategic, and coordinated. Most significantly, this will entail, understanding the major ways in which constitutional decay is taking place; mobilizing elite and popular support for India democracy amidst rising populism and nationalism; prioritizing protecting the minimal core of Indian democracy; recognizing that the Supreme Court is not always an ally; utilizing institutional leverages efficiently; and working towards ensuring rotation of power at all levels.

Is the Rule of Law Framework an Adequate Response to the Constitutional Decay?

Teodora MILJOJKOVIC S.J.D Candidate, Legal Department, Central European University (CEU), Budapest, Hungary

The ongoing shift from liberal values in Europe has been said to amount to a breach of values of the European Union, expressed in the article 2 of the TEU, particularly the principle of the rule of law. Despite the fact that the Article 7 procedure has been launched against Poland in

2017 and Hungary in 2018, it could be argued that EU's response to the undermining of the rule of law has made little of an impact on the regressive constitutional practices in these countries. The focus of this presentation will be on the connection of the rule of law framework and the recent attacks on the judiciary, primarily in EU but also worldwide. The question at hand is – can the rule of law framework be an appropriate narrative under which the illiberalism is to be fought against, particularly its detrimental impact on the judicial independence.

Constitutional Decay in Europe: Can the EU Save the Day?

Matteo BONELLI Assistant Professor, Law Faculty, Maastricht University, Netherlands

Signs of constitutional decay are evident in several Member States of the EU, and most notably in Hungary and Poland. This presentation reflects on the role that EU institutions may have in tackling constitutional decay in the Member States. First, it argues that in order to protect its own democratic legitimacy and the smooth functioning of Union law, the EU cannot be indifferent to national democratic crises and needs to react to them. Then, the presentation explores the

toolkit EU institutions have at their disposal and reflects on how it has been used so far. While the EU could make better use of existing instruments, there is in any event a limit to what can be achieved through EU intervention: a top-down rescue of national democracies is simply out of the question. EU institutions should rather concentrate on protecting and empowering domestic actors that can resist constitutional decay and contribute to democratic renewal within the domestic scene.

Constitutional Reform in Bosnia and Herzegovina: Can We Expect It in the Near Future?

Ajla SKRBIC Assistant Professor; Faculty of Law, University of Business Engineering and Management Banja Luka, Bosnia and Herzegovina

Taking into account the constitutional and legislative structure as well as political system and political culture in Bosnia and Herzegovina (BiH), I will first examine the reasons why the previous attempts at constitutional change in BiH have failed. Then, I will offer new solutions for constitutional reform in BiH. I will not only try to answer the question of whether we can expect constitutional reform in BiH in the near

future, but also the questions of whether the issue of constitutional changes in BiH is in fact not as complex as it seems and whether the BiH political leaders want the status quo to be preserved? Finally, I will explore what broader lessons may be learned from BiH experience.



BLOG

Toutes les participants présenteront un billet de blog de 2.000 mots et l'ensemble des textes sera publié sous la forme d'un Colloque du Blog disponible sur le site web de la Table Ronde et, également, sur le blog de l'IACL-AIDC.

Les articles du blog sont disponibles à :

www.iacl-democracy-2020.org/blog

The background of the image is an aerial photograph of a river delta, showing a complex network of water channels and land. The water is a deep blue, and the land is a lighter, sandy brown. The overall texture is intricate and organic. In the lower right quadrant, there is a white rectangular box containing text and a logo.

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The logo consists of three vertical bars of varying heights, with the tallest bar in the center and two shorter bars on either side, all connected at the top and bottom.