

Constitutions, Constitutional Change, and De-Democratization

Panel Chairs:

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Section: The Illiberal Turn in the Post-Communist Region

Abstract:

As a rule, constitutions in “defective” democracies, as well as hybrid and authoritarian regimes, are considered ill-designed, ineffective, or both, so that systematically studying them might appear as a waste of effort. By contrast, scholarship on Comparative Constitutional Law contends that written constitutions matter even in these contexts. They perform a wide range of roles ranging from billboards that signal the intentions of leaders to purely fictional window-dressing, and from operating manuals that define the distribution of power in the polity to aspirational blueprints for the future of the respective society.

Typically, these roles are mixed, and they vary across time and countries.

Over the past decade, the post-communist region has become a laboratory where constitutional designers experiment with increasing frequency, producing very different outcomes. For example, in Hungary and Poland blueprints of “illiberal democracies” were drafted that promise to adapt democracy to local conditions and national traditions, thereby legitimizing rearrangements in the polity. In Eurasia, the “parliamentarization” of president-centered regimes indicated window-dressing in countries like Kazakhstan and Tajikistan rather than “real” changes, while similar reforms in, for example, Kyrgyzstan or Ukraine, codified shifts in the constitutional regime type, which is primarily related to constitutions as operating manuals. Thus, in many places, the current condition is reminiscent of the early post-communist period, when constitution-making in postcommunist Eastern Europe was about “rebuilding the ship in the open sea” and actors were bargaining for higher-order decision-making rules rather than being constrained by them in ordinary political practice. However, the current picture is different from the early 1990s in that the drafters of constitutional revisions refuse to rely on Western templates as the single most important source of inspiration.

Variation in the post-communist region promises new insights into the functions of constitutions in less-than-liberal democracies, constitutional dynamics including the tools of constitutional reforms, and the many nuances of “constitutions without constitutionalism” as enshrined in the textual documents. Papers submitted to this panel are expected to present case studies and small-to-medium-N studies that aim to understand constitutions “from within” and scrutinize the interaction of parchment with politics in a case-sensitive, process-oriented manner.

We give strong preference to papers that focus on Central East European countries and papers comparing Central East European evidence with other post-communist countries.

Keywords: constitutions, democracy, institutions, Europe (Central and Eastern), post-communist space, Qualitative

If you have a Paper you think might fit in this Panel, please contact the Panel Chair before 31 January with the following information:

- Title of the paper (no more than 20 words)
- Abstract of the paper (no more than 250 words)
- Author's (and if applicable co-author's) email address as registered in their MyECPR account
- 3 – 5 keywords