Assistive AI for Law-Making:
A Constitutional Analysis

Pier Francesco Bresciani

Research Fellow in Constitutional Law
Università di Bologna-ALMA AI

Monica Palmirani

Professor of Legal Informatics
Università di Bologna-ALMA AI

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Outline
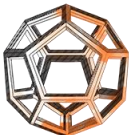
Objective of the Analysis

RQ: What are the constitutional opportunities and risks of Assistive AI in the Law-Making process?

- Limited research have explored the issue, especially when compared to its use in judicial or administrative decision making (yet parliaments hold a special constitutional status)

Objective of the Analysis

- "***Assistive AI***": AI technologies only used to offer support to human decision-makers in the legislative process

- "***Decision-making AI***": AI technologies formally authorized by a legal norm to make binding decisions within the legislative process

- functional and formal distinction

Methodology

- **interdisciplinary approach**, encompassing technological, philosophical, and constitutional dimensions

- special emphasis on **constitutional foundations** of emerging opportunities and **necessary countermeasure** mandated by constitutional frameworks to minimize risks

- reference to general principles of constitutional law to derive results that are not context-dependent (even though each constitutional jurisdiction may have its own peculiarities)

Opportunities of Assistive AI for Constitutional States' Parliaments

	ASSISTIVE AI APPLICATIONS	CONSTITUTIONAL PRINCIPLES
FORMAL QUALITY OF THE LAW	Assisted drafting (improving writing, detecting inconsistencies, retrieving connected legal texts, etc.)	Legal certainty
SUBSTANTIVE QUALITY OF THE LAW	Identifying conflicting norms	Supremacy of constitution (and/or international/supranational law)
	Data-driven review of legislation	Protection of fundamental rights and freedoms
	Engaging citizens and stakeholders	Democratic accountability and legitimacy

Constitutional Constraints on the use of AI in Law-making?

- Is there a looming threat of "algocracy"?

- Drawing a **parallel between experts and AI technologies** presents a positive case for approaching AI in the law-making process with a less pessimistic mindset

- The involvement of experts and administrative staff is typically not considered a concern for democratic legitimacy. In fact, parliaments are constitutionally mandated to consider expert opinions in certain contexts, (even if such opinions are limited to expert discussions/opaque)

The Special Case of Enhancing AI

- This parallel may not fully apply to Enhancing AI technologies, which can limit the possibility of substantive parliamentary debates

- "*Enhancing AI*": AI technologies performing tasks beyond human capabilities (e.g., patterns recognition in vast amount of data)

- To preserve democratic legitimacy, Enhancing AI need not make parliamentary debate impossible (e.g., XAI?)

Risks of Assistive AI in Law-making

- General risks (bias, malfunctioning, etc.) must be addressed by parliaments though methods usually discussed (by design, independent validation, etc.)

- From a source-of-law-theory perspective, possible countermeasures can be adopted only through constitutional or internal regulations

- Regulation on the use of Assistive AI should consider the risk of abusive use of AI technologies (case by case scenarios)

Context-specific Risks & Countermeasures

KEY RISKS	CONSTITUTIONAL PRINCIPLES	COUNTERMEASURES
Undue influence by third parties	Parliamentary autonomy	Securing technological sovreignty (full control over the AI technologies since development, cybersecurity, etc.)
Interruption of parliamentary works due to technological malfunctionings	Continuity of power	Adoption of HIL approaches (not fully automating work processes)
Technological disparity between political parties/groups	Par condicio & Free mandate	Ensuring fair access to AI technologies to all groups (if limited resources, similar to scheduling debates)
Technological inaccessibility by MPs	Free mandate	Promoting full accessibility through desing considerations and adequate organizational measures (including digital literacy)

Conclusions

- The question of using AI for Law-Making should not be treated as a unitary issue from a constitutional perspective

- While delegating decisions to AI is clearly problematic, assistive AI, in principle, is not fundamentally different from the typical form of human intelligent assistance to MPs and should be treated similarly constitutionally

- Assistive AI can, in fact, strengthen states' ability to pursue fundamental constitutionally grounded objectives

Conclusions

- However, a precautionary approach is warranted when employing Enhancing AI due to its potential to impose significant limitations on parliamentary debate

- The incremental implementation of AI-based technologies within the legislative process must nonetheless be accompanied by a corresponding implementation of adequate safeguards for fundamental constitutional principles
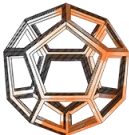
Thanks for your attention!

Feedback is welcome

Pier Francesco Bresciani
pierfrancesco.bresciani@unibo.it

Monica Palmirani
monica.palmirani@unibo.it