Constitutional Opportunities and Risks of AI in the law-making process

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Abstract [En]: This paper explores the constitutional opportunities and risks linked to the use of AI in the legislative process, adopting an interdisciplinary approach. The analysis distinguishes between AI assisting, enhancing, and decision-making for legislators, highlighting their different constitutional implications. Opportunities and risks for each use are discussed with examples, emphasizing the need for constitutional safeguards. The Authors argue that assistive AI, with proper safeguards, poses fewer issues than commonly believed, while AI augmenting MPs abilities or making decisions may compromise fundamental principles of constitutional law and due legislative process.

Titolo: Opportunità e rischi costituzionali dell'IA nel procedimento legislativo
Abstract [It]: Il saggio discute in prospettiva interdisciplinare le opportunità e i rischi costituzionali dell'impiego dell'IA nel procedimento legislativo. L'analisi distingue tre possibili utilizzi dell'IA da parte del legislatore (assistivo, di potenziamento umano e decisorio) per evidenziarne le differenti implicazioni costituzionali. Opportunità e rischi sono quindi discussi con riferimento a specifici casi d'uso e individuando possibili misure di salvaguardia per i principi costituzionali interessati. La tesi sostenuta dagli Autori è che l'impiego di IA assistiva è meno problematico di quanto si pensi comunemente, purché si adottino le necessarie misure di mitigazione dei rischi. Gli altri utilizzi tendono invece a risultare effettivamente incompatibili con i principi costituzionali fondamentali del procedimento legislativo.

1. Introduction

Artificial Intelligence is rapidly finding its way into our societies, and public powers are no exception. While the literature on the opportunities and risks of using AI in judicial and administrative decision-making has accordingly been expanding in recent times,[1] comparatively less research has focused on the use of AI-based technologies by legislators.[2] However, even if some of the reasoning typically applied to judges and administrations can be broadly extended to legislators (e.g., the reasoning on transparency, risks of bias and discrimination, and opportunities of noise reduction),[3] the use of AI in the context of the law-making process presents unique challenges because of the different function of parliaments and their special constitutional status.

Indeed, while the normative function of legislators is generally subject to fewer formal procedural constraints because of the principle of parliamentary autonomy (which might suggest that the use of AI is less problematic), contemporary constitutional states still expect parliamentary procedures to be conducted in a way that safeguards the democratic legitimacy of the political process on a substantive level. For this reason, discussions regarding the potential use of AI in law-making cannot be limited to the highly debated issues of the rule of law[4] or the protection of fundamental rights,[5] which are pivotal in the context of law application or enforcement. Instead, these discussions raise concerns that should

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[1] For references within the EU and US legal scholarship see L. TORCHIA, *Lo Stato digitale*, Il Mulino, Bologna, 2023, chs. VII, VIII, and X; A. D'ALOIA, *Intelligenza artificiale, società algoritmica, dimensione giuridica. Lavori in corso*, in *Quaderni costituzionali*, 3, 2022, pp. 651 ff.; L.A. DI MATTEO, C. PONCIBÒ, & M. CANNARSA (edited by), *The Cambridge Handbook of Artificial Intelligence. Global Perspectives on Law and Ethics*, Cambridge University Press, Cambridge, 2022, *passim*; F. HERRERA TRIGUERO, A. PERALTA GUTIÉRREZ, & L.S. TORRES LÓPEZ (edited by), *El derecho y la inteligencia artificial*, EUG, Granada, 2022; R. ROTEMUND, *Künstliche Intelligenz aus staatlicher Perspektive. Rechtliche Herausforderungen und Chancen*, Peter Lang, Berlin, 2021, pp. 155 ff.; F. ROUVIÈRE, *La justice prédictive: peut-on réduire le droit en algorithmes?*, in *Pouvoirs*, 3, 2021, pp. 97 ff.; and R. CALO, *Artificial Intelligence Policy: A Primer and Roadmap*, 2017, available at SSRN here.

[2] *Cf.* A. DRAHMANN & A. MEUWESE, *AI and Lawmaking: An Overview*, in B. CUSTERS & E. FOSCH-VILLARONGA (edited by), *Law and Artificial Intelligence. Regulating AI and Applying AI in Legal Practice*, Springer, Den Haag, 2022, p. 434, and, also, F. FITSILIS, *Artificial Intelligence (AI) in parliaments – preliminary analysis of the Eduskunta experiment*, in *The Journal of Legislative Studies*, 27 (4), 2021, 623-625. In the Italian literature see A. CARDONE, *"Decisione algoritmica" vs "decisione politica". A.I., Legge, Democrazia*, ESI, Napoli, 2021, and Y.M. CITINO, *L'intelligenza artificiale applicata ai processi decisionali parlamentari: una griglia di funzioni e una stima dei rischi per la neutralità delle tecnologie*, in *Rassegna parlamentare*, 3, 2022, pp. 629 ff.

[3] For references see respectively T. WISCHMEYER, *Artificial Intelligence and Transparency: Opening the Black Box*, in T. WISCHMEYER & T. RADEMACHER (edited by), *Regulating Artificial Intelligence*, Springer, Den Haag, 2020, pp. 75 ff.; A. TISCHBIREK, *Artificial Intelligence and Discrimination: Discriminating Against Discriminatory Systems*, in T. WISCHMEYER & T. RADEMACHER (edited by), *Regulating Artificial Intelligence*, *op. cit.*, pp. 104 ff.; C.R. SUNSTEIN, *Governing by algorithm? No noise and (potentially) less bias*, in *Duke Law Journal*, 71 (5), 2022, pp. 1175 ff.; for a broader discussion see B.D. MITTELSTADT, P. ALLO, M. TADDEO, S. WACHTER, & L. FLORIDI, *The ethics of algorithms: Mapping the debate*, in *Big Data & Society*, 3(2), 2016.

[4] J. TASIOULAS, *The Rule of Algorithm and the Rule of Law*, in *Vienna Lectures on Legal Philosophy*, 2023, pp. 3 ff.

[5] A. SIMONCINI & E. LONGO, *Fundamental Rights and the Rule of Law in the Algorithmic Society*, in H.W. MICKLITZ, O. POLLICINO, A. REICHMAN, A. SIMONCINI, G. SARTOR, & G. DE GREGORIO (edited by), *Constitutional Challenges in the Algorithmic Society*, Cambridge University Press, Cambridge, 2022, pp. 97 ff.

be primarily addressed within the more comprehensive framework of a constitutional theory of democracy.

In this paper, our aim is to conceptualize the issue of the constitutional opportunities and risks associated with AI in the law-making process. We will approach this topic from an interdisciplinary perspective, considering both philosophical and constitutional aspects. The paper is organized as follows. First, in Section 2, we will distinguish between three potential uses of AI-based technologies by legislators: assisting, enhancing, and making decisions. This preliminary distinction is crucial because the balance between opportunities and risks, from a constitutional standpoint, heavily relies on these different uses. Next, in Sections 3 and 4, we will separately discuss the opportunities and risks associated with each use, providing concrete examples of technologies that are already available. In this context, we will emphasize the constitutional basis of the opportunities and suggest countermeasures to minimize the risks.

More specifically, Section 3 highlights how the use of assistive AI in the law-making process could enhance states' ability to pursue constitutionally grounded objectives, such as the quality of laws, the protection of fundamental rights, and the democratic accountability of legislatures. It discusses the legitimacy of its use by parliaments through a parallel between artificial intelligent assistance and forms of human intelligent assistance, which are already considered permissible under contemporary constitutional standards. Finally, it analyzes associated risks and the necessary institutional safeguards to make them constitutionally tolerable. This risk-benefit analysis will specifically consider the special problems posed by enhancing AI. Conversely, Section 4 problematizes the idea of delegating decisions within parliamentary procedures to AI-based technologies against the backdrop of the fundamental constitutional principles of non-delegation and free mandate.

To conduct our analysis, we will primarily refer to general principles of constitutional law in order to obtain results that are not context-dependent, even though each constitutional jurisdiction may have its own peculiarities.

Overall, our argument is that the use of assistive AI by parliaments is far less problematic than commonly believed, as long as adequate institutional safeguards are in place to protect the technological sovereignty of parliament, guarantee continuity of power in case of a technological malfunctioning, ensure *par condicio* between different political parties, and secure full accessibility by all members of parliament (MPs). Conversely, using AI to augment the abilities of MPs or make decisions on their behalf is highly likely to impinge upon fundamental principles of parliamentary law in ways that are inconsistent with the constitutional standard of due legislative process.

2. AI-based Technologies: Legislative Use Cases and Constitutional Implications

According to our understanding the question of using AI in the law-making process cannot be treated as a unitary one from a constitutional theory perspective. This is because different uses of AI in this context entail different legal implications. For example, while the delegation of parliamentary decisions to an AI-based technology is clearly problematic for a constitutional democracy, using AI to check for inconsistencies in a human-formed draft does not seem to pose the same level of constitutional concern. In this paper, we propose to differentiate among three distinct possible general functions of AI within the law-making process, each of which raises varying levels of constitutional opportunities and risks: assisting, enhancing, and making decisions.

With "assistive AI" we refer to all AI technologies that offer support to human decision-makers involved in the law-making process. On the other hand, "decision-making AI" denotes technologies that have been formally authorized by a legal norm (constitutional or parliamentary) to make binding decisions within the law-making process without requiring human intervention. Lastly, "enhancing AI" is here intended as a subset of assistive AI that aids human decision-makers by performing tasks beyond human capabilities, such as processing vast amounts of data without predefined rules or algorithms.

Before delving further into the analysis, it is necessary to provide some clarifications regarding this preliminary distinction. Firstly, the distinction is intended to be functional in nature. We do not assert that specific AI-based technologies are inherently assistive or substitutive. For instance, a large language model (LLM) can serve the purpose of assisting a human lawmaker in drafting a proposal while also being capable of directly generating a binding act. What is significant for our distinction, however, is the purpose for which parliaments or MPs in the law-making process use AI-based technologies. This first clarification holds twofold importance: It means that our constitutional analysis need not delve into controversial ontological distinctions regarding different types of AI technologies;[6] it also helps keep pace with the extraordinarily rapid technological development of the field.

Secondly, the distinction should be regarded as formal rather than substantive. What matters is the level of human intervention in the procedure required by legal sources (constitutional or parliamentary),[7] rather than the concrete effects of the AI-based technology's use[8]. This second clarification addresses the

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[6] On the complex ontological questions related to AI and types of AI see S. RUSSEL & P. NORVIG, *Artificial Intelligence. A Modern Approach*, Pearson, 2010, pp. 2 ff. and 1020 ff.

[7] For the different governance mechanisms which can ensure human oversight, such as human-in-the loop (HITL), human-on-the-loop (HOTL), or human-in-command (HIC) approach, see the *Ethic Guidelines for Trustworthy AI*, 2019, p. 16.

[8] The formal nature of our distinction depends on the idea that, to distinguish between different uses of AI (assistive and decision-making), one should look at the legal norms regulating parliamentary procedures. In this sense, the distinction could also be considered "procedural." However, in the text, we use the term "formal" instead of "procedural" because of its more general account and in accordance with a long-lasting linguistic tradition in legal theory.

objection that truly distinguishing between AI supporting human decision-making and AI making decisions on behalf of humans due to a human tendency to unquestioningly accept the results generated by machines might not be possible.[9] There are, in fact, at least three reasons to refute this objection and adopt a formal understanding of this distinction, two of which are general, and one is constitutional. On a general level, refusing to acknowledge the distinction leads to illogical consequences, as demonstrated by simple examples of obvious assistive AI applications, such as employing AI to detect mere typographical errors in a draft created by humans; Furthermore, it seems questionable to base a distinction on a behavioral bias that can be rectified through proper digital education.[10] On the constitutional level, moreover, the decision of a political party or a MP to unconditionally rely on AI can be considered, in principle, a political choice as long as they remain legally free to choose otherwise[11]. While constitutional law must indeed safeguard the substantial freedom of MPs, as it stands as a cornerstone of the principle of free mandate,[12] this does not prevent a constitutional analysis from distinguishing between different uses of AI. On the contrary, the very possibility of discerning distinct levels of risk to this freedom is crucial in assessing the adequacy of the existing or proposed constitutional safeguards.[13]

3. Constitutional Opportunities and Risks of Assistive AI

In this Section, we explore the constitutional opportunities and risks associated with assistive AI. Subsection 3.1 outlines potential use cases of assistive AI and shows how they can promote constitutionally grounded objectives. In Subsection 3.2, we argue that artificial-intelligent assistance shares similarities with existing forms of human-intelligent assistance and, therefore, should be treated constitutionally in a similar manner. However, when it comes to enhancing AI, different factors may need

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[9] M. HILDEBRANT, *Algorithmic regulation and the rule of law*, in *Philosophical transactions. Series A, Mathematical, physical, and engineering sciences*, 376 (2128), 2017, 2.

[10] On the obligation of putting in place measures to increase digital literacy and skills in all segments of the population stemming from Artt. 10 and 11 ECHR see D. LESLIE, C. BURR, M. AITKEN, J. COWLS, M. KATELL, & M. BRIGGS, *Artificial intelligence, human rights, democracy, and the rule of law. A primer*, COE and the Alan Turing Institute, 2021, 22.

[11] This example clearly points out an extreme case. However, what we want to emphasize is that MPs are generally free to choose how to collect information to make up their minds, and, apart from the very limited cases of judicial review of legislation based on manifestly ill factual assumptions, decisions of this kind might only be sanctioned politically. In this regard, the decision to rely on AI is not different from other sources of information (which can also be wrong or deceptive). We will extensively discuss the parallel between assistive AI and experts *infra* in Subsection 3.2.

[12] *Cf.* A. JACKIEWICZ & A. OLECHNO, *Mandate*, in *Max Planck Encyclopedia of Comparative Constitutional Law*, Oxford University Press, Oxford, 2017, §§9 ss.

[13] A similar argument is advanced to critique the EU AIA proposal's approach by C. NOVELLI, F. CASOLARI, A. ROTOLO, M. TADDEO, & L. FLORIDI, *Taking AI Risks Seriously: a Proposal for the AI Act*, 2023, available here at SSRN.

to be considered that challenge the complete applicability of this parallel. Lastly, in Subsection 3.3, we identify key risks and discuss potential countermeasures to mitigate them.

3.1. Assistive AI Applications: Examples and Constitutional Foundations

The legal informatics literature has already reviewed extensively possible state-of-the-art applications of assistive AI in the law-making process.[14] Here, our objective is to emphasize the link between these potential uses and general principles of constitutional law. By doing so, we aim to illustrate the opportunities presented by AI-based technologies for constitutional states.

As a general distinction, AI applications can foster both the formal and the substantive quality of laws.[15] At the formal level, AI already can aid parliaments and MPs in the drafting process by suggesting improved wording, identifying inconsistencies in laws (such as legal definitions or broken references), and facilitating translations in multilingual contexts.[16] With the use of semantic technologies, AI can further operate in a context-aware manner, retrieving relevant information from interconnected regulations, detecting implicit or incomplete modifications, and ensuring that obligations, rights, permissions, and penalties are formulated in a manner that renders regulations practically applicable[17]. On the substantive level, AI can contribute to the quality of legislation in three key ways[18]. First, by identifying inconsistencies between norms, it can promote compliance with higher-level norms. Second, through data-driven regulation, it can enhance the effectiveness of regulations by simulating their real-world impact. Lastly, AI can assist parliaments in conducting *ex post* review of legislation by collecting and organizing large amounts of information on its application in judicial decisions, its effect in society, and even opinions and feedback from citizens and other stakeholders (at every stage of the legislative process).[19]

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[14] See most recently M. PALMIRANI, F. VITALI, W. VAN PYMBRROECK, & F. NUBIA DURANGO, *Legal Drafting in the Era of Artificial Intelligence and Digitalisation*, European Commission, 2022, X. ZIOUVELU, G. GIANNAKOPOULOS & V. GIANNAKOPOULOS, *Artificial Intelligence in the Parliamentary Context*, in F. FITSILIS & G. MIKROS, *Smart Parliaments. Data-Driven Democracy*, ELF, 2022, pp. 43 ff., and F. FITSILIS, D. KORYZIS, & G. SCHEFBECK, *Legal Informatics Tools for Evidence-Based Policy Creation in Parliaments*, in *International Journal of Parliamentary Studies*, 2, 2022, pp. 5 ff.

[15] On this distinction see M. DE BENEDETTO, *Qualità della legislazione tra scienza, tecnica e tecnologia: prime riflessione*, in *Osservatorio sulle fonti*, 2, 2022, 385 ff.

[16] *Cf.* M. PALMIRANI, F. VITALI, W. VAN PYMBRROECK, & F. NUBIA DURANGO, *Legal Drafting in the Era of Artificial Intelligence and Digitalisation*, *op. cit.*, pp. 23 ff., and X. ZIOUVELU, G. GIANNAKOPOULOS, & V. GIANNAKOPOULOS, *Artificial Intelligence in the Parliamentary Context*, *op. cit.*, pp. 47-48.

[17] *Cf.* M. PALMIRANI, F. VITALI, W. VAN PYMBRROECK, & F. NUBIA DURANGO, *Legal Drafting in the Era of Artificial Intelligence and Digitalisation*, *op. cit.*, pp. 20 and 24.

[18] *Cf.* M. PALMIRANI, F. VITALI, W. VAN PYMBRROECK, & F. NUBIA DURANGO, *Legal Drafting in the Era of Artificial Intelligence and Digitalisation*, *op. cit.*, pp. 24 ff.

[19] *Cf.* F. FITSILIS, D. KORYZIS, & G. SCHEFBECK, *Legal Informatics Tools for Evidence-Based Policy Creation in Parliaments*, *op. cit.*, pp. 9 ff. On crowdsourcing policy making in general see T. AITAMURTO, *Crowdsourcing for Democracy:*

In contemporary constitutional states, both formal and substantive quality of the laws is intricately linked to fundamental constitutional objectives. Therefore, the use of AI by parliaments can itself have a constitutional basis.

Indeed, the formal quality of laws is widely recognized as a crucial requirement for achieving adequate levels of legal certainty and foreseeability, which are fundamental principles of the rule of law.[20] For example, the Italian Constitutional Court held that «*la chiarezza del dettato legislativo contribuisce alla certezza del diritto e riduce le occasioni di controversie*»[21] and, more recently, that «*disposizioni irrimediabilmente oscure, e pertanto foriere di intollerabile incertezza nella loro applicazione concreta, si pongano in contrasto con il canone di ragionevolezza della legge*»[22]. Similar doctrines on clarity of laws are also established in the jurisprudence of other European constitutional courts.[23]

The same applies to the three aspects of substantive quality mentioned earlier: increased compliance with higher norms, improved effectiveness, and more data-driven and democratic quality reviews. Firstly, ensuring compliance of legislation with higher norms (constitutional, international, supranational, etc.) is an essential objective of constitutional states. In fact, when laws enacted by parliaments no longer hold supreme authority, their substantive quality is closely linked to their level of compliance with higher norms, encompassing both the absence of violations and the complete implementation of such norms.[24] Secondly, regulatory effectiveness is an important component of proportionality, especially as far as the rules of suitability and necessity are concerned[25]. Since AI data-driven technologies can enhance parliaments' ability to predict or monitor the effect of a regulation on individuals and society, its use in *ex ante* and *ex post* review of the quality of legislation can help avoid enacting disproportionate measures and can facilitate their correction. Overall, this could result in better protecting the fundamental rights and freedoms limited by legislative acts. Lastly, using AI to engage citizens and stakeholders on a broad scale in legislative decision-making or in *ex post* reviews of enacted legislation has the potential to

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A New Era in Policy-Making, Publications of the Committee for the Future, Parliament of Finland, 2012, available here at SSRN.

[20] This holds for both the thin and thick conceptions of the Rule on Law. *Cf.* J. TASIOULAS, *The Rule of Law*, in J. TASIOULAS (edited by), *The Cambridge Companion to the Philosophy of Law*, Cambridge University Press, Cambridge, 2020, pp. 119 ff.

[21] *Corte costituzionale*, judgement no. 31/1983, law §2, ECLI:IT:COST:1983:31: «The clarity of legislative provisions contributes to legal certainty and reduces opportunities for disputes» (translation by the authors).

[22] *Corte costituzionale*, judgement no. 110/2023, law §4.3.3, ECLI:IT:COST:2023:110: «Provisions that are irreparably obscure and consequently lead to intolerable uncertainty in their concrete application are inconsistent with the canon of reasonableness in the law» (translation by the authors).

[23] *Cf.*, for instance, *Conseil constitutionnel*, judgement no. 2006-504, §9, ECLI:FR:CC:2006:2006.504, and *Bundesverfassungsgericht*, 1 BvR 2354/13, §§110 ff., ECLI:DE:BVerfG:2022:rs20220928.1bvr235413.

[24] *Cf.* L. FERRAJOLI, *La costruzione della democrazia. Teoria del garantismo costituzionale*, Gius. Laterza, Bari, 2021, 182 ff.

[25] On the well-established structure see most recently M. KLATT & M. MEISTER, *The Constitutional Structure of Proportionality*, Oxford University Press, Oxford, 2012, p. 8.

strengthen democratic accountability of decision makers and, ultimately, bolster the political legitimacy of the legislation.[26]

For all these reasons, to the extent that AI-based technologies can enhance both the formal and substantive quality of the law, their use can enjoy a strong constitutional foundation based on principles such as legal certainty; the supremacy of constitutions, international, and supranational laws; the protection of fundamental rights and freedoms; and the democratic accountability and legitimacy of legislatures.

3.2. A parallel between Artificial- and Human-Intelligent Assistance and its Limits

Despite the clear potential of AI to foster our societies' capacity to achieve fundamental constitutional goals, there is an increasingly pessimistic perspective regarding its use in the exercise of public powers. This view suggests that, in the long run, the adoption of AI could have a disruptive impact on constitutional democracies. One argument put forth is that algorithms can potentially undermine democracy in a similar way that experts do. According to these perspectives, the inclination towards outcome-driven approaches to political legitimacy induced by both algorithms and experts carries a significant risk of pushing democratic systems towards anti-constitutional authoritarian forms of government, such as algocracies and epistocracies.[27]

Our argument here is that the parallel between algorithms and experts actually works in both directions. We do not deny that excessive reliance on algorithms and experts could potentially endanger constitutional democracies because of its detrimental effect on human participation in, and comprehension of, public decision-making. However, we want to emphasize that, despite this risk, no constitutional democracy has yet adopted an anti-epistemic stance to the extent of banning experts from parliaments. Quite the contrary, in certain contexts, scientific knowledge is considered relevant by constitutional courts for assessing the constitutionality of laws[28]: In such cases, MPs are required to take

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[26] *Cf.* H.S. CHRISTENSEN, M. KARJALAINEN, & L. NURMINEN, *Does Crowdsourcing Legislation Increase Political Legitimacy? The Case of Avoin Ministeriö in Finland*, in *Policy & Internet*, 7, 2015, pp. 39-40.

[27] J. DANAHER, *The Threat of Algocracy: Reality, Resistance and Accommodation*, in *Philosophy & Technology*, 29, 2016, pp. 245 ff. and, before, D. ESTLUND, *Making truth safe for democracy*, in D. COPP, J. HAMPTON & J. ROEMER (edited by), *The idea of democracy*, Cambridge University Press, Cambridge, 1993, pp. 71 ff. (for the description of moderate forms of epistocracies see also K. LIPPERT-RASMUSSEN, *Estlund on Epistocracy: A Critique*, in *Res Publica* 18, 2012, pp. 247 ff.).

[28] For instance, in the context of the mandatory vaccinations during the recent COVID-19 pandemic, the Italian Constitutional Court held that «discretion must be exercised by the legislator in the light "of constantly changing progress in medical research, which must guide the legislator when making its choices in this area (according to the settled case law of this Court since the leading Judgment No 282/2002)" (Judgment No 5/2018). Specifically, any intervention in these areas "cannot result from decisions made by the legislator on the basis of pure political discretion but must rather provide for the consideration of approaches based on a review of the state of scientific knowledge and experimental evidence acquired by institutions and bodies – normally national or supranational – charged with obtaining such knowledge and evidence, given the 'essential significance' that 'technical-scientific bodies' take on in this regard (cf. Judgment No 185/1998); alternatively, it should in any case constitute the result of such a review" (Judgment No

this knowledge into consideration when making decisions, even if they are in no position to independently validate it. This shows that contemporary constitutional democracies, within their constitutional theory of public reason, are willing to accept moderate degrees of rule-by-experts schemes in order to effectively pursue fundamental constitutional objectives (even if some could consider it anti-democratic or authoritarian from a purely moral standpoint).

If the parallel between experts and AI technologies holds true, there is a positive case for treating AI in the law-making process with a less pessimistic mindset.

For most purely assistive uses of AI that we have mentioned, the parallel is rather evident. Regarding tasks such as drafting, information retrieval, and translations, these and similar activities are already being carried out by technicians employed by parliamentary administrations.[29] In most jurisdictions, administrative staff of parliaments are civil servants selected through competence-based competitive procedures and are expected to adhere to a principle of political neutrality, as their tasks are considered purely technical in nature. From a constitutional perspective, as these supporting activities neither involve nor significantly affect the exercise of legislative discretion, there appears to be no significant difference at an abstract level whether this assistance is provided to MPs by human-intelligent or artificial-intelligent assistants.

The same seems to apply to more advanced and substantive forms of support for MPs activities, including data analysis and acquiring scientific knowledge on the matter to regulate, which typically involve auditioning external experts. Given the more significant impact that these tasks can have on democratic decisions, one can expect objections to the use of AI-based technologies to arise, particularly concerning the issue of opacity.[30] In this regard, one possible argument is that transparency is a fundamental requirement for the legitimacy of parliamentary decisions, and therefore, the use of opaque AI technologies should generally be avoided. However, if we consider a similar objection in light of the

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282/2002). Therefore, this operation still amounts to an exercise of political discretion, albeit based (of necessity) on scientific evidence» (judgement no. 14/2023, law, §8, ECLI:IT:COST:2023:14, official translation). So did the *Bundesverfassungsgericht* in relation to environmental law: « (b) The legislator is not entirely free in how it specifies the obligation to take climate action under Art. 20a GG. […] However, new and sufficiently reliable findings on the development of anthropogenic global warming, its consequences and controllability, might make it necessary to set different targets within the framework of Art. 20a GG, even when taking the legislator's decision-making leeway into account. This is subject to review by the Federal Constitutional Court. Art. 20a GG places the legislator under a permanent obligation to adapt environmental law to the latest scientific developments and findings (cf. BVerfGE 49, 89 <130, 132> on Art. 1(1) first sentence GG)» (*Bundesverfassungsgericht*, 1 BvR 2656/18, ECLI:DE:BVerfG:2021:rs20210324.1bvr265618, §211-212, official translation).

[29] See for comparative references *Report on Parliamentary Administration and Legislative Cooperation*, Camera dei Deputati Repubblica Italiana, 2003, available here and T. CHRISTIANSEN, E. GRIGLIO, & N. LUPO (edited by), *The Routledge Handbook of Parliamentary Administrations*, Routledge, London, 2023, *passim*. On the opportunities of AI utilization by administrative personnel *cf.* also X. ZIOUVELU, G. GIANNAKOPOULOS, & V. GIANNAKOPOULOS, *Artificial Intelligence in the Parliamentary Context, op. cit.*, p. 48.

[30] On the opacity issue see C. ZEDNIK, *Solving the Black Box Problem: A Normative Framework for Explainable Artificial Intelligence*, in *Philosophy and Technology*, 34 (2), 2019, pp. 265 ff.

parallel we have presented, MPs and the *general population* are not necessarily in a better position when dealing with human-intelligent experts:[31] MPs may not have access (or full access) to rationales underlying experts' opinions and those opinions may not be made comprehensible for the general population.[32] Nevertheless, despite these considerations, parliaments frequently depend on experts when enacting legislation and, in certain contexts, they are even constitutionally required to do so. For this reason, one should either question the legitimacy of non-elected experts participating in the law-making process or acknowledge that a principled objection to the use of artificial-intelligent experts is not entirely persuasive. The parallel between artificial- and human-intelligent assistance may not fully apply to enhancing AI technologies, though. When AI-based technologies are employed to perform tasks beyond human capability, such as extracting patterns from massive amounts of data, their situation is not entirely analogous to that of an expert opinion. Indeed, although MPs and the general population may not possess the expertise to fully engage with an expert opinion, the expert opinion can still be publicly subject to discussion and scrutiny by other experts in the field. Under such circumstances, parliamentary debate may function in a different manner than usual, but it remains possible. Instead, when MPs have to rely on expert knowledge generated by technology surpassing human capabilities, they find themselves in a situation where they must either accept or reject it, more similar to the acceptance of religious truths than democratic ones.[33] Given that contemporary constitutional democracies, despite varying theoretical perspectives,[34] tend to value the procedure through which political decisions are made,[35] the use of enhancing AI can present challenges based on its peculiar epistemological status, which may limit the possibility of substantive debates in the law-making process.

Against this backdrop, one potential approach to mitigate this negative effect could be to pursue further research aimed at making AI explanatory.[36] Indeed, by enabling AI to provide explanations for its results

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[31] A similar argument is developed to deny the significance of the opacity issue on the general level by B. BROŻEK, M. FURMAN, M. JAKUBIEC, & B. KUCHARZYK, *The black box problem revisited. Real and imaginary challenges for automated legal decision making*, in *Artificial Intelligence and Law*, pp. 5-6.

[32] Also, opacity could affect the way the epistemic superiority of expert is ascertained in the first place (*cf.* further J. DANAHER, *The Threat of Algocracy: Reality, Resistance and Accommodation*, in *Philosophy & Technology*, 29, 2016, pp. 253 ff.).

[33] *Cf.* D. ESTLUNED., *Democratic Authority: A Philosophical Framework*, Princeton University Press, Princeton, 2007, pp. 3 ff. and the procedural dimension of democratic authority especially pp.8 ff.

[34] For references see L. FERRAJOLI, *La costruzione della democrazia. Teoria del garantismo costituzionale*, op. cit., 282 ff.

[35] *Cf.* J. HABERMAS & W. REHG, *Constitutional Democracy: A Paradoxical Union of Contradictory Principles?*, in *Political Theory*, 29 (6), 2001, pp. 770-771 and 779-780. Specifically in relation to the use of AI see R. IBRIDO, *Evoluzioni tecnologiche o involuzioni costituzionali? La "reingegnerizzazione" del processo di decisione parlamentare*, in *Osservatorio sulle fonti*, 2, 2022, 300.

[36] On XAI and YAI approaches see F. SOVRANO, F. VITALI, & M. PALMIRANI, *Making Things Explainable vs Explaining: Requirements and Challenges under the GDPR*, in V. RODRÍGUEZ-DONCEL, M. PALMIRANI, M.·ARASZKIEWICZ, P. CASANOVAS, U. PAGALLO, & G. SARTOR (edited by), *AI Approaches to the Complexity of Legal Systems XI-XII*, Springer, Den Haag, 2021, pp. 169 ff.

and the underlying processes, it can potentially create more suitable conditions for their discussion, even if this discussion remains limited to experts.

To conclude, if one examines the use of assistive AI in the law-making process through the parallel we have outlined, the primary concern for its impact on the constitutional legitimacy of parliamentary decisions is not transparency (as human-intelligent assistants can also show similar levels of opacity), but rather the potential limitations that enhancing AI can impose on parliamentary debate.

This conclusion does not necessarily mean that the use of enhancing AI should be entirely prohibited in legislative decision-making. Instead, it emphasizes the need for special caution in approaching its usage and for ensuring that it does not thwart the parliamentary debate, which is fundamental to the constitutional democracies' way of deciding public matters.

3.3. Constitutional Risks and possible Countermeasures

While the integration of assistive AI-based technologies within the law-making process seems acceptable in principle, it is crucial for parliaments to carefully evaluate the associated risks before actually implementing those technologies.

In the lead-up to the analysis, three preliminary considerations are necessary. Firstly, certain risks associated with AI technologies are inherent and not specific to their use by parliaments or MPs. For instance, well-known concerns regarding AI bias, hallucinations or possible malfunctioning are general risks that apply to AI in various contexts. Parliaments, like other public authorities, should address them using methods already discussed in the literature (such as through design considerations[37] or independent validation[38]). However, our focus here is on context-specific risks, namely those risks that specifically arise from the use of AI within the law-making process.

Secondly, from a sources-of-law-theory perspective, possible countermeasures to the risks posed by AI can be adopted only through constitutional or internal regulation (i.e., Rules of Procedure) because of the generally established principle of parliamentary autonomy within constitutional democracies. This applies to both general risks and context-specific risks. The special significance of this second consideration lies in highlighting that ordinary legislation, whether at the national or EU level, may not be sufficient to address AI risks specifically in the context of parliamentary use.

Thirdly, we will not delve deeply into the potential for the abusive use of AI-based technologies by MPs, although it is important to acknowledge that parliaments should address this issue when formulating

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[37] See, e.g., M. HILDEBRANDT, *Law As Computation in the Era of Artificial Legal Intelligence. Speaking Law to the Power of Statistics*, in *University of Toronto Law Journal*, 68 (1), 2018, p. 35.
[38] *See,* e.g., R. ZICARI et al., *How to Assess Trustworthy AI in Practice*, 2022, available online here or A. MANTELERO, *AI and Big Data: A blueprint for a human rights, social and ethical impact assessment*, in *Computer Law & Security Review*, 2018, pp. 754-772.

regulations. For example, LLMs can be employed to generate a huge number of obstructive amendments, which could hinder the legislative process.[39] However, we will not extensively explore similar risks for two reasons: because distinguishing between abusive and legitimate uses typically necessitates a case-by-case evaluation, akin to the application of the general doctrine of abuse of rights; and because disciplinary powers over MPs and approaches to obstructionism vary significantly among parliaments worldwide. Thus, while it may be appropriate for parliaments to consider incorporating a general clause to prevent abusive uses of AI-based technologies, examining all the possibilities in detail would require distinctions that are incompatible with the introductory nature of this paper.

We will now briefly conceptualize four key context-specific risks linked to general constitutional principles: the risk of undue influence by third parties, which could endanger the principle of parliamentary autonomy; the risk of interruption of parliamentary works in case of technological malfunctioning, which could undermine the principle of continuity of power; the risks of technological disparity between parties and of technological inaccessibility by MPs, which could both adversely affect the principle of free mandate.

3.3.1. Parliamentary Autonomy and Technological Sovereignty

The primary and paramount constitutional risk associated with the utilization of AI-based technologies is that of undue influence on the law-making process. This risk directly affects the integrity of the democratic process and encompasses concerns related to both technological sovereignty and cybersecurity.

Firstly, in order to uphold the principle of parliamentary autonomy,[40] it is crucial that the parliament maintain full control over the AI technologies utilized in the law-making process. For instance, the autonomy of parliament can be compromised if AI technologies are developed by external entities in a manner that may influence parliamentary proceedings, or if the AI technologies are inherited from a previous parliament and cannot be modified to meet the current needs of the sitting parliament.

To mitigate these risks, it seems necessary to establish sufficient levels of technological sovereignty.[41] This entails substantial involvement of parliaments in, or at the very least oversight over, decisions

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[39] On the case of Senator Calderoli's automatic amendment generator in the Italian Parliament see A. CARDONE, *Algoritmi e ICT nel procedimento legislativo: quale sorte per la democrazia rappresentativa?*, in *Osservatorio sulle fonti*, 2, 2022, pp. 376-377.

[40] On the declinations of the common principle of parliamentary autonomy across constitutional democracies see E. ALBANESI, *The Equilibrium Point Between the Autonomy of Parliament and Other Constitutional Principles, as Viewed Through The Theoretical Framework of a System of Constitutional Justice. Case-Study: Italy*, in *International Journal of Parliamentary Studies*, 2, 2022, pp. 123 ff.

[41] For references on the discourse on technological sovereignty and different conceptions and misconceptions see J. EDLER, K. BLIND, H. KROLL, & T. SCHUBERT, *Technology sovereignty as an emerging frame for innovation policy: Defining rationales, ends and means*, Fraunhofer ISI Discussion Papers - Innovation Systems and Policy Analysis, No.

regarding the development, utilization, and modification of AI systems (and underlying data) intended for use within the law-making process.[42]

Additionally, parliamentary autonomy can be compromised if the AI technologies employed by parliaments are susceptible to cyber-attacks or manipulation. This underscores the significance of safeguarding the security of these technologies through appropriate organizational measures, as is widely acknowledged in the context of the information revolution.[43]

3.3.2. Continuity of Power and Technological Malfunctioning

The second constitutional risk that necessitates consideration is the potential impact of technological malfunctions on the functioning of parliaments. This risk may arise if parliamentary work became heavily reliant on assistive AI technologies, and any malfunction or disruption in their operation could therefore significantly hamper the timely restoration of normal workflow. Such a scenario poses a challenge to the constitutional principle of continuity of power, which emphasizes the need of uninterrupted functioning of parliamentary processes.

Thus, from this perspective, the general principles of constitutional law can be understood as imposing a constraint on the complete replacement of human-intelligent assistance. More generally, the implementation of AI-based technologies within the law-making process must be carried out in a manner that ensures the continuity of legislative power, limiting the level of technological dependence to an acceptable level of risk. This however can be easily achieved by ensuring that humans remain in the loop even when AI technologies are employed–avoiding the full automation of the parliamentary processes and securing substantial human interventions within all decision cycles of AI systems[44]. After all, human-in-the-loop solutions are already recommended for a wider variety of reasons by general approaches to the use of AI in the legal domain, such as the hybrid AI and dialogic model.[45]

70, Fraunhofer-Institut für System- und Innovationsforschung ISI, 2021, pp. 5-13. Here, however, we use the concept to broadly refer to the capacity of a parliament to employ AI systems without becoming structurally dependent on third parties for that reason.

[42] This could be achieved, for instance, through forms of participatory design (see for updated references S. BØDKER, C. DINDLER, O.S. IVERSEN, & R.C. SMITH, *Participatory Design*, Springer, Den Haag, 2022).

[43] *Cf.* M. TADDEO, *Is Cybersecurity a Public Good?*. in *Minds & Machines*, 29, 2019, pp. 349 ff.

[44] On the issues of human agency and human oversight and the necessity to take safeguards to prevent overconfidence and overreliance on AI to substantially keep humans in the loop see already the *Ethic Guidelines for Trustworthy AI*, 2019, pp. 15 ff. and pp. 26 ff.

[45] See further M. PALMIRANI, *A Smart Legal Order for the Digital Era. A Hybrid AI and Dialogic Model*, in *Ragion pratica*, 59, 2022, pp. 633-655.

3.3.3. AI technologies and Free Mandate: Ensuring *par condicio* and full accessibility

Finally, AI-based technologies could have adverse effects on the concrete possibility of taking part in the legislative process by parliamentary groups or MPs.

At the group level, there is a risk of a potential technological disparity between different parliamentary groups (extending not only to the availability of AI technologies but also to the availability of datasets). As already pointed out in the constitutional literature, this could allow groups that invest more significantly in algorithms to have a greater influence on the law-making process, irrespective of their electoral results.[46] In other words, the unregulated use of AI-based technologies can disrupt the fair political competition between parliamentary groups, thereby violating the principles of *par condicio* and equal participation.

This risk can be partially mitigated by implementing strategies that institutionalize AI-based technologies, as previously discussed in relation to the need for technological sovereignty based on the principle of parliamentary autonomy. However, ensuring *par condicio* between parliamentary groups goes beyond mere parliamentary control over AI technologies employed within the law-making process. It also necessitates providing fair access to these technologies based on fair criteria, including substantial access for minority groups.

This becomes particularly significant if access to some AI-based technologies were to be regarded as a limited resource for parliaments, for instance, due to associated costs (e.g., in terms of computational power). In such cases, allocation criteria should be established in advance through parliamentary regulations, considering factors such as the size of parliamentary groups, similar to the approach taken for scheduling parliamentary debates.

At the individual level, the use of AI-based technology raises constitutional concerns only when it hinders an MP's ability to participate in the law-making process. This can occur, for example, due to a lack of digital skills or physical disabilities.[47]

To uphold the principle of free mandate, it is essential to ensure that every MP is provided with an effective opportunity to engage in the legislative process (drafting and amending legislation, expressing their opinions in debates, voting, etc.). This necessitates making AI technologies used within the law-making process fully accessible to all MPs through design considerations and adequate organizational measures.

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[46] *Cf.* A. CARDONE, *Algoritmi e ICT nel procedimento legislativo: quale sorte per la democrazia rappresentativa?*, *op. ult. cit.*, p. 377.
[47] On the issue of accessibility in a disability perspective see *Disability perspective on Regulating Artificial Intelligence. Position Paper on the European Commission Proposal for Regulating Artificial Intelligence (AI)*, European Disability Forum, 2021, pp. 6 ff.

4. Constitutional Constraints on Decision-Making AI

Based on the arguments we have presented so far, the use of assistive AI technologies by parliaments should be considered as less problematic than commonly presented, and the associated risks can be effectively reduced through the implementation of constitutional safeguards. Conversely, employing AI-based technologies to make decisions on behalf of MPs is clearly unconstitutional, just as it appears.

The hypothesis is primarily theoretical,[48] but it merits brief discussion, particularly in a context where the automation of public powers, such as administrative and judicial functions, is increasingly being debated. According to our preliminary distinction, the employment of AI-based technologies should not be considered assistive when a legal norm (constitutional or parliamentary) authorizes AI to make binding decisions within the law-making process without requiring human intervention. This includes not only situations where AI determines the entire content of legislation but also instances where any stage of the legislative process is determined by non-human decision-making. As we will now show, general constitutional principles place considerable limitations on both of these scenarios.

4.1. Delegating Legislative Power to AI

From a constitutional law perspective, we can problematize the issue of whether the entire content of a law could be determined by AI under the non-delegation principle.[49] This general principle, common to most constitutional jurisdictions,[50] prevents parliaments from transferring their legislative functions to other entities. The rationale behind this principle is twofold: Firstly, it safeguards the democratic legitimacy of legislation, which relies on the unique characteristics of the parliamentary process, such as openness and the involvement of minorities; Secondly, it upholds separation of powers, preventing an excessive concentration of power, usually within the executive branch, but possibly to courts or private actors, too.

Both of these rationales clearly apply to cases where legislative power is fully delegated to AI-based technologies. Legislation that is entirely formulated by AI would give rise to substantial concerns regarding its legitimacy when compared to constitutional standards, both in procedural and substantive aspects. Moreover, it would entail the risk of an undemocratic transfer of legislative powers to AI developers, whether private or public.

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[48] See in general S. PIETROPAOLI, *Verso un legislatore non umano? Brevi riflessioni su alcuni problemi di diritto computazionale*, in *Osservatorio sulle fonti*, 2, 2022, pp. 407 ss.

[49] *Cf.* also L.B. SOLUM, *Artificially Intelligent Law*, in *BioLaw Journal*, 1, 2019, p. 61.

[50] For references to the non-delegation principle in a comparative fashion see E. GRODIN, *An Internationally Intelligible Principle: Comparing the Nondelegation Doctrine in the United States and European Union*, in *Perspectives on Federalism*, 7(2), 2015, pp. 58 ff.

A less straightforward constitutional question is whether a decision made by AI-based technologies could be integrated into human-formed legislation. The main case would be that of so-called dynamic rules, which refer to rules that autonomously adapt based on predetermined conditions without requiring intervention from the rule giver.[51] In these scenarios AI-based technologies might be used to collect and analyze data, and, consequently, change the rule according to the criteria predetermined by a human legislator. This could occur at a general and abstract level (e.g., fixing the usury rate by considering the average rates applied annually) or at a more particular and concrete level (e.g., establishing speed limits for a particular road section based on real-time traffic or weather conditions).[52]

Even though this method of regulation is not theoretically different from that of conditional rules, the idea that the rule in force could be ultimately determined through a factual analysis conducted by an AI raises potential constitutional issues.

Firstly, the non-delegation principle may be infringed if the criteria set by the human legislator are not adequately specified. Insufficient clarity in defining the criteria for AI technology to determine the applicable rule could result in a substantive transfer of parliamentary powers. Secondly, if the factual analysis conducted using AI technologies to determine the applicable rule cannot be effectively validated by humans (for example, due to the involvement of a vast amount of data), the possibility of subjecting the legislation or related executive acts to an effective judicial review may be hindered. Thirdly, the automatic change of regulations could make it difficult for individuals to foresee, know, and understand the applicable rules and therefore lessen their capacity to plan their conduct and make informed decisions based on the legal framework in force.

For these reasons, integration of AI-based technology into human-formed legislation, even when it does not involve full delegation of legislative powers, should be approached carefully and in ways that do not infringe the non-delegation principle, the right to an effective remedy, and the principle of legal certainty. Overall, upholding these principles is in fact crucial for the preservation of constitutional democracies and the rule of law.

4.2. Delegating other Decisions to AI within the Law-Making Process

Apart from decisions directly affecting the content of legislation, the law-making process encompasses numerous other decisions, including those related to procedural matters such as the ones related to scheduling, timing, and order of legislative activities, assigning proposed bill to committees, or assessing admissibility of amendments.

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[51] *Cf.* J.O. MCGINNIS & S. WASICK, *Law's Algorithm*, in *Florida Law Review*, 2015, p. 1039.
[52] This is the example of law as micro-directive made by J.B. ELLIOT, *Robustness and Overcoming Brittleness of AI-Enabled Legal Micro-Directives: The Role of Autonomous Levels of AI Legal Reasoning*, 2020, available online here p. 3.

Automatization of these decision through AI-based technologies could in principle make the law-making process more efficient and fairer (potentially even reinforcing the position of parliamentary minorities against majorities).[53] However, it could also result in weakening democratic control over the legislative process inconsistently with the contemporary constitutional standard of due legislative process.

Insofar as it entails political discretion, both the formulation and enforcement of parliamentary regulations have traditionally been regarded as activities reserved for parliaments.[54] This is why European constitutional jurisdictions typically show special deference when called upon to review internal acts of parliaments in accordance with the *interna corporis acta* doctrine.[55] At the heart of this doctrine lies the concept that, apart from explicit constitutional constraints, the internal affairs of legislative bodies should be governed by democratic rule-making only. This means that decisions are ultimately to be made by a majority of elected representatives[56] and to be judged not based on pre-established legal norms, but rather through mechanisms of political accountability.

In this context, the automation of decision-making processes can alter the normal functioning of the principle of accountability of legislatures, which requires political decisions to be clearly attributable to parliamentary groups or MPs. AI-based technologies may instead lead to a reduction in transparency, making it more challenging to hold the majority accountable for its decisions.

Moreover, at an individual level, delegating political decision-making to AI-based technology could also prevent MPs from exercising their mandate to the fullest extent, for example, by making it impossible for them to adopt obstructive behaviors in procedural decisions. Indeed, the democratic process, as commonly understood in contemporary constitutional democracies, involves a certain level of political conflict that should not be neutralized[57] by depoliticizing fundamental decisions within the law-making process with AI systems that would make such decisions in lieu of elected representatives.

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[53] Indeed, the automatic enforcement of parliamentary regulations could be seen as a potential mechanism to better protect minority rights, as opposed to decision-making on procedural questions solely through majority votes. By implementing enforcement mechanisms through AI-based technologies, parliamentary regulations could be applied more consistently and impartially, by removing the potential for decisions to be influenced by political dynamics or partisan interests, and instead prioritizing the objective application of established rules.

[54] For instance, the Italian Constitutional Court held to this regard that «The protection of the sphere of parliamentary independence and freedom not only pertains to regulatory autonomy but also extends to the moment of application of these regulatory provisions, and necessarily involves the exclusion from any jurisdiction of the tools intended to ensure respect for parliamentary rights (judgments no. 379 of 1996 and no. 129 of 1981)» (judgement no. 120/2014, law, §4.3, ECLI:IT:COST:2014:120, translation by the authors).

[55] On the origins of parliamentary privilege see recently E. LUI, *Piercing the Parliamentary Veil against Judicial Review: The Case against Parliamentary Privilege*, in *Oxford Journal of Legal Studies*, 42 (3), 2022, pp. 918 ff.

[56] On the rule of majority's procedural value for legitimizing political organization and its relationship with democracy *cf.* C. CARUSO, *Majority*, in *Max Planck Encyclopedia of Comparative Constitutional Law*, Oxford University Press, Oxford, 2022.

[57] *Cf.* A. BARBERA, *I parlamenti*, Gius. Laterza, Bari, 2008, p. 49.

In conclusion, the complete automation of decisions within the legislative-making process appears to pose constitutional problems as it could potentially disrupt the fundamental mechanisms of constitutional democracies.

5. Conclusions and Future Research

Not every instance of employing AI-based technology within the law-making process will irreversibly disrupt our constitutional democracies. Our analysis shows that the constitutional risk-benefit ratio varies significantly depending on the various potential uses of AI by parliaments and MPs.

While the use of enhancing and decision-making AI-based technologies may indeed have such a disruptive effect in most of the cases, the implementation of assistive AI tools is constitutionally permissible in principle and can actually strengthen the capacity of constitutional states to uphold fundamental constitutional principles such as legal certainty; the supremacy of constitutions, international, and supranational laws; the protection of fundamental rights and freedoms; and the accountability and legitimacy of legislatures.

The incremental implementation of AI-based technologies must nonetheless be accompanied by a corresponding implementation of adequate safeguards to preserve the autonomy of parliament and the democratic legitimacy of parliamentary decisions. This entails the necessity to establish measures to protect technological sovereignty, continuity of power, *par condicio* between parliamentary groups, and an effective participation of every MP.

In this introductory paper, our objective was to address the issue of using AI in the law-making process at a general level, with the aim of emphasizing its constitutional foundations and limitations. Within this framework, further research should evaluate the validity of our conclusions regarding specific use cases of AI-based technologies or the suitability of particular risk-mitigation measures. At the general level, however, we aim to have shown that constitutional law can effectively accommodate human progress and democratic values without the need for absolute prohibitions on new technologies even in its most sensitive domain, the legislative process.