

Post-Legislative Scrutiny in a Non-Westminster Parliament

Opportunities, Challenges and Considerations

Jonathan Murphy & Svitlana Mishura*

Abstract

Post-legislative scrutiny (PLS) has generated growing interest as a means both for strengthening the legislative process and for permitting parliament to more effectively integrate its legislative and oversight functions. Engagement throughout the cycle of legislative development, adoption and implementation enables parliament to assure laws are properly implemented and to rectify weaknesses either in original legislative conceptualization or in executive implementation. Carried out properly, PLS should improve governance and increase its democratic accountability. Recent attention to PLS has however focused mainly on its role and use in Westminster-type parliaments. This article explores PLS from the perspective of non-Westminster parliaments. It seeks to understand why PLS in non-Westminster parliaments has received comparatively less scholarly and parliamentary development practitioner attention. The article uses a case study of Ukraine to explore the context and challenges for effective PLS, a non-Westminster emerging democracy. It concludes by proposing rebalancing discussion of PLS to take better account of diverse parliamentary models and suggests approaches to supporting PLS development in parliaments where it has not previously been consistently used

Keywords: Post-legislative scrutiny, parliamentary oversight, legislative process, Verkhovna Rada of Ukraine, French Senate, Belgian federal parliament.

A Introduction: The Growth of PLS

Post-legislative scrutiny (PLS) is an important tool for improving the effectiveness of parliament as a part of accountable, democratic governance. The fundamental principle underpinning PLS is that parliaments should not only consider and pass legislation but also follow up to assess the implementation of laws, thus ensuring, (a) that the executive has appropriately and effectively implemented

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the laws that the parliament has adopted and (b) that the laws achieved the goals that were intended by the parliament.

In recent years, there has been increasing interest in PLS within the scholarly communities and more particularly within the parliamentary development practitioner communities, with PLS viewed as a means to increase both the accountability of parliament and government accountability to parliament. In other words, if the parliament is to pass laws, it has an obligation to follow what happens to those laws. Similarly, if the parliament charges government with putting a law into effect, government should be held to account for properly implementing that law. PLS can thus help ensure that legislation achieves the goals for which it is intended and to identify and address situations where laws are not properly implemented or do not function as anticipated.

While occasional references to PLS can be found in parliamentary literature dating back to the 1970s and 1980s^{1,2} – with a PLS process in place in India's parliament, for example, as early as the 1980s – both research and policymaker attention to PLS has burgeoned over the past 20 years, driven particularly, though not exclusively, by efforts of the political advisor, parliamentarian and scholar Philip Norton to enhance the role and functioning of the British parliament.^{3,4,5,6} The UK-devolved assemblies that were established after referenda in 1997 have systematically implemented PLS strategies in Wales, and particularly in Scotland, where PLS has been institutionalized within the parliamentary committee structure,⁷ with the further objective of engaging citizens in the PLS process.⁸ Elsewhere in the Commonwealth, several parliaments from India to New Zealand⁹ have developed PLS approaches.

- 1 House of Commons Procedure Committee (1971), *The Process of Legislation*, HC 538.
- 2 N.R. Inamdar, 'The Estimates Committee and Administrative Accountability', *Indian Journal of Public Administration*, Vol. 29, No. 3, 1983, pp. 590-611.
- 3 P. Norton, 'Reforming Parliament in the United Kingdom: The Report of the Commission to Strengthen Parliament', *The Journal of Legislative Studies*, Vol. 6, 2000, pp. 1-14.
- 4 House of Lords Select Committee on the Constitution, 14th Report of Session 2003-2004: Parliament and the Legislative Process, HL Paper 173-I, 2004.
- 5 The Law Commission, Consultation Paper No. 178, Post-Legislative Scrutiny: A Consultation Paper, 2005.
- 6 The Law Commission, Post-Legislative Scrutiny (Law Com No. 302), 2006.
- 7 See www.parliament.scot/parliamentarybusiness/CurrentCommittees/public-audit-committee.aspx (last accessed 20 September 2018).
- 8 P. McLaverty & I. MacLeod, 'Civic Participation in the Scottish Parliament Committees', *International Journal of Public Administration*, Vol. 35, No. 7, 2012, pp. 458-470.
- 9 A. Miller, *Post-Legislative Scrutiny in New Zealand: Challenging the Status Quo*, New Zealand, Faculty of Law, Victoria University of Wellington, 2016.

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PLS has attracted growing attention from parliamentary development organizations.^{10,11,12,13} This interest is linked to the idea that, by consistently paying attention to the actual outcomes of laws they pass, parliaments can become more responsible in their work and also more institutionalized in the governance process. This can be particularly beneficial in a democratic development context where, in many countries, parliament has tended to be marginalized vis-à-vis the executive, and sometimes perceived as a ‘rubber stamp’ for executive decisions. This shared interest of parliamentary scholars and parliamentary development organizations in PLS led to the Seminar on Post-Legislative Scrutiny co-organized by the Institute for Advanced Legal Studies of the University of London and the Westminster Foundation for Democracy in London on 10 July 2018, which in turn inspired the publication of this special issue of the *European Journal on Law Reform*.

The concentration of both scholarly and parliamentary development interest in PLS from the UK and other countries with a Westminster-type parliamentary tradition has resulted, naturally, in a focus on PLS frameworks and practice in these countries. This in turn raises questions that this article seeks to answer, at least in part, regarding the actual and potential role for PLS in non-Westminster parliaments, with a focus on the case study of PLS in Ukraine in order to identify barriers and challenges as well as opportunities for external support to enhancing PLS. The article proceeds through considering a series of questions about PLS and its applicability within diverse parliamentary settings. First, it explores whether there is a clear definition of PLS, as a necessary preliminary step to examining its relevance in diverse parliamentary contexts. How broadly drawn should be the concept of PLS, and what risks exist for PLS to infringe on parliament’s broader oversight mandate, or to indulge in an unhelpful re-litigation of legislative debates? Next, the article considers how PLS fits within the organizational architecture of both Westminster-type and non-Westminster-type parliaments, before considering whether PLS is indeed a generally useful approach in democratic parliaments or whether its utility is more or less restricted to parliaments in the Westminster tradition. Next, the article surveys PLS practices in some non-Westminster parliaments, illustrating differing approaches to the definition and implementation of PLS, focusing particularly on the French and Belgian parliaments. The article then goes on to look closely at the example of Ukraine, where an emerging democratic parliament has established a process for PLS. It explores the framework for PLS in Ukraine as well as the extent to which that framework has been implemented, including barriers encountered. Finally, the article proposes further research on PLS as well as approaches parliamentary development

10 F. De Vrieze, *Post-Legislative Scrutiny: Guide for Parliaments*, London, WFD, 2017.

11 F. De Vrieze, *Principles of Post-Legislative Scrutiny by Parliaments*, London, WFD, 2018.

12 A. Brazier, *Post-Legislative Scrutiny, Guide to Parliaments. Paper 8*, London, Global Partners Governance, 2017.

13 F. De Vrieze & H. Victoria Hasson, *Post-Legislative Scrutiny: Comparative Study of Practices of Post-Legislative Scrutiny in Selected Parliaments and the Rationale for its Place in Democracy Assistance*, London, WFD, 2017.

practitioners could consider for enhancing the application and the utility of PLS in emerging democracies.

The article has a number of limitations. No data source exists that documents PLS practices in the world's parliaments, and the article's description of PLS processes internationally is therefore based on a sample drawn from published material as well as authors' interviews and exchanges with parliamentary experts.¹⁴ The article aims to illustrate comparative PLS practices (and thus possibilities) rather than to represent them quantitatively. Another limitation is that, from a parliamentary development perspective, the article focuses on a single illustrative case of the Ukrainian parliament, the Verkhovna Rada of Ukraine, based on the authors' detailed knowledge and access to data about this institution. The challenges faced in Ukraine may not necessarily be similar to those faced in other emerging democracy parliaments, although some features such as limited technical and other resources, and inconsistent application of rules and practices may well be illustrative of problems common to many parliaments.

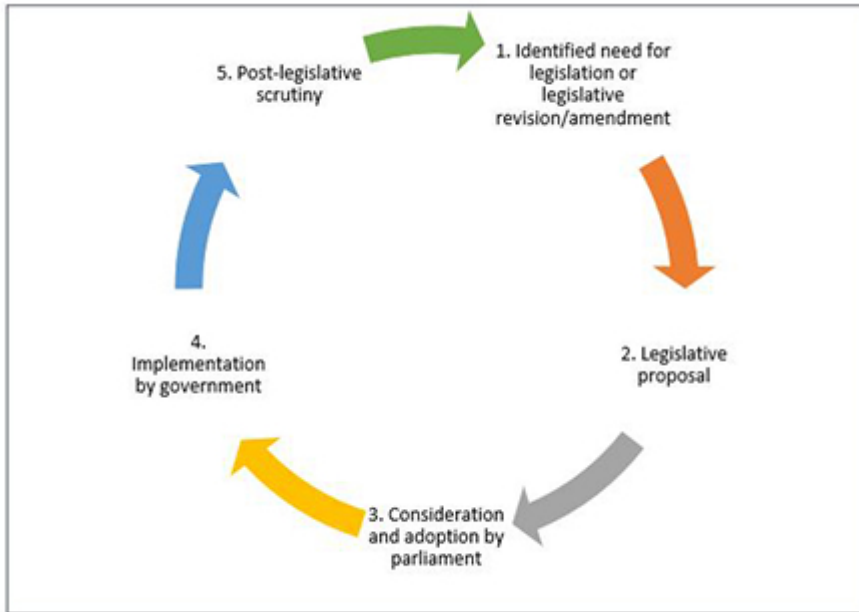
B Defining PLS – Work in Progress?

While the logic underpinning PLS in general is clear, the specific content of PLS, its variability according to context and its relationship with other core parliamentary responsibilities require clarification. This is especially important when considering how the use of PLS can be extended to different parliamentary environments, particularly those from outside the Westminster model.

A first step is to explore the rationales for introducing, expanding and institutionalizing PLS. In the current literature on the subject, PLS is typically justified with the 'common sense' argument already noted above, that since parliament passes laws, it needs to pay attention to whether and how those laws are implemented. Further, PLS is frequently, in the British literature, associated with the need to properly oversee the framework of regulations usually delegated for government to establish in order to implement legislation. Finally, PLS has frequently been linked in the British and other cases with the process of overseeing the implementation of European Union law established through EU Directives.

An overall justification for PLS can be expressed in terms of a cyclical and iterative approach to governance. That is, by following its implementation once parliament passes a law, it can determine whether government has properly and effectively carried out the intention of the lawmakers, and if some unintended consequences have arisen in implementation that means the law should be adjusted, or in the case of more generalized implementation issues, that such consequences should be taken into account in consideration of other prospective legislation, as illustrated in Figure 1:

14 Notably Professor Francis Delperee (Belgian deputy and constitutional expert), Alain Delcamp (former Secretary General of the French Senate and Venice Commission expert, and Professor (Lord) Norton of Louth, UK.

Figure 1 PLS as part of an end-to-end legislative process

The adoption of such an ‘end-to-end’ or ‘full cycle’ approach is increasingly popular in governance thinking. Within the area of democratic governance it was first applied in the electoral field¹⁵ as a means to assure gradual development of national election organization capacity, rather than reinventing electoral processes during each electoral cycle. The full-cycle electoral approach is viewed not only as enhancing efficiency through the development of durable electoral expertise but also as building citizen faith in the electoral process as institutionalized and democratically credible.

Within the parliamentary field, the full-cycle approach has developed particularly in reference to the national budget process. It is by now quite generally understood that parliament should ideally have a role throughout the budget cycle; engaging the public in the pre-budget discussions phase, considering and adopting the budget, monitoring its implementation and, finally, in conjunction with the supreme audit institution, auditing and evaluating the budget execution.¹⁶ PLS therefore can be seen as a further extension of this tendency towards the responsabilization of parliament at key stages in governance processes.

15 See, e.g., <http://aceproject.org/electoral-advice/electoral-assistance/electoral-cycle> (last accessed 20 September 2018).

16 Carlos Santiso and Marco Varea, Strengthening the Capacities of Parliaments in the Budget Process, Inter-American Development Bank, Policy Brief No. IDB-PB-194, October 2013, available at: <https://bit.ly/2OGhZto> (last accessed 20 September 2018).

C Delineating PLS from Executive Functions and from Parliamentary Oversight

This expanded role of parliament as part of an end-to-end process must be carefully delineated from the role of the executive. Except in the exceptional case of the United States, parliaments are not typically the place where the majority of legislation (including budget legislation) is crafted, and parliaments are certainly not (except in the controversial case of ‘constituency development funds’) involved in the execution of state programmes and services. This separation of powers and responsibilities, which is fundamental to the success and the protection of representative democracy from populist and plebiscitary challenges, is actually enhanced by providing a clearer role for parliament at *specific* moments and with *specific* roles.

Another question that has not been adequately addressed in existing literature on PLS is the nature of the relationship between PLS and oversight, typically considered one of the four fundamental functions of the parliamentary institution, along with the legislative power, the vote of the budget and representation of the citizen. These core roles are typically either directly enunciated in the constitution or are implicit in the division of powers established by the constitution.

At first glance, PLS appears to fall in between the legislative and the oversight function. On the one hand, the process obviously relates specifically to legislation that has been passed by the parliament. On the other hand, the process of scrutiny typically involves an oversight of the work of government in implementing the law. Post-legislative scrutiny can thus be considered an aspect of oversight, but that links between the legislative and the oversight roles of parliament, with potential to enhance the iterative relationship between legislation and oversight in parliament’s governance role, as well as providing opportunity for citizen engagement in the scrutiny process.

In practice, PLS in the Westminster tradition – and we shall see also in its corollaries beyond Westminster – typically focuses on a relatively narrow purview, that is, whether a law has been implemented as intended. For example, have the regulations required been enacted by the government, and have these regulations been effectively implemented? A greyer area arises when parliaments not only assess technical implementation but also engage in a broader evaluation of impact outcomes of legislation. At this point there is likely to be friction between any special PLS process that has been established, and the role of specialized sectoral committees. Further, the broader the ambit of PLS, the more likely that it will become politicized into a debate regarding the merits of the policies underpinning the legislation rather than the efficacy of their translation into government programming.¹⁷ While politics is at the heart of every democratic parliament, effective parliamentary work requires institutions to distinguish between the nonpartisan gathering of information required to make decisions and to evaluate policies and political debates informed by that evidence.

17 Interview with Professor Francis Delpérée, MP, Parliament of Belgium, 19 September 2018.

D PLS across Divergent Parliamentary Models

One of the significant and recurring challenges in international parliamentary development is in transferring parliamentary concepts, and indeed reform opportunities, across different models of parliaments. It has been suggested that Westminster-tradition parliaments have tended to exercise strong oversight,¹⁸ while parliaments arising from the Napoleonic governance tradition have been viewed as having their primary powers in the legislative process. Further, in some systems, including in particular those within the Lusophone tradition, the possibility for government to legislate through decree law provides a particularly important role for parliament in scrutinizing such decree legislation. There are of course many other ways in which governance systems can be categorized (*e.g.* presidential, semi-presidential and parliamentary) and that similarly impact upon and to some extent structure the ways in which particular practices, including PLS, might be implemented.

It has been noted that recent interest in PLS has been associated with Westminster-tradition parliaments. When considering the appropriateness of introducing PLS in non-Westminster parliaments, including through parliamentary development programmes, it is important to consider whether there are specific features of the Westminster tradition that are particularly amenable to PLS and whether there might be barriers to such an approach in non-Westminster parliaments. Frequently, parliamentary reform efforts flounder when attempts are made to introduce practices developed within one parliamentary tradition into a parliament that has developed in a different type of governance system.

While on the one hand, the tendency of path dependency in parliamentary development can appear to privilege conservatism in governance approaches and even continuing postcolonial dependency, on the other hand, countries that have tried to design governance systems from a blank sheet of paper have frequently ended up in models that lack checks and balances and can result in instability and/or power capture and/or authoritarian outcomes; the examples are legion from the French Revolution to the Russian Revolution, to postcolonial cases such as Sekou Touré's Guinée.

Difficulties transferring models can be for very practical reasons. For example, in systems where the public financial audit function is vested in a judicial institution such as an audit court – even though the audit court normally has a constitutionally defined relationship with the parliament – financial oversight practices will necessarily diverge from those systems where the Auditor-General's office is a parliamentary institution. It is of doubtful utility to encourage parliaments with judicial audit systems to study the work of an Auditor-General, except perhaps in technical processes of public audit.

18 Although some have argued that the oversight processes at Westminster are actually quite weak: M. Benton & M. Russell, 'Assessing the Impact of Parliamentary Oversight Committees: The Select Committees in the British House of Commons', *Parliamentary Affairs*, Vol. 66, No. 4, 2012, pp. 772-797.

On the other hand, there can be, of course, a tendency to rule out potential reforms *ex ante* because they are perceived as not 'belonging' to the chosen model. This tendency is exacerbated by the temptation in postcolonial environments for parliaments to refer for reform examples primarily to the parliament of the former colonial power, whose model inspired the post-independence parliament.

However, in recent years there has been a gradual shift towards syncretic approaches to parliamentary system design, where good practices from different traditions are more readily accepted within parliamentary reform processes. In Tunisia, for example, after the 2011 revolution, the National Constituent Assembly, a popularly elected parliament also charged with drafting a new constitution, introduced within the new constitution a provision that the finance committee should be headed by a member of the political opposition, an approach derived from the (not universal) Commonwealth tradition of Public Accounts Committees being headed by an opposition member, and with the same purpose of assuring a serious parliamentary attention to oversight. Conversely, a number of countries that originated from a Westminster tradition have introduced restrictions or prohibitions on cabinet ministers holding parliamentary seats, thus creating a more formally rigorous institutional balance and separation between the legislature and the executive.

A balance must be struck, nevertheless, between openness to adopt innovations on the one hand, without on the other hand embarking on destabilizing or un-implementable reform adventurism (often driven by the predilections of international advisors).

Given the apparent rooting of PLS in the Westminster-model parliaments, it is important to explore whether there are specific features of these parliaments that make them more amenable to PLS or whether some or all features of PLS can be considered good practices that are worthy of being considered by parliaments of whatever constitutional type.

E Oversight in Westminster and Non-Westminster Parliaments

A particular characteristic of the Westminster parliament is that the process of oversight is generally separated from the process of scrutinizing and adopting legislation. This distinction is a relatively recent innovation resulting from the reforms in the 1970s establishing Select Committees, which follow particular ministerial portfolios and assess the effectiveness of government programming in those domains; a reform introduced in one of a number of attempts in recent years to render parliament, and specifically backbench parliamentarians, more influential and more effective.

By contrast, in most 'continental' type parliaments, sectoral committees are responsible for both legislation and for oversight of government programming in their areas of responsibility.

The broader committee mandate in non-Westminster parliaments has both advantages and disadvantages. The advantage is that the link between the legislative and the oversight role of parliament is institutionalized within the commit-

tee mandate, thus in principle avoiding the risk of legislative work being divorced from consideration of its outcomes. On the other hand, the disadvantage is that the workload of the committee is thus quite large. Given the priority naturally given to legislative work, especially when driven by governance imperatives, the oversight function is frequently overlooked. In parliaments where there is a clear government majority, this de-emphasis on oversight is of course quite convenient, avoiding too close scrutiny of the success or otherwise of government policies and programming. In many developing countries' parliaments, this factor is also combined with a real absence of human and monetary resources to carry out effective oversight.¹⁹

Many parliaments in the French and Portuguese constitutional traditions have provisions in their internal rules to establish special 'missions of enquiry' to consider specific issues in government programming. These time-limited committees have a mandate to investigate and report to parliament and government on problems in programme implementation. Two limitations are, first, that typically these committees require a majority vote to be established, which can be impossible where there is a clear government majority, and second, that the mission of inquiry can come close to usurping and thus politicizing the judicial process.

In the developing-country Napoleonic parliament context, PLS could be considered a useful way to delineate a realistic but effective oversight function, whether this role is assumed by a special committee (as in Belgium), as a responsibility of the parliamentary secretariat (as in France), or by the relevant sectoral committee (as is the case in Ukraine).

F Post-Legislative Scrutiny in Different Non-Westminster Parliaments

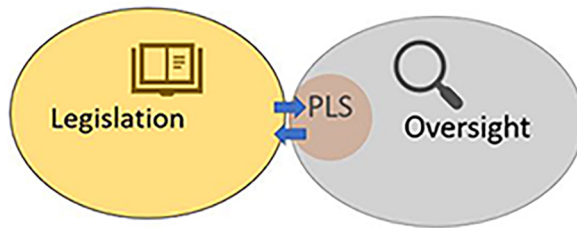
This section begins by looking at the issues that can arise in translation of the term PLS, then briefly reviews recent comparative surveys of PLS, and concludes by discussing the approaches used in France, specifically in the French senate, and in the Belgian federal parliament.

The interlinked issues of language and divergent terminology are complicating factors that should not be underestimated in translating practices between different parliamentary models. Post-legislative scrutiny is both, as we have seen, a relatively recent term, and a specifically English-language phrase.²⁰ It is necessary when exploring what corollaries exist in other parliaments not only to translate the term but also to compare practices that may encompass some or all aspects of PLS. Given the relative fluidity of the use of the term PLS even in Westminster-model parliaments, this is not a straightforward task. The absence of a common terminological approach is evident in Yamamoto's IPU study on over-

19 One author recalls a situation in Niger where a parliamentary committee was unable to visit health centres in a remote region because there was not sufficient fuel to drive outside the main provincial town.

20 Although the term *suivi législatif* used in several Francophone parliaments has similar meaning to PLS.

Figure 2 *Situating PLS in relation to legislation and oversight*



sight in 88 countries.²¹ While he describes in some detail the work of the *Joint Committee on Scrutiny of Regulations* in Canada, and several other national parliamentary bodies whose functions clearly fit the definition of PLS used by other authors, he does not use the term ‘post-legislative scrutiny’ anywhere in his 80-page handbook of parliamentary oversight tools. A review of this IPU oversight handbook suggests that it is highly likely that many PLS processes in parliaments around the world have not been inventoried; this would be a useful exercise in expanding understanding of the scope and variety of PLS in the world, as well as sharing of different models, their effectiveness and drawbacks.

De Vrieze and Hasson,²² and Brazier²³ usefully provide a number of comparative examples of PLS activities of parliaments internationally, including those from non-Westminster parliaments. De Vrieze and Hassan consider Belgium, Indonesia, Lebanon, Montenegro and Switzerland, while Brazier looks at examples from Iraq and Honduras. These cases are themselves quite diverse, ranging from permanent PLS committees established through the parliamentary rules of procedure (Indonesia) to *ad hoc* committees (Lebanon), to scrutiny of EU directive transposition into national law (Montenegro), to PLS by a special service of the parliamentary secretariat (Switzerland), to parliamentary committee-driven PLS examples (Iraq and Honduras). Some of the examples involved a more technical assessment of the regulatory framework established subsequent to the passage of a law, while others seemed more or less indistinguishable from general government oversight including impact evaluation. Again, the diversity of examples explored by these authors suggest the need both to find commonly accepted translations of the term PLS in different languages and parliamentary systems and to locate PLS clearly within the framework of parliamentary responsibilities. One possible visualization, reproduced as follows, locates PLS as part of oversight, but linking back into the legislative process.

21 H. Yamamoto, *Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments*, Geneva, IPU, 2007.

22 De Vrieze & Hasson, 2017.

23 Brazier, 2017.

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The bicameral French parliament is, along with Westminster, one of the world's archetypal parliaments, largely due of course to the colonial tradition of both countries. Most former French colonies and protectorates have adopted governance systems and parliamentary institutions modelled more or less closely on French traditions, typically those of the semi-presidential Fifth Republic that was established in the period immediately before most French colonies secured independence.

Both chambers of the French parliament are characterized by committees that assume both legislative and oversight roles. The specific PLS function is assumed, in the senate, by a 'Delegation', a group of senators charged with tasks of analysis and reflection. In the French senate, the *Delegation of the Bureau*,²⁴ carries out an assessment of the 'application of laws'; in other words, the extent to which government has enacted the dispositions necessary in order to put laws into application. On an annual basis, the chairperson of the delegation presents a report developed through discussions with the seven parliamentary commissions and the office of the secretary general of the government, on the extent to which regulatory dispositions have been implemented. In the report dated 31 March 2017, covering the previous year, it was noted for example, that "The rate of publication of enabling texts has reached approximately 90%, in continual increase compared to the 80% of last year and the 65% of the session 2013-2014".²⁵ In the report of 31 March 2018, the chairperson noted that while the percentage of enabling measures enacted by the government had increased again, there was often a delay in government responses to parliamentary questions regarding application of laws.²⁶

The allocation of responsibility for this work to a group of parliamentarians within the senate represents an evolution and formalization of a process begun several decades ago, initially carried out by staff of the parliamentary secretariat who reported to the Bureau of the Senate on a biannual basis. This earlier staffed system remains in effect, for example, in the Swiss federal parliament. Alain Delcamp, honorary Secretary General of the Senate, notes that the biannual reports produced during his tenure at the senate had a clear impact in accelerating government action to implement laws.²⁷

The French approach can be contrasted with the more expansive Belgian model, briefly discussed by de Vrieze and Hasson, and the subject of a detailed 2018 analysis by Camille Courtois.²⁸ Following many years of discussion regarding the poor quality of drafted legislation as well as an excess of laws ('legislative inflation'), in 2007 the parliament adopted a new law to create a 'comité de suivi'

24 To October 2017, the Delegation of the Bureau *responsible for parliamentary work, oversight, and studies*, and from November 2017, the Delegation of the Bureau *responsible for parliamentary work, legislation in committees, votes, and oversight*.

25 See www.senat.fr/rap/r16-677/r16-6770.html (last accessed 2 January 2019).

26 See <https://www.senat.fr/notice-rapport/2017/r17-510-notice.html> (last accessed 2 January 2019).

27 Personal interview, Alain Delcamp, Kyiv, 28 June 2018.

28 C. Courtois, 'Le Comité parlementaire chargé du suivi législatif', *Courrier hebdomadaire du CRISP*, Vol. 10, 2018, pp. 5-46.

comprised of parliamentarians from both the upper and lower houses of the Belgian parliament. The committee was charged with two roles: to assess the adequacy of a law in addressing the problem it was designed to solve, and to identify weaknesses in the law itself that render it difficult to effectively implement. Laws could be referred to the committee by a range of bodies, including authorities responsible for implementing a law, the procurer general of the court of cassation, citizens and incorporated organizations, and the constitutional court. The committee's reports on particular pieces of legislation are to be delivered to the two parliamentary chambers and to the relevant ministry.

The 'comité de suivi' produced two substantive annual reports covering two periods: 2012 and 2013-2014. These resulted in the development of five legislative initiatives sponsored by the committee – three fixing weaknesses in the original legislative drafting, and the other two addressing substantive problems raised by laws on taxation and the judicial code. Three laws addressing these five issues were eventually adopted by parliament. Constitutional changes coming into effect in 2014 reduced the powers of the senate and abolished the direct election of senators, and it was argued that henceforth the comité should be reconstituted with membership only of the elected lower house. However, an initial legislative proposal developed by a cross-party group of parliamentarians was ruled noncompliant with Belgian legislative procedure by the Belgian state advisory body, the Conseil d'État. The legislative revision to the PLS process was being redesigned as of summer 2018, with the activities of the 'comité de suivi' remaining on hold.

Despite the interruption in the federal parliament's PLS committee, the PLS approach continues to gather momentum in other Belgian parliaments; in 2018, the parliament of Flanders adopted a decree addressing PLS, while the Brussels and French Community parliaments are also considering PLS propositions.²⁹

While the delays to effective implementation of the Belgian federal parliament's PLS process may be mainly due to procedural questions, there does seem to be some circumstantial evidence that, as occurs in the French senate, a PLS function interfacing with committees but reporting to parliament through its 'Bureau' may be a more realistic model for PLS, and one in which the risk of interference or conflict with the work of sectoral committees is mitigated. The French senate *Delegation* reports for both 2017 and 2018 make clear that their work is carried out in conjunction with the sectoral committees, as well as the secretariat of the Prime Minister's Office which itself maintains records of legislative implementation within the responsible ministries. Another interesting aspect of the PLS approach in the French senate is that although it has been carried out consistently for the past several decades, it is not enshrined in the rules of procedure of the institution, but established through resolution of the bureau and subject to revision as needed. Thus, it has avoided the legislative complexities encountered at the Belgian federal parliament.

29 *Ibid.*, pp. 28-29.

G Ukraine Case Study – Formal Existence, But Irregular Practice of PLS

Ukraine is governed through a semi-presidential system in which executive responsibilities are divided between an elected president and a cabinet of ministers headed by the prime minister. The parliament, the Verkhovna Rada of Ukraine (VRU), is the sole legislative power. Numerous studies of the Ukrainian parliament and political system have focused on the extraordinarily high number of legislative proposals, a low success rate (below 50%) of laws proposed by the Cabinet of Ministers, and overall, an excessive legislative framework combined with (or leading to) an incomplete application of laws in practice.³⁰ The Needs Assessment Mission report of 2016, carried out under the leadership of former European Parliament President Pat Cox, made as its first recommendation the need to establish an ‘end-to-end’ legislative process. The potential value of an effective system of PLS can thus be easily seen, and indeed echo the reasoning behind the establishment of the PLS process in the Belgian parliament discussed previously. Tracking what actually happens to the legislation that is enacted would enable identification of duplication, redundancies and cases where legislation is enacted but never properly implemented. This in turn would provide the possibility for feeding back into the legislative process and beginning a process of legislative rationalization.

In principle, Ukraine’s parliament has a relatively clearly articulated responsibility to carry out PLS. The Law on the Committees of the Verkhovna Rada of Ukraine was adopted in 1995, shortly after Ukraine’s independence. According to this law, parliamentary committees were charged with oversight over the observance and implementation of the constitution, laws and other regulations of the Verkhovna Rada of Ukraine, to check an accordance of secondary legislation to Constitution and laws of Ukraine and to analyse the effectiveness of their implementation. Article 16(7) of the Law on Committees specifies that committees shall in their oversight functions:

Conduct analyses of the practices of the application of legislative acts within the competences of a Committee, and prepare proposals concerning their systematisation and codification.

However, the law does not establish a framework or timelines for parliamentary committees conducting PLS, and as a result, the committees do it at their own discretion, guided only by their own work plans. In practice, committees face a paradoxical situation in which they are so overburdened dealing with the plethora of legislative proposals,³¹ often multiple addressing the same topic, that little committee time remains to carry out the PLS work that could help identify and eliminate legislative duplications. A further pressure on parliament is a large body

30 P. Cox, Verkhovna Rada of Ukraine and European Parliament Needs Assessment Mission Report and Roadmap for Reforms, Kyiv, Verkhovna Rada of Ukraine, 2016.

31 Despite provisions in the Rules of Procedure aimed at eliminating such duplication.

of European Union 'acquis' that need to be 'transposed' into Ukrainian law as a condition of Ukraine's accession to the EU-Ukraine Association Agreement.

As noted, whether committees carry out PLS is largely dependent on the capacity and will of individual committees and specifically of the committee leadership. A review of committee work plans and reports for the 7th and 8th sessions (2017-2018) of the parliament elected in 2014 shows wide divergence in the PLS practices of different committees. Several committees do include PLS in their work plans, including, for example, the committee on issues of agrarian policy and land relations,³² the committee on legal policy issues,³³ and the anti-corruption committee,³⁴ although a number of other committees either do not publish their work plans or have little or no information in their plans regarding PLS.

Some committees' actual PLS work is quite comprehensive, with them regularly selecting legislation for implementation review. This is the case, for example, for the Committee on Legal Policy and Justice, whose 8th session report includes details of PLS conducted on five pieces of legislation within the committee's jurisdiction.³⁵ The Committee on State Building, Regional Policy and Local Self-Government similarly provides a detailed overview of the PLS carried out by the committee on implementation of decentralization legislation, including details of input provided by various civil organizations, as well as consideration of reports of Ukraine's Accounting Chamber. Based on its PLS work, the committee provides recommendations to the government for improvement in the implementation of the decentralization legislation.³⁶

For a number of other committees, where PLS is mentioned in a work plan, the objectives are often formulated in a very broad manner, such as 'Question of the implementation of the law on civil service', an approach that does not establish with any certainty what specific scrutiny the parliamentary committee wishes to carry out. Similarly, the state of implementation of such measures in the reports on the implementation of these plans is often not clearly and precisely described. Some committees only publish a brief one-page tabular summaries of activities that simply state the number of 'oversight' activities conducted without further details.

The Government of Ukraine is itself legally mandated to carry out PLS on its own. At the government level, the PLS function is vested in individual ministries³⁷ and in the Cabinet of Ministers.³⁸ Being one of the originators of legislative proposals, the cabinet, when conducting PLS, can propose amendments to laws that have proven ineffective or inefficient.

32 See <http://komagropolit.rada.gov.ua/uploads/documents/30089.pdf> (last accessed 2 January 2019).

33 See <http://kompravpol.rada.gov.ua/uploads/documents/32146.pdf> (last accessed 2 January 2019).

34 See <http://crimecor.rada.gov.ua/uploads/documents/30655.pdf> (last accessed 2 January 2019).

35 See http://kompravpol.rada.gov.ua/news/Pro_komitet/zvit_kom/zvit_sesii/73174.html (last accessed 2 January 2019).

36 See http://komsamovr.rada.gov.ua/news/main_news/80241.html.

37 Art. 7 of the Law of Ukraine 'On Central Executive Power Bodies'.

38 Art. 19 of the Law of Ukraine 'On Cabinet of Ministers of Ukraine'.

The Law of Ukraine ‘On Fundamentals of State Regulatory Policy’ provides for a systemic approach to PLS, whereby each regulatory act should be subject to regulatory impact assessment (RIA) at baseline (within a year after the act takes effect), follow-up (within 2 years after the act takes effect), and periodically (every 3 years thereafter). This exercise consists of a number of steps, including the publication of a report with conclusions and recommendations. The *ex-post* RIA can be informed with relevant statistics, industry research and survey data. Performance indicators obtained during the follow-up *ex-post* RIA are compared with those of the baseline, while periodical *ex-post* RIAs are conducted to ascertain whether the regulatory act in question consistently achieves the aims and objectives outlined at the time of its adoption. Unfortunately, there is no formal feedback loop in which the results of the government RIA are fed into the parliamentary committee deliberations as part of its PLS and broader oversight work.

Although dysfunctionalities in parliament and in governance within Ukraine are not susceptible to any quick fixes, the consistent application of PLS would move the system towards a more coherent, consistent and parsimonious legislative production, perhaps paving the way for a rationalization of the legislative framework and the elimination of redundancy and duplication in legislation. This in turn would render governance more transparent and reduce the potential for capriciousness in legal interpretation within the judicial system. As noted, however, the existing legislative work burden on committees hampers consistent and in-depth PLS, and oversight work in general. The Ukrainian example suggests that in systems where parliamentary committees are responsible both for legislation and for oversight, a specialized PLS approach such as the one adopted by the French senate or the Swiss parliament, where either a group of parliamentarians or a staff team reporting to the management bureau of the institution may provide greater likelihood of consistent, focused and prioritized PLS.

H Conclusion and Recommendations

This article has found that PLS does take place in non-Westminster parliaments and that there is no systemic barrier to its expanded use in non-Westminster- as well as Westminster-model parliaments. The greater attention paid to PLS in Westminster-type systems, both in parliamentary literature and in parliamentary development practice, is probably due to several factors: a. the renewed drive for PLS that began around the turn of the century in the British parliament, b. the predominance of study of Westminster-model parliaments as opposed to other models and c. some lack of clarity on the scope of PLS, which renders it difficult to ‘translate’ to different systems and languages. However, as we saw with the case studies of both France and Ukraine, and also reported in secondary surveys of other countries, PLS frameworks are present in divergent parliamentary systems, addressing broadly similar questions of the effective application of laws.

The case study of Ukraine demonstrated that more effective application of PLS would be useful in addressing some of the endemic issues in Ukrainian parliamentarianism, which include legislative overload and inadequate attention to

oversight. A relatively narrow application of PLS, focusing on whether laws have been put into effect (as opposed to re-litigating the original legislation), has potential for both improving legislative implementation and discouraging duplication, while being realistic in scope for a parliament with relatively limited resources. However, it was also noted that the capacity of individual sectoral committees to implement PLS is limited and that some specific PLS service would be helpful. However, unlike in most democratic parliaments, there is no clear 'management bureau' that represent all factions and would be an obvious recipient of PLS reports, as is the case in the French senate. Finally, the absence of clear linkage between the PLS work within government and within parliament should be addressed. A regular ministerial report that includes PLS reporting to the relevant committee of parliament would enable more effective PLS in particular and parliamentary oversight more generally.

The parliamentary development implications of this article are twofold. First, as noted in the case of Ukraine, PLS can be a useful means to begin rationalization of the legislative process and in particular to introduce an end-to-end or legislative-cycle approach. Second, parliamentary development practitioners need to understand existing frameworks for PLS, so that support for enhanced PLS builds upon parliament's own working modalities and operating frameworks, rather than simply attempting to import wholesale a model that has been developed in a different institutional and political environment.

In terms of future research directions, the first priority should be a comprehensive documentation on PLS activities globally. Such a resource base would allow a clearer picture of practices and trends and provide a foundation for identifying and categorizing different approaches to PLS employed by parliaments. This in turn would enable selection of country cases for further comparative study, providing useful information for parliamentary development practitioners in designing knowledge-sharing activities for parliaments seeking to strengthen their PLS and institutional development processes.