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► To cite this version:

Jonathan Chibois. Parliamentarians' body face the virus: Reflections on parliamentary representation in a pandemic context in the French National Assembly. Annual Conference 2020: "Perspectives on Legislatures and Legislative Power: Past, Present, Future", Canadian Study of Parliament Group, Oct 2020, Ottawa, Canada. halshs-02975248

HAL Id: halshs-02975248

<https://shs.hal.science/halshs-02975248>

Submitted on 22 Oct 2020

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Parliamentarians’ body face the virus

Reflections on parliamentary representation in a pandemic context in the French National Assembly

Thursday, October 15, 2020,
Panel “Parliament in Unique Times”

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Translated by the Translation Bureau (a federal institution of Canada).

I would like to begin by thanking the CSPG for organizing this conference, and for giving me the opportunity to present my ongoing reflections.

These reflections began last spring, during the COVID-19 pandemic, when the French population was put on lockdown. At that time, I was shocked to see to what extent the French National Assembly was caught off guard, both its deputies and its governing bodies. It was widely reported in the press, and deputies and their staff shared about it on social media.

My purpose here is not to pass judgment on how unprepared they were, nor to lecture on the decisions that should have been made. The fact is, no existing regulatory provision, nor any precedent in the annals of this institution, could have guided the President of the Assembly on what to do: in the face of the unknown, improvisation was really the only option. Rather, the purpose of my talk is to examine how the new normal, with the constant threat of the pandemic, is an issue for parliamentary institutions: the focus is less on explaining past indecisions and more on shedding light on likely future decisions. When the pandemic hit last spring, it revealed a major weak spot in how French democracy currently operates, and the National Assembly will have no choice but to address it.

Before getting into what that weak spot is, I’ll wrap up my introduction by saying that all of the reflections that follow are part of a personal research program in political anthropology on the infrastructure of parliamentary assemblies, that is, on their necessary and ordinary operating conditions, whether from a human, regulatory or technical perspective. In this context, the pandemic was of interest to me because of how it called into question the ordinary operations of the institution, as well as some of its founding principles.

Transmission of the virus through parliamentary channels

Here's a fact: a virus is not only more likely to appear in France's National Assembly than anywhere else in the country, but also, once it appears, it is likely to spread to the French population far more quickly through parliamentary connections than through any other vector.

There are two reasons for this: the first is the crowded conditions in the Palais Bourbon, a fairly small historical building in which deputies work, meet and sit, as do their staff members and Assembly employees. Approximately 4,000 people work there, and individual workspaces are hard to come by, even for deputies: most workspaces are shared by at least two or three people (and often even more on the administrative side). The chamber itself is too small for deputies to have their own seats, so they have no choice but to share benches. At the Palais Bourbon, it is a headache to determine how to implement social distancing, when it is even possible.

The second reason is the number of miles the deputies put in, travelling between Paris and their constituencies at least once a week, as well as the high number of people they meet with on a daily basis. This means that deputies are not only at a higher risk of being exposed to the virus, but also collectively they are a key vector for spreading the virus to all levels of society across the entire country. If a major outbreak occurs at the Palais Bourbon, then 577 parliamentary offices are one only step behind. In the parliamentary world, communication and activities take place within a closely integrated network, and therefore any virus can spread easily.

For both of these reasons, and on a strictly structural level, national representation is a serious threat to public health during a pandemic. As such, it would be inconceivable if the Assembly (as well as the Senate) did not change how it operates if a new epidemic were to occur. The safest option would be to suspend all parliamentary activity in the Palais Bourbon (and in the constituencies) while the crisis is ongoing, and to do so very early on, as a precautionary measure.

The deputy's indispensable body

Of course, shutting down all parliamentary activities, whether before or during the crisis, is not a viable option because of the crisis itself. To conduct government business, deputies must be able to make decisions, enact legislative changes, defend the interests of their constituents, and support as well as monitor government policy.

Can the Assembly function without the body of deputies? Not body in the symbolic or metaphorical sense (as in a "legislative body"), but the body of elected representatives made of flesh and bone, who can individually or collectively be infected by a virus. This is the heart of the matter. My position is that, no, we cannot do without the physical presence of deputies, even as organizations and administrations are turning to telework, and the pressure to have employees work offsite is very strong.

Why do I think parliamentary work cannot happen unless deputies are physically present? Because at the Palais Bourbon, as in all other places where parliamentary life unfolds, the physical presence of the deputy affects their ability to take action. Standing up for a cause or a particular piece of legislation is a physical show of force. It means elected officials making themselves available when leaving the chamber, for example, and speaking to journalists in the "Four Columns Hall" It also means sharing informal moments, and lunches, for example, with

ministerial advisors, with lobbyists, or with colleagues from their parliamentary group. Or, for example, crossing paths with a minister in a common space and bending their ear for a moment. In other words, deputies can apply pressure with their physical presence, ensuring their political opponents and allies don't overlook them.

This unique way of socializing, where the challenge is to be in the right place at the right time, has no digital equivalent (although socializing online has its own unique advantages and disadvantages). Therefore, at least in France, if the Assembly decided to move deputies to telework – preventing them from being physically present at the Palais – it would no longer be able to properly carry out its constitutional purpose. It would upset the balance of power and leave the field wide open for the executive branch.

This situation reveals the serious limitations of having national representation depend on the physical presence of a restricted group of elected individuals. Any physical threat involving elected officials is in fact a threat to French democracy (not in the absolute sense, but, to reiterate, because of the current situation).

French-style hybrid procedures?

How can this problem be solved? How can we move away from having deputies physically present (due to the pandemic) while preserving their ability to meet in person, so they can fulfill their parliamentary functions?

First, I must say, before going any further, that in the case of the crisis in the spring, the problem went away before the institution really addressed it. The president of the Assembly did not implement any measures until the first cases had already been identified in the Palais. At that point, the government decided to put the entire French population on lockdown, and to pass emergency legislation authorizing it to govern by decree. In so doing, the Assembly agreed to temporarily forego its legislative power. Although its purpose, which is to monitor the government's actions, remained unchanged, the institution suspended all of its activities until the summer. Only a handful of deputies (mainly group leaders) were needed to monitor the government's activities. The question of deputies being physically present on site at the Palais did not come up, so there was no need to adopt “hybrid proceedings,” as was the case in the United Kingdom, for example, to ensure that the rest of the deputies on lockdown could continue working remotely.

This turn of events was unavoidable due to the novel and unexpected nature of the crisis, allowing the government to take advantage of the tacit agreement of a majority of deputies who were caught off guard and at a disadvantage. That said, this is not a viable long-term solution, since it upset the balance between institutions and required the Assembly to renounce its very purpose. Of course, in the event of a future pandemic, there is no guarantee that the government of the day will have a majority, as it did in our case when it agreed to and voted for this temporary transfer of legislative power.

The question has therefore not been resolved, and the problem remains. The Assembly should come up with a solution so it is ready in the future if a similar situation were to occur. It will have to come up with a set of provisions, and possibly adjust its regulatory framework in anticipation.

In my opinion, there is only one possible way forward. If it is not an option to forego the physical presence of deputies in the matter of national representation, and if it is also not possible to completely suspend the activities of the Assembly, the only solution is a hybrid one.

If we go back to a collective understanding of the objectives of a parliament, that is, national representation that cannot be compromised, (which is theoretically a strong principle in France), it would in fact be possible to envision a system of procedures for exceptional circumstances, integrated into the Assembly's rules of procedure, which the president could invoke temporarily when deemed necessary, based on provisions that would have been debated beforehand in a public sitting. This system could include distributing assignments to all deputies based on location (prorated based on the representation of elected officials), so that all the territories and the Palais Bourbon have physical representatives, while limiting movement as much as possible.

It would mean, on the one hand, that most deputies would be assigned to their constituencies, distributed equally across the country, so that each political group would have deputies available on the ground and accessible to citizens; and on the other hand, that a smaller number of deputies would be assigned to the Palais Bourbon, ensuring that all standing committees are covered, so that each parliamentary group would have deputies who could use their physical presence to engage in their legislative work and in government oversight. It would mean, on the one hand, that most deputies would be assigned to their constituencies, distributed equally across the country, so that each political group would have deputies available on the ground and accessible to citizens; and on the other hand, that a smaller number of deputies would be assigned to the Palais Bourbon, ensuring that all standing committees are covered, so that each parliamentary group would have deputies who could use their physical presence to engage in their legislative work and in government oversight.

In this system for exceptional circumstances, specific rules of procedure would be needed to ensure equality between those deputies who remain in their constituencies and those who are assigned to the Palais: this could be achieved by making voting by public ballot the norm and by allowing remote voting, to ensure the recent achievements for individual voting are not rolled back; and by allowing and arranging for deputies to speak from a remote location, both in committees and in public sittings.

Conclusion

To conclude, it is true that a hybrid solution like this one, modeled on the British system, is a departure from parliamentary representation in its current form in France. It is important to reflect on new ways that would ensure national representation, which may look a bit different than our current practices, and the representation of politicians at the national level. Therefore, promoting a hybrid solution would take real political will on the part of the President of the Assembly, as well as raising collective awareness among deputies. From the point of view of the balance of power, however, it seems to me that it would be preferable for the Assembly to decide on its operating conditions in a time of crisis rather than having them be dictated by the executive branch, as was more or less the case this spring.